

COUNCILLOR CONDUCT COMMITTEE

8 SEPTEMBER 2021

PROPOSED DELEGATION TO SCREEN COMPLAINTS

Report from: Bhupinder Gill, Monitoring Officer

Author: Jan Guyler, Deputy Monitoring Officer

Summary

This report asks the Councillor Conduct Committee (CCC) to recommend to full Council that a delegation be granted to the Monitoring Officer (MO), who shall seek the views of the Independent Person, to undertake the initial screening for some complaints.

1. Budget and policy framework

1.1. This Committee has within its remit the assessment, against published criteria, of allegations of Councillor misconduct. The Committee is responsible for determining the response to complaints which may include referral to another organisation or political group, investigation of the matter or no further action.

2. Background

2.1. The MO has undertaken a review of recent complaints, including some particularly time consuming complaints in terms of ascertaining whether there was a prima facie case against the Councillor(s) accused of misconduct, before deciding to present or otherwise the case to the CCC for screening. It is one of the presumptions under Medway Council's procedure for dealing with Member conduct complaints that complaints should be settled quickly, efficiently and informally and in a way that represents value for money. An efficient administration of the complaints procedures does help relieve the intense pressures faced by the complainant as well as the subject Member, and allow both parties to quickly resume business as usual.

2.2. To enable the CCC to work more efficiently in dealing with the complaint cases, it shall seek to focus on complaints that have been pre-screened and contain substantive details. It was not the intention of the complaint mechanism for CCC members to discuss cases that are eventually considered to be trivial, malicious, vexatious and so on. Neither was it for the

MO to correspond with complainants back and forth on essential information that should be provided at the time of making the complaint.

2.3. This issue was discussed the at last CCC on 4th August 2021 including the possibility of the CCC granting a delegation to the MO, who shall seek the views of the Independent Person, to undertake the initial screening for some complaints as a potentially more efficient way of dealing with such complaints. Many complaints considered as part of the MO's review provided insufficient detail to enable CCC to make a determination, the complainant was unable to identify the individual, there was no potential breach of the code identified and some elements of the complaints were outside the remit of the Councillor Conduct Committee.

2.4. The MO therefore requests that the CCC recommends to full Council that the following delegation is granted:

The CCC delegates authority to the Monitoring Officer, who shall seek the views of Independent Person, to undertake the initial screening process for complaints and determine, if appropriate, that there is to be no further action on the following types of cases:

1. No Councillor has been identified;
2. No potential breach of the code has been identified;
3. Insufficient detail to make a determination;
4. The complaint is more than 6 months old and no cogent explanation for the delay in reporting;
5. The complaint relates to matters that are not within the CCC's remit.
6. The complaint is considered trivial, malicious or vexatious.

2.5. There is no intention to circumvent the CCC by making this proposed delegation. It is merely to deal more efficiently with some of the more trivial complaints and complaints that are not within the CCC's remit.

2.6. As part of the review the MO considered that it would be helpful to potential complainants to update the Councillor Conduct Complaints Form to ensure that essential information is provided at the outset to assist the understanding and analysis of the complaint. If the delegation was approved there would also be a need to update the Complaints Procedure to reflect the role of the Independent Person. This report asks Members to delegate to the Monitoring Officer the authority to amend the complaints form and the Complaints Procedure accordingly.

3. View of the Independent Person

3.1. The current procedure agreed by the Council for dealing with complaints about Councillor Conduct envisages the Committee taking a view from the Independent Person (IP) before it reaches a decision usually only where an investigation into a complaint has been commissioned. This means that an initial screening of a complaint by the CCC need not involve the Independent Person. However, the Localism Act 2011 makes provision for the views of the IP to be sought by the Committee in relation to an allegation in circumstances

where an investigation has not been commissioned (i.e. at any other stage in the process) and also by the person who is the subject of a complaint.

- 3.2. Since the complainant may wish to avail himself of contact with the Independent Person, a copy of reports to the CCC and the appendices are sent to the IP at the initial screening by the CCC stage.
- 3.3. The proposed delegation to the MO includes the requirement to seek the view of the IP in cases where the MO will undertake the initial screening.

4. Risk management

Risk	Description	Action to avoid or mitigate risk
Members of the CCC losing trust in the delegation to the MO screening certain cases	The CCC may become concerned that more serious cases which should come to CCC for member screening are being dealt with under the delegation.	MO to seek the views of IP when screening any such cases

5. Financial and legal implications

- 5.1. Medway Council is required to have in place arrangements for dealing with complaints relating to conduct (in respect of Medway Council Members and Members of Parish Councils in Medway's area). The Council has established this Committee to assess complaints and determine the action to be taken in each case.
- 5.2. Should a complainant, who is a member of the public, be dissatisfied with the way the Committee has reached a decision, he or she may refer the matter to the Local Government Ombudsman (LGO). The Local Government Ombudsman 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. Under the Local Government Act 1974 the Local Government Ombudsman can only accept complaints from members of the public. This means that currently there is no recourse to the LGO for complainants who are Councillors or for Councillors who are the subject of a complaint following the decision of the Councillor Conduct Committee on any conduct related matter.
- 5.3. Any costs associated with the investigation of complaints will be met from a budget held by the Monitoring Officer for this purpose.

6. Recommendations

- 6.1. The Committee is asked to recommend to full Council that the following delegation is granted:

The Councillor Conduct Committee delegates authority to the Monitoring Officer, who shall seek the views of Independent Person, to undertake the initial screening process for complaints and determine, if appropriate, that there is to be no further action on the following types of cases:

- a) No Councillor has been identified;
 - b) No potential breach of the code has been identified;
 - c) Insufficient detail to make a determination;
 - d) The complaint is more than 6 months old and no cogent explanation for the delay in reporting;
 - e) The complaint relates to matters that are not within the Councillor Conduct Committee's remit.
 - f) The complaint is considered trivial, malicious or vexatious.
- 6.2. The Committee is asked to delegate to the Monitoring Officer the authority to amend the Councillor Conduct complaints form and the Complaints Procedure accordingly

Lead officer contact

Jan Guyler, Head of Legal Services / Deputy Monitoring Officer
Tel: 01634 332158 Email: jan.guyler@medway.gov.uk

Appendices

None

Background papers

None