

**Standards Committee
3 February 2020**

**Council
5 March 2020**

**Annual Report Of The Council's
Monitoring Officer – 2019**

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 2019 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 2018 to 31 March 2019.

B. Code of Conduct Complaints 2019

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. A series of complex formal complaints from this period which were referred for investigation have now been concluded and this is referred to in Table 1 below. These complaints were the subject of consideration at a Special Standards Committee meeting in October 2019 and I refer briefly to the outcome of this in section C below.

7. A number of further Code of Conduct complaints have arisen during 2019, involving both borough and parish councillors. Details of these complaints are also set out in Table 1 below.
8. There has also been a significant volume of informal complaint activity in the last year and of contact with the Monitoring Officer regarding parish and town council activity. Some of this may yet result in further formal complaints. There has continued to be a significant number of 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 disruptive and bullying behaviour. Several of these informal complaints have been resolved by the Monitoring Officer without the need for formal complaint or investigation.
9. In my Annual Report for 2018 I noted that the increased use/misuse of social media had given rise to complaints about personal and defamatory attacks. For this reason, I proposed a Social Media Guidance Note for Councillors and further information about this is in the next section of my Report. The number of social media based complaints reduced in 2019 and it is hoped this trend will continue.

C. Other Relevant Governance Developments in 2019

10. As referred to in para. 9 above, a new Social Media Guidance Note for Councillors was adopted in time for the new Council elected in May 2019. This Guidance sets out advice and best practice for Councillors to avoid the potential pitfalls and risks of social media usage. The Council also approved changes to the Code of Conduct to reflect the new Guidance and now offensive comments on social media can in some circumstances constitute a breach of the code of conduct.
11. In the period prior to the May 2019 elections, the Council also approved a completely revised protocol on Councillor/Officer Working Relationships. New internal procedures for raising concerns were put in place and this protocol has clear links to both the officer and Councillor Codes of Conduct in terms of laying down standards of expected behaviours. Both the revised code and the new Councillor/Officer protocol are being monitored for effectiveness and any issues arising will be brought to members in due course.
12. In October 2019, when the Standards Committee considered my report on the series of complaints referred to in para. 6 above, I recommended one immediate change to the current "Arrangements" for handling code of conduct complaints and that I should undertake a detailed wider review of the Arrangements to ensure they remain fit for purpose and reflect current best practice. I will report back to a future meeting of the Standards Committee with my conclusions. In the meantime, the immediate procedural change (which relates to when and what information is put on the Council's website) has been put in place.

D. The Committee on Standards in Public Life etc.

13. During 2018, the influential Committee on Standards in Public Life (CSPL) undertook a comprehensive review of the Local Government Ethical Standards system. Its report was published on 30 January 2019. The CSPL has made 26 formal recommendations to the Prime Minister and 15 ‘Best Practice’ recommendations. The Government has not yet formally responded to the report. Many of the recommendations, if agreed, would require primary legislation changes.
14. A detailed report on the CSPL review was considered by the Standards Committee in 2019. It is inevitable that the Council’s Code of Conduct and adopted Arrangements for handling code complaints will require a fundamental review in the light of the Government’s response. I will present a further report through the Standards Committee at the appropriate time as soon as the position going forward is clear. In so far as is possible I will pick up any relevant best practice recommendations in the review of “Arrangements” referred to in para. 12 above.
15. The LGA has very recently published revised “Probity in Planning” Guidance. If any changes are required to the Council’s adopted Good Practice Protocol on Planning I will make appropriate recommendations through the Selection & Constitutional Review Committee.

Table 1

Formal Valid Code of Conduct Complaints Made or Resolved

Council Ref.	Allegation(s)	Decision(s)	Comments
ABC 17/06 and 17/09 Ashford BC	Bullying and bringing office into disrepute in use of social media	Issue confidential advice to the Councillor regarding the investigator’s conclusions. No public benefit in holding formal hearing	Referred for investigation. Investigator report Sep. 2018 found breach in part, no breach in part. Standards Committee October 2019
ABC 18/09 Ashford BC	Disclosure confidential information/disrepute	Issue confidential advice – no public benefit in referral for investigation	Standards Committee October 2019
ABC 18/05 Bilsington PC	Disclosure confidential information/bullying	Issue confidential advice – as above	Standards Committee October 2019

Council Ref.	Allegation(s)	Decision(s)	Comments
ABC 18/007 Tenterden Town Council	Bullying behaviour at a meeting	Informal investigation and findings by MO Feb 2019	Appropriate apology given so no further action required
ABC 18/008 Ashford BC	Bullying a member of the public	N/A	Complaint withdrawn
ABC 18/010 Ashford BC	Improper use of position to disadvantage a person	N/A	Informally resolved
ABC 18/011 Ashford BC	Offensive comment on social media	N/A	Informally resolved by way of explanation and apology

E. Ombudsman Complaints 2018/19

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 2018/19 are attached (Appendix A). The LGO's Annual Letter and Report are also included in Appendix A.
18. The number of complaints received by the Ombudsman in 2018/19 (19) was slightly higher than in 2017/2018 (16) but, the number of complaints upheld remained at just one.
19. A new column has been added to the Table of Ombudsman Complaints giving information on action taken/lessons learned where relevant. This is consistent with the approach advocated in the Ombudsman's annual review letter.

