

COUNCILLOR CONDUCT COMMITTEE

15 DECEMBER 2014

PROCEDURAL GUIDANCE FOR INVESTIGATIONS

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report seeks approval of procedural guidance for investigations into councillor conduct allegations and the minor amendment of an existing complaints procedure.

1. Budget and Policy Framework

- 1.1 Upholding high standards of conduct are a matter for the Councillor Conduct Committee.

2. Background

- 2.1 The Localism Act 2011 made significant changes to the “Standards Regime.” From July 2012 the Council adopted a new Code of Conduct with a lighter touch conduct process, which was introduced after consultation. Amongst other changes, the Committee leading this work became the “Councillor Conduct Committee” and no longer included independently appointed members.
- 2.2 The Council appointed an “Independent Person” to whom members and others can refer. They are also consulted during investigations.
- 2.3 The Councillor Conduct Committee developed an overall procedure for complaints but that did not include detail about how investigations, if commissioned, would proceed.

3. Procedural Guidance and Conduct complaints procedure.

- 3.1 Attached at Appendix 1 is a proposed procedural guide to cover those councillor conduct allegations where an investigation is commissioned.
- 3.2 In order to ensure consistency of all of the relevant documents, some slight amendments are requested to the “Medway Council procedure for dealing with Councillor conduct complaints under the Localism Act 2011”, which are demonstrated as tracked changes at Appendix 2.

4. Analysis

- 4.1 The Monitoring Officer has reviewed a number of guides produced by other Councils to deal with the process after an investigation has been commissioned. He has sought to ensure that any Medway procedural guidance reflects the “light touch” approach to complaints that Members have agreed, but that also ensures the principles of natural justice are addressed.
- 4.2 The attached procedural guide seeks to balance those two factors. Informal discussions with Members of the Councillor Conduct Committee have been helpful in developing the guidance in ensuring that it is both practical and clear. Those discussions centred on the wish to make the procedural guidance fair, transparent, comprehensive and easy to understand.
- 4.3 Members have asked that all the relevant documents that are provided about the Councillor Conduct Committee’s work are consistent. Some minor changes are therefore needed to the current procedure which has been agreed previously to clarify the position regarding complainants addressing the Committee about factual matters.

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.

Risk	Description	Action to avoid or mitigate risk
Reputation	The absence of a procedural guide for investigations could lead to uncertainty and the possibility of legal challenge or referral to the Local Government Ombudsman.	The Monitoring Officer has developed a procedural guide that is natural justice compliant and based on best practice from other Councils.

6. Financial and Legal Implications

- 6.1 This report contains no specific financial implications. The costs of any investigations will be provided from within existing budgets.
- 6.2 The legal implications are contained in the body of the report.

7. Recommendation

- 7.1 The Committee is recommended to approve the procedural guidance at Appendix 1.

7.2 The Committee is recommended to approve the minor amendments to the “Medway Council Procedure for dealing with Councillor conduct complaints under the Localism Act 2011” at Appendix 2.

Background Papers:

None

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Councillor Conduct Committee

Procedural Guidance for investigations about councillor conduct allegations under the Localism Act 2011

Background

This guidance applies to those Councillor misconduct complaints where the Councillor Conduct Committee has requested an investigation after the Screening process.

It sets out the approach that will be taken when the Councillor Conduct Committee considers the Investigators report, the report of the Independent Person and any other relevant information.

Relevant people

The Committee – the Councillor Conduct Committee

The Investigator – an individual appointed by the Monitoring Officer to investigate the allegation

The Independent Person – someone not connected to the Council who has been appointed by the Council to provide independent oversight of conduct cases and whose views must be taken into account by the Committee before it makes a decision after an investigation

The Monitoring Officer – a senior officer who advises the Committee on the procedure and the law

The Complainant – the person making the complaint about a Councillor

The subject Councillor – the Councillor about whom the complaint is made

Initial process

Once the Councillor Conduct Committee has decided to request an investigation, the Monitoring Officer will appoint a suitably qualified Investigator, normally outside of the Council. The Monitoring Officer will write to inform the subject Councillor, the Complainant and where applicable the Clerk of the relevant Parish Council. He will also write to the Independent Person.

