

**Standards Committee
30 September 2014**

**Council
16 October 2014**

**Annual Report Of The Council's
Monitoring Officer - 2013-14**

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 1m August 2013 to 31 July 2014.
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 two years.
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 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. During the year 2013/14, two important training events were held. First in November 2013, Ashford hosted an externally facilitated training day aimed principally at the role of "Independent Persons" in the new Localism Act conduct regime. This was attended by representatives of several local authorities including Ashford. In February 2014 a training day was held at Ashford on the new Code of Conduct. This was a joint ABC/KALC event and was attended by 14 borough councillors and 30 parish representatives.

6. 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 2013 to 31 March 2014.

Code of Conduct 2013/14

7. Complaint activity in Ashford has been low since adoption of the new code. 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 and the outcome of this will provide a good base for any review locally.
8. 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. Sample checking of parish councils' own websites will also be undertaken and advice given to clerks as appropriate.
9. In terms of numbers of formal complaints submitted, the attached TABLE 1 provides information on the three new complaints made in the year. Cases where complaint forms were provided to potential complainants, but were not completed and returned, are not included in these figures. Nor are cases where complaint forms have been submitted but are incomplete and further information is awaited to validate them.
10. The number of formal complaints for 2013/14 has reduced compared to the previous three years (when there were five cases in 2012/13 and seven and eight "filtering" decisions under the old regime in the two preceding years). Of the three cases in 2013/14 none had to be referred for investigation.
11. 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.

During the course of the year the Monitoring Officer has provided detailed written advice to all borough councillors regarding the approach to declaration of interests on the Chilmington Green planning application and on the "call for sites" process being undertaken as part of the Local Plan preparation.

12. On the basis of all the above matters, I am satisfied that the Borough Council's code of conduct is generally understood and observed.
13. 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.
14. During the course of the year, Kent Monitoring Officers have continued to work collaboratively on code issues and have jointly finalised a protocol for working with Kent Police on cases where complaints are made about non-declaration of DPis 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 2013/14

16. 2013/14 was the first full year the Local Government Ombudsman recorded complaints under its new business model and, since April 2013, complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government Ombudsman (LGO). So figures for complaints will not be directly comparable with previous years. The LGO's annual letter and report are attached.
17. For Members' information the analysis of the complaints resolved by the LGO and the HO in 2013/14 are attached (appendix A). Comparative figures for the other Local Authorities in Kent are also included.
18. The LGO has changed the way its decisions are described and now uses the term 'maladministration' to indicate administrative fault. Decisions on three complaints were that the council was at fault but in no case did the LGO consider that the complainant had suffered any injustice as a result.

Recommendations

1. That the report of the Monitoring Officer be received and noted.

T W MORTIMER
September 2014

TABLE 1

VALID CODE OF CONDUCT COMPLAINTS MADE OR RESOLVED BETWEEN JULY 2013 – JULY 2014			
COUNCIL/CASE REFERENCE	ALLEGATION	DECISION	COMMENTS
ABC/13/05 HIGH HALDEN	Various allegations not directly linked to code of conduct		Still under discussion with/awaiting further information from complainant.
ABC/13/06 ASHFORD	Brought Council/ office into disrepute by making unwarranted comments about motives for removal of trees	Informal resolution by agreed redaction of a short paragraph in an appeal letter	Matter not investigated
ABC/13/07 WYE PARISH	Rudeness during a parish by-election campaign	Not acting in official capacity as a councillor at time of alleged conduct	Matter not investigated.

Appendix A - Analysis of Ombudsman Complaints

The Ombudsman investigates complaints about council services to remedy personal injustice caused by maladministration or service failure. In the past 'maladministration' was reserved for reports where the fault was likely to be significant. However the significance or otherwise of the fault does not determine whether or not it is maladministration, 'administrative fault by the body in jurisdiction' is maladministration. The Ombudsman will decide if there has been maladministration (or 'fault') and whether or not there was injustice.

The Local Government Ombudsman (LGO) forwarded 19 complaints to Ashford Borough Council for the period 1st April 2013 to 31st March 2014 and resolved 16 of those complaints within this period (nine of these complaints were concluded by the LGO without any input from the council) the other three complaints were resolved in May 2014. The council also received one complaint from the Housing Ombudsman (HO) which was resolved.

