

# REVISED COUNCILLOR COMPLAINT HANDLING ARRANGEMENTS

<b>Council</b>	8 December 2022
<b>Report Author</b>	Committee Services Manager
<b>Portfolio Holder</b>	Leader of the Council, Cllr Ash Ashbee
<b>Status</b>	For Recommendation
<b>Classification:</b>	Unrestricted
<b>Ward:</b>	All

## Executive Summary:

This report asks the Full Council to consider the suggested changes to the current Councillor complaints handling arrangements as a result of their review by the Kent Secretaries group, the Council's Constitutional Working Group and the Council's Standards Committee. All of the changes are outlined in paragraph 2.0 of the report. The changes can be amended further by Full Council or they can remain as they are laid out within the report.

## Recommendation(s):

To agree the changes to the Council's Standards Complaint handling arrangements taking into consideration the recommendations from both the Constitutional Review Working Party and the Standards Committee.

## Corporate Implications

### Financial and Value for Money

There are no financial implications arising directly from this report.

### Legal

The legal implications are outlined throughout the report.

### Risk Management

Submitting a complaint against a Councillor or being the subject of one can be a very stressful situation. By ensuring that the Council's processes and procedures for dealing complaints are as robust, efficient and transparent as possible is important, as it can reduce the stress of the whole process. If the process is not transparent, inefficient and not timely then there is a significant risk of reputational damage to the Council and the entire standards process can be seen to be undermined.

### Corporate

An up to date and robust Councillor code of conduct is important as it allows for clear rules for Councillors to adhere to and gives clear indications to the wider public on what constitutes acceptable behaviour from their elected representatives.

## **Equality Act 2010 & Public Sector Equality Duty**

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

## **Corporate Priorities**

This report relates to the following corporate priorities: -

- Communities

### **1.0 Introduction and Background**

1.1 TDC's Councillor Code of Conduct is based on the "Kent Code of Conduct". This is a model code of conduct that is broadly similar across the County in order to maintain a similar level of standards amongst Councillors. The Kent Code was created and is maintained by the Kent Secretaries group, which consists of all of the Council Monitoring Officers from all the Districts in Kent as well as Kent County Council. The Kent Secretaries group created a series of procedures based on those that were created with the original model code of conduct created after the introduction of the Localism Act 2011.

1.2 The Local Government Association produced a new model code of conduct for Councillors in 2021 and Kent Secretaries then updated the "Kent Code of Conduct" to reflect these changes - this piece of work is extensively covered elsewhere in this agenda. Further to that piece of work, the Kent Secretaries took that opportunity to update the associated processes for receipt and handling of complaints and subsequent hearings. This report outlines those suggested changes.

## 2.0 Changes to the current procedures

### 2.1 Arrangements for Dealing With Code of Conduct Complaints Under the Localism Act 2011

2.1.1 The following amendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Change to Interpretation Paragraph	Delete paragraphs 2.12 and 2.13	<p>2.12 'Standards (Assessment) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council with responsibility for making recommendations to the Monitoring Officer on whether in relation to a complaint alleging a failure by a Subject Member to comply with the requirements of the Members Code of Conduct no further action should be taken in respect of the complaint or whether the informal disputes resolution procedure should be instigated or whether the complaint should be the subject of an investigation.</p> <p>2.13 'Standards (Hearings) Sub Committee' means the Sub Committee established by the Standards Committee of the District Council to conduct a hearing in respect of a complaint against a Subject Member referred to it by the Monitoring Officer</p>	Paragraphs 2.12 and 2.13 are not needed in the summary document as they are extensively covered in the annexes to the document.

