

**Standards Committee
12 February 2018**

**Council
22 February 2018**

**Annual Report Of The Council's
Monitoring Officer – 2017**

A. Introduction

1. The principal purpose of my 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. This report deals with the calendar year 2017 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 minor 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 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 relates to the most recent data provided by the Ombudsman namely that for the period 1st April 2016 to 31 March 2017.

B. Code of Conduct and Related Matters 2017

6. Complaint activity in Ashford has been very 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 2017 has been more challenging.

7. A significant level of formal Code of Conduct complaint has arisen during 2017. This has involved both borough and parish councillors. In addition, the first formal complaint under the Council's Planning Protocol was dealt with. Further details of these formal complaints are set out in Table 1 below.
8. There was also a significant increase in informal complaint and contact with the Monitoring Officer regarding parish council activity. Some of this may yet result in further formal complaints. There has been a noticeable increase in requests for advice from and meetings with the Monitoring Officer in this regard. Subjects have ranged from allegations of non-declaration of interests to complaints about procedural issues on development-related decisions and disruptive and bullying behaviour.
9. Although there is no obvious single reason for the increase in incidence of complaints, it will be important to carefully monitor developments in 2018 to see if any trend or pattern emerges. Having said that two factors appear to have contributed:
 - the increased use/misuse of social media by Councillors which has given rise to more complaints about personal and defamatory attacks.
 - increased activity and local controversy in relation to preparation of Neighbourhood Plans and consultations on sites for inclusion in the new Borough Local Plan has been the background to some complaints and allegations.
10. In order to address the social media issue, I recommend that in consultation with our media team I prepare for consideration by the Standards Committee a Social Media Policy for the guidance of Councillors. This would provide advice on risks, best practice etc. I also recommend that the Council's Code of Conduct be amended to draw attention to the need to exercise care when using social media. Although it is not practicable or desirable to lay down hard and fast rules in the Code of Conduct about how Councillors should use or describe themselves on social media, some broad requirements in the Code can only assist. This would also enable use of social media to be one of the focuses of Member induction training on the Code in 2019. Accordingly I recommend the addition of the following clauses in the Code:
 - (a) " You must not publish on social media material that a reasonable person would consider offensive or abusive.
 - (b) You should be aware that members of the public may perceive you to be acting as a Councillor even when you are acting in your personal capacity. This includes when you publish material on social media. You must make it clear in your social media profile and/or in any post/tweets etc whether you are acting in your personal capacity or as a Councillor."

11. I also recommend that parish councils be invited to consider adopting a social media policy and amendments to their own Codes of Conduct (most of which are based on the Kent Model Code).

C. Other Probity/Conduct Matters

12. During 2017, the Monitoring Officer began a comprehensive exercise of seeking updated Disclosable Pecuniary Interest registration forms from all borough and parish councillors. This will minimise the risk of breaches of the Interest rules. The forms also now include “privacy notices” in accordance with the General Data Protection Regulation which comes into force in May 2018. This explains the basis on which the information is collected and how it will be used. Councillors are now all registered as data controllers with the Information Commissioner.
13. All Ashford Borough Council meeting agendas now include a specific item at the beginning of a meeting seeking declarations of interest. The item has been updated to provide relevant advice about when to declare different types of interest.
14. The updated Constitution now enshrines a formal training pre-condition to membership of the two main regulatory Committees (Planning and Licensing) and a requirement that this training be refreshed every 4 years. This will reduce the risk of complaints relating to these sensitive functions.
15. During 2018, the influential Committee on Standards in Public Life (CSPL) intends to undertake a review of Local Government standards. A consultation is expected to be launched in the near future. A key feature of the consultation will be how Local Government has adapted to devolved standards arrangements since the Localism Act and whether a culture of ethical practice in public life has been maintained. I will report further on this consultation to the Standards Committee in due course.