For comparison, in 2012/13 the LGO resolved seven complaints about the council, in 2011/12 the LGO resolved 25 complaints and in 2010/11 23 complaints were resolved.

The LGO changed the way it describes its decisions and in its annual letter has used these new decision reasons to describe complaint outcomes. As far as possible the decision reasons given on the annual letter have been reconciled with the complaint outcome descriptions given by the LGO earlier in the year. The LGO are unable to provide councils with any detailed data.

The figures for the number of complaints received by the LGO about this council differ from the figures for the number of complaints the council has received from the LGO – because, for example, the LGO may have received a premature complaint which was referred back to the complainant with the advice that the complaint needed to be taken up with the council, but the complainant may not have pursued the complaint.

The LGO annual letter and report are attached (appendix 3).

When the LGO has issued a report on a completed investigation, these are generally published in the Complaints outcomes section of the LGO website www.lgo.org.uk

Since 1 April 2013, the LGO has published all its decision statements on its website. The published information does not name the complainant or any individual involved with the complaint. Decision statements are published no earlier than three months after the date of the final decision.

The decision outcomes received by the council are recorded below and how they relate to the changed LGO decision reasons are indicated where appropriate.

The LGO's decisions were grouped in accordance with following headings:-

Decision Reasons from 1 April 2013	What changed in February 2014	Annual Letter categorisation
<i>Not in jurisdiction (OJ) and no discretion</i>	<i>No Change</i>	<i>Closed after initial enquiries</i>
<i>Not in jurisdiction (OJ) and discretion not exercised</i>		
<i>Not investigated</i>		
<i>To discontinue investigation</i>		<i>Not upheld</i>
<i>To discontinue investigation (for those cases where a remedy is agreed with an authority without LGO making a finding of maladministration or fault)</i>		<i>Upheld</i>
<i>Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report S30(1B)</i>	<i>Investigation complete: Maladministration and Injustice</i>	<i>Upheld</i>
	<i>Investigation complete: Maladministration, No Injustice</i>	
	<i>Investigation complete: No Maladministration</i>	<i>Not Upheld</i>
<i>Investigation complete and appropriate to issue a report S30(1)</i>	<i>Investigation complete and report issued: Maladministration and Injustice</i>	<i>Upheld</i>
	<i>Investigation complete and report issued: Maladministration, No Injustice</i>	
	<i>Investigation complete and report issued: No Maladministration</i>	<i>Not upheld</i>

The outcomes of the 16 complaints to this council resolved by the LGO are detailed below:-

Not in Jurisdiction and no discretion	1
Not in Jurisdiction and discretion not exercised	3
Not investigated	5
To discontinue Investigation	1
Investigation complete and satisfied with authority's actions or proposed actions and not appropriate to issue report S30(1B)	6*
Investigation complete and appropriate to issue report S30(1)	0
total	16

The outcome of the Housing Ombudsman complaint was '**no maladministration, council acted in line with its obligations**'.

*Of these six decisions, three fall into the category 'Investigation complete - no maladministration' i.e. not upheld (no fault); and three fall into the category 'Investigation complete: maladministration but no injustice' i.e. upheld (fault), - further details in Appendix 1.

Two charts are attached at appendices 1 and 2 for the Committee's information:

- 1 A list of the Ombudsman complaints together with their details and the outcome.
- 2 Comparison table of other Kent Local Authority complaint figures.

I have attached the Ombudsman's Annual Review letter 2013/14 (appendix 3).
Figures in the table referred to in the letter are included in appendix 2.
Annual Reviews and data for previous years are available on the LGO website.

Appendix 1 – Local Government Complaints 1st April 2013 – 31st March 2014

Ombudsman complaints 2013/14

There are 17 complaints here, 16 from the Local Government Ombudsman (LGO) and 1 from the Housing Ombudsman (HO). The decision reasons used by the LGO from 1 April 2013 were changed in February 2014 and changed again on 1 April 2014. The decisions given on this table are those given in the LGO's decision letter.

Though the number of complaints has increased since last year, there were still fewer than in 2011/12 or 2010/11, and there have been no decisions of injustice by this council.