		<p>under these Arrangements and at the conclusion of the hearing and having regard to the opinion of the Independent Person to recommend to the Monitoring Officer whether in the opinion of the Sub Committee there has been a failure by a Subject Member to comply with the Members Code of Conduct and if so, to further recommend what action should be taken in relation to such failure.</p>	
Making a complaint	b) via the Council's website using the on-line complaint form provided there.	None	This clarifies that online forms are acceptable as a way to submit complaints.
Complaint acknowledgement	The Monitoring Officer will normally acknowledge receipt of a complaint within 15 working days of receiving it. At the same time (and subject to paragraph. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 1 of Annex 1 to these Arrangements.	The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with Paragraph 2 of Annex 2 to these Arrangements.	The current 5 day deadline is considered not achievable in many cases, due to Monitoring Officers being engaged on other matters, or simply being on leave.
Local Assessment Criteria	Delete Paragraphs 9 to 9.4	<b>9. Standards (Assessment) Sub Committee - Local Assessment Criteria.....</b>	Paragraphs 9 to 9.4 are not needed in the summary document as they are extensively covered in the annexes to the document.
Investigation deadline	10.1 If the Monitoring Officer decides that the complaint merits formal investigation, they will, normally within 30 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform	If the Monitoring Officer decides that a complaint merits formal investigation, they will, within 10 working days of their decision, appoint an Investigating Officer to undertake the investigation and inform	The current 10 day deadline is considered not achievable in many cases, due to the availability of suitably qualified investigators.

	the Parties of the appointment.	the Complainant and the Subject Member of the appointment.	
No breach procedure	Delete Paragraph 12 to 14.2	<b>12 Investigating Officer's Opinion - 'No Breach'.....</b>	Paragraphs 12 to 14.2 are not needed in the summary document as they are extensively covered in the annexes to the document.
Discontinuation of Action	14.1 In the event that the Subject Member has died, is seriously ill or has ceased to be an elected member or co-opted member of the District/Borough or Parish Council the Monitoring Officer may determine to end the complaints process.	New	There is currently no allowance within the current scheme to end standards complaints due to death or serious illness of the subject member.

## 2.2 Procedure on Receipt of a Complaint

2.2.1 The following amendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Notification of Complaint	The Monitoring Officer may invite the Subject Member [and, if applicable, the Parish Clerk] to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).	The Monitoring Officer may invite the Subject Member and, where applicable, the Parish Clerk to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint.	The timescale has been removed in order to allow more time to collect views from the subject member, as they may miss out on submitting important information due to unavailability.
Amending the local assessment/legal jurisdiction test	Legal Jurisdiction Test <ul style="list-style-type: none"> <li>Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer to this is 'No' the test is failed.</li> </ul>	Local Assessment Criteria <ul style="list-style-type: none"> <li>Was the person complained of acting in an official capacity at the time of the alleged conduct? If the answer</li> </ul>	These two criteria were in the wrong section of the procedure.

	<ul style="list-style-type: none"> <li>• Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.</li> </ul>	<p>to this is 'No' the test is failed.</p> <ul style="list-style-type: none"> <li>• Did the alleged conduct occur when the person complained of was acting as a member of another authority? If the answer to this is 'Yes' the test is failed.</li> </ul>	
Total timescale for complaints	If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, normally within 60 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.	New	This introduces an aspirational overall timescale for non-valid complaints.
Informal resolution	The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 6 below. Where the Subject Member or the Monitoring Officer or the District or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.	<p>Where the Subject Member has made a reasonable offer of informal resolution it is more likely that the decision will be to instigate the informal disputes resolution procedure although the seriousness of the complaint and the acceptability of such offer to the Complainant will also be taken into account in making the decision.</p> <p>More information on when it may be appropriate to instigate the informal disputes resolution procedure is given at Paragraph 6 below.</p>	Revised wording.
Overall timescale for dealing with complaints.	Normally within 90 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member [and, if applicable, the Parish Clerk] of their decision and reasons for applying one of the following processes in the	New	This paragraph introduces a new total time target (in days) for dealing with complaints.

	format of the Decision Notice template (appended to this Annex 1):		
Confidentiality	If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.	If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.	This change introduces a 15 day time limit for the Monitoring Officer to inform the complainant of the decision regarding confidentiality. This timescale helps to prevent the process from becoming too elongated.

