

**Standards Committee
30 JANUARY 2024**

**Council
29 February 2024
Annual Report of the Council's
Monitoring Officer – 2023**

A. Introduction

1. The principal purpose of my Annual Report is to assess activity in probity and related governance matters, in particular in relation to formal complaints about alleged breaches of protocols and codes of conduct by borough and parish councillors. The report also provides an opportunity to review the effectiveness of current procedures. This report deals with the calendar year 2023 in relation to these matters.
2. The Council's current code of conduct for councillors was adopted on 20 July 2012 and has since been the subject of a number of amendments. This code is based on Localism Act principles and was developed as a collaborative project by Kent Monitoring Officers in consultation with task groups of councillors within individual councils. The vast majority of district and parish councils in Kent adopted this "Kent Model Code of Conduct" although some parish councils have since adopted a model code prepared by the LGA.
3. When it adopted the Code of Conduct in 2012, the Council also adopted new procedural "Arrangements" for handling code of conduct complaints. Again this was developed on a Kent-wide basis with the objective of simplifying procedures and removing unnecessary bureaucracy which had beset the previous standards regime.
4. The Council has also adopted a "Good Practice Protocol for Councillors Dealing with Planning Matters". This sets out detailed best practice rules for this specialist and sensitive area of the Council's work which go beyond the general rules set out in the code of conduct.
5. My Annual Report also includes data on Ombudsman complaints as these are also handled by or on behalf of the Monitoring Officer. The Standards Committee monitors any issues of probity raised in Ombudsman investigations. In terms of Ombudsman complaints the relevant period relates to the most recent data provided by the Ombudsman namely that for the period 1st April 2022 to 31 March 2023.

B. Code of Conduct Complaints 2023

6. Formal complaint activity in Ashford has generally been relatively low since adoption of the new code of conduct in 2012. For example, during 2016 no new formal complaints were submitted, whilst in previous years the few complaints made, mainly at Parish Council level, had been resolved informally. However the period since 2020 has been more challenging. Between early 2020, and mid 2021 various temporary national and local "lockdowns" were in

place with most staff working remotely and councillor meetings taking place “virtually” up to May 2021. However this did not result in a reduction of formal or informal complaint activity. On the contrary the volume of informal complaint activity and requests for advice grew significantly at parish council level. In my report in 2022 I reported that 23 complaints had been received during 2021. Although most had resulted in no further action following initial filtering decisions, in many of these cases, a significant volume of “pre-investigation” work was required in order to reach a “no further action” decision. Some decisions were therefore lengthy documents and the time and cost involved in cases reflected this reality.

7. Last year (for the calendar year 2022) I reported that the volume of complaints had reduced to 8 with no new cases referred for formal investigation.

The handling of some of these complaints in 2021/2022 was undertaken by an external specialist lawyer in view of staff vacancies and other pressing work priorities in legal services. This had been undertaken within the current legal services budget, using vacancy savings. This allowed the work to be undertaken within reasonable timescales.

8. At the time of my report in January 2022 – and in view of the very significant growth in numbers of complaints at parish council level – members also requested that discussions be held with the Kent Association of Local Councils with a view to agreeing measures to reduce the incidence and cost of formal complaints. Discussions have taken place between Kent Monitoring Officers and KALC representatives in 2022 and 2023 and KALC did take some steps with their own member councils to strengthen their own training offer and promote internal procedures to resolve complaints about parish council governance and procedures which should not normally be pursued through code of conduct complaint channels
9. Although the number of formal code complaints made in 2022 reduced significantly – and the steps taken by KALC with its members may have helped initially in this regard – it can be seen from TABLE 1 below that the number of complaints received in 2023 has increased significantly again. Even leaving aside the first entry in the Table involving a complaint against all 9 Councillors at one local council, the volume of complaints has even exceeded the elevated level of 2021.

In addition to the complaints received in 2023 there is one earlier complaint still outstanding following referral for investigation. Delay has occurred for a number of reasons, including the personal circumstances of the subject councillor, their subsequent resignation and the consequent need for the investigator to review the terms of the final report on a number of occasions. I will report separately to this committee on that case in the near future.

