

# Audit & Governance Committee

# 15 September 2020

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes**

## Update on complaints received under the Members' Code of Conduct

<b>Final Decision-Maker</b>	Audit & Governance Committee
<b>Portfolio Holder(s)</b>	Leader of the Council, Councillor Alan McDermott
<b>Lead Director</b>	Lee Colyer, Director of Finance, Policy and Development
<b>Head of Service</b>	Patricia Narebor, Head of Legal Partnership and Monitoring Officer
<b>Lead Officer/Report Author</b>	Keith Trowell, Team Leader (Corporate Governance) and Deputy Monitoring Officer
<b>Classification</b>	Non-exempt
<b>Wards affected</b>	All

### This report makes the following recommendations to the final decision-maker:

1. That Members note the update on complaints received under the Members' Code of Conduct.

### This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough
- A Green Borough
- A Confident Borough

The report supports the Council's commitment to probity in all our affairs as well as the values of openness and responsibility.

### Timetable

<b>Meeting</b>	<b>Date</b>
Audit & Governance Committee	15 September 2020

# Update on complaints received under the Members' Code of Conduct

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report provides an update on complaints received under the Members' Code of Conduct in the period 9 July 2020 to 1 September 2020.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The current Members' Code of Conduct ("the Kent Code") for Tunbridge Wells Borough Council was adopted by the Borough Council on 18 July 2012. It was a requirement under the Localism Act 2011 that all councils adopt a Code of Conduct and that the Code adopted must be based upon the Nolan Principles of Conduct in Public Life. At the same Full Council meeting the Council also adopted arrangements for dealing with complaints ("the Kent Procedures") made under the Code of Conduct in the Tunbridge Wells area. The current version of the Kent Procedures can be found on the Council's website.
  - 2.2 The Localism Act 2011 requirement to adopt a Code of Conduct also applied to the parish and town councils in the Tunbridge Wells area and all have adopted a Code of Conduct. These parish and town councils, with the exception of Paddock Wood, adopted the same 'Kent Code' which had been agreed across Kent and was adopted by the County Council, most of the district councils and most of the parish and town councils in Kent. Paddock Wood Town Council adopted the National Association of Local Councils model Code of Conduct.
  - 2.3 Under the Localism Act 2011 the Borough Council is responsible for dealing with any complaints made under the Members' Codes of Conduct against Borough, parish and town council members throughout the Tunbridge Wells Borough area. The arrangements for dealing with complaints ("the Kent Procedures") that were adopted by the Borough Council also apply in cases concerning parish and town councils.
  - 2.4 The Borough Council have resolved that oversight of the Kent Procedures falls under the Audit and Governance Committee.
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## 3. UPDATE ON COMPLAINTS RECEIVED

- 3.1 At each Audit and Governance Committee meeting the Monitoring Officer provides an update regarding Code of Conduct complaints. The update omits details of the identities of the complainant and the subject member because the Localism Act repealed the previous statutory process under which names were published. In the absence of that statutory process, the Data Protection Act requires the names to be kept confidential at this stage

- 3.2 At the Audit and Governance Committee on 21 July 2020 it was reported that there were 3 outstanding complaints against Borough Councillors. In two cases the views of the Council's Independent Person, Mr Michael O'Higgins, were awaited and in the third the initial response from the subject member was awaited. Having subsequently received the subject member's response that matter was also passed to the Independent Person.
- 3.3 Following receipt of the Independent Person's views –
- One complaint involving bullying and disclosing information on social media remains under consideration by the Monitoring Officer due to delay caused by the Covid-19 workload.
  - In another complaint involving bullying and disclosing information on social media it was concluded the legal jurisdiction criteria test and the Local Assessment criteria were not met in full and no further action would be taken. As a result of a subsequent request, the Monitoring Officer is reviewing this decision but delay has been caused by the Covid-19 workload.
  - In the third complaint, which also involved disclosing on social media information given in confidence, it was concluded that no further action would be taken as at least one of the local assessment criteria applied to each part of the complaint.
- 3.4 Since the last meeting three further complaints against borough councillors have been received. The first complaint alleged inappropriate email content, the second alleged misuse of Council resources and inappropriate behaviour at a meeting and the third alleged inappropriate comments made in the local press.
- 3.5 In each of the three most recent complaints the Monitoring Officer, after receiving reports from an independent assessor and after consulting with the Independent Person, decided that the complaints did not pass the legal jurisdiction test, and if they did, they failed at least one of the local assessment criteria and rejected the complaints.
- 3.6 However, as a result of recommendations made by the independent assessor, the Monitoring Officer will be issuing a further guidance note to councillors in order to address complaints of a minor nature, tit for tat complaints and political motivation and the application of the preliminary tests. The issue is also to be raised with political group leaders with the aim of improving civility between members. In addition a councillor training exercise on the Code, the complaints process and other procedural issues is to be arranged.
- 3.7 There are no other outstanding complaints.

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## **4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 That Members note the update on complaints received under the Members' Code of Conduct.

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## 5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 This report does not require further consultation as it is for information only.

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## 6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 The Committee's decision will be published in the minutes of this meeting on the Council's website in due course.

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## 7 CROSS-CUTTING ISSUES AND IMPLICATIONS

<b>Issue</b>	<b>Implications</b>	<b>Sign-off (name of officer and date)</b>
<b>Legal</b> including Human Rights Act	It is a requirement under the Localism Act 2011 that all Councils adopt a Code of Conduct and that the Code adopted must be based upon the Nolan Principles of Conduct in Public Life. The Members' Code of Conduct was adopted by Full Council on 18 July 2012 and can be found on the Council's website.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Finance</b> and other resources	If a complaint proceeds to investigation it may be carried out by an external person. If this is the case, there will be an irrecoverable cost to the Council.	Jane Fineman, Head of Finance & Procurement
<b>Staffing establishment</b>	No issues.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Risk management</b>	An effective complaints system is part of an effective system of governance.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Data Protection</b>	Data will be held and processed in accordance with the data protection principles contained in the Data Protection Act 2018.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Environment</b> and	There are no relevant issues identified within this report.	Keith Trowell, Team Leader (Corporate Governance) –

sustainability		01.09.20.
<b>Community safety</b>	There are no relevant issues identified within this report.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Health and Safety</b>	There are no relevant issues identified within this report.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Health and wellbeing</b>	There are no relevant issues identified within this report.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.
<b>Equalities</b>	The There are no relevant issues identified within this report.	Keith Trowell, Team Leader (Corporate Governance) – 01.09.20.

**8 REPORT APPENDICES**

None

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**9 BACKGROUND PAPERS**

None