

**Standards Committee
31 JANUARY 2023**

**Council
2 MARCH 2023**

**Annual Report of the Council's
Monitoring Officer – 2022**

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 2022 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.
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 2021 to 31 March 2022.

B. Code of Conduct Complaints 2022

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. Between early 2020, and mid 2021 various temporary national and local “lockdowns” were in place with most staff working remotely and councillor meetings taking place “virtually” up to May 2021. However this did not result in a reduction of formal or informal complaint activity. On the contrary the volume of informal complaint activity and requests for advice grew significantly at parish council level. In my report last year I reported that 23 complaints had been received but most had resulted in no further action following initial filtering decisions.

At the time of the report 5 complaints were noted as “final decision to be issued” Decisions were issued on these cases in 2022 and all resulted in ‘no further action’. Also last year’s Table 1 included an ongoing case from the previous year which has yet to be concluded due to the personal circumstances of the subject member (ABC/20/012). It is worth noting however, that in many of these cases, a significant volume of “pre-investigation” work is required in order to reach a “no further action” decision. Some decisions are therefore lengthy documents and the cost involved in cases reflects this reality.

7. The formal complaints received and registered in 2022 are set out in Table 1 below.
8. The handling of some of these complaints has been 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. This has allowed the work to be undertaken within reasonable timescales. At the time of my previous report, members asked that data on indicative costs incurred by the Council in dealing with such complaints be included. The average external cost incurred on a complaint has been £4000 plus an average of 3 hours per case on in-house handling and monitoring. Of the other complaints handled internally, all but one have been concluded without the need to incur investigation or determination costs. The average in house time commitment on each of these files was 10 hours.
9. At the time of my previous report in January 2022 – and in view of the very significant growth in numbers of complaints at parish council level – members also requested that discussions be held with the Kent Association of Local Councils with a view to agreeing measures to reduce the incidence and cost of formal complaints.
10. I am pleased to report that I raised this issue at a meeting of Kent Monitoring Officers and three senior Kent Monitoring Officers (including myself) met with the KALC Chief Executive and its Legal Adviser in August. The KALC has agreed to assist by taking a range of measures with their own member councils. These are:-
 - strengthening their own training offer to members
 - updating their website content including promotion of KALC services such as professional mediation and provision of a comprehensive package of “good governance” advice and documents.
 - Promotion of internal procedures for resolving complaints about parish council procedures, governance, staff performance etc which should not be taken through code of conduct procedures

- direct written communication with all member councils regarding “boundaries” between matters which should be resolved internally by parishes and matters which are legitimate code of conduct matters for the district Monitoring Officers.

In addition it has been agreed that regular meetings should take place between Kent Monitoring Officers and senior KALC representatives. The next meeting is scheduled to take place in March 2023.

11. It is too early to say whether any of the measures taken to date has had an impact but as can be seen from Table 1 below the number of formal complaints received has reduced significantly from last year. This will of course continue to be monitored. The volume of work involved in handling “informal complaints” (by which I mean contact with myself by members of the public and parish councillors regarding possible or proposed complaints) continues to be at a significant level. The challenge will always be (with the assistance of KALC where appropriate) to find solutions without resort to the formal complaint route.
12. Training also has an important role to play. In addition to the steps outlined above being taken by KALC with its member councils, members asked at the last meeting (Min.245 (iv)) that the Member Training Panel examine possibilities for further code training for parish councils. I can confirm that arrangements for post-election training have already been put in place and parish council representatives will be included. The Training Panel recognised the importance of this and also suggested that refresher training should be considered mid-term which would also help address councillor turnover at parish level. This is referred to in recommendation 3 below.

Table 1
Formal Code of Conduct Complaints Made
in 2022

No	Ashford BC -Complaint Reference	Council	Background (Allegation)	Action/Current Position
1	ABC/22/001	Chilham Parish Council	Bullying Dispute	Handled by external Deputy Monitoring Officer. Councillor resigned so no longer subject to code and no further action possible.
2	ABC/22/002	Rolvenden Parish Council	Alleged bias on involvement in planning decision (hostility and closed mind)	Bias/predetermination not a code of conduct issue but in event insufficient evidence. File closed.

