

## **Benenden Parish Council**

### **Code of Practice in Handling Complaints against the Parish Council.**

Benenden Parish Council is committed to providing a quality service to residents of the Parish and to anyone who deals with the Parish Council. The Parish Council is determined to conduct its business in a fair and equitable manner. To meet this standard the following complaints procedure has been adopted.

#### **Misconduct by Parish Councillors.**

All councillors have to conform to the Code of Conduct, which covers misconduct as detailed in the Adopted Model Code of Conduct (copy available from the parish clerk or Tunbridge Wells Borough Council website). Any member of the public, parish councillor or council personnel can make a complaint using The Tunbridge Wells Borough Council complaints procedure details of which can be found on the Tunbridge Wells Borough Council website ([www.twbc.gov.uk/complaints](http://www.twbc.gov.uk/complaints)) or obtained from Tunbridge Wells Borough Council.

The Parish Council has a separate policy (Code of Conduct Complaints) detailing the process it would take if it was informed of a complaint to the Monitoring Officer at Tunbridge Wells Borough Council.

#### **Behaviour of Councillors.**

At its meeting on 2<sup>nd</sup> June 2014 the Parish Council decided to identify and adopt a positive statement about the behaviour that it expected from parish councillors.

*“A parish councillor should act respectfully, accept the rules and regulations of debate, never act offensively or conduct themselves in a way that could be considered offensive or unacceptable by a ‘right thinking person’.*

*A parish councillor should respect the rights of fellow councillors and other people to have their own opinion and be willing to consider all arguments before making a decision.*

*If a parish councillor holds an office of the council they must never abuse the position they hold. They are responsible for ensuring that decisions are reached after balanced argument and that no parish councillor is denied their basic right to express an opinion.”*

#### **Misconduct by Council personnel.**

Any complaints should be made in writing to the Chairman of the Parish Council, the address is available from the parish clerk or if a letter is sent to the clerk it will be passed onto the Chairman. The matter will come under the adopted Disciplinary Procedure of the Parish Council

#### **Grounds for complaints against the Parish Council.**

A complaint should not be made just because you do not agree with a decision of the Parish Council. You will need to show that the Parish Council did not follow correct procedure or policy and this has resulted in unfair treatment. The Parish Council has numerous policies and procedures and its minutes and most records are open for public scrutiny. This policy is in accordance with the Freedom of Information Act 2000 – Publication Scheme, a copy of which is available from the parish office and can be viewed on the Parish Council’s website [www.benendenparishcouncil.org](http://www.benendenparishcouncil.org)

The Local Government Ombudsman is unable to deal with complaints about Parish Councils as its legal remit only covers County, District and Borough Councils.

### **Complaints against the Parish Council's Procedures and/or Policies.**

It is in the particular interest of a Parish Council to settle a complaint because, even if it is unjustified, it will in the absence of a settlement be raised again. This is bad for the council since it wastes time and affects its reputation.

1. If a complaint about procedures or administration is notified orally to a councillor or clerk and they cannot satisfy the complainant forthwith the complainant shall be asked to put the complaint in writing to the clerk.
2. If the complainant prefers not to put the complaint to the clerk he/she shall be advised to put it to the chairman.
3. (a) On receipt of a written complaint the clerk or chairman, as the case may be, shall try to settle the complaint directly with the complainant but shall not do so in respect of a complaint about the behaviour of the clerk or of a councillor without first notifying that person and giving them an opportunity for comment on the manner in which it is intended to attempt to settle the complaint. The Parish Council shall not get involved with complainants about the misconduct of a councillor but will instead refer the complainant to the Local Monitoring Officer of The Standards Board for England.  
(b) Where the chairman receives a written complaint about his or her own actions then he or she shall forthwith refer the complaint to the council.  
(c) Where the clerk receives a written complaint about his or her own actions then he or she shall forthwith refer the complaint to the chairman.
4. The chairman or the clerk shall report to the next meeting of the Parish Council any written complaint disposed of by direct action with the complainant.
5. The chairman or clerk shall bring any written complaint that has not been settled to the next meeting of the Parish Council. The clerk shall notify the complainant of the date on which the complaint will be considered, and the complainant shall be offered an opportunity to explain the complaint orally.  
If the complainant is submitting documentation or evidence to which they will be referring to at the meeting then they should, 7 clear working days prior to the meeting, provide copies to the council. Similarly the Parish Council should supply the complainant with copies of any Parish Council documents, which are requested and available under the Freedom of Information Act - Publication Scheme.
6. The Parish Council shall consider whether the circumstances attending any complaint warrants the matter being discussed in the absence of the press and public but any decision on a complaint shall be announced at the Parish Council meeting in public. In the interest of openness and accountability there must be clear relevant reasons or a request from the complainant for the matter to be held without the presence of the press or public.
7. At the meeting the Chairman should
  - (a) Introduce everyone
  - (b) Explain the procedure
  - (c) Ask the complainant to outline the grounds of the complaint.
  - (d) Allow members to ask questions.
  - (e) Allow the Clerk or other Proper Officer to explain the council's position.
  - (f) Allow members to question the Clerk or Proper Officer.

