



## BEAN PARISH COUNCIL

### ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER SECTION 28 LOCALISM ACT 2011

(November 2021)

#### 1. Making a complaint

A complaint alleging a breach of the Code of Conduct by an elected member or co-opted member of either:

- Dartford Borough Council; or
- one of the Parish/Town Councils within the Borough of Dartford,

(The Authority)

must be made in writing and addressed to the Monitoring Officer, preferably using the [Complaint Form](#).

It is helpful if the complainant specifies which aspect of the Code of Conduct, they believe has been breached.

The complainant will be required to provide evidence, which supports the complaint, including where applicable, minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, the complainant should let the Monitoring Officer know who they are. This latter point is especially important, as the Monitoring Officer only has one person's word against another's. In the absence of independent confirmation, the Monitoring Officer may not be able to conclude with sufficient certainty, that there is enough evidence to warrant pursuing the complaint.

Receipt of the complaint will normally be acknowledged by the Monitoring Officer, within 7 working days. The member the subject of the complaint will be provided with a summary of the complaint.

#### 2. Consultation with the Independent Person

- (a) The Monitoring Officer will seek and take into account the views of the Independent Person before she decides that an allegation should be investigated; and
- (b) In circumstances other than a decision to investigate, the Monitoring Officer may seek and take into account the views of the Independent Person.

### 3. Preliminary tests – two stages

The Monitoring Officer will assess the complaint, using the following criteria:

#### Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct (i.e., is there direct evidence to establish that a breach actually took place)?<sup>1</sup>
- (f) The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.

Members are entitled to privacy in their personal lives and the provisions of the Code of Conduct only apply to members when they are acting as a member or co-opted member or as a representative of their Authority.

When reaching a decision as to whether the Code of Conduct applies to a member at a particular time, the Monitoring Officer will have regard to the particular circumstances and the nature of the conduct at that time.

If the complaint fails one or more of the legal jurisdiction tests, it will be rejected. i.e., 'Dismissed at Preliminary Stage (Legal Jurisdiction Criteria Test not met)'.

If the complaint satisfies the legal jurisdiction test, it will be assessed against the local assessment criteria test below.

#### Local assessment criteria test:

- (a) The complaint is a 'repeat complaint'<sup>2</sup>, unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous;
- (c) No or insufficient information/evidence to substantiate the complaint has been submitted by the complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 3 months ago;
- (g) The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time and not be in the public interest;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;

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<sup>1</sup> The level of proof that is required by the Monitoring Officer is on the balance of probabilities

<sup>2</sup> Persistent 'repeat complaints' is conduct which in itself, may be investigated as a potential breach of the Code of Conduct

- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g., where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member.

If one or more of the local assessment criteria applies to the complaint, the complaint will be rejected i.e. 'Dismissed at Preliminary Stage (Local Assessment Criteria Test not met)'.

The Monitoring Officer may consult with the Independent Person on the decision to reject the complaint. If rejected, the complainant and the member who is the subject of the complaint will be notified of the decision and the member will be provided with a summary of the complaint within 10 working days.

#### **4. Notification to Member of complaint**

If the complaint is not rejected at the preliminary test stage, the Monitoring Officer will inform the member who is the subject of the complaint, of the details of the complaint and request initial views on the complaint, within 10 working days.

#### **5. Additional information**

The Monitoring Officer may ask the complainant, the member who is the subject of the complaint and if applicable, the Parish/Town Clerk for additional information, at any stage of the process, to assist in deciding how to deal with the complaint.

#### **6. Initial assessment – following two-stage test process**

Having undertaken the two-stage test (see section 3 above), the Monitoring Officer will categorise the complaint as either: -

- No further action;
- Appears that the alleged breach may constitute an offence under criminal law (Includes allegations related to disclosable pecuniary interests);
- Informal resolution;
- Referral back to the Parish/Town Council for resolution, within specific parameters;
- Mediation with the Leader of the Member's Political Group;
- Mediation through the Panel of Political Group Leaders;
- Requiring a formal investigation, which may lead to a meeting of the Hearing Panel.

The Monitoring Officer will seek and take account of the views of the Independent Person, where she decides to formally investigate.

On other categorisations of the complaint, the Monitoring Officer may consult with the Independent Person.

## **7. No further action**

The Monitoring Officer will inform the complainant and the member who is the subject of the complaint of her decision.

## **8. Relating to a Disposable Pecuniary Interest, where it appears that the alleged breach may constitute an offence under criminal law**

The Monitoring Officer will refer the matter to Kent Police and notify the complainant and the member who is the subject of the complaint.