3	ABC/22/003	Ashford Borough Council	Attendance at meeting where an alleged interest arose and was not declared.	Informal resolution by appropriate advice and agreement not to attend future meetings on the relevant subject.
4&5	ABC/22/004&005	Tenterden Town Council	(1) Alleged failure to declare interests at meetings of Town Council arising from relationships with interested parties on a particular decision (2) Alleged bullying at meeting.	Handled by external DMO. No further action as insufficient evidence that a relevant interest existed. Also a single incident of alleged aggressive behaviour at a meeting where feelings were running high did not merit formal investigation.
6.	ABC/22/006	Rolvenden Parish Council	Alleged improper use of position to secure own advantage.	Insufficient evidence provided despite requests to do so. File closed
7.	ABC/22/007	Bethersden Parish Council	Alleged improper use of position to secure personal advantage	No evidence provided despite requests to do so. File closed
8.	ABC/22/008	ABC	Alleged improper use of position as Councillor.	No evidence provided to date.

C. Other Relevant Governance Developments

13. 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.
14. In my last annual report I included an update on the review work of the national Committee on Standards in Public Life (CSPL). One of the CSPL's formal recommendations 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 published a new Model Code of Conduct and continues to publish "Guidance" on its code most recently in October 2022. Kent Monitoring Officers appointed a group of experienced Monitoring Officers to consider the LGA Code and Guidance and the group expanded its work to include a review of the "Arrangements" (ie: the detailed procedure for handling code complaints). This work will be concluded in the next couple of months and reports to individual Councils will follow with recommended amendments to the Kent Code and Arrangements.

D. Ombudsman Complaints 2021/22

15. Since April 2013, complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government Ombudsman (LGO).
16. For Members' information the analysis of the complaints resolved by the LGO in 2021/22 are attached (Appendix A). The LGO's Annual Letter and Report are also included in Appendix A.
17. The number of complaints received by the Ombudsman in 2021/22 (17) was similar to 2020/21 (18) However the number of complaints upheld in 20/21 was nil, whilst 3 were upheld in 2021/2. Also one was upheld by the Housing Ombudsman Service and another partly upheld. Details are provided in the Table below.
18. 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 by the Ombudsman which highlights the importance of using complaints to drive improvements.

E. Recommendations

1. That the Annual Report of the Monitoring Officer for 2022 be received and noted.

2. That the Monitoring Officer report to a future meeting(s) of the Standards Committee in relation to the new LGA Model Code of Conduct and the review of Arrangements undertaken by Kent Monitoring Officers.
3. That the Monitoring Officer continue to hold regular meetings with KALC representatives to review the code complaint situation and the effectiveness of measures being taken to minimise the incidence of formal complaints and to agree the scope and content of possible 'refresher' code training mid-term following the 2023 elections.

T W MORTIMER

Solicitor to the Council & Monitoring Officer January 2023

Appendix A – Analysis of Ombudsman Complaints

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

Between 1st April 2021 and 31st March 2022 the Local Government Ombudsman (LGO) received a total of 17 complaints, with the following results:

No further investigation	12
Investigated	5

Of the 5 complaints investigated, 3 were upheld. In 2 cases the organisation satisfied the LGO that it had successfully implemented all the LGO’s recommendations. In the 3rd case the organisation provided a satisfactory remedy before the decision was reached by the Ombudsman.

The LGO contacted the Council about 9 complaints, seeking further information. Attached is a table providing details of these complaints and the outcome. In 4 of these cases the LGO did not pursue investigation of the complaint.

I have also attached the Ombudsman’s Annual Review letter 2021/22.

The LGO’s statistics focus on three key areas to help assess an organisation’s commitment to correcting errors in service delivery. These areas are: complaints upheld, compliance with recommendations and satisfactory remedy provided by the authority. The Annual Review letter gives further information on these key areas.

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).

ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
Planning & Devt	Complained that the Council failed to properly consider an application for prior approval for an agricultural building near his property. Mr X says the building is in an area of outstanding natural beauty and will impact on his outlook and value of his property	Not upheld: no maladministration	N/A	N/A
Revenues and Benefits	Complained that the council tax band of his home was too high	Closed after initial enquiries – out of jurisdiction	N/A	N/A
Planning & Devt	Complained that the Council failed to exercise its planning enforcement powers as promised before an unauthorised building gained immunity from enforcement action	Upheld: Maladministration and Injustice	<ul style="list-style-type: none"> • Apologise in writing to complainants for the failings identified; • Pay complainants £500 in recognition of the avoidable distress caused and the avoidable time and inconvenience in following up the issue with the Council; • Share with staff the final decision to remind staff of the importance of properly recording conversations with, and advice given to, the public. It will also remind staff of the need to corroborate through their own investigations, statements made by the public. 	Head of Planning and Development wrote letter of apology and arranged payment. He also emailed relevant staff to advise of decision of Ombudsman, and to draw attention to the Ombudsman recommendations and learning from this complaint to ensure this did not occur again.
Revs and Bens	Complained that the Council had not granted full council tax relief on a property he owned.	Closed after initial enquiries – no further action	N/A	N/A
Planning & Devt	Complained that the Council's records did not show that it properly considered how complainant was affected by a breach of planning control when it decided not to pursue enforcement action.	Upheld: maladministration and injustice	The Council to carry out a site visit and review its decision	Site visit undertaken and decision reviewed by officers with the same outcome.
Env Services	Complained about how the Council handled his complaint in relation to allotments	Upheld: No further action, satisfactory remedy provided by the organisation	N/A	New Manager and new Officer appointed to oversee this service

ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
Parking Services	Complained because the Council issued a penalty charge notice for a parking contravention. Complainant said the Council's evidence was false.	Closed after initial enquiries – out of jurisdiction	N/A	N/A
Parking Services	Complained that the Council introduced an online virtual visitor parking permits without publicity and without consultation with the public. He also complained the Council did not tell him he could get a permit by telephone and told him twice that he had to use its online service.	Closed after initial enquiries – no further action.	N/A	N/A
Planning Enforcement	Complained that the Council failed to take appropriate enforcement action regarding a breach of planning control by his neighbour.	Not Upheld – No Maladministration	N/A	N/A

Housing Ombudsman Service

The Housing Ombudsman Service (HOS) looks at complaints about registered providers of social housing, including local authorities. The Local Government and Social Care Ombudsman considers complaints about local authorities' wider housing activities, for example in discharging their statutory duties in homelessness,, housing allocations, housing benefit and home improvement services.

The Housing Ombudsman does not provide local authorities with annual statistics in relation to complaints. However, details are included in this report for Members' information and to provide a full picture of complaints made against the Council in 2021-22.

During 2021-22, 2 cases were investigated by the HOS and the details are provided in the table below.

ABC Dept	Complaint details	Decision	LGO comment	Action taken by the Council/lessons learned
Housing	<p>Complained about:</p> <ul style="list-style-type: none"> -The Council's handling of reports of antisocial behaviour from their neighbour. -The Council's handling of the residents' request for a management move. -The related complaint handling. 	<p>Maladministration by the Council when handling the residents' reports of antisocial behaviour from their neighbour.</p> <p>No maladministration by the Council when handling the residents' request for a management move.</p> <p>Maladministration by the landlord when handling the residents' complaints.</p>	<p>a) Provide an apology to the residents for the service failures identified in this report.</p> <p>b) Pay the residents £550 in compensation made up of:</p> <ul style="list-style-type: none"> i. £300 for failing to deal with ASB reports appropriately and; ii. £250 for complaint handling failures. <p>c) Review the learning from the service issues identified in this report and let the Ombudsman know how it will ensure ASB complaints are handled in accordance with its ASB policy, going forward.</p>	<p>Undertake an independent review of our ASB policy and procedure and the implementation of the same, to include any necessary amendments and training to ensure that the aims and objectives are met and that instances of ASB are dealt with in an appropriate and timely manner. Housing is also committed to working with and taking advice and instruction from the Legal Services Team to ensure that where there is sufficient evidence that proactive legal action is properly considered and taken where appropriate to tackle ASB. The aim of this is to limit the longer term impact on those affected by the behaviour of others. Changes made will be communicated internally but officers will also ensure that they communicate and engage with residents and other agencies as widely as possible on their approach and what to expect from the Council's service when ASB is reported.</p>
Housing	<p>Complained about the way the Council ended his tenancy and the charges applied</p>	<p>No maladministration found concerning charges at the end of the tenancy</p> <p>Service failure found in the handling of the associated complaint.</p>	<p>Council to pay £75 compensation to the resident.</p>	<p>Head of Housing has overhauled measures for handling complaints within Housing. This will lead to improvements overall and minimise risk of an instance like this occurring again.</p>

Local Government & Social Care OMBUDSMAN

20 July 2022

By email

Mrs Kerly
Chief Executive
Ashford Borough Council

Dear Mrs Kerly

Annual Review letter 2022

I write to you with your annual summary of complaint statistics from the Local Government and Social Care Ombudsman for the year ending 31 March 2022. The information offers valuable insight about your organisation's approach to complaints. As such, I have sought to share this letter with the Leader of your Council and Chair of the appropriate Scrutiny Committee, to encourage effective ownership and oversight of complaint outcomes, which offer such valuable opportunities to learn and improve.

