

**Standards Committee
8 August 2013**

**Council
17 October 2013**

**Annual Report Of The Council's
Monitoring Officer - 2012-13**

Introduction

1. The principal purpose of this annual report is to assess activity in probity matters, in particular in relation to formal complaints about alleged breaches of protocols and codes of conduct by borough and parish councillors. The report provides an opportunity to review the effectiveness of current procedures based on real data. The year on which the current report is based is 20 July 2012 to 31 July 2013.
2. The Council adopted a new code of conduct for councillors on 20 July 2012. This code was based on Localism Act principles and was developed as a collaborative project by Kent Monitoring Officers in consultation with task groups of councillors within individual councils. The vast majority of district and parish councils in Kent adopted what was called 'The Kent Model Code of Conduct'. It has now been operating for one year.
3. The Borough Council also adopted new procedural "Arrangements" for handling code of conduct complaints. Again this was developed on a Kent-wide basis with the objective of simplifying procedures and removing unnecessary bureaucracy which had beset the previous standards regime.
4. The Council has also adopted a "Good Practice Protocol for Councillors when Dealing with Planning Matters". This sets out detailed best practice rules for this specialist and sensitive area of the Council's work which go beyond the general rules set out in the code of conduct. This protocol now requires significant amendment not only in the light of the operation of the new code of conduct interest provision but also the LGA's recent publication "Probity in Planning".
5. Formal training for members on the code of conduct was deferred pending ongoing discussions between CLG and local government professional bodies seeking clarification about the scope of the new interest rules (Disclosable Pecuniary Interests) and other matters. Government has since issued "Guidance" which has been circulated to all members. The time is right now to re-visit the proposed joint training programme for borough/parish councillors especially now that some limited experience of its operation has been gained. In the meantime the Council will be hosting an externally facilitated training event in November aimed principally at the role of 'Independent Persons' in the new Localism Act conduct regime.
6. Notwithstanding that formal training has not been undertaken in respect of the Code of Conduct, the Monitoring Officer has continued to provide advice to borough councillors and Parish Councils. The Deputy Monitoring Officer recently attended a Parish Forum and spoke at length on the Kent Model Code of Conduct and answered numerous questions.

7. This annual report also includes data on Ombudsman complaints as these are also handled by the Monitoring Officer and his staff. The Standards Committee monitors any issues of probity raised in Ombudsman investigations. In terms of Ombudsman complaints the relevant period is 1st April 2012 to 31 March 2013. As explained below, the data available from the Ombudsman for that year is more limited than usual, although it is anticipated that for future years more detailed analysis will once again be provided.

Code of Conduct 2012/13

8. Complaint activity at Ashford has been low since adoption of the new code. The limited experience of operation makes it rather too early to draw conclusions and identify necessary changes of substance. It is fair to say, however, that no significant procedural or conduct problems have arisen to date in using the new code or 'Arrangements'. The Committee for Standards in Public Life, an independent public body which advises government on ethical standards issues, has announced its intention to review the local government standards regime next year and the outcome of this will provide a good base for any review locally. Also, I am aware that the Leader of the Council has expressed a wish to examine options to further develop the Kent Code to include certain aspects of member responsibilities. Any review would of course proceed by way of reports through the proper channels.

However, in the meantime, it has come to my notice that two definitions within the adopted Kent Code contain typographical errors and obviously these need to be corrected. In addition some minor drafting changes to the "Arrangements" are needed eg: to reflect the police protocol referred to in paragraph 15 below.

9. All Borough Councillor Disclosable Pecuniary Interests (DPI) have been registered with the Monitoring Officer and all are up-loaded and available on the Council's website. The considerable task of assembling, checking and uploading all parish council details onto the Borough Council website is nearing a conclusion.
10. In terms of numbers of formal complaints submitted, the attached TABLE 1 provides information on the four new complaints made in the year, together with the outcome on one case carried forward from the 'old' regime under transitional provisions. Cases where complaint forms were provided to potential complainants, but were not completed and returned, are not included in these figures.
11. The number of formal complaints for 2012/13 has reduced compared to the previous two years (when there were seven and eight "filtering" decisions under the old regime). Of the five cases in 2012/13 two were referred for investigation, although one of these was finally resolved by a formal apology.
12. All meeting agendas include an early item seeking declarations of interest and this item has been amended to reflect the revised interests regime under the Council's new code of conduct. Ad hoc advice on interests is regularly sought from the Monitoring Officer and his staff by borough councillors and parish clerks/councillors particularly in relation to Planning Committee matters. This process continues to demonstrate a good general level of understanding by borough councillors and a desire to comply with the code of conduct.

