



Braintree District Council

Code of Conduct Complaints Policy

1. Purpose of this Policy

- 1.1 The Localism Act 2011, requires Braintree District Council (the Council) to have in place “Arrangements” under which allegations that a Councillor has breached the Code of Conduct (the Code) will be dealt with.
- 1.2 This Policy sets out the Council’s arrangements for handling such allegations, how decisions will be made and the criteria that will be used.
- 1.3 Any reference to:
- a. the Monitoring Officer includes a reference to a person authorised to act on behalf of the Monitoring Officer; and
 - b. the council includes reference to a Town and Parish Council as appropriate.

2. Who is covered by this policy

- 2.1 This Policy applies to:
- elected or co-opted councillors of the Council; and
 - parish and town councillors within the Braintree District area.

3. Responsibility for complaints

- 3.1 The Monitoring Officer is a senior officer of the Council who has a statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.

4. Code of Conduct for Councillors

- 4.1 The Code that applies to Councillors elected to the Council is set out in the Council Constitution and can be found here - [Our Constitution – Braintree District Council](#).
- 4.2 For Parish and Town Council Code of Conduct, please visit the relevant Parish/Town Council’s website or contact the Parish/Town Clerk.

5. Purpose of the Code of Conduct

- 5.1 The role of Councillor across all tiers of local government is a vital part of our country’s system of democracy. It is important that Councillors can be held

accountable and adopt the behaviours and responsibilities associated with the role.

- 5.2 The conduct of an individual Councillor affects the reputation of all Councillors. Councillors represent local residents, work to develop better services and deliver local change. The Code sets out the personal behaviours and obligations all Councillors sign up to, so that the public can have confidence that Councillors will maintain high standards of conduct, show integrity, act with respect for others and take decisions that are in the best interests of the communities they serve.
- 5.3 Councillors are also required to declare all interests they have under any of the categories referred to in the Code. They must also disclose these interests immediately after they are elected as Councillors and whenever they are involved in a Council decision that may affect these interests. They must also notify the Monitoring Officer, so that they can be added to the Councillors register of Disclosable Pecuniary Interests.

6. What is not covered under the Code of Conduct

- 6.1 The Council can only deal with complaints about the alleged behaviour and conduct of Councillors and co-opted members. It will not deal with complaints about any of the Council's departments or Council policies.
- 6.2 It will also not deal with any complaints about a Parish/Town Clerk or other matters not covered by the Code.
- 6.3 If you are unsure about any aspect of the process, please contact the Monitoring Officer before submitting any complaint.

7. Making a complaint

- 7.1 A complaint can be made in the following ways:
- By sending an email the Monitoring Officer at governance@braintree.gov.uk ;
or
 - By completing the complaint form on our website [Complain about a Councillor | Instructions – Braintree District Council](#)
- 7.2 When making a complaint, please provide us with:

- your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this and your reasons for anonymity. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent. We do not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- A brief summary of the matters complained of;
- Attach all relevant documents, screenshots or photographs; and
- Set out which parts of the Code of Conduct you believe have been breached.

8. How a complaint will be dealt with

8.1 Following receipt of your complaint, the Monitoring Officer will:

- acknowledge receipt of your complaint within 10 working days of receiving it;
- If additional information or clarification is required, this will be requested from you;
- Once all relevant information has been received, an initial assessment of the complaint based on the information provided will be carried out within 5 working days of all information being received;
- if the complaint falls within the remit of this Policy, then the Councillor who is the subject of the complaint will be notified, together with their Group Leader, within 2 working days of the initial assessment being concluded, that you have made a complaint about them;
- you and the Councillor will be informed of the progress of your complaint; and
- privacy of the complainant and the Councillor will be preserved until the complaint outcome is determined.

8.2 The Monitoring Officer will review all complaints received and may consult with the Council's Independent Person before making a decision as to whether the complaint:

- Merits no further action;
- Merits early informal resolution or mediation; or
- Merits formal investigation.

- 8.3 The Independent Person is a person who has been appointed by the Council. The Independent Person has no prior connection with the Council, either as a Councillor or an officer, nor are they a relative or close friend of anyone in the Council.

9. Initial Assessment criteria

- 9.1 In deciding the appropriate course of action, the Monitoring Officer will consider the following criteria:

9.1.1 **A complaint will not normally merit further action if the complaint:**

- is not considered sufficiently serious to warrant investigation;
- appears to be motivated by malice or is “tit-for-tat”;
- appears to be politically motivated;
- does not fall under the Code, for example that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision;
- is about someone who is no longer a councillor;
- has insufficient information available;
- has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances;
- occurred so long ago that it would be difficult for a fair investigation to be carried out;
- is the same, or similar to, a complaint that has already been determined;
- has been made anonymously;
- where the Councillor complained of has already apologised and/or admitted making an error.

