

Update on complaints received under the Members' Code of Conduct

For Audit and Governance Committee on 27 September 2022

Summary

Lead Member: Leader of the Council, Councillor Ben Chapelard

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

Head of Service: Claudette Valmond, Interim Head of Legal Partnership and Monitoring Officer

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Classification: Public document

Wards Affected: All

Approval Timetable	Date
Audit and Governance Committee	27 September 2022

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 March 2022 to 31 August 2022.
- 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, 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.
- 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 have 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 Data Protection Act requires the names to be kept confidential at this stage.

2.2 At the Audit and Governance Committee on 22 March 2022 it was reported that there were three outstanding complaints against borough, parish, or town councillors. These complaints have now been concluded as follows:

- Parish/Town Councillor - Allegations of failure to behave in a way that a reasonable person would regard as respectful.
Complaint did give rise to a breach of the Code. Complaint was resolved informally. Subject member was advised to issue a written apology to the complainant.
- Borough Councillor - Allegations of bullying and bringing their office or the Authority into disrepute.
Complaint did not give rise to a breach of the Code. It failed the following Local Assessment Criteria:
(b) – no or insufficient information/evidence has been submitted to substantiate the complaint; and
(e) – the complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and members' time.
- Borough Councillor – Allegations of bullying, intimidation, compromising impartiality/integrity of those who work for or on behalf of the Authority, preventing access to information that a person is entitled to by law and bringing your office or the Authority into disrepute.
Complaint did not give rise to a breach of the Code. It failed the following Local Assessment Criteria:
(h) – the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter, or the alleged misconduct took place so long ago that the complaint should not be pursued.

2.3 Since the last report, the Monitoring Officer has received a further four complaints. Two of the complaints concern borough councillors whilst the remaining two complaints concern parish/town councillors.

Two of these complaints have now been concluded as follows:

- Borough Councillor – Allegations of bullying and threatening behaviour.
Complaint did not give rise to a breach of the Code. It failed the following Legal Jurisdiction Test:
(e) – if the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- Borough Councillor – Allegations of bullying, intimidation, compromising the impartiality/integrity of those who work for or on behalf of the Authority, using position as councillor to confer an advantage onto themselves and bringing their office or the Authority into disrepute.
Complaint did not give rise to a breach of the Code. It failed the following Legal Jurisdiction Test:

(f) – the complaint is about the dissatisfaction with the Borough or Parish/Town Council's decisions, policies and priorities etc.

Had the complaint passed the Legal Jurisdiction Test, it would also have failed the following Local Assessment Criteria:

(c) – the complaint is malicious, trivial, politically motivated, or 'tit-for-tat'; and

(g) – the complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken.

The two remaining complaints in relation to parish/town councillors are currently being considered by the Monitoring Officer and will be reported on in the next report. One of the complaints concerns an allegation of bullying, intimidation and compromising the impartiality/integrity of those who work for or on behalf of the Authority and the other concerns an allegation of bullying, compromising impartiality/integrity of those who work for or on behalf of the Authority, using position as a councillor to confer an advantage onto themselves, bringing their office or the Authority into disrepute and preventing another person from gaining access to information which they are entitled to by law.

3. Preferred Option and Reason for Recommendation

- 3.1 That Members' note the update on complaints received under the Member's 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. Appendices and Background Documents

Appendices: None

7. 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.

Gary Rowland, Senior Legal Advisor (Corporate Governance) 31/08/2022

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.

Gary Rowland, Senior Legal Advisor (Corporate Governance) 31/08/2022

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.

Gary Rowland, Senior Legal Advisor (Corporate Governance) 31/08/2022

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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