

**Standards Committee
24 JANUARY 2022**

**Council
3 MARCH 2022**

**Annual Report of the Council's
Monitoring Officer – 2021**

A. Introduction

1. The principal purpose of my Annual Report is to assess activity in probity and related governance matters, in particular in relation to formal complaints about alleged breaches of protocols and codes of conduct by borough and parish councillors. The report also provides an opportunity to review the effectiveness of current procedures. This report deals with the calendar year 2021 in relation to these matters.
2. The Council's current code of conduct for councillors was adopted on 20 July 2012 and has since been the subject of a number of amendments. This code is 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 have adopted this "Kent Model Code of Conduct".
3. When it adopted the Code of Conduct in 2012, the 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 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. The Protocol was substantially revised and updated in October 2015 to reflect changes in the law and government guidance. The first formal complaint of breach of the Protocol was dealt with in 2017.
5. My Annual Report also includes data on Ombudsman complaints as these are also handled by or on behalf of the Monitoring Officer. The Standards Committee monitors any issues of probity raised in Ombudsman investigations. In terms of Ombudsman complaints the relevant period relates to the most recent data provided by the Ombudsman namely that for the period 1st April 2020 to 31 March 2021.

B. Code of Conduct Complaints 2021

6. Formal complaint activity in Ashford has been relatively low since adoption of the new code of conduct in 2012. For example, during 2016 no new formal complaints were submitted, whilst in previous years the few complaints made,

mainly at Parish Council level, had been resolved informally. No complaints had been taken to formal investigation and hearing up to the end of 2016. However the period since 2017 has been more challenging. Since early 2020, various temporary national and local “lockdowns” have been in place with most staff working remotely and councillor meetings taking place “virtually” up to May 2021. However this has not resulted in a reduction of formal or informal complaint activity. On the contrary the volume of informal complaint activity and requests for advice has grown significantly at parish council level. Several formal complaints were made in 2020 although a number fell away due to a failure to provide information or the fact that the complaint failed to meet legal or local assessment criteria eg. related to private conduct. In the end only three formal complaints proceeded.

7. The formal complaints received and registered in 2021 are set out in Table 1 below. This includes two cases decided in 2021 albeit submitted in late 2020.
8. It can be seen that not only has the number of formal complaints grown very considerably, but to date only one of the complaints merited even partial formal investigation. So it is not necessarily justified to draw adverse conclusions about parish governance just because a large number of complaints has been made against it.
9. The handling of these complaints has been largely undertaken by an external specialist lawyer in view of staff vacancies and other pressing work priorities in legal services. This has been undertaken within the current legal services budget, using vacancy savings. Whilst this has allowed much of the work to be undertaken within reasonable timescales, the current volume of complaint work is unsustainable in the longer term. The volume of complaints in 2021 exceeds by a very large margin those received in any other single year since 2012. Since all of the formal complaints have emanated from parish council level, I am including a recommendation at the end of this report that I work with KALC to identify measures and opportunities to minimise the incidence of formal complaints. This may include a more robust use of the existing threshold criteria to identify unmeritorious complaints earlier.

Table 1
Formal Code of Conduct Complaints Made

No	Ashford BC -Complaint Reference	Council	Background (Allegation)	Action taken
1	ABC/20/008	Kennington Community Council	Disadvantage members of the council/ misuse of council resources/ disclosure of confidential information	No further action.