Table 1

Valid Code of Conduct/Planning Protocol Complaints Made or Resolved

Council Ref.	Allegation(s)	Decision(s)	Comments
ABC17/01 Ashford Borough Council	Bringing Council/Office into disrepute	Complaint resolved by remedial action	Social media case
ABC17/03 Tenterden Town Council (2 complaints)	Failure to register or declare interest at meetings. Bringing Council into disrepute	No breach of the Code	Monitoring Officer decision

Council Ref.	Allegation(s)	Decision(s)	Comments
ABC17/04	Alleged bias/predetermination by member of Planning Committee on an application which came before the Committee for decision	No breach of Good Practice Planning Protocol	PLANNING PROTOCOL COMPLAINT
ABC 17/06 Ashford Borough Council (2 complaints)	Breach of Code by allegedly defamatory statements	Referred for investigation	Social media case
ABC 17/09 Ashford Borough Council (2 complaints)	Breach of Code by allegedly defamatory /bullying statements	Referred for investigation	Partially social media case
ABC 17/08 Aldington and Bonnington Parish Council (3 complaints)	Various Code breaches alleged including disrepute and bullying	Referred for investigation	
ABC 17/11 Tenterden Town Council	Bringing Council into disrepute/bullying	Not acting in capacity as Councillor so Code inapplicable	Social media case
ABC 17/12 Bethersden Parish Council	Disruptive and bullying conduct	STILL UNDER CONSIDERATION	
ABC 17/13 Bethersden Parish Council	Disruptive and bullying conduct	STILL UNDER CONSIDERATION	

D. Ombudsman Complaints 2016/17

16. Since April 2013, complaints about social housing have been dealt with by the Housing Ombudsman (HO) and not the Local Government Ombudsman (LGO).
17. For Members' information the analysis of the complaints resolved by the LGO in 2016/17 are attached (Appendix A). The LGO's Annual Letter and Report are also included in Appendix A.

E. Recommendations

1. That the Annual Report of the Monitoring Officer for 2017 be received and noted.
2. That the Council's Code of Conduct be amended to include a social media clause as set out in Section B of the Report.
3. That the Monitoring Officer report to future meetings of the Standards Committee in relation to the following matters:
 - (i) a social media policy for Councillors
 - (ii) any consultation by the CSPL as referred to in Section C of the Report.

T W MORTIMER
Director of Law and Governance & Monitoring Officer
January 2018

Appendix A – Analysis of Ombudsman Complaints

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

Between 1st April 2016 and 31st March 2017 the Local Government Ombudsman (LGO) received 21 complaints and enquiries, and made 20 decisions on these, as follows:

Not referred to the Council by the LGO

Incomplete or invalid complaint	1
Advice Given by LGO	1
Referred back for local resolution	

Investigated by the LGO

Closed after initial enquiries	6
Not upheld	2
Upheld	4

TOTAL **20**

It should be noted that of the 4 upheld decisions, 3 related to a joint complaint by 3 neighbours, who were counted separately in the above figures. For comparison, in 2015/16 the LGO resolved 22 complaints, 2 of which were upheld, and there were no Housing Ombudsman complaints.

During this period 4 complaints were received by the Housing Ombudsman. Three of these were referred back to the Council for local resolution, which was successful. There is one outstanding Housing Ombudsman complaint for this period.

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.

The outcomes of the 12 complaints investigated by the LGO in 2016/17 are detailed below:-

Closed after initial enquiries- out of jurisdiction or no further action	6
Not upheld: No Maladministration	2
Upheld: Maladministration & Injustice	4

Total	12
--------------	-----------

Attached is a table of the 12 complaints investigated by the LGO, together with details and outcome.

I have also attached the Ombudsman's Annual Review letter 2016/17.

Local Government Ombudsman Complaints 1st April 2016- 31st March 2017

Reference	ABC Dept	Complaint details	LGO decision	LGO final comment
(1778) 15 020 670	Env Services/Housing	1. No service of a Right of Entry Notice 2. Wrong notice was issued in order to circumnavigate landlord's right to dispute	Closed after initial enquiries - out of jurisdiction	n/a
(2857) 16 006 911	Parking	Complains that the Council has produced fraudulent evidence in support of penalty charge notice issued to a third party.	Closed after initial enquiries -out of jurisdiction	n/a
(2858) 16 006 907	Housing	Discrimination by a Housing Officer	Closed after initial enquiries- out of jurisdiction	n/a
(2859) 16 006 899	Parking	Complains that the Council acted maliciously in taking him to court for a public order offence	Closed after initial enquiries – out of jurisdiction	n/a

(2920) 16 009 022	Housing	The Council wrongly advised her tenants to stay put until they were removed from their homes by bailiffs	Closed after initial enquiries - no further action.	n/a
(3048) 16 016 661 1	Planning	Complaint re the Council's decision to grant planning permission for a new dwelling in her village	Closed after initial enquiries – no further action	n/a
(1779) 16 000 718	Planning	The Council failed to properly consider his neighbour's planning application	Not upheld: no maladministration	n/a
(2994) 16 012 168	Planning	Complaint relates to the planning permission that was granted to build a house on land neighbouring his property	Not upheld: no maladministration	n/a