F. Recommendations

1. That the Annual Report of the Monitoring Officer for 2019 be received and noted.
2. That the Monitoring Officer report to future meeting(s) of the Standards Committee in relation to the recommendations of the CSPL Report and the review of Arrangements.

T W MORTIMER
 Director of Law and Governance & Monitoring Officer
 January 2020

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 2018 and 31st March 2019 the Local Government Ombudsman (LGO) received 19 complaints, with the following outcomes:

Not investigated by the LGO

Incomplete or invalid complaint	3
Advice Given by LGO	1
Referred back for local resolution	<u>2</u>
	6

Investigated by the LGO

Closed after initial enquiries	11
Not upheld	1
Upheld	<u>1</u>
	13

TOTAL **19**

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 13 complaints investigated by the LGO in 2018/19 are detailed below:-

Closed after initial enquiries – out of jurisdiction or no further action	11
Not upheld: No Maladministration	1
Upheld: Maladministration & Injustice	1
Total	13

Attached is a table providing further details and outcome on these complaints.

I have also attached the Ombudsman's Annual Review letter 2018/19.

Local Government Ombudsman Decisions 1st April 2018 – 31st March 2019

Reference	ABC Dept	Complaint details	LGO decision	Action taken by the Council/lessons learned
17 010 379	Planning & Development	That the Council was at fault in its handling of a reserved matters planning application.	Not Upheld – No Maladministration	n/a
17 009 527	Housing	That the Council unreasonably allocated her housing next door to an unsuitable tenant. She moved out after eight months due to her neighbour's behaviour and would like the Council to compensate her for the money she spent on a new carpet.	Upheld – No further action	The Council offered the complainant a remedy for the financial expenses she incurred (£2,500 following a review by the Tenants' Panel). The LGO considered that no further action was required by the Council. Officers put new procedures in place to ensure joint working between Officers in such cases in the future, as well as improved communication procedures between Officers and the tenant.
17 020 245	Planning	That the Council would not reduce planning application fees to enable them to build a higher fence.	Closed after initial enquiries - no further action.	n/a
18 000 656	Revenues & Benefits	That the Council made the decision to make him liable for council tax on a property.	Closed after initial enquiries – out of jurisdiction.	n/a
18 003 796	Parking	That the Council rejected his application for a parking permit.	Closed after initial enquiries – no further action.	n/a
18 007 067	Planning	That the Council had delayed in dealing with his planning application and that the Council's	Closed after initial enquiries – out of jurisdiction.	n/a

		complaints procedure was not independent.		
18 011 622	Property Services	That the Council leased a nearby carpark to a business, although there was insufficient car parking in the area.	Closed after initial enquiries – no further action.	n/a
18 014 686	Monitoring Officer	That the Council mishandled her complaint about a Parish Councillor.	Closed after initial enquiries – no further action.	n/a
18 014 537	Parking Services	That the Council was guilty of malicious prosecution and misfeasance in public office in relation to a prosecution in 2013. Also complained about further issues in 2017.	Closed after initial enquiries – out of jurisdiction	n/a
18 014 520	Environmental Health	That his neighbour's air conditioning units emitted a droning noise which affected his health and wellbeing. That the Council failed to investigate the noise disturbance properly.	Closed after initial enquiries – no further action.	n/a
18 016 459	Legal Services	That the Council failed to properly investigate a complaint against her.	Closed after initial enquiries – out of jurisdiction	n/a
18 016 056	Planning	That the Council did not give him a fair chance to apply to speak at a Planning Committee meeting.	Closed after initial enquiries – no further action	n/a
18 016 852	Parking	That the Council issued him a penalty charge notice for stopping or waiting in a bus bay, although the bay had not been used as a bus stop since 2015.	Closed after initial enquiries – out of jurisdiction	n/a

Local Government &
Social Care
OMBUDSMAN

24 July 2019

By email

Tracey Kerly
Chief Executive
Ashford Borough Council

Dear Mrs Kerly

Annual Review letter 2019

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2019. The enclosed tables present the number of complaints and enquiries received about your authority, the decisions we made, and your authority's compliance with recommendations during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

Complaint statistics

As ever, I would stress that the number of complaints, taken alone, is not necessarily a reliable indicator of an authority's performance. The volume of complaints should be considered alongside the uphold rate (how often we found fault when we investigated a complaint), and alongside statistics that indicate your authority's willingness to accept fault and put things right when they go wrong. We also provide a figure for the number of cases where your authority provided a satisfactory remedy before the complaint reached us, and new statistics about your authority's compliance with recommendations we have made; both of which offer a more comprehensive and insightful view of your authority's approach to complaint handling.