9.1.2 **A complaint may merit informal resolution if:**

- a breach of the Code is identified and the breach is accepted by the Councillor,
- an informal resolution such as an apology would be a proportionate outcome; and
- the matter would not warrant a more serious sanction.

9.1.3 **A complaint may merit formal investigation if:**

- it is serious enough, if proven, to justify the range of sanctions available to the Council;

- the complaint demonstrates a clear breach of the Code;
- it is in the public interest to investigate;
- the Independent Person supports an investigation; and/or
- the conduct, if proven, is likely to bring the Council into disrepute.

10. Monitoring Officer's decision

- 10.1 Once the Monitoring Officer has made a decision on the complaint, the complainant will be informed of the decision together with the reasons for that decision.
- 10.2 If the Monitoring Officer proposes an informal resolution, but the Councillor is not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- 10.3 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to make a referral to the Police or other regulatory agencies.
- 10.4 The Monitoring Officer's decision on the complaint is final and there is no right of appeal. The decision can be challenged by way of a complaint to the Local Government and Social Care Ombudsman [Home - Local Government and Social Care Ombudsman](#) or a legal challenge by way of a judicial review. Any person considering a legal challenge is advised to take independent legal advice.

11. Procedure for formal investigation

- 11.1 If the Monitoring Officer decides the complaint is serious enough to merit a formal investigation, an Investigating Officer will be appointed. The Monitoring Officer has delegated power to act as the Investigating Officer (Investigator) and may in some instances appoint a senior officer in the Council to act as the Investigating Officer. In exceptional circumstances, an external investigator may be appointed.
- 11.2 A formal investigation will be concluded as quickly as possible, and normally within 3 months of the Investigator being appointed, unless a longer date has been agreed with the complainant and Councillor, having regard to the nature of the complaint and the level of complexity.
- 11.3 The investigation must be undertaken fairly. In particular:

- a. The Councillor must be given enough information to enable them to respond to the allegation.
- b. Information supplied by any person should be recorded in writing.
- c. Further information should be sought from the complainant if necessary to consider a relevant point made by the complaint.

11.4 The procedure for a formal investigation is set out at Appendix 1.

12. Outcome of formal investigation

12.1 The Monitoring Officer will review the final report and, if satisfied that there has been a breach of the Code, will decide whether:

- The investigation merits no further action with reasons as to why no further action is to be taken;
- in consultation with the Independent Person, seek an informal resolution; or
- send the matter for a hearing before the Standards Committee.

12.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such instance, they will consult with the Independent Person and will seek to agree with the complainant a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Council's Standards Committee for information but will not require a hearing.

12.3 If informal resolution is not appropriate, then the Monitoring Officer will submit the final report to the Standards Committee for a hearing. The Standards Committee will conduct a hearing before deciding whether the Councillor has failed to comply with the Code and, if so, whether to take any action in respect of the Councillor. The procedure for hearing allegations, is attached as Appendix 2.

13. Revision of these Arrangements

13.1 The Council may agree to amend these Arrangements from time to time. Any amendments to this Policy will be published on the Council's website.

13.2 The Monitoring Officer has the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Appendix 1

Formal Investigation Procedure

Gathering evidence

1. The appointed Investigator will:
 - inform the complainant and Councillor of their appointment and set out the expected timescales and steps they intend to take;
 - keep written records throughout the investigation;
 - assess whether any additional information is required from the complainant or Councillor;
 - obtain the Councillor's explanation of the matters complained of;
 - identify the paragraph(s) of the Members' Code of Conduct that are alleged to have been breached;
 - identify the evidence that is needed to determine the issues; and
 - keep the Monitoring Officer, complainant and Councillor updated as to progress.

Conducting interviews, if required

2. If there are significant disputes of the facts, or the matter is complex, the investigator may consider interviewing either party or other witnesses.
3. Where necessary, the investigator will arrange interview dates and conduct interviews.

Drafting an Investigation Report

4. On completion of an investigation, the Investigator must produce a draft report which should include draft findings. The report, which will contain:
 - Details of who was interviewed, who supplied information and whether through written documentation or verbally;
 - set out any agreed facts;
 - set out any facts that are not agreed and the corresponding conflicting evidence;
 - make an assessment on all of the alleged breaches of the Code of Conduct forming the complaint;
 - set out conclusions as to whether a breach has occurred;

5. The draft report must be sent out to the Councillor and complainant, on a confidential basis, giving them 14 days to comment.
6. The Investigator must then produce a final report which sets out whether the Investigator has found there to be a breach of the Code. If it was not possible to make a finding, then the Investigator should make that clear within the report.
6. The Investigator should send their final report to:
 - a. The Complainant
 - b. The Councillor
 - c. The Independent Person
 - d. The Monitoring Officer (if they did not conduct the investigation)

