

COUNCILLOR CONDUCT COMMITTEE

15 SEPTEMBER 2014

COUNCILLOR CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

Report from: Perry Holmes, Assistant Director Legal and Corporate Services, Monitoring Officer

Summary

This report considers the current set of criteria for use in considering complaints against Members and summarises the process for receiving and resolving or investigating complaints about the conduct of a Councillor. After the second year of operation it is right that this Committee considers whether the Code of Conduct and the supporting processes are still fit for purpose. The Monitoring Officer has undertaken a review of the procedures and includes in this report some suggested changes as a result of the review to enable the on-going efficient and effective consideration of complaints made about Members.

1. Budget and Policy Framework

1.1 On 26 July 2012 full Council approved the Council Members' Code of Conduct and the terms of reference for the Councillor Conduct Committee (the "Committee"). On 18 September 2012, Council adopted the current arrangements for processing and dealing with complaints made about Members.

2. Background

2.1 The Council approved a light touch Code of Conduct with a heavy emphasis on seeking a local informal resolution wherever possible to any complaints about the conduct of a Councillor. This reflects the very limited sanctions that can be imposed under this conduct regime and following the impact of the Localism Act 2011. It also reflects the wish to use sparse council resources carefully and only investigate the most serious of cases that cannot be otherwise resolved.

2.2 This Committee is responsible for reviewing the application of the Code and the criteria and the process are reviewed annually to see whether they remain fit for purpose.

- 2.3 Since the implementation of the Council's arrangements in 2012, the Monitoring Officer, in consultation with officers, has noted the following:
- 2.3.1 There have been no investigations in any of the complaints about Member conduct;
 - 2.3.2 One complainant appealed the Committee's outcome of "no further action" to the Local Government Ombudsman, which considered that there was no fault with the Council's process;
 - 2.3.3 The Local Government Ombudsman has confirmed that Parish Councillors are unable to use the LGO appeal process where the Committee decided to take "no further action" on a complaint.
- 2.4 During the course of processing one complaint, the Independent Person was consulted to form a view. In their considerations, the Independent Person identified specific areas for improvement in (i) the Flowchart and (ii) the Procedure.
- 2.5 The Independent Person's comments have been incorporated into the Flowchart and the Procedure with tracked changes. A copy of these documents, with tracked changes, is attached as Appendix One.
- 2.6 The Independent Person suggested that the Procedure follow the same order as set out in the Flowchart and specifically commented on timescales. Following this, the Monitoring Officer looked at other Council's process and noted that the timescale within which to bring a complaint varied from 28 days, 3 months and 6 months.
- 2.7 The Independent Person also referred to the title of this process, and suggested that "assessment criteria" is misleading, in that it might lead complainants to consider that the Committee is assessing the complaint itself. For this reason, it has been suggested that the process be renamed to a "Screening" process.

3. Options

- 3.1 The Localism Act 2011 required the Council to adopt a Code of Conduct, but the Council has a number of options as to the exact format for the Code, the system to receive and process complaints, the involvement of the Independent Person and whether to have a Committee to oversee this work or not.
- 3.2 Following its annual review, it is clear that there are areas for improvement to ensure that the Council's arrangements are fit for purpose.
- 3.3 The options available are:
- 3.3.1 To approve the proposed amendments following the annual review;
or
 - 3.3.2 To not approve the proposed amendments following the annual review.

4. Advice and analysis

- 4.1 Members have indicated that they wished the Council to take the opportunity to simplify the process for councillor conduct complaints, to ensure that the amount of time and resource that is engaged is proportionate and that concerns are dealt with quickly.
- 4.2 A Councillor Conduct Committee is scheduled for each month with the aim that if a complaint about a Councillor is received it could be considered within 28 days at the next available meeting. Of the 5 complaints received, 4 were considered within this timescale, but 1 complaint was received on the date of dispatch meaning that it was referred to the next available Committee date.
- 4.3 It is considered appropriate to update the Council's current arrangements to ensure that they continue to be fit for purpose and meet the intention of the Council.
- 4.4 Attached at Appendix 1 is the revised procedure to reflect the proposed changes from the Monitoring Officer's review.