## 2.3 Procedure for Investigating the complaint

2.3.1 The following amendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
Updating relevant laws	The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under UK GDPR and the Data Protection Act 2018, Equalities Act 2010, the Human Rights Act 1998, and other relevant legislation	New	The laws governing data protection have been updated since the code was first introduced in 2011.
Notification by investigating officer	The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 20 working days of being appointed	Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment	The timescale for contacting the subject members and the complainant has been extended to 20 days. This takes into account potential delays in passing on contact details.
Evidence of new breaches	New section covering the discovery of new breaches by the investigating officer	New	This section now explains what the investigating officer

			should do if they find evidence of new breaches when undertaking their investigation.
Referring cases back to the Monitoring officer	New Section covering how the Monitoring Officer can end an investigation on the receipt of additional evidence	New	This allows for the early closure of an investigation, when new evidence is received that would render the investigation fruitless to continue. Currently this option doesn't exist and so investigation must continue even when there is no merit in continuing, all the time incurring further expense.
Deferring an investigation	New section covering how an investigation can be deferred.	New	Previously there was no legitimate way of deferring an investigation within the scheme. This section outlines how a deferment can occur.
Consideration of the Final Report	Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either: <ul style="list-style-type: none"> <li>a) Take no action; or</li> <li>b) Seek informal resolution; or</li> <li>c) Refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in Annex 3 to these Arrangements.</li> </ul>	Previously the Monitoring Officer could only take no action or refer to the Hearing Panel	By adding informal resolution to the options for the Monitoring Officer, this allows more flexibility where a small breach is found to have occurred. This will allow for a quicker conclusion to complaints and reduced costs where hearings will not be needed for relatively minor breaches of the code.
Confidentiality	7.1 The procedures detailed in this Annex are all treated as confidential to those involved in the process. Some details (which would include names	New	This section has been added to remind those in the process of the importance of confidentiality to the



	<p>and addresses) may be personal data, subject to data protection laws, some content of statements or reports may be otherwise private or confidential or, may be potentially defamatory if published.</p> <p>7.2 Whilst non-members are not covered by the Code of Conduct (e.g., members of the public, witnesses and non-councillor complainants) if, they do decide to publish details of the complaint they may expose themselves to liability in defamation (if information turns out to be untrue) or to other liabilities e.g., for breach of confidence, or for breach of data protection laws which could arise even where the information is true.</p> <p>Non-members may wish to seek their own legal advice.</p>		<p>process.</p>
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## 2.4 Hearing Panel Procedure

2.4.1 The following amendments have been proposed by the Kent Secretaries group to the summary document:

Provision	Proposed Amendment	Current Arrangements	Reasoning
<p>Pre Hearing procedure</p>	<p>In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre-hearing procedure to identify:</p> <p>(a) Which facts in the investigation report are agreed and which are in dispute.</p> <p>(b) Whether there is fresh evidence not mentioned in the investigation report which will be put before the hearing.</p>	<p>New</p>	<p>By introducing a pre-hearing procedure it is hoped that it will bring to light issues before a hearing starts that can cause delay to a hearing or avoid participants questioning the legitimacy of the proceedings.</p>

	<p>(c) Whether there is documentary evidence which a party intends to put before the hearing.</p> <p>(d) Whether the parties intend to attend, whether the parties intend to be represented in accordance with paragraph 3 and, if so, by whom, the number and identity of witnesses to be called.</p> <p>(e) Whether the Subject Member requests the whole or any part of the hearing to be held in private.</p> <p>(f) Whether the Subject Member requests the whole or any part of the investigation report or other relevant documents to be withheld from the public.</p>		
Membership of Hearings	<p>The Hearing Panel consists of three voting elected Members drawn from the [Standards Committee], one of whom shall be elected as Chairman.</p> <p>The quorum for a meeting of the Hearing Panel is three elected Members.</p>	<p>Previously one of the Independent Members had to be the Chair of the hearing Panel.</p> <p>TDC currently has a membership of two cllrs and one independent member.</p>	Could reject this one.
Substitution on hearing panels	Once a hearing has started, the District Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.	New - there are no current rules on substitutions	This rule ensures continuity in hearings.
Representation at hearings	The Subject Member may choose to be represented by counsel, a solicitor, or by any other person they wish. The panel does, however, have the right to require a representative to leave if that representative disrupts the hearing. However, an appropriate warning will be given before requiring a representative to leave the hearing.	Currently the scheme is not specific enough to say that a legal representative is allowed to accompany the subject member.	This amendment specifically allows legal representation, however it does also include a clause that allows the Panel the right to remove any representative that disrupts the hearing.