<p>(1752) 15 018 355</p>	<p>Planning</p>	<p>Dissatisfied with the Council's investigation of alleged breaches of planning control</p>	<p>Upheld: maladministration and injustice.</p>	<p>Fault by the Council not to make an initial site visit following Mr X's complaint. The failure to keep Mr X informed of the progress of the investigation was also fault. The LGO suggested the following remedial action: the Council would review the case and agree an action plan for the remaining stages in the enforcement investigation. The Council would apologise to Mr X. A senior officer would take responsibility for ensuring Mr X received regular reports about progress from now on. The Council confirmed to the LGO that the suggested remedial action had been put in place.</p>
<p>(1792) 16 001 574</p>	<p>Planning</p>	<p>Complaint re Council's handling of issues at neighbour's property</p>	<p>Upheld: maladministration and injustice.</p>	<p>Fault by the Council in failing to resolve problems with a neighbour's untidy garden. The LGO suggested the following remedial action: the Council would apologise and take steps to improve its planning enforcement system. The Council would appoint a different Planning Officer to deal with the case, who would explain to the complainant what action would now be taken. The Council accepted the recommendations and agreed to complete the actions within six weeks</p>
<p>(1793) 16 000 987</p>	<p>Planning</p>	<p>Complaint re Council's handling of issues at neighbour's property</p>	<p>Upheld: Maladministration and justice.</p>	<p>As above</p>

(1750) 15 020 341	Planning	Complaint re Council's handling of issues at neighbour's property	Upheld: Maladministration and justice.	As above
----------------------	----------	--	--	----------

20 July 2017

By email

Tracey Kerly
Chief Executive
Ashford Borough Council

Dear Tracey Kerly,

Annual Review letter 2017

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman (LGO) about your authority for the year ended 31 March 2017. The enclosed tables present the number of complaints and enquiries received about your authority and the decisions we made during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

The reporting year saw the retirement of Dr Jane Martin after completing her seven year tenure as Local Government Ombudsman. I was delighted to be appointed to the role of Ombudsman in January and look forward to working with you and colleagues across the local government sector in my new role.

You may notice the inclusion of the '*Social Care Ombudsman*' in our name and logo. You will be aware that since 2010 we have operated with jurisdiction over all registered adult social care providers, able to investigate complaints about care funded and arranged privately. The change is in response to frequent feedback from care providers who tell us that our current name is a real barrier to recognition within the social care sector. We hope this change will help to give this part of our jurisdiction the profile it deserves.

Complaint statistics

Last year, we provided for the first time statistics on how the complaints we upheld against your authority were remedied. This year's letter, again, includes a breakdown of upheld complaints to show how they were remedied. This includes the number of cases where our recommendations remedied the fault and the number of cases where we decided your authority had offered a satisfactory remedy during the local complaints process. In these latter cases we provide reassurance that your authority had satisfactorily attempted to resolve the complaint before the person came to us.

We have chosen not to include a 'compliance rate' this year; this indicated a council's compliance with our recommendations to remedy a fault. From April 2016, we established a new mechanism for ensuring the recommendations we make to councils are implemented, where they are agreed to. This has meant the recommendations we make are more specific, and will often include a time-frame for completion. We will then follow up with a council and seek evidence that recommendations have been implemented. As a result of this new

process, we plan to report a more sophisticated suite of information about compliance and service improvement in the future.

This is likely to be just one of several changes we will make to our annual letters and the way we present our data to you in the future. We surveyed councils earlier in the year to find out, amongst other things, how they use the data in annual letters and what data is the most useful; thank you to those officers who responded. The feedback will inform new work to

provide you, your officers and elected members, and members of the public, with more meaningful data that allows for more effective scrutiny and easier comparison with other councils. We will keep in touch with you as this work progresses.

I want to emphasise that the statistics in this letter comprise the data we hold, and may not necessarily align with the data your authority holds. For example, our numbers include enquiries from people we signpost back to the authority, but who may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website. The aim of this is to be transparent and provide information that aids the scrutiny of local services.