2	ABC/20/008	Kennington Community Council	Misuse of council resources/ confidential information/failure to declare an interest.	No further action
3	ABC/20/011	Egerton Parish Council	Bullying/ failure to show leadership	No further action recommendation for mediation.
4	ABC/20/011	Egerton Parish Council	Bullying	No further action recommendation for mediation.
5.	ABC/20/011	Egerton Parish Council	Bullying	No further action recommendation for mediation
6.	ABC/20/011	Egerton Parish Council	Bullying	No further action recommendation for mediation
7	ABC/20/009	Newenden Parish Council	Use of position to gain advantage/ conduct could bring office into disrepute.	No further action
8	ABC/20/012	Kennington Community Council	Failing to act with respect/ bullying & intimidation/ failure to use council resources in accordance with requirements	Complaint 1B only has been referred for investigation
9	ABC/20/012	Kennington Community Council	Use of foul or abusive language/malicious disrespect and unfounded accusation against Clerk	No further action
10	ABC/20/012	Kennington Community Council	Disrespect and accusation against the Clerk.	No further action.
11	ABC/21/01A	Egerton Parish Council	Failure to disclose interest.	No further action
12	ABC/21/01B	Egerton Parish Council	Failure to disclose interest	No further action.
13	ABC/21/01/C	Egerton Parish Council	Failure to disclose interest.	No further action.
14	ABC/21/01/D	Egerton Parish Council	Failure to disclose interest.	No further action.

15	ABC/21/01E	Egerton Parish Council	Failure to disclose interest.	No further action
16	ABC/21/02A	Chilham Parish Council	Prevention of access to information permitted by law/ conduct bringing office into disrepute.	No further action.
17	ABC/21/02B	Chilham Parish Council	Compromise the integrity or impartiality of those in office/ must not conduct themselves in a manner which would bring councillor's office or Authority into disrepute.	Final decision to be issued.
18	ABC/21/04	Kennington Community Council	Behave in a manner which is respectful/ bullying and intimidation.	No further action.
19	ABC/21/05	Egerton Parish Council	Behave in a manner which does not bring the office or authority into disrepute/ bullying.	No further action
20	ABC/21/06	Egerton Parish Council	Failed to declare interest.	Final decision to be issued.
21	ABC/21/07A Dated 19.10.21	Egerton PC	Disclosure of information given in confidence.	Final decision to be issued.
22	ABC/21/07B Dated 19.10.21	Egerton PC	Disclosure of information given in confidence.	Final decision to be issued.
23	ABC/21/07C Dated 19.10.21	Egerton PC	Disclosure of information given in confidence	Final decision to be issued.

C. Other Relevant Governance Developments in 2020

10. The new Social Media Guidance Note for Councillors was adopted in May 2019. In addition a revised Councillor/Officer Working Relationship protocol was adopted clarifying standards of expected behaviours. Some training in relation to these protocols was provided following the elections in 2019 and I am pleased to say that noticeably fewer complaints (formal and informal) have related to social media usage since 2019.
11. In my last annual report I included an update on the review work of the national Committee on Standards in Public Life (CSPL). The CSPL had made 15 “Best Practice” Recommendations in relation to the local government ethical standards system, some of which required legislation to implement. An update has been provided to the CSPL by all local authorities.
12. One of the CSPL’s formal recommendations in 2019 was that the Local Government Association should prepare an optional new Model Code of Conduct for Councillors in order to encourage greater consistency and higher standards. Following extensive consultation the LGA has now published a new Model Code of Conduct and some new “Guidance”. This is now being given detailed consideration by the Kent Monitoring Officers Group and a further report to this Committee will be presented when that work is complete.

D. Ombudsman Complaints 2019/20

13. Since April 2013, complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government Ombudsman (LGO).
14. For Members’ information the analysis of the complaints resolved by the LGO in 2020/21 are attached (Appendix A). The LGO’s Annual Letter and Report are also included in Appendix A.
15. The number of complaints received by the Ombudsman in 2020/21 (18) was similar to 2019/20 (17) but it is pleasing that the number of complaints upheld in 20/21 was nil, as opposed to three in the previous year. Details are provided in the Table below.
16. A new column was added to the Table of Ombudsman Complaints with effect from 19/20 giving information on action taken/lessons learned where relevant. This is consistent with the approach advocated in the Ombudsman’s annual review letter in 2020 and also with the most recent annual letter which highlights the importance of using complaints to drive improvements.

E. Recommendations

1. That the Annual Report of the Monitoring Officer for 2021 be received and noted.

2. That the Monitoring Officer report to future meeting(s) of the Standards Committee in relation to the new LGA Model Code of Conduct.
3. That the Monitoring Officer contact the Kent Association of Local Councils with a view to discussing and agreeing measures to reduce the incidence and cost of formal complaints at parish council level.