Introductory statement	The Monitoring Officer, legal advisor, or chairman may make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed	New	Having an introductory statement outlining the process and what the complaint being considered is will improve the flow of the hearing and make proceedings easier to understand.
Mitigating and factors	<p>Mitigating factors may include:</p> <ul style="list-style-type: none"> <li>(a) An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.</li> <li>(b) A councillor's previous record of good service.</li> <li>(c) Substantiated evidence that the councillor's actions have been affected by ill-health.</li> <li>(d) Recognition that there has been a failure to follow the Code.</li> <li>(e) Co-operation in rectifying the effects of that failure.</li> <li>(f) An apology to affected persons where that is appropriate.</li> <li>(g) Self-reporting of the breach by the councillor.</li> <li>(h) Compliance with the Code since the events giving rise to the complaint.</li> </ul>	New	
Aggravating Factors	<p>Aggravating factors may include:</p> <ul style="list-style-type: none"> <li>(a) Dishonesty or breaches of trust.</li> <li>(b) Trying to gain an advantage or disadvantage for themselves or others.</li> <li>(c) Bullying.</li> <li>(d) Continuing to deny the facts despite clear contrary evidence.</li> <li>(e) Seeking unfairly to blame other people.</li> </ul>	New	

	<p>(f) Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.</p> <p>(g) Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.</p>		
Hearings regarding Parish Councillors	<p>Where the Subject Member is a Parish or Town councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Town or Parish Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the Monitoring Officer. The panel should also ask the Parish or Council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.</p>	New	<p>This paragraph clarifies that a Parish Council cannot overturn the findings of a hearing panel. It also requires the Parish Council to inform the Monitoring Officer that the Parish Council has met to discuss the sanction within a three month period.</p>
Failure to comply with sanctions	<p>Note that under the Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.</p>	New	<p>It was not previously confirmed in the previous code that non-compliance with sanctions would be a breach of the code. This paragraph clarifies that it would be</p>
Access to Reports.	<p>The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.</p>	<p>The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards (Hearings) Sub Committee.</p>	<p>The wording is slightly amended, but makes it clearer that the reports and minutes of hearing sub-committees should be in the public domain.</p>

### **3.0 Consideration by Constitutional Review Working Party**

3.1 The Constitutional Review Working Party reviewed this report at its meeting on 1st September. It made the following recommendation to the Standards Committee:

“To recommend the changes to the Complaints Handling Arrangements as outlined in the report with the following amendments:

- The Investigating Officer will notify the Subject Member and the Complainant of their appointment, normally within 10 working days of being appointed, but within a maximum of 20 working days.
- That membership of hearing sub-committees continues to include an independent member as the chair of the hearing panel.”

### **4.0 Consideration by Standards Committee**

4.1 The Standards Committee reviewed this report and the recommendations from the CRWP on 10 November. It made the following recommendations to Full Council:

“The 2.1.1 (Procedure on Receipt of a Complaint), section involving “Investigation Deadline”, be amended to 20 days.

The Standards Committee agreed with the other recommendation from the CRWP, namely that membership of hearing sub-committees continue to include an independent member as the chair of the hearing panel and recommended the remaining amended arrangements to Council.”

### **5.0 Options**

5.1 The Full Council can agree with the recommendations from the CRWP and Standards Committee or suggest further amendments to those proposed in the report. These could be in addition to those suggested or amendments to the suggested changes.

5.2 The Council could suggest not making any amendments to the existing code of conduct, however this is not recommended as it would mean that TDC had moved away from the wider kent code and the LGA model code of conduct.

### **6.0 Next Steps**

6.1 Full Council makes the final decisions on amendments to the Council’s Constitution.

Contact Officer: Nicholas Hughes (Committee Services Manager)

Reporting to: Sameera Khan (Interim Head of Legal & Monitoring Officer)

### **Annex List**

Annex 1: Arrangements for Dealing With Code of Conduct Complaints Under the Localism Act 2011

Annex 2: Procedure on Receipt of a Complaint

Annex 3: Procedure for Investigating the Complaint

Annex 4: Hearing Panel Procedure

### **Background Papers**

None

### **Corporate Consultation**

**Finance:** Chris Blundell (Acting Deputy Chief Executive)

**Legal:** Sameera Khan (Interim Head of Legal & Monitoring Officer)