13. On the basis of all the above matters, I am satisfied that the Borough Council's code of conduct is generally understood and observed.
14. One aspect of the Planning Protocol worth reminding all members about is the recommendation that borough councillors should notify the Monitoring Officer when they make a formal planning application to the Borough Council. The reason for this is to ensure the Monitoring Officer is aware and can, if necessary, ensure proper internal procedures are followed in such cases.
15. During the course of the years, Kent Monitoring Officers have continued to work collaboratively on code issues and have jointly prepared a protocol for working with Kent Police on cases where complaints are made about non-declaration of DPLs and related issues which may, under the Localism Act, amount to criminal conduct requiring police intervention. Essentially this is a procedural protocol to ensure that in the unlikely event of a criminal investigation being triggered there is proper communication between the police, the Council and any councillor.

Ombudsman Complaints 2012/13

16. During the course of the current year the Ombudsman's office changed its business processes and is unable to provide a consistent set of data for the entire year. However they have confirmed that during 2012/13 they received a total of NINE complaints about the Council. There is no breakdown of this by service or outcome. However the Ombudsman has confirmed that next year they will return to their past practice of providing the more detailed information for each authority. The LGO's Annual Letter is attached.
17. To assist members, I have attached at TABLE 2 a list of the seven Ombudsman Complaints of which the Council is aware, together with details thereof and the outcome.
18. In the meantime it is worth noting that the number of complaints has significantly reduced from the previous two years when numbers of complaints were 25 and 26. In addition no complaints have involved a finding of maladministration by the Council. Overall, therefore, the Council's record in relation to Ombudsman case outcomes remains strong.

Recommendations

1. That the report of the Monitoring Officer be received and noted.
2. That the minor amendments to the Code and Arrangements referred to in paragraph 8 of the report be made.

T W MORTIMER
July 2013

TABLE 1

CODE OF CONDUCT COMPLAINTS MADE OR RESOLVED BETWEEN JULY 2012 – JULY 2013			
COUNCIL/CASE REFERENCE	ALLEGATION	DECISION	COMMENTS
ABC/11/05 (ASHFORD)	(1) Non declaration of a Prejudicial Interest. (2) Used position to improperly confer an advantage on another person.	No breach of the Code (this was the pre-July 2012 Code)	This matter was referred for an external Investigation. The Investigation Report found no breach. That finding was accepted by the Monitoring Officer in consultation with the Independent Person.
ABC/12/02A - H (ASHFORD)	(1) Disclosure of Confidential Information to third party by email. (2) Not acting in accordance with the Council's Email Policy.	Informal Resolution in the form of an apology to the Complainants and the Council.	This matter was referred for an external Investigation. However during the Investigation the subject Councillor offered an apology and this was accepted by the eight Complainants. The Investigation was therefore ended.
ABC/12/03 (GREAT CHART)	Breach para 3 (compromise impartiality or integrity of those who work for parish council and bringing office or council into disrepute)	N/A	Awaiting further information from complainant.
ABC/12/04 (GREAT CHART)	As above	N/A	As above
ABC/12/06 (ORLESTONE)	Complaint about parish council's administrative processes in handling a planning application	Complaint withdrawn	Parish Council resolved complaint informally to satisfaction of complainant.

TABLE 2

LGO complaints 2012/13

There are 7 complaints here, the LGO says it has recorded 9 complaints against this council in 2012/13. It may be that the LGO received 2 complaints before the 31 March 2013 of which we are still unaware and on which the LGO has still to make a decision or a reference.

ABC Ref no	ABC Dept	Details	LGO decision
648	Housing	Council failed to allocate sufficient housing priority	To discontinue investigation
783	Planning/ Highways	Council included a proposed motorway junction close to complainant's home in its Local Development Framework (LDF) without requiring an Environmental Impact Assessment.	Not to initiate an investigation
792	Housing	Council failed to take action about alleged anti-social behaviour of neighbours	To discontinue investigation
809	Housing	Council failed to award enough housing priority	To discontinue investigation
915	Planning	Council accused of disregarding its policies with regard to a not-yet-determined planning application next to complainant's home	Not to initiate an investigation
812	Legal	Complaint re Council's decision not to conduct a formal investigation of a complaint that a Councillor had allegedly breached the Code of Conduct.	Not to initiate an investigation
942	Revenues & Benefits	Complaint about reduction in benefits	Outside Jurisdiction

LOCAL GOVERNMENT OMBUDSMAN

16 July 2013

By email

Mr John Bunnett
Chief Executive
Ashford Borough Council

Dear Mr Bunnett

Annual Review Letter

I am writing with our annual summary of statistics on the complaints made to the Local Government Ombudsman (LGO) about your authority for the year ended 31 March 2013. This year we have only presented the total number of complaints received and will not be providing the more detailed information that we have offered in previous years.

The reason for this is that we changed our business processes during the course of 2012/13 and therefore would not be able to provide you with a consistent set of data for the entire year.