T W MORTIMER

Director of Law and Governance & Monitoring Officer

January 2022

Appendix A – Analysis of Ombudsman Complaints

The Ombudsman investigates complaints about Council services to remedy personal injustice caused by maladministration (“fault”) or service failure.

Between 1st April 2020 and 31st March 2021 the Local Government Ombudsman (LGO) made decisions on 18 complaints as follows:

Incomplete or invalid complaint	3
Referred back for local resolution	<u>5</u>
	8

Closed after initial enquiries	8
Investigated, but not upheld	<u>2</u>
	10

Attached is a table providing details on the 10 complaints about which the LGO contacted the Council, and outcome of these complaints. Only 2 complaints were fully investigated by the LGO and these were not upheld.

I have also attached the Ombudsman’s Annual Review letter 2020/2021.

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. The published information does not name the complainant or any individual involved with the complaint. Each Council’s annual data is uploaded onto an interactive map, along with a copy of the Annual Review letter. Information can be found on decisions made about complaints against the Council, public reports issued by the LGO and the service improvements the Council has agreed to make as a result of LGO investigations (if any).

This year, the LGO has focused on the outcomes of complaints and what can be learned from them, and statistics are concentrated on three key areas: complaints upheld; compliance with recommendations; satisfactory remedy provided by the authority. In this year, 0% of complaints made against the Council and investigated by the LGO were upheld. No recommendations were due for compliance and the

Council was not required to provide any remedies. Key annual statistics for the Council are also provided as a comparison with similar types of authorities.

To allow authorities to respond to the Covid-19 pandemic, the Ombudsman did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints received and decided by the Ombudsman in the 2020-21 year. This should be considered when comparing data from previous years.

Reference	ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
19019831	Planning	Complained about the Council's planning actions and Local Plan	Closed after initial enquiries – out of jurisdiction.	N/A	
19020822	Planning	Complained that a Planning Officer misled the Planning Committee	Closed after initial enquiries – no further action.	N/A	
20000841	Legal & Democracy	Complained that there were procedural faults in how the Council considered a planning application for development near her home. She said some elected Members of the Planning Committee voted along party lines and an absent Member was replaced by an inappropriate substitute	Closed after initial enquiries – no further action.	N/A	
20001177	Planning	Complained about how the Council consulted about a large development next to her home.	Closed after initial enquiries – no further action.	N/A	

Reference	ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
20002531	Planning	Complained that the Council failed to consider the impact on his privacy when it approved a planning application for a site next to his home	Closed after initial enquiries – out of jurisdiction	N/A	
20005898	Planning	Complained about how the Council dealt with an application for a development near his home. He said the application was not properly publicised and the Council did not consider the impact the new building would have on the area.	Closed after initial enquiries – no further action.	N/A	
20005562	Planning	Complained about the Council's handling of a reported breach of planning control at her property. She also complained about the Council's handling of her planning application to regularise the breach and about the way it dealt with her complaint.	Closed after initial enquiries – no further action.	N/A	
20002542	Planning	Complained about the Council's decision to approve a planning	Not Upheld – no further action	N/A	

Reference	ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
		application for a holiday home on land next to his home			
20007838	Housing	Complained the Council's lettings policy unfairly favoured Council tenants over housing association tenants wanting to move home and the Council should have rehoused him sooner.	Not Upheld – no maladministration	N/A	
20012040	Planning	Complained that the Council decided not to do any public consultation on the third set of permitted plans for the development next to his property	Closed after initial enquiries – no further action.	N/A	

HOUSING OMBUDSMAN

The Housing Ombudsman does not provide Councils with an annual report on complaints made to its service.

The table below outlines the complaints made to the Housing Ombudsman and investigated during 2020/21, and the outcomes and lessons learned by the Council (where required).

Reference	ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
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201908089	Housing	Complained about the way the Council handled ASB complaints and rent accounts	No maladministration found	Recommendations made by HO to improve service	Recommendations implemented by Housing Service
201908089 Appeal against determination	Housing	Appeal for review of Housing Ombudsman decision that no maladministration found in the way the Council handled ASB complaint and rent account.	No maladministration found by review.		

