

Process for Handling Member Complaints

General Principals:

- Complaints will be considered against the relevant code of conduct and the assessment criteria.
- The Council will comply with its legal obligations including the Localism Act 2011.
- The Council will usually seek to resolve matters informally where appropriate having regard to the wishes of the complainant and the seriousness of the allegations.
- Decisions will be in writing, clear and set out their reasoning.
- Complainants and members will be treated with respect and given clear explanations
- We will act proportionately balancing; the severity of the allegation, relevant information, and the prospects of finding sufficient information to substantiate a breach. We will be mindful of the cost of investigation, this may be a factor in determining action for minor or trivial matters and in all cases the scope of an investigation will be proportionate to the issues raised.
- References to the Monitoring Officer include their nominated deputy.

The Standards Sub-Committee:

The Committee will meet in accordance with the requirements for meetings set out in the Local Government Act 1972. Meetings will usually be in public unless the matter is one to which Schedule 12A of the Act applies.

The Committee will comprise of the District Council Members appointed by the Council, with the attendance of the Independent Person. The Town and Parish Council representatives will be invited however the meeting will be quorate without their attendance.

The Committee must have regard to any advice from the Independent Person or the Town and Parish Council representatives.

Receiving Complaints:

The Monitoring Officer is the nominated person for receiving complaints under the Member Code of Conduct.

On receiving complaints the Monitoring Officer will assess the complaint to see whether or not the complaint is a relevant matter for the Council to consider. The Council can only consider matters relating to the conduct of Councillors for Braintree District Council or one of the Town or Parish Councils within the District. The Council cannot consider complaints against former Councillors, County Councillors or Members of Parliament. Complaints against the Council, its decisions or Officers will be passed to the corporate complaints process.

Complaints which relate to the failure to declare a Disclosable Pecuniary Interest, or a breach of a Councillor's requirement to register interests will be referred to the Police. These matters are criminal offences under the Localism Act 2011 and the Council has no jurisdiction to consider these.

Where a complaint is rejected from the process on one of these grounds the Monitoring Officer will confirm this to the Complainant.

Initial Consideration of Complaints:

Once a complaint has been received in respect of a matter within the remit of the Member Standards Framework the Monitoring Officer will give it consideration under the Code of Conduct.

All complaints must be in writing; email is acceptable. The Council provides a complaint form; whilst its use is not required it may assist complainants to use this. The Monitoring Officer will consider whether the complaint is sufficiently detailed to enable full consideration; and may contact the complainant for further information or details.

Once the complaint is sufficiently clear the Monitoring Officer will usually contact the Subject Member to seek their initial written comments on the complaint, the Monitoring Officer will ask the Member to respond within a specified timescale (usually 14 days) but may vary this period in appropriate circumstances. The Monitoring Officer will also seek to establish if the matter can be resolved informally.

Anonymous complaints will not generally be accepted. Except where there is a clear complaint, there is sufficient documentary information to enable a determination to be made and the complaint is sufficiently serious to warrant formal consideration.

Where in the view of the Monitoring Officer there is either no merit in seeking the Councillors view as the complaint is sufficiently clear, minor or where to do so would either inflame a situation or jeopardise the prospects of a successful investigation a decision may be made to dispense with seeking their views.

Before making an initial assessment of the complaint the Monitoring Officer will seek the views of the Independent Person. This may be in whatever format is considered appropriate in the circumstances and may include email, telephone conversation or a meeting. The Monitoring Officer must take into consideration the Independent Persons views before making a determination.

The Monitoring Officer may:

- Where a complaint raises a number of issues split or combine elements as appropriate and reach conclusions on each element separately.
- Determine that the complaint does not disclose a breach of the Code of Conduct on the information held.
- Determine that the complaint does not merit formal investigation; in reaching this decision the Monitoring Officer may or may not make a finding that a breach has occurred (or is likely to have occurred) and may if relevant issue advice or guidance to either the Subject Member or Members in general.
- Determine that informal resolution is appropriate and seek to implement this. Where an apology is given by the Subject Member the Monitoring Officer will determine whether it is sufficient taking into account the views of the complainant.
- Refer the matter to the Standards Sub-Committee in appropriate circumstances.
- Refer the matter for Investigation.

Matters Referred for Initial Assessment by the Standards Sub-Committee:

The Monitoring Officer may refer any complaint to the Standards Sub-Committee for them to make the initial decision on whether or not to investigate the matter. This may be for any reason, although usually it will be because the Monitoring Officer is unable to distance themselves sufficiently to be seen as acting reasonably.

