

COUNCILLOR CONDUCT COMMITTEE

20 OCTOBER 2014

COUNCILLOR CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

Report from: Perry Holmes, Monitoring Officer

Summary

This report provides the Committee with the updated procedures for dealing with councillor conduct complaints which had been discussed at the last meeting on 15 September 2014. The Monitoring Officer undertook a review of the procedures and includes in this report some suggested changes as a result of the discussions 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 Councillor Conduct Committee is responsible for reviewing the application of the Councillor Code of Conduct and the criteria and procedure used to process complaints about councillors are reviewed annually to ensure they remain fit for purpose. At the meeting of this Committee on 15 September 2014, changes to the procedure for dealing with Councillor conduct complaints were agreed.

2.2 However during discussion at the meeting Members sought clarity in relation to the circumstances when a complaint is made more than six months after the event due to the complainant only recently becoming aware of the event and whether a complaint should be considered.

2.3 The Monitoring Officer, has suggested a note to include the following revised wording, to address the issues raised by the Committee:

2.3.1 'Exceptional circumstances' could include an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light.

2.3.2 This note is included in the final draft procedures set out at Appendix 1, with tracked changes shown.

2.4 Also at the meeting, members agreed that the Independent Persons' names be removed in order to improve the sustainability of the procedure. These amendments have been made and are shown as tracked changes at Appendix 1.

3. Advice and analysis

3.1 Attached at Appendix 1 is the final revised procedure which has incorporated the above wording contained in paragraph 2.3.1 and the changes previously agreed from the Monitoring Officer's review.

4. Risk management

4.1 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. The following risks were identified in relation to the implementation of the procedures:

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.

5. Consultation

5.1 The views of the Independent Person have previously been considered and the Committee's comments have been incorporated into the revised procedures.

6. Financial implications

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

7. Legal implications

7.1 There are none.

8. Recommendations

8.1 The Committee is asked to consider and approve the revised 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 complaints raised about potential breaches of the code of councillor conduct.

Medway Council and the 11 Parish Councils have 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 amended the way that Councils can deal with any concerns that are raised about the conduct of Councillors. These arrangements regarding Medway Councillors and Parish Councillors applied from 1 July 2011.

It is important to note that the Councillor Conduct Committee can only look into complaints 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 [Screening Process](#) Flowchart (attached)

Presumptions

- 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.
- 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).
- 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.
- 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.

- 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.
- 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.
- 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; Screening, Investigation, Independent Review and Conclusion. At each stage we will be looking to quickly and informally resolve your concern.

In the **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 exceptional circumstances, it will not be investigated) see note below:*
- Is the complaint about a councillor when they were acting in that capacity?
- On the face of the complaint is the conduct something, which is a potential breach of the Code of Conduct?
- Is the complaint one that should be referred to another body to investigate?
- Is the 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 complaint capable of being resolved by an investigation, bearing in mind the sanctions available?
- Bearing in mind 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.

**'Exceptional circumstances' could include an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light.*

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 is appointed at the Annualby Full Council Council meeting on 15 May 2013. At the Annual Council meeting aA second Independent Person was is also appointed, Rose Davies (“the Second Independent Person”), in the event that Martin Pilkington at any stage the Independent Person had has any conflict of interest that preventsed him/her 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.

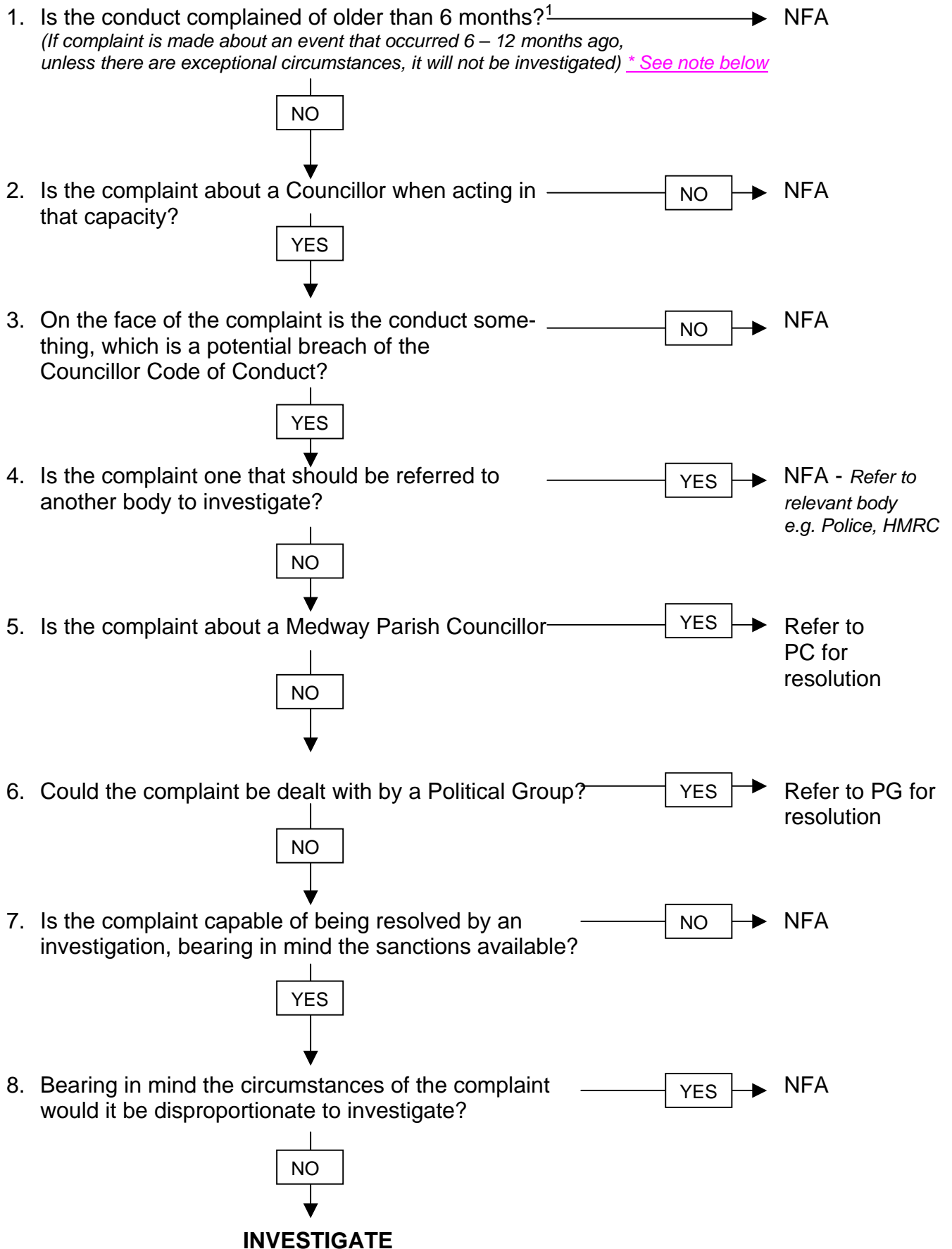
In the **Conclusion** Stage the investigation report and the Independent Person's opinion will be presented to a Committee of Councillors. This may be a paper process or you may have to attend to be asked questions. A decision will be made how to resolve the complaint. You will be notified of the outcome.

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.

SCREENING PROCESS



NFA – No further action

**'Exceptional circumstances' could include an event or incident that took place more than 6 months ago, but did not come to light until recently, and the complainant brought it forward as soon as it had come to light.*