

Update on complaints received under the Members' Code of Conduct

For Audit and Governance Committee on 14 March 2023

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, Head of Legal Partnership and Monitoring Officer

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Classification: Public document

Wards Affected: All

Approval Timetable	Date
Audit and Governance Committee	14 March 2023

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 Twice yearly, the Monitoring Officer provides an update to the Audit and Governance Committee regarding Code of Conduct complaints. The update omits details of the identities of the complainant and the subject member because the Localism Act 2011 repealed the previous statutory process under which names were published. In the absence of that statutory process, the Data Protection Act 2018 requires the names to be kept confidential at this stage.

2.2 At the Audit and Governance Committee on 13 September 2022 it was reported that there were three outstanding complaints against borough, parish, or town councillors. These complaints have now been concluded as follows:

Complaint 1

- Parish/Town Councillor – Allegations of:
 1. bullying;
 2. compromising, or likely to compromise the impartiality or integrity of those who work for, or on behalf of, the Authority;
 3. preventing another person from gaining access to information to which that person is entitled by law;
 4. bringing the Authority or office into disrepute; and
 5. improperly conferring or securing an advantage or disadvantage for yourself or any other person.

No breach of the Code was established. The complaint met the following preliminary tests:

Legal Jurisdiction Test – 1.2(f) the complaint is about dissatisfaction with the Borough or Parish/Town Council's decisions, policies, and priorities, etc.

Local Assessment Criteria – 1.4(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.

Complaint 2

- Parish/Town Councillor – Allegations of:
 1. bullying and intimidation; and
 2. compromising, or likely to compromise the impartiality or integrity of those who work for, or on behalf of, the Authority.

No breach of the Code was established. The complaint met the following preliminary tests:

Legal Jurisdiction Test – 1.2(f) the complaint is about dissatisfaction with the Borough or Parish/Town Council's decisions, policies, and priorities, etc.

Local Assessment Criteria – 1.4(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.

Complaint 3

- Parish/Town Councillor – Allegations of:
 1. failure to act in accordance with the Authority’s reasonable requirements;
 2. failure to ensure that council resources are not used improperly for political purposes (including party political purposes); and
 3. disclosing information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature.

No breach of the Code was established. The complaint met the following preliminary test:

Legal Jurisdiction Test - 1.2(f) – the complaint is about dissatisfaction with the Borough or Parish/Town Council’s decisions, policies, and priorities, etc.

- 2.3 Since the last meeting, the Monitoring Officer has received a further three complaints. Two of the complaints concern borough councillors whilst the remaining one complaint concerns a parish/town councillor.

Two of these complaints have now been concluded as follows:

Complaint 1

- Parish/Town Councillor – Allegations of:
 1. failure to act in accordance with the Authority’s reasonable requirements;
 2. bullying and intimidation;
 3. bringing the office or the Authority into disrepute; and
 4. improperly conferring or securing an advantage or disadvantage for yourself or any other person.

No breach of the Code was established. The complaint met the following preliminary tests:

Legal Jurisdiction Test - 1.2(f) – the complaint is about dissatisfaction with the Borough or Parish/Town Council’s decisions, policies, and priorities, etc.

Local Assessment Criteria – 1.4(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; and

Local Assessment Criteria – 1.4(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.

Complaint 2

- Borough Councillor – Allegations of
 1. bullying; and
 2. bringing the office or the Authority into disrepute.

A breach of the Code was established and the complaint was resolved informally. The subject member was asked to issue an apology to the complainant.

Complaint 3

The one remaining complaint is currently being considered by the Monitoring Officer and will be detailed in the next report. It concerns a complaint against a Borough Councillor and the allegations concern bringing the office or the Authority into disrepute.

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) 27/02/2023

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.

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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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