Table 1
Formal Code of Conduct Complaints Made
in 2023

No	Ashford BC -Complaint Reference	Council	Background (Allegation)	Action/Current Position
1-9	PR304-224	Egerton Parish Council	Para 3 – preventing another person from accessing information	The complaint was essentially about alleged non-disclosure following an FOI request to the parish council which should be pursued through the Information Commissioners Office, not as a code breach
10 & 11	PR304/225	Ruckinge Parish Council (2 Cllrs)	Para 5 of code alleged failure to declare interests when discussing a planning application	Complaints rejected on basis the facts, even if proven, did not disclose a potential breach of the code as decision would not affect financial interests
12	PR304/226 (WC)	Pluckley Parish Council	Alleged participation in planning decision when biased	Monitoring Officer tried to resolve informally but unsuccessfully. Unfortunately, the case led to the resignation of a councillor. Formal decision was no further action as unlikely an investigation would be able to come to a firm conclusion on what had been said prior to the meeting and circumstances had changed significantly since complaint so little public benefit in further action
13	PR304/227 (WC)	Ashford Borough Council	Social Media post Alleged disrepute and offensive/abusive material on social media	Complaint rejected as even if acting as councillor, conduct could not amount to code breach – post made in political context
14	PR304/228 (WC)	Ashford Borough Council	Social Media post Alleged disrepute and offensive/abusive material on social media	Complaint rejected as even if acting as councillor, conduct could not amount to code breach – post made in political context
15	PR304/230	Ashford Borough Council	Alleged disclosure of private information on social media	Complaint rejected as anonymous and despite request insufficient information provided to determine whether in public interest to pursue
16	PR304/231	Kennington Community Council	Alleged breach of code by offensive social media post	Insufficient evidence provided – no copy of or details of alleged post
17	PR304/232	Kingsnorth Parish Council	Alleged bullying between councillors	Complaint not being considered due to failure to provide sufficient information

18	PR304/233 (WC)	Bethersden Parish Council	Alleged failure to declare an interest at Parish Council meeting and improper use of position to confer an advantage	Decision Notice to be issued early 2024
19	PR304/234 (WC)	Bethersden Parish Council	Alleged failure to declare an interest at Parish Council meeting and disclosure of personal data	Decision Notice to be issued early 2024
20- 22	PR304/235 (WC)	Bethersden Parish Council (3 Cllrs)	Alleged failure to declare interests at Parish Council Meeting, failing to submit written application for dispensation and using position improperly to confer an advantage	Decision Notice to be issued early 2024
23- 25	PR304/236	Kennington Community Council (3 Cllrs)	Alleged breach of code by councillors arguing on social media	Awaiting further information to identify which councillors complaint is about and more information in relation to the posts
26	PR304/237 (WC)	Tenterden Town Council	Alleged breach of code by inappropriate social media posts regarding other councillors	Decision Notice to be issued early 2024
27	PR304/238 (WC)	Tenterden Town Council	Alleged breach of code by inappropriate social media posts regarding other councillors	Decision Notice to be issued early 2024
28- 32	PR304/239 (WC)	Bethersden Parish Council (5 Cllrs)	Misleading public into believing s106 money to be used for supporting business they have an interest in. And failure to declare interest at Parish Council meeting	Complaints under consideration
33- 37	PR304/240 (WC)	Bethersden Parish Council (5 Cllrs)	Alleged holding private Council meetings thereby excluding the public from discussions	Complaint under consideration
38	PR304/241	Kingsnorth Parish Council	Councillor Profile on website incorrect claims of holding certain offices	Complaint resolved by discussions between Monitoring Officer and parish clerk and updating of website

39	PR304/242 (WC)	Kingsnorth Parish Council	Alleged disrepute by comments made at public meeting	Complaint under consideration
40	PR304/243 (WC)	Kingsnorth Parish Council	Alleged bullying of councillor	Referred for formal investigation