## **9. Informal/local resolution**

The aim of informal/local resolution is to resolve matters at an early stage, to avoid the unnecessary escalation of the situation, which may damage personal relationships within the Authority and the Authority's reputation. The process may result in an apology being offered.

Informal resolution is suited to low-level complaints, which are made by a member against a fellow member. Typically, these complaints will be about alleged failures to show respect and consideration for others as required. Such complaints are more appropriately resolved informally and locally, in order to speed up the complaints process and to ensure that the Monitoring Officer's resources are devoted to the investigation of serious complaints.

The Monitoring Officer will meet/correspond with the member who is the subject of the complaint and seek an informal resolution – e.g., apology, training etc.

The Monitoring Officer may consult with the Independent Person on the proposed informal resolution. The Monitoring Officer will confirm the informal resolution with the member who is the subject of the complaint and seek their agreement in writing. If the member accepts the informal resolution, the Monitoring Officer will inform the complainant. If the member belongs to a political group, the Monitoring Officer will inform the Group Leader of the resolution.

If the member does not accept the proposed informal resolution, or having accepted the informal resolution, fails to comply, the complaint will be escalated to the Mediation stage. The complainant will be notified accordingly.

## **10. Mediation with the Leader of the Member's Political Group**

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting with her and the Leader of the member's Political Group. The Monitoring Officer will consult with the Independent Person on her proposed resolution. The Monitoring Officer will inform the complainant and the member who is the subject of the complaint, of the mediation decision.

The mediation meeting will be held in private, with the outcome being reported to the Political Group Leaders for information

## **11. Mediation through the Panel of Political Group Leaders**

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting of the Panel of Political Group Leaders. The Monitoring Officer will consult with the Independent Person on the proposed resolution. The Monitoring Officer will inform the

complainant of the decision and the member who is the subject of the complaint, of the mediation decision.

Whilst the meeting will be in private, the outcome of the meeting will be reported to the Audit Board for information.

## 12. Bullying/harassment allegations

When dealing with allegations of bullying<sup>3</sup> and harassment<sup>4</sup>, the Monitoring Officer will consider both the perspective of the alleged victim and whether the member complained of intended their actions to be bullying or harassment. She will also consider whether the individual was reasonably entitled to believe they were being bullied or harassed.

Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether expressed verbally or in writing.

Harassment can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

When considering such complaints, the Monitoring Officer will take into account the specific circumstances of the case, whether there was an attempt to intimidate or undermine and the content and context of what has been said.

'Abuse' is an inflammatory word, which is often misunderstood and misused. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that the Monitoring Officer will investigate complaints made in this context.

## 13. Political expression<sup>5</sup>

The High Court in *Sanders v Kingston* [2005] EWHC 1145 (Admin) considered that it had to ask itself three questions in deciding the legality of a finding as to whether a councillor had breached a local authority's code of conduct by not treating others with respect and could reasonably be regarded as bringing their office into disrepute:

- was the decision-maker entitled as a matter of fact to conclude that the conduct breached the code of conduct?
  - if so, was the finding in itself or the imposition of a sanction a breach of Article 10<sup>6</sup>?
  - if so, was the restriction justified under Article 10(2)<sup>7</sup>?

This test was adopted in *R (Calver) v Public Services Ombudsman for Wales* [2012] EWHC 1172 (Admin), where the High Court found that a decision that a councillor had breached a local authority's code of conduct by commenting on other councillors online was a disproportionate interference with the councillor's rights under Article 10.

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<sup>3</sup> Characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened

<sup>4</sup> Conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions (Protection from Harassment Act 1997)

<sup>5</sup> [Robinson, R \(On the Application Of\) v Buckinghamshire Council](#) [2021] EWHC 2014 (Admin)

<sup>6</sup> European Convention on Human Rights

<sup>7</sup> *Supra*

A member's freedom of expression attracts enhanced protection<sup>8</sup> when the comments are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate and it is unlikely that such comments would be considered to be a breach of the Code of Conduct. This would not however include threats to an officer's position or wellbeing.

'Political' comments are not confined to those made within the Authority's meetings and for example, include comments members may generally make on their Authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that the Monitoring Officer will investigate complaints made in this context.

#### **14. Grievance procedures**

The High Court in the case of R (Harvey) v Ledbury Town Council considered local authority staff grievance procedures and their relationship with the code of conduct regime under the Localism Act 2011. The court held that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.

#### **15. Training**

Where the member has not undertaken training relating to Code of Conduct matters, they are not able to use this as a defence, where a complaint alleging a breach of the Code is made against them.

#### **16. Investigation**

It is important to ensure the effective use of the Monitoring Officer's resources and that any investigation undertaken is proportionate and required in the wider public interest (see 'public interest factors' below).

