

COUNCILLOR CONDUCT COMMITTEE

15 JUNE 2022

ANNUAL MONITORING OFFICER REPORT 2021-22

Report from: Bhupinder Gill, Monitoring Officer

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Summary

This report summarises the activity of the Monitoring Officer for the 2021-22 Municipal Year (5 May 2021 – 17 May 2022).

1. Budget and policy framework

- 1.1. The Councillor Conduct Committee has a role in promoting and maintaining high standards of conducts by Councillors and voting and non-voting co-opted members.

2. Background

- 2.1. The Local Government and Housing Act 1989 requires local authorities to appoint a Monitoring Officer (MO), giving a broad role in ensuring the lawfulness of Council decision-making and promoting good governance and high ethical standards. A summary of the MO's functions are as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law.	Local Government and Housing Act 1989
Report on any maladministration or injustice where the ombudsman has carried out an investigation.	Local Government and Housing Act 1989
Report on sufficiency of resources.	Local Government and Housing Act 1989
Establish, publish and maintain the register of members' interests.	Localism Act 2011
Issue dispensations to members regarding disclosable pecuniary interests.	Localism Act 2011
Promote and maintain high standards of conduct.	Localism Act 2011

Undertake the assessment of complaints that a member may have breached the code of conduct.	Localism Act 2011
Act as legal advisor to the standards committee when carrying out a local determination hearing.	Localism Act 2011
Maintaining the Constitution	Council Constitution
Ensuring lawfulness and fairness of decision making	Council Constitution
Supporting the Councillor Conduct Committee	Council Constitution
Proper officer for access to information	Council Constitution
Advising whether Cabinet decisions are within the budget and policy framework	Council Constitution

3. The Council's Constitution

- 3.1. The Constitution sets out how the Council operates and makes decisions. It explains procedures to ensure decisions are efficient and transparent. The MO is responsible for ensuring that the Constitution is properly maintained and adhered to.
- 3.2. Council agreed the latest amendments to the Constitution at its meeting on 21 April 2022 which set out a change to the employee scheme of delegations relating to the granting of dispensations, which is covered in more detail in section 6 below.
- 3.3. Members are advised that an internal audit review has been carried out on the maintenance of the Constitution. Whilst the outcome of this review will be formally reported to the Audit Committee, it can be confirmed that the formal audit opinion for this is green - risk management operates effectively and objectives are being met.

4. Code of Conduct Complaints

- 4.1. During the reporting period (5 May 2021-17 May 2022), the way in which officers log and number complaints has changed. Previously, complaints were all logged under one reference number when they were about the same issue, despite the number of complainants and subject members involved. For example, CCC/2021/001 related to five separate complainants about four different parish councillors, all dealt with in one report and under the one reference number. This has made logging the numbers of complaints more difficult and therefore since July 2021, officers now record each different complainant and/or subject member as a separate reference number, regardless of whether it is about the same issue. It should be noted that this may therefore cause there to be a perceived uplift in the number of complaints when compared to previous years but that will not necessarily be the case.
- 4.2. During the reporting period there were a total of eight complaints received (noting CCC/2021/001 was under the old recording system and as explained above related to five complainants and four subject members).

- 4.3. The first two complaints were considered by the Councillor Conduct Committee and its decisions on these complaints are set out below:

CCC/2021/001	No further action as it did not consider the evidence provided amounted to a potential breach of the code
CCC/2021/002	No further action as it did not consider the evidence provided amounted to a potential breach of the code

- 4.4. At its meeting on 8 September 2021, the Councillor Conduct Committee recommended full Council to agree the following delegation:

The Councillor Conduct Committee delegates authority to the Monitoring Officer, who shall seek the views of the 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.

- 4.5. The delegation was subsequently agreed by full Council on 7 October 2021 (minute number 358/2022 refers) and was included within the Council's Constitution (Employee Delegation Scheme).

- 4.6. The six further complaints received during the reporting period have been dealt with under this delegation, the outcome of which are as follows:

Complaint reference number	Reasons why MO (with support from the Independent Person) determined no further action, using the categories in paragraph 4.4 above.
CCC/2022/001	d and f
CCC/2022/002	d and b
CCC/2022/003	b
CCC/2022/004	b
CCC/2022/005	b and e
CCC/2022/006	b and e

- 4.7. All complaints in the 2021/22 Municipal Year referenced above were from members of the public.

- 4.8. In addition to the formal complaints referred to above, the Monitoring Officer has informally resolved two further potential complaints by liaising with the complainants and explaining why the Councillors complaints process was not applicable to their particular concerns.

5. Dispensations

5.1. During the 2021/22 Municipal Year there were three requests for dispensation, all of which were from co-opted members of the Children and Young People Overview and Scrutiny Committee and all three of which were approved by the Councillor Conduct Committee at its meeting on 16 February 2022.

5.2. At the same meeting, the Committee recommended to full Council to agree to amend the delegation set out at 6.20 of the Employee Delegation Scheme, within the Council's constitution, to be reworded as follows:

“To consider and determine any requests for dispensations from Medway Members and voting and non-voting co-opted Members in cases where the timing of a request would make it impractical to convene a meeting of the Committee and to only refer requests for dispensations to the Councillor Conduct Committee for determination where the Monitoring Officer is minded to not grant a dispensation”.

