

# Audit & Governance Committee

# 24 November 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>	Gary Rowland, Senior Lawyer (Corporate Governance)
<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	24 November 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 1 September 2020 to 13 November 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 implications of the Data Protection Act 2018 require that the names be kept confidential at this stage. A report can be considered in public (after a full investigation) at a Standards

Committee if a complaint is progressed to that stage and it is considered appropriate to do so, taking into account the requirements of the Data Protection Act 2018.

- 3.2 At the Audit and Governance Committee on 15 September 2020, it was reported that the Monitoring Officer had received three further complaints against Borough Councillors. 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.
- 3.3 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.
- 3.4 Since the last update, the Monitoring Officer has received a further two complaints. The first complaint against a Borough Councillor concerns an allegation of bullying and bringing the Authority or office into disrepute and the second complaint against a Parish Councillor, concerns an allegation of failure to declare an interest. Both complaints are currently under consideration and an update on the progress of both will be provided at the next committee meeting.
- 3.5 At the time of publishing this report, other than the complaints mentioned in part 3.4, there are no additional complaints outstanding.

Queries raised at the Audit and Governance committee on 21 July 2020.

- 1. Explore in more detail between the date of November 2019 and July 2020 how many different subject Members were complained about and how many different complainants there were.**

**Subject Members**

7 – Borough Councillors  
2 – Parish Councillors

**Complainants**

2 – Borough Councillors  
4 – Members of the Public

- 2. Calculate what the cost has been to Mid Kent Legal Services in dealing with these complaints. £23,404.31**
- 3. Advise on the specific legislation that prohibits the naming of Members that are sanctioned in accordance with the constitution as it was currently or to be constituted.**

Data Protection Act 2018 - Complaints which are formally investigated and considered at a standards committee can be considered in public subject to data protection implications.

**4. Explore the possibility that all complaints against one Member can be taken as one complaint.**

Multiple complaints on one incident against a subject member could be dealt with together as one complaint. Complaints against one member involving various incidents would need to remain separate and account be taken as appropriate of the complaint history of that member.

**5. Explain how Members could be advised of the range of sanctions that can be placed on a subject Member.**

The range of possible sanctions outlined in paragraph 4.1 of Annex 3 to the Code of Conduct are as follows:

- (a) Censuring the Subject Member or;
- (b) Recommending to the Subject Member's Group Leader or Parish Council, or in the case of an ungrouped Subject Member, to the Borough or Parish Council that they be removed from committees or sub-committees of the Council;
- (c) Instructing the Monitoring Officer [or recommending to the Parish Council] to arrange training for the Subject Member;
- (d) Recommending to the Borough or Parish Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the Borough or Parish Council;
- (e) Recommending to the Borough or Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (f) Recommending to the Borough or Parish Council the exclusion of the Subject Member from the Borough or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish Council committee and sub-committee meetings;
- (g) Reporting the Panel's findings to the Borough or Parish Council for information;
- (h) Instructing the Monitoring Officer to apply the informal resolution process;
- (i) Sending a formal letter to the Subject Member;

(j) Recommending to the Borough or Parish Council to issue a press release or other form of publicity;

(k) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

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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 including Human Rights Act</b>	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.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Finance and other resources</b>	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.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Risk management</b>	An effective complaints system is part of an effective system of governance.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Data Protection</b>	Data will be held and processed in accordance with the data protection principles contained in the Data Protection Act 2018.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Environment and sustainability</b>	There are no relevant issues identified within this report.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Community safety</b>	There are no relevant issues identified within this report.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Health and Safety</b>	There are no relevant issues identified within this report.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Health and wellbeing</b>	There are no relevant issues identified within this report.	Gary Rowland, Senior Lawyer (Corporate Governance)
<b>Equalities</b>	The There are no relevant issues identified within this report.	Gary Rowland, Senior Lawyer (Corporate Governance)

## 8 REPORT APPENDICES

None

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## 9 BACKGROUND PAPERS

None