



Arrangements for dealing with standards allegations under the Localism Act 2011 – guidance note

1 Context

Under Localism Act 2011, the Borough Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority (or of a parish/ town council within the authority’s area), or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

This guidance note summarises the arrangements adopted by Tonbridge & Malling Borough Council. A copy of the complete arrangements may be requested from the Council’s Monitoring Officer - monitoringofficer@tmbc.gov.uk.

2 Independent Person

The arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member (or a member or co-opted member of a parish council) against whom an allegation has been made.

Tonbridge and Malling Borough Council has appointed an independent person (Mr David Mercier) following public advertisement.

3 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the Council’s website (www.tmbc.gov.uk) and on request from the Council’s Monitoring Officer.

Each parish/ town council is also required to adopt a Code of Conduct. If you wish to inspect a Parish/ Town Council’s Code of Conduct, you should visit the website operated by the Parish/ Town council or contact the Parish Clerk.

4 Making a complaint

If you wish to make a complaint about a Borough, Parish or Town Councillor within the Borough of Tonbridge & Malling, please complete and send the Code of Conduct complaint form to monitoringofficer@tmbc.gov.uk. The complaint form can be downloaded from the Council’s website or is available on request from the Monitoring Officer via the above email address. Alternatively a complaint may be made via the Council’s website using the online complaint form provided there.

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

5 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and will take a decision as to whether it merits formal investigation. In doing so the Monitoring Officer may consult the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee. This decision will normally be taken within 60 working days of receipt of your complaint. You will be informed of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information. He/ she will also request initial views from the Councillor against whom your complaint is directed. Where your complaint relates to a Parish/ Town Councillor, the Monitoring Officer may also inform the Parish/ Town Council Clerk of your complaint and seek their views before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Councillor or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police and other regulatory agencies.

6 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the Councillor against whom you have complained and provide him/her with a copy of your complaint, and ask them to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can remove your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

7 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/ she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Council concerned (and to the Parish/ Town Council, where your complaint relates to a Parish/ Town Councillor), notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/ she may ask the Investigating Officer to reconsider his/her report.

8 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for hearing before the Hearing Panel or, after consulting the Independent Person and the Chair/ Vice-Chair of the Joint Standards Committee, seek informal resolution.

8.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person, the Chair/ Vice-Chair of the Joint Standards Committee and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Joint Standards Committee (and the Parish/ Town Council) for information but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may refer the matter for a local hearing.

8.2 Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or you are not satisfied by the proposed resolution, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer may report the Investigating Officer's report to the Standards Hearing Panel which will conduct a hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for hearings, which are contained within the adopted arrangements.

9 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Hearing Panel may:

- (a) Report its findings in respect of the subject member's conduct to the Council (or the relevant Parish Council).
- (b) Issue (or recommend to the Parish Council to issue) a formal censure (i.e., the issue of an unfavourable opinion or judgement or reprimand).
- (c) Recommend to the leader of the authority that the Subject Member be removed from positions of responsibility.
- (d) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member.
- (e) Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish Council).
- (f) Recommend to Council (or recommend to the Parish Council) that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access.
- (g) Recommend to Council (or recommend to the Parish Council) that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings, and/or restricts contact with officers to named officers only.
- (h) If relevant recommend to Council that the Subject Member be removed from their role as leader of the authority.
- (i) If relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
- (j) Recommend that the Subject Member make an apology in respect of the conduct or take some other action to resolve the matter.

The Hearing Panel has no power to suspend or disqualify the Councillor or to withdraw members' or special responsibility allowances.

10 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearing Panel as to whether the Councillor failed to comply with the Code of Conduct and as to any actions which the Hearing Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearing Panel, and send a copy to you, to the Councillor (and to the Parish/ Town Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Joint Standards Committee.

11 What is the Hearing Panel?

The Hearing Panel is a Sub-Committee of the Joint Standards Committee. Where the complaint is against a Borough Council, the Hearings Panel will comprise 5 members of the Borough Council together with 1 Parish/ Town Council representative. Where the complaint is against a Parish/ Town Councillor, the Panel shall be comprised of 3 Borough Councillors plus 3 Parish/ Town Members.

The Independent Person is invited to attend all meetings of the Hearing Panel and his views are sought and taken into consideration before the Hearing Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

12 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearing Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government & Social Care Ombudsman.