In 2012/13 we received 9 complaints about your local authority. This compares to the following average number (recognising considerable population variations between authorities of a similar type):

District/Borough Councils-	10 complaints
Unitary Authorities-	36 complaints
Metropolitan Councils-	49 complaints
County Councils-	54 complaints
London Boroughs-	79 complaints

Future development of annual review letters

We remain committed to sharing information about your council's performance and will be providing more detailed information in next year's letters. We want to ensure that the data we provide is relevant and helps local authorities to continuously improve the way they handle complaints from the public and have today launched a consultation on the future format of our annual letters.

I encourage you to respond and highlight how you think our data can best support local accountability and service improvements. The consultation can be found by going to www.surveymonkey.com/s/annualletters

LGO governance arrangements

As part of the work to prepare LGO for the challenges of the future we have refreshed our governance arrangements and have a new executive team structure made up of Heather Lees, the Commission Operating Officer, and our two Executive Directors Nigel Ellis and Michael King. The Executive team are responsible for the day to day management of LGO.

Since November 2012 Anne Seex, my fellow Local Government Ombudsman, has been on sick leave. We have quickly adapted to working with a single Ombudsman and we have formally taken the view that this is the appropriate structure with which to operate in the future. Our sponsor

department is conducting a review to enable us to develop our future governance arrangements. Our delegations have been amended so that investigators are able to make decisions on my behalf on all local authority and adult social care complaints in England.

Publishing decisions

Last year we wrote to explain that we would be publishing the final decision on all complaints on our website. We consider this to be an important step in increasing our transparency and accountability and we are the first public sector ombudsman to do this. Publication will apply to all complaints received after the 1 April 2013 with the first decisions appearing on our website over the coming weeks. I hope that your authority will also find this development to be useful and use the decisions on complaints about all local authorities as a tool to identify potential improvement to your own service.

Assessment Code

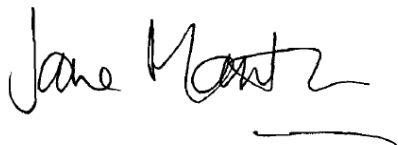
Earlier in the year we introduced an assessment code that helps us to determine the circumstances where we will investigate a complaint. We apply this code during our initial assessment of all new complaints. Details of the code can be found at:

www.lgo.org.uk/making-a-complaint/how-we-will-deal-with-your-complaint/assessment-code

Annual Report and Accounts

Today we have also published *Raising the Standards*, our Annual Report and Accounts for 2012/13. It details what we have done over the last 12 months to improve our own performance, to drive up standards in the complaints system and to improve the performance of public services. The report can be found on our website at www.lgo.org.uk

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a long horizontal flourish at the end.

Dr Jane Martin
Local Government Ombudsman
Chair, Commission for Local Administration in England

PROPOSED AMENDMENTS TO THE CODE AS REFERRED TO IN PARAGRAPH 8 OF THE REPORT

THE CODE

1. Interpretation

In this Code:

“**Associated Person**” means (either in the singular or in the plural):

(a) a family member or any other person **or body** with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or

(b) any person or body who employs or has appointed you or such persons, any

firm in which you or they are a partner, or any company of which you or they are directors; or

(c) any person or body in whom **you or** such persons have a beneficial interest in a class

of securities exceeding the nominal value of £25,000; or

(d) any body of which you are in a position of general control or management and

to which you are appointed or nominated by the Authority; or

(e) any body in respect of which you are in a position of general control or management:

(i) exercising functions of a public nature; or

(ii) directed to charitable purposes; or

(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

“**Authority**” means Ashford Borough Council.

“**Co-opted Member**” means a person who is not **an elected** Member of the Authority but who is a member of:

AMENDMENTS TO ARRANGEMENTS

PROCEDURE ON RECEIPT OF A COMPLAINT

- (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;

4.4 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant may be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. **Alternatively the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and if the complaint passes that test he may pass the complaint to the police. Where a complainant has been advised to refer a matter to the police or the Monitoring Officer has referred the matter to the police** the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and, in consultation with the Independent Person, will apply the local assessment criteria test in paragraph 1.4 above.

- 6.1 The Monitoring Officer may, after consultation with the Independent Person, seek to resolve a complaint informally at any stage in the process, whether without the need for an investigation or before or after an investigation has been commenced or concluded. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to **seek to** agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.

6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee [and, if applicable, the Parish Council] for information, but will take no further action **against the Subject Member**.

New Clause 6.6 under INFORMAL RESOLUTION

If the Complainant or Subject Councillor do not agree the precise details of the Informal Resolution eg the actual wording of an apology, the Monitoring Officer shall still be entitled to resolve the Complaint by Informal Resolution.