The Committee may make any determination which was open to the Monitoring Officer in relation to the initial assessment of the Complaint.

Investigation of Complaints:

Where a matter is referred for Investigation the Monitoring Officer will determine who will undertake the investigation.

The Investigation will be conducted by a person independent of the complaint and shall be in the form and scope as agreed with the Monitoring Officer. The Monitoring Officer may consult the Independent Person before commissioning the Investigation.

The purpose of an investigation will be to determine whether or not the allegation is proven; additional issues will only be looked at where directly relevant. Investigations are not a full consideration of the history of an overall situation or to try and find potential breaches.

Investigations will be conducted in a timely way. The cost of the investigation should be managed in such a way as to ensure that it is proportionate and reasonable in the circumstances.

The Investigator is expected to produce a written report and reach a conclusion as to whether or not the Member Concerned has or has not breached the Code of Conduct. Whenever practical a draft of the report should be shared with the Complainant and the Subject Member for their comments prior to finalisation.

Should the Subject Member cease to be a member during the course of an investigation (either by resignation, not being returned to office at an election or death) or where there are extenuating personal circumstances (such as significant long term medical issues) the Monitoring Officer may stop the investigation following consultation with the Independent Person.

Receiving Investigation Reports:

Where an Investigation Report is received the Monitoring Officer will ensure that it is actioned in line with the following guidelines:

- Where no breach of the Code of Conduct is found the Monitoring Officer will report the findings to the Complainant, Member Concerned, Independent Member and the Standards Sub-Committee for information, no further action is required.
- Where a breach of the Code of Conduct is found the Monitoring Officer may seek to resolve the matter informally. Informal resolution is only possible with the agreement of the Complainant at this stage, and where agreement is reached a summary report will be passed to the Standards Sub-Committee for information, no further action is required.

- Where a breach of the Code of Conduct is found and no other remedy is agreed, the matter will be referred for hearing.

Hearings:

All hearings of the Standards Sub-Committee will be in public unless there are specific circumstances in accordance with Schedule 12A of the Local Government Act 1972. The fact that the hearing is considering an individual Councillors Conduct is unlikely to be sufficient in and of itself to withdraw into closed session given the public interest in open and transparent democracy.

A Subject Member may be represented at any hearing; the cost of this is the responsibility of the Subject Member and is not payable by the Council.

At any hearing the Investigating Officer will be asked to present their findings, this may include where necessary presenting witnesses. Members of the Committee and the Subject Member will be entitled to ask questions of the Investigating Officer or any witnesses.

The Subject Member will be given the opportunity to respond to the allegation and may where relevant have witnesses supporting them. The Subject Member and their witnesses may be questioned by the Investigating Officer or the Standards Sub-Committee.

Before making a determination the Standards Sub-Committee must give the Independent Person the opportunity to make representations and must give these representations consideration.

The Standards Sub-Committee will determine whether or not there is a breach of the Code of Conduct. If a finding is made that the Code of Conduct has not been breached they may make recommendations to the Subject Member or other members as they see appropriate.

If a finding is made that a breach of the Code of Conduct has occurred then the Sub-Committee may impose sanctions as set out below either individually or in combination:

- a. Reporting its findings to Council (or to the Parish Council) for information;
- b. Recommending to Council that the member be issued with a formal censure or reprimand (or to the Parish Council)
- c. Recommending to the Council and the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council) that they be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- f. Recommending to Council (or Cabinet in the case of an Executive Appointment) the removal (or recommend to the Parish Council that the member be removed) from all or some outside appointments to which the Member has been appointed or nominated by the authority (or by the Parish Council);

- g. Withdrawing (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- h. Excluding (or recommend that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Appeals:

A member who has been found to have breached the Code of Conduct may appeal to the Appeals Committee, stating their reasons for the appeal. The appeal must be in writing and be submitted to the Monitoring Officer within 14 days of the decision of the Standards Sub Committee

When considering the appeal the Appeals Committee may:

- Uphold the original decision of the Standards Sub-Committee;
- Uphold the original decision of the Standards Sub-Committee and substitute the sanction determined by the Standards Sub-Committee with one which the Appeals Committee considers appropriate, after consultation with the Monitoring Officer and the Independent Person.
- Overturn the decision of the Standards Sub-Committee.

The Appeals Committee will comprise of the Chairman of the Governance Committee and 2 Members of the Governance Committee who were not involved in the original decision. They may take representations from the Town and Parish representatives

The appeal hearing will take the form of a fresh hearing of the allegation and will follow the same process as the original hearing, the Investigating Officer and the Subject Member may call additional witnesses should they feel it relevant.