5. Risk management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Using the following table this section should therefore consider any significant risks arising from your report.

Risk	Description	Action to avoid or mitigate risk
Parish councils	Parish councils may be reticent to accept the delegation to them to resolve complaints.	The Monitoring Officer maintains an ongoing dialogue with parish council clerks about the code of conduct and process.

6. Consultation

- 6.1 The views of the Independent Person and the Committee's comments during the use of this process have been incorporated into this report.

7. Financial implications

- 7.1 This report contains no specific financial implications, as any training will be provided from within existing budgets.

8. Legal implications

- 8.1 These are contained in the body of the report.

9. Recommendations

- 9.1 The Committee is requested to consider and approve the proposed amendments to the criteria for dealing with councillor conduct complaints as set out at Appendix 1.

Background papers

None

Lead officer contact

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Medway Council procedure for dealing with Councillor Conduct complaints under the Localism Act 2011

Introduction

Medway Council is committed to high standards of behaviour and conduct by Councillors who are visible community leaders. The Councillor Conduct Committee will promote high standards of behaviour and consider ~~any~~ complaints raised about potential breaches of the code of councillor conduct.

Medway Council and the 11 Parish Councils ~~has~~ ve adopted a Code of Conduct that is based on the seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Localism Act 2011 ~~has~~ amended the way that Councils can deal with any concerns that are raised about the conduct of Councillors. These arrangements ~~are how concerns about regarding~~ Medway Councillors and Parish Councillors will be dealt with applied from 1 July 2011.

It is important to note that the Councillor Conduct Committee can only look into complaints that appear to fall within the within about a breach or potential breach of the Councillor Code of Conduct. The Councillor Conduct Committee will use this procedure to determine how to deal with complaints, having regard to the assessment Flowchart (attached):

Presumptions

- ~~There will be an overriding presumption that e~~ Complaints should be settled quickly, efficiently and informally and in a way that represents value for money and takes into account the limited action that can be taken against a Councillor.
- ~~There will be a working assumption that d~~ Details of the allegations made against a Councillor should not be made public until the end of the process and only if there is an investigation (subject to the rules on access to information).
- ~~There will be a working assumption that i~~ If a complainant makes an allegation public before it is concluded that may bring an end to the process since that publicity would be similar in gravity to the most serious action the Council could ultimately take of censure.
- ~~There will be a presumption that a~~ Any investigations will be completed quickly and where possible by correspondence.
- There will be recognition from the outset of any complaint that the action that can be recommended at the end of any process must be

proportionate to the need to ensure effective administration of the Council, the welfare of its staff or the reputation of the Council.

- ~~There will be a presumption that w~~ Where a complaint is capable of resolution by a Political Group or Groups these will be referred for such resolution to the Leader and Whip of such Group or Groups.
- ~~There will be a presumption that a~~ Any resolution decision by the Groups or Groups is final and cannot of itself give rise to a complaint except to the Local Government Ombudsman.
- ~~There will be a presumption that w~~ Where a complaint involves a Parish Councillor, that this will be referred to the Parish Council concerned for resolution.

Making a complaint

In the first instance if you have a concern about a Councillor arising out of their role as a councillor as opposed to their private life, you are expected to discuss your concerns with the Monitoring Officer at Medway Council by telephone on 01634 332133. The Monitoring Officer is a senior officer with a legal background. They will discuss your concern and may suggest an alternative resolution to a formal complaint.

If you wish to make a complaint you can write to the Monitoring Officer or send an email to:

[Perry Holmes](#), Monitoring Officer
Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR
perry.holmes@medway.gov.uk

We would like you to use the attached form so that we have all the relevant information. Anonymous complaints will not normally be considered.

