

**KENT COUNTY COUNCIL  
STANDARDS COMMITTEE  
Advice Note 3**

**ADVICE TO MEMBERS ON THE APPLICATION OF  
THE CODE OF MEMBER CONDUCT**

**November 2009**

**Complaining about another Member of the Council**

1. In undertaking to observe the Council's Code of Member Conduct, you have agreed to make a written allegation to the Council's Standards Committee as soon as it is practicable for you to do so after you become aware of any conduct by another Member which you reasonably believe involves a failure to comply with the Code. Failure to make that allegation could place you yourself in breach of the Code.

2. Making an allegation about a fellow Member to the Standards Committee is a serious step that should not be taken lightly or without due consideration and advice. You are required to "reasonably believe" there has been a failure to comply with the Code. That means you need to have taken reasonable steps to satisfy yourself as to the likely truth of the alleged or apparent facts of the matter and whether, if true, the action or behaviour would constitute a failure to comply with the Code.

3. As a first step, you should approach the Member about whom you have a concern to discuss their action or behaviour, seek their account of the facts and their view of their compliance with the Code. The only circumstances when such an approach should not be made is if you have grounds for believing that to do so would either:

- of itself risk harm to the Council, for example by risking loss of money through fraud or the destruction of essential evidence, or
- create a risk to the health, safety or reputation of another individual (including yourself), for example, if the complaint was of bullying or sexual harassment.

4. If, following discussion with the other Member, you are of the view that there has been a failure to comply with the Code, you should seek advice from the Council's officers: the Chief Executive, the Director of Finance - if the concern relates to finance - or the Director of Law and Governance as Monitoring Officer. You should exercise care in discussing the matter with fellow Members or people outside the Council and respect the right of the other Member to preserve their reputation until and unless any allegation is found to be proven.

5. A Member who receives such an approach from a fellow Member may also seek advice from the same officers if they have any concern about their compliance with the Code and are encouraged to do so unless the fellow Member states clearly that he/she is satisfied there has been no failure to comply.

6. If, at the conclusion of any informal attempt to resolve your concerns about the conduct of a Member, or if such an informal attempt at resolution is inappropriate, as described in paragraph 3 above, you must make a written allegation to the Director of Law and Governance, as Monitoring Officer, who will deal with the allegation in accordance with the Protocol for such matters agreed by the Standards Committee, as set out in the Appendix to this Advice Note.

November 2009

## Monitoring Officer Protocol

### Procedure to be followed by the Monitoring Officer in relation to the initial assessment and review of allegations that a member of the Authority has failed to comply with the Code of Conduct

#### 1 Receipt of Allegations

- 1.1 Any allegation made in writing that a Member of the Authority has, or may have, failed to comply with the Authority's Code of Conduct is to be referred to the Monitoring Officer immediately upon receipt by the Authority.
- 1.2 A register of such allegations is maintained by the Monitoring Officer to ensure that the Authority can comply with its obligations under the relevant legislation.
- 1.3 Allegations shall only be entertained where the identity of the complainant is known, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his opinion that would be in the public interest.

#### 2 Notification of Receipt of Allegations

- 2.1 All relevant allegations must be assessed by the Assessment Sub-Committee of the Standards Committee. The Monitoring Officer has no authority to deal with an allegation of failure by a relevant Member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the Authority, a statement of policy disagreement, a legal claim against the Authority or a complaint against an officer of the Authority.
- 2.2 Following receipt of an allegation, and where the allegation appears to be a complaint of misconduct against a relevant Member, the Monitoring Officer will promptly and in any case in advance of the relevant Assessment Sub-Committee meeting:
  - 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee;
  - 2.2.2 notify the Member against whom the allegation is made of receipt of the allegation, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he shall consult the Chairman of the Standards Committee, or in

his/her absence another Member of the Standards Committee, and may then decide that no such advance notification shall be given;

- 2.2.3 collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;
- 2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- 2.2.5 place a report, including a copy of the allegation, such readily available information and any recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Assessment Sub-Committee.

### **3 Local Resolution**

- 3.1 Local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee, but can avoid the necessity of a formal local investigation.
- 3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he may approach the complainant and ask what redress the complainant is seeking. This might include, for instance, an apology or a commitment to take some specified action in support of the complainant. The Monitoring Officer may then approach the Member against whom the allegation has been made and ask whether s/he is prepared to acknowledge that his/her conduct was inappropriate, and whether s/he would be prepared to offer an apology or undertake other appropriate remedial action, as suggested by the complainant. The Monitoring Officer shall in every case then report to the Assessment Sub-Committee as required, and at the same time report the comments of the complainant and the response of the Member concerned. This procedure should ensure that, where the Member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is likely to be satisfied with the proffered apology or remedial action, the Assessment Sub-Committee will be able to take this into account when considering whether the matter merits investigation, although the Sub Committee is not bound by any concessions.

### **4 Review of Decisions not to Investigate**

- 4.1 Where the Assessment Sub-Committee has decided that no action be taken on a particular matter, the Monitoring Officer shall promptly advise the complainant of the decision, and the complainant may then within 30 working days of receipt of such notification request that the Review Sub-Committee of the Standards Committee review that decision.
- 4.2 Whilst the review shall normally be a review of the reasonableness of the original decision rather than a reconsideration, the Monitoring Officer shall report to the Review Sub-Committee the information that was provided to the Assessment Sub-Committee in respect of the matter, the summary of the Assessment Sub-Committee and any additional relevant information which has become available prior to the meeting of the Review Sub-Committee.

## **5 Local Investigation**

- 5.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.
- 5.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Assessment Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include another appropriately experienced senior officer of the Authority, a senior officer of another authority or an external consultant.

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