ABC Ref no	ABC Dept	Details	LGO decision	Investigated complaints
872	Housing	Complainant considered that council misled him about prospective tenants its housing department nominated to his properties.	To discontinue investigation	
915	Planning	Council accused of disregarding its policies with regard to a planning application near to complainant's home.	Investigation complete – No Maladministration	No fault, not upheld.
925	Planning	Complainant alleged council failed to consider his objections when determining a neighbour's application for an outbuilding.	Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report	Fault (but no injustice). Complainant says council failed to consider his objections when it determined a planning application for an out building. LGO considered the outcome would have been the same even if there had been no fault by the council

941	Planning	Complaint about council's decision to protect woodland which he owns.	Not investigated	
942	Revenues & Benefits	Unhappy about council's decision that son (as his carer) was not exempt from paying council tax.	Not in jurisdiction & discretion not exercised	
949	Revenues & Benefits	Complaint that council did not use information provided for complainant's council tax benefit claim.	Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report	No fault, not upheld
1036	Revenues & Benefits	Complaint about council decision to hold complainant responsible for council tax while living in a caravan.	Not in jurisdiction & discretion not exercised	
1066	Planning	Complainant considered that neighbour was running a business from home which was an unauthorised change of use and the council had not taken action to stop it.	Not investigated	
1139	Revenues & Benefits	Complaint that council failed to deal with council tax account properly when complainant briefly rented a property in the council's area.	Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report	No fault, not upheld

1078	Revenues & Benefits	Complaint that council sent an overpayment demand without sending a proper notification of its decision and didn't send the explanation in a format that took account of the complainant's disability.	Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report	Fault (but no injustice). Fault by the council in the way it dealt with the complainant's housing benefit claim. The council agreed to send a new statement of reasons to the complainant to enable him to appeal if he so wished
1090	Planning	Complainant considered that council's refusal of listed building consent gave him no option but to do some rebuilding work though he believed there was no obligation for him to do so.	Not in jurisdiction & discretion not exercised	
1131	Planning	Complaint that council was wrong to decide that a house which was converted from a single dwelling into two self contained flats more than four years ago was immune from enforcement action.	Investigation complete and satisfied with authority actions or proposed actions and not appropriate to issue report	Fault (but no injustice) Complainant has not suffered a significant injustice because the Council decided a property in his road had changed from a single dwelling to two self contained flats more than 4 years ago and so was immune from planning enforcement
1153	Planning & BC	Complainant considered that the council did not ensure that building work to his neighbour's property was carried out in accordance with the agreed plans.	Not investigated	

1167	Corporate and other Services	Complaint that council failed to make reasonable adjustments for complainant's disability when he applied for a job at the council.	Out of jurisdiction and no discretion	
1207	Planning	Complaint about the council's decision to grant planning permission for a balcony at a neighbouring property. Complainant considered the development would be an intrusion of her privacy and detrimental to her visual amenity.	Not investigated	
1216	Planning	Complaint about the council decision to grant planning permission for a new dwelling at a neighbouring property. Complainant said the council did not come to his house to assess the impact of the development, and his point of view was not considered.	Not investigated	
			HO decision	
1264	Housing	Complaint that council would not make compensation for damage to belongings when part of complainant's living room ceiling collapsed.	Council acted in line with its obligations, there was no maladministration	

Appendix 2 - Comparative data from other Kent authorities: 2013/14

Complaints and enquires received by LGO

Authority	Total 2013 -14	Adult care services	Benefits and tax	Corporate & other services	Education & children's services	Environmental services, public protection & regulation	Highways & transport	Housing	Planning & development
Ashford BC	27	0	7	3	1	3	1	3	9
Canterbury City C	32	0	4	1	0	2	3	11	11
Dartford BC	17	0	6	2	0	2	1	2	4
Dover DC	29	1	5	0	0	3	2	5	13
Gravesham BC	24	0	12	0	1	2	1	6	2
Maidstone BC	19	0	3	2	0	2	1	2	9
Sevenoaks DC	18	0	5	0	0	1	0	2	10
Shepway DC	24	0	8	0	0	3	0	3	10
Swale BC	22	0	3	2	0	2	4	1	10
Thanet DC	25	0	1	6	0	5	1	3	9
Tonbridge & Malling BC	8	0	2	1	0	1	0	3	1
Tunbridge Wells BC	16	0	4	0	0	2	1	2	7