You can expect:

- An acknowledgement of your complaint within 5 working days from the Monitoring Officer.
- That the Monitoring Officer will inform the subject Councillor that a complaint has been received (unless to do so would prevent proper consideration of the complaint).
- That you will be kept informed about the progress of your complaint.
- That only the Councillors on the Conduct Committee will consider your complaint as it is held in 'exempt session', in order to preserve the confidentiality of the process.

The Process

The process we will follow is set out below and is also illustrated by the attached diagram.

There are four main stages to our process; Assessment Screening, Investigation, Independent Review & and Conclusion. At each stage we will be looking to quickly and informally resolve your concern.

In the Assessment Screening stage we will decide against the following criteria and based on the presumptions above whether we will investigate your concern or seek to resolve it in another way:

- Is the conduct complained of older than 6 months?
(If complaint is made about an event that occurred 6 – 12 months ago, unless there are extenuating exceptional circumstances, it will not be investigated)
- Is the complaint about a councillor when they were acting in that capacity?
- On the face of the complaint is the conduct something, which falls within a breach or potential breach of the Code of Conduct?
- Is the complaint actually one that should be referred to another body agency to investigate?
- Is the concern complaint about a Parish Councillor and it would be more appropriate for the issue to be resolved locally by the Parish Council?
- Could the complaint be dealt with by a Political Group?
- ~~Is the matter too old? (over 6 months ago – complainants are expected to bring their complaints to the Monitoring Officer as soon as possible. When a complaint is made about an event that occurred 6 – 12 months ago, unless there are extenuating circumstances, it will not be investigated))~~
- ~~Is the concern better dealt with by some other process or body?~~
- ~~In all the circumstances bearing in mind what action can be recommended, is this concern likely to be addressed by an investigation?~~
- Is the complaint capable of being resolved by an investigation, bearing in mind the sanctions available?
- Bearing in mind In all the circumstances the circumstances of the complaint, would it be disproportionate to investigate?

We could decide to take no action, suggest an informal resolution, seek the views of the Independent Person, or send your complaint for investigation.

Assessment of Complaint - Independent Person's views

- The Localism Act 2011 provides that the Committee **must** seek, and take into account the views of the Independent Person before it makes a decision on an allegation that it has decided to investigate (section 28(7)(a) of the Localism Act). The Act also provides that the Committee **may** seek the views of the Independent Person in relation to an allegation at any other stage within the complaints procedure (section 28(7)(b) of the Localism Act).
- The Independent Person is Martin Pilkington who was appointed at the Annual Council meeting on 15 May 2013. At the Annual Council meeting a second Independent Person was also appointed, Rose Davies ("the Second Independent Person"), in the event that Martin Pilkington at any stage had any conflict of interest that prevented him from carrying out the role of Independent Person.

In the **Investigation** stage we will seek to get more information about your concern and then put the information we have into a report. We will put the emphasis on speedy investigations completed remotely through correspondence to speed up the process and provide better value for money. If a complaint is withdrawn at any stage we will discontinue the process including any investigation.

In the **Independent Review** stage we will present all the information to an Independent Person who has no links to the Council to seek their opinion on how to proceed. We have to take their opinion into account.