WC = referred to external law firm

10. Complaints in 2023 have been predominantly at parish council level with a concentration of activity around a small number of councils. Although it is difficult to draw sweeping conclusions about root causes from this activity (because the prevailing background circumstances in each case are quite different) this level of complaint is unsustainable in terms of time and cost for the Borough Council. As happened in 2021/2022, about half the complaints have been referred to specialist external lawyers for determination using vacancy savings within the legal services budget where possible. Significant in-house costs have also been incurred not only in managing the outsourcing but also seeking to resolve the significant number of complaints not outsourced. A number of complaints were resolved in this way in 2023. Salary savings within legal services is unlikely to be available during 2024 and if complaint levels do persist, alternative funding will need to be identified. The average external costs incurred on a complaint is c.£4000 plus an average of five hours per case on internal handling and monitoring. The average in-house time commitment on complaints handled solely internally has been 8 hours.
11. In my view, a number of steps should be taken as a priority, in an endeavour to drive down complaint numbers and manage workloads:
- Further urgent engagement with KALC regarding training for their members. Ashford Borough Council did provide post- election code of conduct training for borough and parish councillors in May 2023 but there should be a greater emphasis now also on KALC's own training programme for local councillors. This could usefully focus on special skills such as chairing council meetings and managing conflicts at meetings as well as promoting mediation as a possible solution to working relationship tensions between councillors. The latter in particular has been a factor in a number of complaints, as well as causing multiple resignations in one local council. A further meeting between Kent Monitoring Officers and KALC is currently being arranged and this will also focus on further steps they can take to assist such as sitting in on council meetings at councils where difficulties persist so that advice and assistance can be offered subsequently.
 - Further discussions with KALC to develop an optimum programme for a

mid-term councillor training event as suggested by this Committee at previous meetings.

- Discussions with the Society of Local Clerks (the parish clerk organization) to explore options for further training for clerks to strengthen skills in good governance especially around declaration of interests, use of social media by councillors and conflict management at meetings.
- The Council's appointed Independent Person (IP) (Mrs Carol Vant) has been consulted and agrees with the above proposed steps. As members know, the IP is a member of the Standards Committee. Under statute, the views of the IP must be sought and taken into account before a decision is taken on an allegation it has decided to investigate. Statute also allows the IP to have a wider role. At Ashford the role of the IP also includes being consulted by the MO on certain decisions such as when undertaking initial assessment of a complaint, when deciding whether a complaint should be resolved informally and whether the identity of a complainant should be withheld. The IP may also be consulted by a councillor who is the subject of an allegation although it is important to note that it is not the IP's role to intervene on behalf of a subject councillor. The IP must remain independent but could, for example, ensure the subject councillor is aware of the process and that the process is being fairly followed.

C Other Governance Developments

12. Following my last annual report I undertook to report further to this Committee regarding the work of Kent Monitoring Officers on the LGA's published "model code". At that time, I thought this work would conclude in a few months. However because the work was expanded to include a more comprehensive review of the "Arrangements for Handling Complaints" as well as the LGA Code, and because the LGA subsequently issued further Guidance which required further review work, the Kent Monitoring Officer work was not concluded until late 2023
13. The Kent Monitoring Officers work has resulted in a number of recommended minor changes to the Kent Code and the "Arrangements". I will bring forward a report to this Committee as soon as possible.

D Ombudsman Complaints 2022/2023

14. Since April 2013 complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government and Social Care Ombudsman (LGO). With effect from April 2024 the two offices will introduce a new Joint Complaint Handling Code. The purpose of the Joint Code is to facilitate speedier resolutions of complaints and the use of complaint data to drive service improvements. Ombudsman guidance is expected shortly and a project team is already working on implementing revised internal procedures.
15. In the meantime the analysis of complaints resolved by the LGO in 2022/23 are attached at APPENDIX A. The LGO's Annual Review Letter is also in Appendix A
16. The number of complaints received by LGO in 22/23 (16) was similar to

2021/22 (17). The number of complaints upheld in 21/2 was 3. The number upheld in 22/3 was zero

17. Similar details for the Housing Ombudsman service are also provided at Appendix A. In this case for 2022/2023, 5 complaints were investigated resulting, in a total of 12 findings including 8 maladministration findings as broken down and tabulated in Appendix A. Further statistical details are given in the Landlord Performance Report at Appendix D. The table of Housing Ombudsman complaints includes full details of remedial measures taken and lessons learned. No probity issues arise of direct relevance to the work of the Standards Committee.

In 2021/2022 there were 2 complaints investigated with a total of 5 findings including 3 findings of fault/service failure (maladministration).

E Recommendations

1. That the annual Report of the Monitoring Officer for 2023 be received and noted
2. That the Monitoring Offer report to a future meeting of this Committee in relation to the Kent Monitoring Officers review of the LGA Model Code and of the current Arrangements for Handling Code of Conduct Complaints
3. That the Monitoring Officer take the steps identified in paragraph 11 of this report in order to improve training, awareness and skills especially at local council level and seek to drive down incidence of formal complaints

T W MORTIMER
Solicitor to the Council & Monitoring Officer

January 2024