The Monitoring Officer has a wide discretion as to whether to begin or continue an investigation. The two-stage test referred to in section 3 above provides clarity on how that discretion will usually be exercised and to secure a degree of consistency and certainty in the decisions that are reached.

If the Monitoring Officer, in consultation with the Independent Person decides that the complaint merits formal investigation, she will appoint and brief an Investigating Officer to undertake the investigation, and inform the complainant, the member who is the subject of the complaint and if applicable, the Clerk to the Parish/Town Council of the appointment.

The Investigating Officer will provide a confidential draft report to the Monitoring Officer.

When the Monitoring Officer has reviewed and accepted the Investigating Officer's confidential draft report, it will be sent to the complainant and the member who is the subject of the complaint on a confidential basis, requesting comments within 10 working days.

A member who is the subject of an investigation is required to comply with the investigation process. Not to do so, may itself be a breach of the Code of Conduct.

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<sup>8</sup> Supra

Once comments are received, the Monitoring Officer will discuss these with the Investigating Officer and a final report will be agreed.

### **Public interest factors when deciding to investigate**

Some of the public interest factors that the Monitoring Officer will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case:

- the seriousness of the breach;
- whether the member deliberately sought personal gain for themselves or another person at the public expense;
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person;
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity;
- whether there is evidence of previous similar behaviour on the part of the member;
- whether the investigation is required to maintain public confidence in elected members of the Authority;
- whether investigation is a proportionate response, i.e., whether it is likely that the breach would lead to a sanction being applied to the member;
- whether the use of resources in carrying out an investigation or hearing by the Hearing Panel would be regarded as excessive when weighed against any likely sanction.

### **17. Hearing Panel**

The Monitoring Officer will reflect on and analyse the evidence gathered by the Investigating Officer and draw conclusions as to whether it is suggestive that a breach of the Code of Conduct has occurred.

Following the submission of the Investigating Officer's report, if the Monitoring Officer concludes that the case needs to be presented to a Hearing Panel, she will consult with the Independent Person.

Where appropriate, the Monitoring Officer will arrange for a Hearing Panel to meet and consider the allegation and report of the Investigating Officer and to determine the outcome of the complaint. The Hearing Panel will have regard to its Procedure for Conducting a Hearing.

The authority to make a determination of breach rests solely with the Hearing Panel.

Whilst the hearing will be in private, the outcome of the hearing will be a public record and reported to the Audit Board for information.

### **18. Sanctions**

Where a member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more of the sanctions below: -

- (a) Recommending to the Borough or Parish/Town Council that the member be issued with a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand);

- (b) Recommending to the member's Group Leader, or Parish/Town Council, or in the case of a ungrouped Member, to the Borough or Parish/Town Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the Borough Council that the member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer, or recommending to the Parish/Town Council, to arrange training for the member;
- (e) Recommending to the Borough or Parish/Town Council that the member be removed from one or more outside appointments to which they have been appointed or nominated by the Borough or Parish/Town Council;
- (f) Recommending to the Borough or Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the Borough or Parish/Town Council the exclusion of the member from the Borough or Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish/Town Council committee and sub- committee meetings;
- (h) Instructing the Monitoring Officer to apply the informal resolution process;
- (i) Sending a formal letter to the member;
- (j) Recommending to the Borough or Parish/Town Council to issue a press release or other form of publicity.

## **19. Dealing with the recommendation(s)**

Where recommendation(s) are made to the Borough or Parish/Town Council, the Borough or Parish/Town Council will note the recommendation without discussion (which will be deemed to have been agreed as recommended) <sup>9</sup>

## **20. Determination – Hearing Panel**

The Complainant and the member who is the subject of the complaint will be informed of the Hearing Panel's determination. The decision notice will be published on the Borough Council's website and reported to the Audit Board.

## **21. Appeal and complaints**

There is no right of appeal for the complainant or the member who is the subject of the complaint against decisions of the Monitoring Officer, the determination of the Hearing Panel, or of the outcomes through mediation, with the Leader of the Member's Political Group or the Panel of Political Group Leaders.

An application to the court for judicial review may be made on the grounds that the Monitoring Officer's decision or Hearing Panel's determination, is illegal, unfair, irrational and/or not proportional.

## **22. Ombudsman**

The Ombudsman does not offer a right of appeal against the Monitoring Officer's decision or Hearing Panel's determination, but it can consider if there was *administrative fault* in the way the Borough Council considered the complaint. The Ombudsman will only investigate

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<sup>9</sup> R v ent LBC ex p. Gladbaum and Wood (The Times 14.12.19)

complaints if there is sufficient injustice to warrant its involvement or it considers it in the public interest to do so.

### **23. Revision of these Arrangements**

The Audit Board may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.