

Update on complaints received under the Members' Code of Conduct

For Audit and Governance Committee on 30 March 2021

Summary

Lead Member: Leader of the Council, Councillor Alan McDermott

Lead Director: Lee Colyer, Director of Finance, Policy and Development

Head of Service: Patricia Narebor, Head of Legal Partnership and Monitoring Officer

Report Author: Gary Rowland, Senior Lawyer (Corporate Governance)

Classification: Public document

Wards Affected: All

Approval Timetable	Date
Audit and Governance Committee	30 March 2021

Recommendations

Officer recommendations as supported by the Portfolio Holder:

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

1. Introduction and Background

- 1.1 This report provides an update on complaints received under the Members' Code of Conduct in the period 1 September 2020 to 1 March 2021.
- 1.2 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.
- 1.3 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, except for 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.
- 1.4 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.
- 1.5 The Borough Council has resolved that oversight of the Kent Procedures falls under the Audit and Governance Committee.

2. Update on complaints received

- 2.1 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 Borough Council needs to adhere to the requirements of the Data Protection Act. Therefore, the names of parties involved in Code of Conduct complaints are kept confidential unless it is appropriate to disclose the names as part of a formal investigation and consideration by a Hearing Panel at a Standards Committee.

2.2 At the Audit and Governance Committee on 15 September 2020 it was reported that there were 2 outstanding complaints against Borough Councillors.

The conclusion of these complaints had been delayed due to the workload caused by Covid-19. Both complaints have now been concluded as follows:

- Allegation of bullying and disclosing information on social media.

Having sought the opinion of the Council's Independent Person, the complaint was concluded by way of informal resolution. The Subject Member was asked to issue an apology to the complainant, delete the offending posts from social media and agree to attend a relevant training session.

- Allegation of bullying and disclosing information on social media.

Having sought the opinion of an external Independent Assessor, no further action was taken as a result of the complaint failing one or more of the Legal Jurisdiction tests.

2.3 Since the last meeting, the Monitoring Officer has received three further complaints. One complaint against a borough councillor and two complaints against parish councillors. The first complaint alleged bullying and bringing the office or the Authority into disrepute, the second complaint alleged failure to disclose declarations of interest and the third complaint alleged the sharing of confidential information. All 3 complaints have now been concluded as follows:

- Allegation of bullying and bringing the office or the Authority into disrepute.

Having sought the opinion of the Council's Independent Person, no further action was taken as a result of the complaint meeting one or more of the Local Assessment Criteria.

- Failure to disclose declarations of interest.

Having sought the opinion of the Council's Independent Person, the complaint was concluded by way of informal resolution. The Subject Member was advised to ensure DPI forms were completed appropriately and undertake to declare interests at future parish meetings whilst also refraining from taking part in any discussions or votes where appropriate.

- Sharing confidential information.

Having sought the opinion of the Council's Independent Person, the complaint was concluded by way of informal resolution. The Subject Member was asked to issue an apology to the complainant and agree to attend a training session.

There are currently no outstanding Member complaints where a formal complaint form has been received.

- 2.4 Following the informal resolution of one complaint, the Monitoring Officer received comments from the complainant that they were not consulted about the use of the informal resolution process and therefore considers that the process followed was flawed.

The complaint was reviewed against the preliminary tests and further reviewed to address the complainant's subsequent queries. The complaint was not investigated under the procedure outlined under Annex C for the purpose of a Standards Committee Panel Hearing, since it was considered that the complaint did not merit such a formal investigation. Paragraph 4.2 notes that such an approach is relevant when the Monitoring Officer, in consultation with the Independent Person considers that the complaint 4.2(a) is serious enough to warrant one of the sanctions that can be applied; and/or there is a disruptive pattern of behaviour (consisting of less serious conduct).

The informal resolution was referred to in the initial letter to the complainant and the decision made is in line with the complaints handling process. The complainant sought an apology which the Subject Member provided (though the complainant remained dissatisfied). The outcome would not have been different, had the complainant specifically expressed their dissatisfaction to engaging in an informal resolution.

3. Preferred Option and Reason

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

4. Consultation results and previous committee feedback

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

5. Next Steps: Communication and Implementation of the decision

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

6. Cross Cutting Issues

A. Legal (including the 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.

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B. Finance 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.

C. Staffing

There are no relevant issues identified within this report.

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D. Risk Management

An effective complaints system is part of an effective system of governance.

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E. Environment and Sustainability

There are no relevant issues identified within this report.

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F. Community Safety

There are no relevant issues identified within this report.

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G. Equalities

There are no relevant issues identified within this report.

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H. Data Protection

Data will be held and processed in accordance with the data protection principles contained in the Data Protection Act 2018.

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I. Health and Safety

There are no relevant issues identified within this report.

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J. Health and Wellbeing

There are no relevant issues identified within this report.

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