Investigation

The Investigator will contact the subject Councillor, the Complainant and any witnesses and conduct an investigation to establish to the best of their knowledge and belief, the facts of the alleged misconduct. They will also be expected to say in their opinion whether the subject Councillor has breached the Code of Conduct. If a breach is found in the opinion of the Investigator they will be expected to confirm what action if any the Committee should take. The investigation will be expected to complete wherever possible within 3 months of instruction. Interviews of relevant people may take place in writing, over the telephone or in person.

In the unusual event that the Investigator finds evidence that suggests a criminal offence may have been committed she or he will contact the Monitoring Officer who will refer the matter to the police. The investigation will be suspended at that point until the police investigation concludes.

The subject Councillor and the Complainant should be asked to comment on a draft report from the Investigator which should indicate that it does not necessarily represent the Investigators final conclusions. Any comments should be included in a final report. The final report should include the Investigators conclusion on facts, breach and where relevant sanction.

Where the Investigator finds that the Code of Conduct has not been breached, the Committee will be invited by the Monitoring Officer to consider that together with the report of the Independent Person and to decide that the complaint process should not progress any further. They should give reasons for that decision.

Independent Person

The Independent Person will be invited to comment on the outcome of the investigation whether a breach has been found or not.

Where a breach has been found in the opinion of the Investigator and or the Independent Person, their report will be considered by the Committee before deciding on whether a breach of the Code of Conduct has happened.

Pre- Committee Meeting process

Once the Investigator's report and the Independent Person's report have been received by the Monitoring Officer, the Subject Councillor and the Complainant will be notified of the date that the Committee will be considering the reports and making their final decisions.

Both parties will be invited to comment on whether an informal resolution is possible. If that is the case then the Monitoring Officer should take all reasonable steps to

facilitate the informal resolution and should notify the Committee at the next available meeting.

If that is not the case then the preparations for the meeting will continue. The complainant will be entitled to attend the meeting but will not normally be invited to contribute to the meeting as their complaint will have been fully investigated by this stage.

The subject Councillor will be asked to confirm whether they wish to attend and whether they object to any parts of the Investigator's report stipulating how they object and whether they wish to call witnesses. It will be at the discretion of the Monitoring Officer in consultation with the Chairman of the Committee where relevant to manage the pre-Committee hearing process. Witnesses who have not been previously notified to the Investigator will not normally be allowed accept in exceptional circumstances.

The Committee Meeting.

The consideration of the Investigator's report, the Independent Person's report and any other information will be conducted in accordance with the procedure outlined below. The meeting will not take evidence under oath and the questioning of people present will be through the Chairman of the Committee. The decision on the facts of the case will be on the balance of probabilities. The Committee will be expected to give reasons for its findings of fact, any decision that the subject Councillor has breached the Code of Conduct and any decision as to sanction.

The Subject Councillor may be represented at their own expense by a barrister or solicitor. The consent of the Committee will be required for any other person to represent the Subject Councillor.

Meeting Procedure

The meeting to consider the Investigator's report will be closed to the press and public after resolution where any of the conditions in the Local Government Act 1972 Schedule 12A are met. The complainant and the subject Councillor will be entitled to stay in the meeting if this decision is made.

The Monitoring Officer or their nominee will support the Committee to make their decision. Any advice given by the Monitoring Officer will be reported to all those present in the meeting.

- 1) The Chairman or the Monitoring Officer will confirm who is present.

- 2) If the subject Councillor declines to attend or cannot attend for some specified reason the Committee will decide whether to proceed in absence giving reasons.
- 3) The Chairman or Monitoring Officer will outline the procedure.