5.3. This was subsequently agreed by full Council at its meeting on 21 April 2022 (minute number 834/2022 refers) and was included within the Council's Constitution (Employee Delegation Scheme). In addition, at the Council meeting, the Monitoring Officer undertook to report the number of dispensations granted by the MO to the Councillor Conduct Committee on an annual basis, which will be done so via these reports. No further dispensations have been considered in the 2021/22 Municipal Year.

5.4 All current live dispensations are as follows:

Member/ Co-optee	Dispensation details	Expiration date
Carl Guerin-Hassett (non-voting co-optee on CYP O&S)	To debate in respect of his employment at Hundred of Hoo Academy on annual school performance report	19 January 2023
Fay Cordingley (voting co-optee on CYP O&S) – no longer on the committee	To debate/vote in respect of her employment at St James CofE Academy & St Margaret's Junior School on annual school performance report	19 January 2023
Dr Pete Green (Previous HWB Member – no longer a member of the board)	To debate/vote on annual report on CCG's contribution to the HWB in relation to his DPI paid position at NHS Medway CCG	12 March 2023

Councillor Howard Doe	To debate/vote in respect of: <ul style="list-style-type: none"> • MDC Ltd – Director & Chairman • Kyndi Ltd – Director & Chairman • Medway Public Services td – Director 	30 June 2023
Councillor Adrian Gulvin	To debate/vote in respect of: <ul style="list-style-type: none"> • MDC Ltd – Director 	30 June 2023
Councillor Rupert Turpin – no longer appointed to the company boards	To debate/vote in respect of: <ul style="list-style-type: none"> • Kyndi Ltd – Director & Chairman • Medway Norse – Director 	30 June 2023
All Councillors	To debate/vote in respect of member allowances	9 October 2023
Vicky Aspin (non-voting co-optee on CYP O&S)	To debate in respect of her employment at Abbey Court School on annual school performance report and reports relating to Special Educational Needs and Disabilities (which may relate to Abbey Court School)	20 January 2024
Hannah Roberts (non-voting co-optee on CYP O&S)	To debate in respect of her employment at Warren Wood Primary Academy on annual school performance report	20 January 2024
Lenny Williams (voting co-optee on CYP O&S)	To debate/vote in respect of his employment at St Margaret’s Junior School on annual school performance report.	16 February 2026

6. Register of Members’ interests

- 6.1. The Monitoring Officer has reviewed the Register of Members’ interests and agreed in-year amendments by Councillors. Members will also be reminded to check that their Register is still update up to date in late May 2022.

7. Code of Conduct

- 7.1. Last year the LGA consulted on a review to the Councillors Code of Conduct and as a result recommended some minor changes in May 2021. The implementation of those changes is discretionary, as it is up to each authority

to adopt a code as they see fit, subject to mandatory provisions regarding the declaration of interests.

- 7.2. The revised code has received a mixed welcome from Monitoring Officers. It is the Monitoring Officer's opinion that the revisions do little to strengthen the existing code or aid its application/understanding.
- 7.3. Ordinarily, the Committee's views would be sought and any recommendations acted upon. However, in light of the period of time that has already elapsed and that the Council will have all out elections in 11 months time, the Monitoring Officer recommends that a review is undertaken after the next council elections, by the "new intake" of members, so that they can influence the code that they will have to comply with.

8. Appointment of a Deputy Monitoring Officer

- 8.1. The current Monitoring Officer, Bhupinder Gill, joined the Council on 1 July 2021. The post of Head of Legal Services, which traditionally also held the position of Deputy Monitoring Officer, was held vacant for a period of time. Vicky Nutley has recently been appointed as Interim Head of Legal Services and the Monitoring Officer has subsequently appointed Vicky as his Deputy MO.

9. Local Government (Disqualification) Act 2022

- 9.1. This piece of legislation received Royal Assent in April 2022 and introduces a new provision for the disqualification of people standing for election or being a member of a local authority in England.
- 9.2. The new disqualification applies if a person is subject to notification requirements or a relevant order relating to the Sexual Offences Act 2003 or the Sentencing Code.
- 9.3. A person is not subject to be regarded as disqualified until the expiry of the ordinary period allowed for making an appeal or application against the conviction, finding, caution, order or certification in respect of which the person is subject to or if such an appeal or application is made, the date on which it is finally disposed of or abandoned or fails because it is not prosecuted.
- 9.4. The amendments made by the Act do not have effect of disqualifying a person becoming subject to any relevant notifications or a relevant order before the day on which the Act came into force.
- 9.5. These new provisions require amendments to the Local Government Act 1972 and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006 as well as legislation relating to the holding of Mayoral elections and the appointments to Health and Wellbeing Boards and of local government electors as trustees.

10. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Reputational risk to the Council if complaints are not progressed in accordance with complaints procedure	It is a statutory duty to appoint at least one Independent Person and provide training. Failure to do so would prevent the authority from processing complaints in accordance with the Council's own complaints procedure.	Two independent Persons were appointed on a four year term on 8 October 2020.	B2

11. Financial implications

11.1. There are no financial implications arising directly from this report.

12. Legal implications

12.1. Legal implications are set out in the body of the report.

13. Recommendations

13.1. The Committee is asked to note the contents of the report.

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Appendices

None.

Background papers

None.