- (g) Members to decide whether or not the grounds for the complaint have been made.
8. Within 7 working days of the meeting the decision and the nature of any action to be taken shall be communicated in writing to the complainant.
  9. The Parish Council shall defer dealing with any written complaint only if it is of the opinion that issues of law or practice arise on which advice is necessary. The complaint shall be dealt with at the next meeting after the advice has been received.

## **Benenden Parish Council policy dealing with Code of Conduct Complaints**

Benenden Parish Council attempts to always work in an open and accountable way. It is recognised that there might be complaints against Parish Councillors but in order to be fair to individual members the Parish Council will not publicly acknowledge such a complaint until the independent Monitoring Officer (MO)/TWBC Standards Committee consider that there is a case to investigate.

Details of how to make a complaint are at the Tunbridge Wells Borough Council website ([www.twbc.gov.uk/complaints](http://www.twbc.gov.uk/complaints))

When the TWBC Standards Committee is considering a complaint about a Parish Councillor it is required to notify the Parish Council of certain information at various stages of the case handling process. Three stages exist and whilst at stage 1 and 2 the complaint is not advertised by the Monitoring Officer or TWBC the complainant might decide to advertise/go public about his or her complaint.

Stage 1. TWBC Monitoring Officer receives a complaint of misconduct and refers it to the borough council's standards sub-committee. The Sub-Committee decides whether to ask the MO to investigate, to direct the MO to take other action (eg training), or to, take no further action. No investigation takes place at this stage and the complaint is dealt with on the basis of the written complaint, although the MO may ask the Parish Clerk for certain detail -e.g. the councillor's acceptance of office, minutes of relevant meetings, copy of parish code of conduct. If the sub-committee decide to take no further action, the complainant may ask the borough council's standards review panel to look at again. The panel can make any of the 3 decisions available to the Sub-Committee. At this stage TWBC does not publish details.

Stage 2. TWBC Monitoring Officer will instruct an Investigating Officer (IO) to undertake an investigation, and will report to the Standards sub-committee. If the IO finds no breach the sub committee can either accept this finding, or refer the matter to a hearing. If the IO finds a breach the sub-committee can either refer the complaint (if it is serious) to the national adjudication panel for England (soon to be renamed) or to a hearing by the sub-committee.

Stage 3. The Standards sub-committee holds a hearing in public. The IO calls evidence and the member who is being complained about will usually attend and present a case in their defence. The sub committee will usually withdraw from the public to consider the evidence and will return to announce the decision. At the conclusion of the investigation the Standards Committee might decide, amongst other things, (and other options are open to the Standards Committee)

- That the councillor be censured
- That the councillor makes a written apology
- That the councillor be suspended for up to 6 months.
- That there has been no breach of the code

The Benenden Parish Council procedure for dealing with notification of a complaint about a councillor is;

Stage 1.

On notification of a complaint the Chair of the Parish Council (or if necessary the Vice Chair or Clerk) will write a **confidential** briefing note to all councillors stating that Councillor X is the subject of a complaint to the TWBC Standards Committee. In the interests of fairness the issue/complaint will not be discussed at any Parish Council meeting.

If the decision is to take no further action then the Chair of the Parish Council (or if necessary the Vice Chair or Clerk) will write a **confidential** briefing note to all councillors stating no further action is being taken. The issue/complaint will not be discussed at any Parish Council meeting and it is up to Councillor X whether he/she wishes to have the complaint acknowledged publicly as unfounded.

#### Stage 2

On notification that this is going to stage 2 the Chair of the Parish Council (or if necessary the Vice Chair or Clerk) will again write a **confidential** briefing note to all councillors stating that the complaint is being investigated further. The issue/complaint will not be discussed at any Parish Council meeting\* however the Chair and Vice Chair will draft a press release in case the complaint becomes public. The press release will stick to the facts and not comment on the actual complaint.

If the decision is to take no further action then the Chair of the Parish Council (or if necessary the Vice Chair or Clerk) will write a **confidential** briefing note to all councillors stating no further action is being taken.

#### Stage 3.

On notification that this is going to stage 3 the chair of the Parish Council (or if necessary the Vice Chair or Clerk) will again write a briefing note to inform all councillors of the situation. The issue will be acknowledged as an item at the next Parish Council Meeting. The Parish Council (and individual councillors if approached) will stick to the facts and not comment on the actual complaint. The press release will be released if necessary.

At conclusion of stage 3 the Parish Council will prepare another press release and also acknowledge the decision of the Standards Committee. A draft of this press release will be supplied to all councillors. If it is felt necessary an emergency Parish Council meeting will be arranged.

Note. A decision/recommendation made by the TWBC Standards Board might require the Parish Council to discuss generalities (i.e. need for and cost of training) but specifics of the complaint/decision will not be discussed.