Decision on the facts

- 4) The Investigating Officer if present or the Monitoring Officer will outline the Investigator's report and findings on the facts.
- 5) Through the Chairman the complainant, the subject Councillor or their representatives may ask questions of the Investigator if present on their findings on the facts.
- 6) The Committee may ask questions of the Investigator on their findings on the facts.
- 7) The complainant if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the complainant's written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.
- 8) The Committee may ask the complainant and any witnesses questions about the facts.
- 9) The subject Councillor or their representative if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the subject Councillors written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.
- 10) The Committee may ask the subject Councillor and any witnesses questions about the facts.

- 11) The complainant and then the subject Councillor or their representative may make any final comments on the facts.
- 12) The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on the facts of the case. They will return to the Committee room or invite everyone back and the Chairman will announce their decision with reasons.

Decision on breach

- 13) The subject Councillor or their representative will be invited to address the Committee on whether the facts as found give rise to a breach of the Code of Conduct.
- 14) The Committee will consider the report of the Investigator and the Independent Person as to breach and if present will ask them questions if necessary.
- 15) The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on the whether the facts of the case give rise to a breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Decision on sanction

- 16) The subject Councillor or their representative will be invited to address the Committee on what sanction if any the Committee should decide for the breach of the Code of Conduct.
- 17) The Committee will consider the views of the Investigator and of the Independent Person and if present ask them questions if necessary.
- 18) The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on sanction for the breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Guidance on sanctions

19) When deciding what sanction if any to impose the Committee should consider the following matters together with any relevant matters to ensure that the sanction is proportionate to the Subject Councillor's behaviour and will ensure compliance with the Code of Conduct in the future.

20) Features that could make the matter more serious or aggravating factors could include:

- Dishonesty
- Continued denial of the facts
- Failure to heed officer advice
- A pattern of behaviour which the Committee has been dealt with before by the Committee
- Breach of trust
- Likelihood of repetition

21) Features that could make the matter less serious or mitigating factors could include:

- An honestly held but mistaken view that the conduct was not a breach of the Code
- A member's previous good record
- Recognition of wrong doing and attempts at reparation

22) the following are the possible sanctions that the Committee could impose:

- Censure of the subject Councillor either by the Committee or a recommendation that the censure be made by full Council at the next meeting.
- Recommendation to the subject Councillor's Group Leader that she/he be removed from any or all Committees.
- Recommendation to the Leader of the Council that she/he be removed from the Cabinet or removed from particular Portfolio Holder responsibilities.

- Recommendation that the subject Councillor write a letter of apology to the Complainant.
- Instruction to the Monitoring Officer that training in the Code of Conduct is arranged for the subject Councillor.
- Recommendation to full Council or to the relevant Parish Council that the Councillor be removed from all outside bodies she/he has been appointed to by the Council.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that facilities such as access to premises, computer, email or other support be withdrawn for a defined period but not such as to prevent the Councillor from attending any meetings to which they are entitled to attend as a Councillor.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that all contact with the subject Councillor be through named officers.

After the meeting

The decision of the Committee will be included in the minutes of the meeting. Where the decision is that there was no breach of the Code of Conduct, the subject Councillor and the Complainant will not normally be identified.

Where the decision is that there was a breach the Councillor will be identified.

The Complainant will only be identified where there have expressly agreed to this.

Appeal

There is no appeal to a decision of the Committee but there is a right to complain to the Local Government Ombudsman about maladministration in the process used.

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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 appointed by Full Council. A second Independent Person is also appointed, ("the Second Independent Person"), in the event that at any stage the Independent Person has any conflict of interest that prevents him/her from carrying out the role.

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, the subject Councillor ~~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.

There is a right for any complainant, who is a member of the public, to refer the matter to the Local Government Ombudsman (LGO). The LGO does not have any powers to overturn the decision of the Committee but may ask the Committee to reconsider the matter or change its procedures if there is evidence of maladministration.