Complaint statistics

Our statistics focus on three key areas that help to assess your organisation's commitment to putting things right when they go wrong:

Complaints upheld - We uphold complaints when we find fault in an organisation's actions, including where the organisation accepted fault before we investigated. We include the total number of investigations completed to provide important context for the statistic.

Compliance with recommendations - We recommend ways for organisations 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 organisation upheld the complaint and we agreed with how it offered to put things right. We encourage the early resolution of complaints and credit organisations that accept fault and find appropriate ways to put things right.

Finally, we compare the three key annual statistics for your organisation with similar authorities to provide an average marker of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

Your annual data, and a copy of this letter, will be uploaded to our interactive map, [Your council's performance](#), on 27 July 2022. This useful tool places all our data and information about councils in one place. You can find the detail of the decisions we have made about your Council, read the public reports we have issued, and view the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

Supporting complaint and service improvement

I know your organisation, like ours, will have been through a period of adaptation as the restrictions imposed by the pandemic lifted. While some pre-pandemic practices returned, many new ways of working are here to stay. It is my continued view that complaint functions have been under-resourced in recent years, a trend only exacerbated by the challenges of the pandemic. Through the lens of this recent upheaval and adjustment, I urge you to consider how your organisation prioritises complaints, particularly in terms of capacity and visibility. Properly resourced complaint functions that are well-connected and valued by service areas, management teams and elected members are capable of providing valuable insight about an organisation's performance, detecting early warning signs of problems and offering opportunities to improve service delivery.

I want to support your organisation to harness the value of complaints and we continue to develop our programme of support. Significantly, we are working in partnership with the Housing Ombudsman Service to develop a joint complaint handling code. We are aiming to consolidate our approaches and therefore simplify guidance to enable organisations to provide an effective, quality response to each and every complaint. We will keep you informed as this work develops, and expect that, once launched, we will assess your compliance with the code during our investigations and report your performance via this letter.

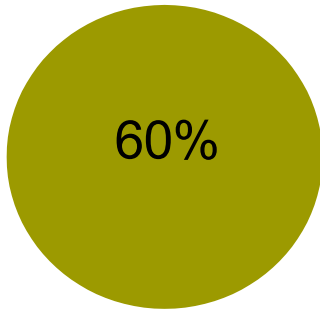
An already established tool we have for supporting improvements in local complaint handling is our successful training programme. We adapted our courses during the Covid-19 pandemic to an online format and successfully delivered 122 online workshops during the year, reaching more than 1,600 people. To 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



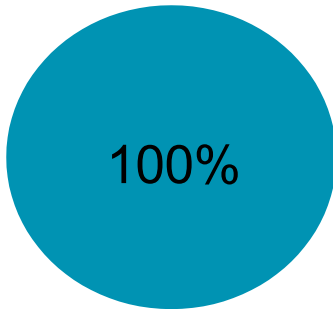
60% of complaints we investigated were upheld.

This compares to an average of **51%** in similar organisations.

3
upheld decisions

Statistics are based on a total of **5** investigations for the period between 1 April 2021 to 31 March 2022

Compliance with Ombudsman recommendations



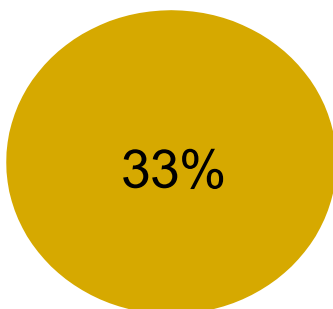
In **100%** of cases we were satisfied the organisation had successfully implemented our recommendations.

This compares to an average of **100%** in similar organisations.

Statistics are based on a total of **2** compliance outcomes for the period between 1 April 2021 to 31 March 2022

- Failure to comply with our recommendations is rare. An organisation with a compliance rate below 100% should scrutinise those complaints where it failed to comply and identify any learning.

Satisfactory remedy provided by the organisation



In **33%** of upheld cases we found the organisation had provided a satisfactory remedy before the complaint reached the Ombudsman.

This compares to an average of **20%** in similar organisations.

1
satisfactory remedy decision

Statistics are based on a total of **3** upheld decisions for the period between 1 April 2021 to 31 March 2022