Appendix 2

Standards Committee Hearing Procedure

1. The Hearing

- 1.1 The Council's Standards Committee (the Committee) will hear a complaint that has been referred to it by the Monitoring Officer.
- 1.2 A hearing will normally be called within 28 days of the Monitoring Officer's decision to proceed to a hearing. The Committee's Terms of Reference are set out in Appendix 3.
- 1.3 If the Councillor is not present at the time of the hearing, the Committee may delay the start, adjourn the matter or proceed in absences if they consider it appropriate to do so, having regard to any representations received.
- 1.4 At the hearing, the Investigator will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Councillor has breached the Code.
- 1.5 The Councillor will then have an opportunity to give their evidence, to call witnesses and to make representations to the Committee as to why they consider that they did not breach the Code.
- 1.6 The Committee, with the benefit of any advice from the Independent Person, may conclude that the Councillor did not breach the Code, and dismiss the complaint.
- 1.7 If the Committee concludes that the Councillor did breach the Code, the Chairman of the Committee will inform the Councillor of this finding.
- 1.8 The Committee will then consider what action, if any, the Committee should take as a result of the Councillor's breach the Code of Conduct. In doing this, the Committee will give the Councillor an opportunity to make representations to the Committee and will consult the Independent Person, before determining what sanctions, if any, to take in respect of the matter.

2. Sanctions

- 2.1 Any sanctions imposed will be relevant to the breaches found to be proven and will be proportionate to the circumstances of the case.

2.2 The Committee may impose any of the sanctions, or a combination of sanctions, listed below.

- a. Report its findings to Council for information;
- b. Issue a censure or reprimand;
- c. Recommend to Council that the Councillor be issued with a formal censure or be reprimanded;
- d. Recommend to the Councillor's Group Leader (or in the case of ungrouped councillors, recommend to full Council that the Councillor be removed from any or all committees of the Council;
- e. Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or any Cabinet Sub Committee, or removed from particular Portfolio responsibilities;
- f. Instruct the Monitoring Officer to arrange for particular training for the Councillor;
- g. Recommend to Council to remove the councillor from all or some outside appointments to which they have been appointed or nominated by the Council;
- h. Recommend to Council to withdraw facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access;
- i. Recommend to Council to exclude the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, or Committee meetings.

2.3 The Committee has no power to suspend or disqualify a Councillor or to withdraw a Councillor's basic allowance or any special responsibility allowances.

3. Conclusion of hearing

3.1 At the end of the hearing, the Chairman will state the decision of the Committee setting out whether they find that the Councillor has breached the Code or not, and set out any sanctions made.

3.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman, and send a copy to the complainant, to the Councillor. A copy of the Decision Notice will be placed on the Councils website for the period of 12 months.

Appendix 3

Standards Committee Terms of Reference

The Standards Committee will comprise of:

- 4 members from the largest political party group
- 2 members from the largest opposition group
- 1 member from the next largest political group
- 1 member allocated in accordance with the political proportionality rules.

The Standards Committee shall be supported by:

- 2 co-opted non-voting Parish/Town Council representatives nominated by the Braintree Association of Local Councils (where the matter concerns a Parish Councillor); and
- one Independent Person or in their absence a Reserve Independent Person.

The duties and responsibilities of the Standards Sub-Committee are:

- a. To promote and maintain high standards of conduct;
- b. to promote and maintain high standards of conduct by Councillors, coopted Members and Officers;
- c. to support the Monitoring Officer in discharging their role in respect of standards of conduct and behaviour;
- d. to receive reports and advice as required from the Monitoring Officer and any Independent Persons appointed by the Council under the Localism Act 2011;
- e. to review the operation and effectiveness of the Members' Code of Conduct and recommend any changes considered necessary to the Council for approval;
- f. to determine allegations of misconduct referred to the Committee by the Monitoring Officer;
- g. to keep under review the operation and effectiveness of the Standards Committee hearing arrangements and to recommend any changes considered necessary to the Council for approval; and
- h. to review the Monitoring Officer's arrangements for the investigation of allegations of breaches of the Council's Code of Conduct by Councillors and co-opted Members and to make recommendations for appropriate changes to the Monitoring Officer.

Any Sub-committee called for the purposes of hearing a matter referred to it by the Monitoring Officer requires at least 3 or more voting members to be quorate.

The Chair shall be appointed by the Standards Committee at each Hearing

Decisions will be by simple majority, with the Chair having the casting vote.

The standard of proof to be applied is the balance of probabilities in any findings against a Councillor.