The new statistics on compliance are the result of a series of changes we have made to how we make and monitor our recommendations to remedy the fault we find. Our recommendations are specific and often include a time-frame for completion, allowing us to follow up with authorities and seek evidence that recommendations have been implemented. These changes mean we can provide these new statistics about your authority's compliance with our recommendations.

I want to emphasise the statistics in this letter reflect 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 your authority, some of whom may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside our annual review of local government complaints. For the first time, this includes data on authorities' compliance with our recommendations. This collated data further aids the scrutiny of local services and we encourage you to share learning from the report, which highlights key cases we have investigated during the year.

New interactive data map

In recent years we have been taking steps to move away from a simplistic focus on complaint volumes and instead focus on the lessons learned and the wider improvements we can achieve through our recommendations to improve services for the many. Our ambition is outlined in our [corporate strategy 2018-21](#) and commits us to publishing the outcomes of our investigations and the occasions our recommendations result in improvements for local services.

The result of this work is the launch of an interactive map of council performance on our website later this month. [Your Council's Performance](#) shows annual performance data for all councils in England, with links to our published decision statements, public interest reports, annual letters and information about service improvements that have been agreed by each council. It also highlights those instances where your authority offered a suitable remedy to resolve a complaint before the matter came to us, and your authority's compliance with the recommendations we have made to remedy complaints.

The intention of this new tool is to place a focus on your authority's compliance with investigations. It is a useful snapshot of the service improvement recommendations your authority has agreed to. It also highlights the wider outcomes of our investigations to the public, advocacy and advice organisations, and others who have a role in holding local councils to account.

I hope you, and colleagues, find the map a useful addition to the data we publish. We are the first UK public sector ombudsman scheme to provide compliance data in such a way and believe the launch of this innovative work will lead to improved scrutiny of councils as well as providing increased recognition to the improvements councils have agreed to make following our interventions.

Complaint handling training

We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. In 2018-19 we delivered 71 courses, training more than 900 people, including our first 'open courses' in Effective Complaint Handling for local authorities. Due to their popularity we are running six more open courses for local authorities in 2019-20, in York, Manchester, Coventry and London. To find out more visit www.lgo.org.uk/training.

Finally, I am conscious of the resource pressures that many authorities are working within, and which are often the context for the problems that we investigate. In response to that situation we have published a significant piece of research this year looking at some of the

common issues we are finding as a result of change and budget constraints. Called, [Under Pressure](#), this report provides a contribution to the debate about how local government can navigate the unprecedented changes affecting the sector. I commend this to you, along with our revised guidance on [Good Administrative Practice](#). I hope that together these are a timely reminder of the value of getting the basics right at a time of great change.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M King', with a stylized flourish at the end.

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

Local Authority Report: Ashford Borough Council
 For the Period Ending: 31/03/2019

For further information on how to interpret our statistics, please visit our [website](#)

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	1	3	0	1	4	4	4	2	19

Decisions made

Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Detailed Investigations			Total
				Not Upheld	Upheld	Uphold Rate (%)	
3	1	2	11	1	1	50	19

Note: The uphold rate shows how often we found evidence of fault. It is expressed as a percentage of the total number of detailed investigations we completed.

Satisfactory remedy provided by authority

Upheld cases where the authority had provided a satisfactory remedy before the complaint reached the Ombudsman	% of upheld cases
0	0

Note: These are the cases in which we decided that, while the authority did get things wrong, it offered a satisfactory way to resolve it before the complaint came to us.

Compliance with Ombudsman recommendations

Complaints where compliance with the recommended remedy was recorded during the year [*]	Complaints where the authority complied with our recommendations on-time	Complaints where the authority complied with our recommendations late	Complaints where the authority has not complied with our recommendations	
1	1	0	0	Number
	100%		-	Compliance rate ^{**}
Notes: [*] This is the number of complaints where we have recorded a response (or failure to respond) to our recommendation for a remedy during the reporting year. This includes complaints that may have been decided in the preceding year but where the data for compliance falls within the current reporting year. ^{**} The compliance rate is based on the number of complaints where the authority has provided evidence of their compliance with our recommendations to remedy a fault. This includes instances where an authority has accepted and implemented our recommendation but provided late evidence of that.				