

COUNCIL

7 OCTOBER 2021

PROPOSED DELEGATION TO SCREEN COMPLAINTS

Report from: Bhupinder Gill, Monitoring Officer

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Summary

The Councillor Conduct Committee (CCC) recommends 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. Councillor Conduct matters are a council function delegated to the Councillor Conduct Committee (Chapter 3, Part 2 of the Constitution). The CCC 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. The Committee also advises the Council on the adoption or revision of the Councillor Code of conduct or on the revision to the adopted arrangements for investigation or making decisions on complaints (Article 9, Chapter 2 of the Constitution).

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 at 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. However, if it has not been possible for the MO to resolve a complaint informally the process requires the matter to be considered by the CCC.

2.4. The MO therefore proposed to the CCC at the meeting on 8 September 2021 that it recommends to full Council that the following delegation is granted:

Full Council 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. Authority is therefore also sought to delegate to the Monitoring Officer the authority to amend the complaints form and the Complaints Procedure accordingly.

3. Discussions at Councillor Conduct Committee on 8 September 2021

3.1 The Committee were supportive of the proposal but requested that the recommendation to full Council be amended to include the requirement that

should either the MO or the IP consider that a matter should be referred to the CCC then it is so referred. The Minutes of the CCC meeting are set out below:

- 3.2 The Deputy Monitoring Officer introduced the report which recommended the Committee to recommend full Council to agree a delegation to the Monitoring Officer, in consultation with the Independent Person, to undertake the initial screening for some complaints. She referred the committee to the types of cases that would apply, which were set out at section 2.4 and 6.1 of the report.
- 3.3 Reference was made to the consultation aspect with the Independent Person and it was suggested that it be made clearer that if either the Monitoring Officer or the Independent Person felt the complaint should be referred on to the Councillor Conduct Committee for formal assessment, then this be the action taken.
- 3.4 The Deputy Monitoring Officer was also asked for some examples of complaints that might be dealt with under the delegation. She explained that it was difficult to refer to examples without identifying previous complaints but added that the committee had recently considered a set of complaints which had largely fallen outside of the remit of the committee. However, due to there being no delegation in place the complaints had been brought forward to the committee for assessment. It was added that the screening criteria used by the committee to assess complaints already considered whether a complaint was trivial, malicious, vexatious, politically motivated or tit-for-tat and in such cases would recommend no further action, subject to the view of the Independent Person.
- 3.5 The Committee recommended 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 (subject to the Independent Person sharing this view) 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.

Note: If either the Monitoring Officer or the Independent Person consider the complaint should be referred on to the Councillor Conduct Committee for formal assessment, then this will be the action taken

- 3.6 The Committee also delegated to the Monitoring Officer the authority to amend the Councillor Conduct complaints form and the Complaints Procedure accordingly. These documents and the proposed changes are set out at Appendix 1 to this report.

4. View of the Independent Person

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 The report to CCC on 8 September 2021 regarding the proposed delegation was shared with the lead IP who has responded to the Deputy Monitoring Officer to confirm their agreement with the proposal.

5. 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 and as requested by CCC, the delegation includes the provision that should either one of the MO or IP consider that the matter should be referred to CCC, it is so referred.

6. Financial and legal implications

- 6.1 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.
- 6.2 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.

- 6.3 Any costs associated with the investigation of complaints will be met from a budget held by the Monitoring Officer for this purpose.

7. Recommendations

- 7.1 That Council agrees to grant the following delegation and to add it to the employee scheme of delegations, as set out in Chapter 3, Part 4 of the Medway Council Constitution:

Full Council 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 (subject to the Independent Person sharing this view) 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.

Note: If either the Monitoring Officer or Independent Person considers that a matter should be referred to the Councillor Conduct Committee for formal assessment, then this will be the action taken.

Lead officer contact

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Appendices

Appendix 1 – Procedure for dealing with complaints

Background papers

None