The statutory duty to report Ombudsman findings and recommendations

As you will no doubt be aware, there is duty under section 5(2) of the Local Government and Housing Act 1989 for your Monitoring Officer to prepare a formal report to the council where it appears that the authority, or any part of it, has acted or is likely to act in such a manner as

to constitute maladministration or service failure, and where the LGO has conducted an investigation in relation to the matter.

This requirement applies to all Ombudsman complaint decisions, not just those that result in a public report. It is therefore a significant statutory duty that is triggered in most authorities every year following findings of fault by my office. I have received several enquiries from authorities to ask how I expect this duty to be discharged. I thought it would therefore be useful for me to take this opportunity to comment on this responsibility.

I am conscious that authorities have adopted different approaches to respond proportionately to the issues raised in different Ombudsman investigations in a way that best reflects their own local circumstances. I am comfortable with, and supportive of, a flexible approach to how this duty is discharged. I do not seek to impose a proscriptive approach, as long as the Parliamentary intent is fulfilled in some meaningful way and the authority's performance in relation to Ombudsman investigations is properly communicated to elected members.

As a general guide I would suggest:

- Where my office has made findings of maladministration/fault in regard to routine mistakes and service failures, and the authority has agreed to remedy the complaint by implementing the recommendations made following an investigation, I feel that the duty is satisfactorily discharged if the Monitoring Officer makes a periodic report to the council summarising the findings on all upheld complaints over a specific period. In a small authority this may be adequately addressed through an annual report on complaints to members, for example.
- Where an investigation has wider implications for council policy or exposes a more significant finding of maladministration, perhaps because of the scale of the fault or injustice, or the number of people affected, I would expect the Monitoring Officer to consider whether the implications of that investigation should be individually reported to members.
- In the unlikely event that an authority is minded not to comply with my recommendations following a finding of maladministration, I would always expect the Monitoring Officer to report this to members under section five of the Act. This is an exceptional and unusual course of action for any authority to take and should be considered at the highest tier of the authority.

The duties set out above in relation to the Local Government and Housing Act 1989 are in addition to, not instead of, the pre-existing duties placed on all authorities in relation to Ombudsman reports under The Local Government Act 1974. Under those provisions, whenever my office issues a formal, public

report to your authority you are obliged to lay that report before the council for consideration and respond within three months setting out the action that you have taken, or propose to take, in response to the report.

I know that most local authorities are familiar with these arrangements, but I happy to discuss this further with you or your Monitoring Officer if there is any doubt about how to discharge these duties in future.

Manual for Councils

We greatly value our relationships with council Complaints Officers, our single contact points at each authority. To support them in their roles, we have published a Manual for Councils, setting out in detail what we do and how we investigate the complaints we receive. When we surveyed Complaints Officers, we were pleased to hear that 73% reported they have found the manual useful.

The manual is a practical resource and reference point for all council staff, not just those working directly with us, and I encourage you to share it widely within your organisation. The manual can be found on our website www.lgo.org.uk/link-officers

Complaint handling training

Our training programme is one of the ways we use the outcomes of complaints to promote wider service improvements and learning. We delivered an ambitious programme of 75 courses during the year, training over 800 council staff and more 400 care provider staff. Post-course surveys showed a 92% increase in delegates' confidence in dealing with complaints. To find out more visit www.lgo.org.uk/training

Yours sincerely

A handwritten signature in black ink, appearing to read 'M King', with a horizontal line underneath.

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

Local Authority Report: Ashford Borough Council
For the Period Ending: 31/03/2017

For further information on how to interpret our statistics, please visit our website:
<http://www.lgo.org.uk/information-centre/reports/annual-review-reports/interpreting-local-authority-statistics>

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
0	3	0	0	2	2	5	9	0	21

Decisions made

Detailed Investigations									
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Upheld	Uphold Rate				
1	1	6	6	2	67%				
Notes					Complaints Remedied				
Our uphold rate is calculated in relation to the total number of detailed investigations. The number of remedied complaints may not equal the number of upheld complaints. This is because, while we may uphold a complaint because we find fault, we may not always find grounds to say that fault caused injustice that ought to be remedied.					<table border="1"> <thead> <tr> <th>by LGO</th> <th>Satisfactorily by Authority before LGO Involvement</th> </tr> </thead> <tbody> <tr> <td>4</td> <td>0</td> </tr> </tbody> </table>	by LGO	Satisfactorily by Authority before LGO Involvement	4	0
by LGO	Satisfactorily by Authority before LGO Involvement								
4	0								
					Total				
					20				