Decisions made

Authority	Total 2013 - 14	Advice given	Closed after initial enquiries	Incomplete/ Invalid	Referred back for local resolution	Detailed Investigations			% Upheld
						Upheld	Not Upheld	Total	
Ashford BC	27	1	12	1	7	3	3	6	50
Canterbury City C	35	2	6	0	22	1	4	5	20
Dartford BC	21	0	10	1	7	2	1	3	66.7
Dover DC	30	2	9	0	11	3	5	8	37.5
Gravesham BC	22	3	4	1	12	1	1	2	50
Maidstone BC	19	0	10	1	5	3	0	3	100
Sevenoaks DC	20	0	8	1	8	0	3	3	0
Shepway DC	24	1	5	1	10	3	4	7	42.9
Swale BC	25	0	11	0	10	2	2	4	50
Thanet DC	22	3	3	0	13	0	3	3	0
Tonbridge & Malling BC	8	0	1	0	6	0	1	1	0
Tunbridge Wells BC	20	1	5	1	5	4	4	8	50

Notes – The figures include all the complaints and enquiries received in 2013/14. A number of cases will have been received and decided in different business years, this means that the number of complaints and enquiries will not always match the number of decisions made.

Appendix 3

LGO Annual Review Letter and Local Authority Report Ashford BC 1 April 2013 – 31 March 2014

7 July 2014

By email

Mr John Bunnett
Chief Executive
Ashford Borough Council

Dear Mr John Bunnett

Annual Review Letter 2014

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 2014. This is the first full year of recording complaints under our new business model so the figures will not be directly comparable to previous years. This year's statistics can be found in the table attached.

A summary of complaint statistics for every local authority in England will also be included in a new yearly report on local government complaint handling. This will be published alongside our annual review letters on 15 July. This approach is in response to feedback from councils who told us that they want to be able to compare their performance on complaints against their peers.

For the first time this year we are also sending a copy of each annual review letter to the leader of the council as well as to the chief executive. We hope this will help to support greater democratic scrutiny of local complaint handling and ensure effective local accountability of public services. In the future we will also send a copy of any published Ombudsman report to the leader of the council as well as the chief executive.

Developments at the Local Government Ombudsman

At the end of March Anne Seex retired as my fellow Local Government Ombudsman. Following an independent review of the governance of the LGO last year the Government has committed to formalising a single ombudsman structure at LGO, and to strengthen our governance, when parliamentary time allows. I welcome these changes and have begun the process of strengthening our governance by inviting the independent Chairs of our Audit and Remuneration Committees to join our board, the Commission for Administration in England. We have also recruited a further independent advisory member.

Future for local accountability

There has been much discussion in Parliament and elsewhere about the effectiveness of complaints handling in the public sector and the role of ombudsmen. I have supported the creation of a single ombudsman for all public services in England. I consider this is the best way to deliver a system of redress that is accessible for users; provides an effective and comprehensive service; and ensures that services are accountable locally.

To contribute to that debate we held a roundtable discussion with senior leaders from across the local government landscape including the Local Government Association, Care Quality Commission and SOLACE. The purpose of this forum was to discuss the challenges and opportunities that exist to strengthen local accountability of public services, particularly in an environment where those services are delivered by many different providers.

Over the summer we will be developing our corporate strategy for the next three years and considering how we can best play our part in enhancing the local accountability of public services. We will be listening to the views of a wide range of stakeholders from across local government and social care and would be pleased to hear your comments.

Yours sincerely

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

Local authority report – Ashford Borough Council

For the period ending – 31/03/2014

For further information on interpretation of statistics click on this link to go to <http://www.lgo.org.uk/publications/annual-report/note-interpretation-statistics/>

Complaints and enquiries received

Local authority	Adult care services	Benefits and tax	Corporate and other services	Education and children's services	Environmental services and public protection and regulation	Highways and transport	Housing	Planning and development	Total
Ashford BC	0	7	3	1	3	1	3	9	27

Decisions made

Local authority	<u>Detailed investigations carried out</u>		Advice given	Closed after initial enquiries	Incomplete/Invalid	Referred back for local resolution	Total
	Upheld	Not upheld					
Ashford BC	3	3	1	12	1	7	27