Local Government & Social Care OMBUDSMAN

21 July 2021

By email

Mrs Kerly
Chief Executive
Ashford Borough Council

Dear Mrs Kerly

Annual Review letter 2021

I write to you with our annual summary of statistics on the decisions made by the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2021. At the end of a challenging year, we maintain that good public administration is more important than ever and I hope this feedback provides you with both the opportunity to reflect on your Council's performance and plan for the future.

You will be aware that, at the end of March 2020 we took the unprecedented step of temporarily stopping our casework, in the wider public interest, to allow authorities to concentrate efforts on vital frontline services during the first wave of the Covid-19 outbreak. We restarted casework in late June 2020, after a three month pause.

We listened to your feedback and decided it was unnecessary to pause our casework again during further waves of the pandemic. Instead, we have encouraged authorities to talk to us on an individual basis about difficulties responding to any stage of an investigation, including implementing our recommendations. We continue this approach and urge you to maintain clear communication with us.

Complaint statistics

This year, we continue to focus on the outcomes of complaints and what can be learned from them. We want to provide you with the most insightful information we can and have focused statistics on three key areas:

Complaints upheld - We uphold complaints when we find some form of fault in an authority's actions, including where the authority accepted fault before we investigated.

Compliance with recommendations - We recommend ways for authorities to put things right when faults have caused injustice and monitor their compliance with our recommendations. Failure to comply is rare and a compliance rate below 100% is a cause for concern.

Satisfactory remedy provided by the authority - In these cases, the authority upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit authorities that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your authority with similar types of authorities to work out an average level of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data will be uploaded to our interactive map, [Your council's performance](#), along with a copy of this letter on 28 July 2021. This useful tool places all our data and information about councils in one place. You can find the decisions we have made about your Council, public reports we have issued, and the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

I would encourage you to share the resource with colleagues and elected members; the information can provide valuable insights into service areas, early warning signs of problems and is a key source of information for governance, audit, risk and scrutiny functions.

As you would expect, data has been impacted by the pause to casework in the first quarter of the year. This should be considered when making comparisons with previous year's data.

Supporting complaint and service improvement

I am increasingly concerned about the evidence I see of the erosion of effective complaint functions in local authorities. While no doubt the result of considerable and prolonged budget and demand pressures, the Covid-19 pandemic appears to have amplified the problems and my concerns. With much greater frequency, we find poor local complaint handling practices when investigating substantive service issues and see evidence of reductions in the overall capacity, status and visibility of local redress systems.

With this context in mind, we are developing a new programme of work that will utilise complaints to drive improvements in both local complaint systems and services. We want to use the rich evidence of our casework to better identify authorities that need support to improve their complaint handling and target specific support to them. We are at the start of this ambitious work and there will be opportunities for local authorities to shape it over the coming months and years.

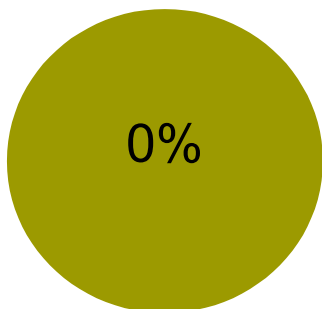
An already established tool we have for supporting improvements in local complaint handling is our successful training programme. During the year, we successfully adapted our face-to-face courses for online delivery. We provided 79 online workshops during the year, reaching more than 1,100 people. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld



0% of complaints we investigated were upheld.

This compares to an average of **53%** in similar authorities.

0
upheld decisions

Statistics are based on a total of 2 detailed investigations for the period between 1 April 2020 to 31 March 2021

Compliance with Ombudsman recommendations

No recommendations were due for compliance in this period

Satisfactory remedy provided by the authority

The Ombudsman did not uphold any detailed investigations during this period

NOTE: To allow authorities to respond to the Covid-19 pandemic, we did not accept new complaints and stopped investigating existing cases between March and June 2020. This reduced the number of complaints we received and decided in the 20-21 year. Please consider this when comparing data from previous years.