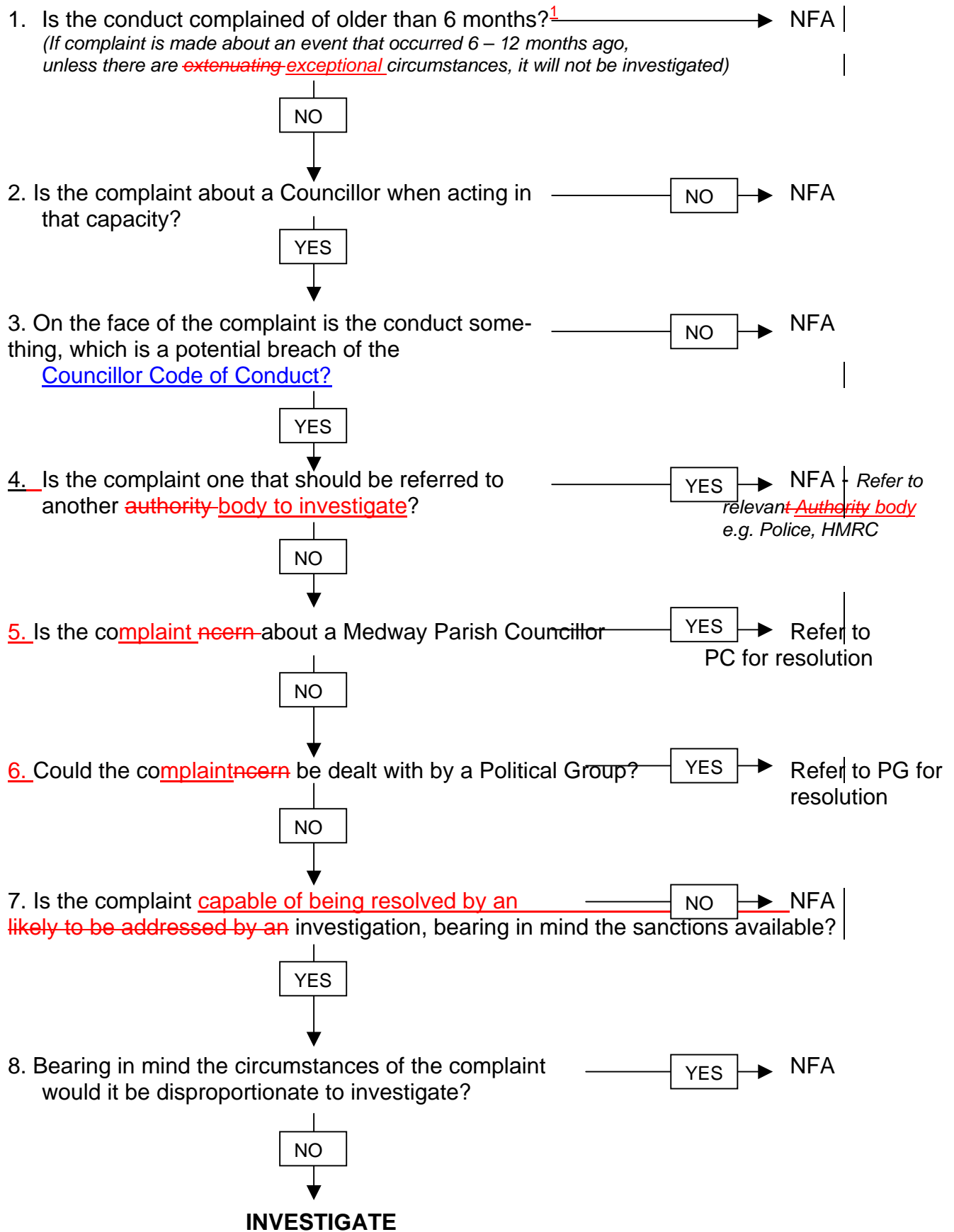
In the **Conclusion** Stage the investigation report and the Independent Person's opinion will be presented to a Committee of Councillors. This may be a paper process or you may have to attend to be asked questions. A decision will be made how to resolve the complaint. You will be notified of the outcome.

Before reaching its decision, the Complainant and Member have the right to make submissions as to the appropriate sanction (if any). Where the decision is communicated in writing, the Council will re-convene the Panel Hearing to consider the question of sanction. In such situations, both parties will be invited to submit their representations in writing to the Monitoring Officer in advance of the re-convened hearing.

If you are not satisfied with how your complaint has been dealt with

There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations of the Councillor Conduct Committee.

ASSESSMENT CRITERIA SCREENING PROCESS



NFA – No further action

¹ This question was previously set out at part 4 of the Flowchart.