



ASHFORD
BOROUGH COUNCIL

How to make a Code of Conduct complaint

*A guide to making a Code of Conduct
complaint about a councillor of either
the Borough, Town or
Parish Councils within the area of
Ashford Borough*

Councillors are elected to represent the constituents of a Borough Ward or a Parish of Community Council. Each Council has its own Code of Conduct to which councillors must adhere.

However if you believe that a councillor has breached the relevant Code of Conduct this leaflet explains how to make a complaint and how your complaint will be dealt with.

Ashford Borough Council takes all complaints seriously and it is our experience that many complaints can be resolved quickly and effectively on an informal basis. Our complaints team would welcome the opportunity to help put things right for you at an early stage without the need for a formal complaint. Please contact Terence Mortimer (email: terry.mortimer@ashford.gov.uk) or Legal Support (telephone No. 01233 330588 or email legal.support@ashford.gov.uk) to discuss your complaint further.

HOW TO MAKE A COMPLAINT

If we cannot resolve the problem you may wish to make a formal complaint. You can complete our online form to make a complaint. Alternatively, you can send your complaint, in writing either using the form accompanying this leaflet or the form can be downloaded from the Council's website www.ashford.gov.uk/councillor-complaints and sent, marked confidential, to The Monitoring Officer, Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL.

Please ensure that when submitting your complaint you provide sufficient information for the Monitoring Officer to determine whether a complaint is valid and if so an investigation or other action is warranted.

WHO YOU CAN COMPLAIN ABOUT

You can complain about elected councillors, or co-opted members (a co-opted member is a voting member of a council or one of its committees, who was appointed to their position rather than being elected.) of all of the councils within the Ashford Borough, that is Ashford Borough Council and any Town or Parish or Community Council in the Ashford Borough area.

We can only consider complaints about individual councillors or members. We cannot consider complaints about the council as a whole, decisions it has made or about people it employs.

ABOUT THE CODE OF CONDUCT

Each council (Borough, Town and Parish) has adopted its own Code of Conduct. If you would like a copy of a particular council's Code of Conduct please contact that council direct. If your complaint is about a Borough Councillor's conduct, a copy of this Council's Code can be seen at www.ashford.gov.uk/councillor-complaints or contact Legal Support (telephone No. 01233 330588 or email legal.support@ashford.gov.uk)

WHAT YOU CAN COMPLAIN ABOUT

You can complain about a councillor who you consider has breached any provision in any part of their council's Code of Conduct. This can include:

- bullying and intimidation
- doing something to prevent those who work for the council from being impartial
- revealing information that was given to them in confidence, or stopping someone getting information they are entitled to by law
- damaging the reputation of their office or council
- using their position improperly, to their own or someone else's advantage or disadvantage
- misusing the council's resources
- allowing the council's resources to be misused for the activities of a political party
- failing to register a Disclosable Pecuniary Interest
- failing to disclose a Disclosable Pecuniary Interest or an Other Significant Interest at a meeting
- taking part in a meeting or making a decision where the councillor has a Disclosable Pecuniary Interest or an Other Significant Interest
- failing to register any gifts or hospitality they have received in their role as a councillor, worth over £100

Further details can be found at Paragraphs 3,4,5 and 7 of this Council's Code of Conduct in respect of Borough Councillors

WHAT WE CANNOT INVESTIGATE

There are some complaints that cannot be investigated, including:

- complaints where a councillor is not named
- complaints that are not in writing (using our complaint form)

- acts carried out in a councillor's private life when they are not acting as a councillor,
- incidents or actions that are not covered by the Code of Conduct
- Complaints about a service the Council has provided. Such complaints can be made by using a separate complaints system
- Complaints about people employed by local councils
- incidents that happened before a councillor was elected
- Complaints about the way in which the council conducts and records its meetings. Such complaints should be made direct to the relevant council.

CONFIDENTIALITY

Before you send us your complaint, you should be aware that we are unlikely to be able to keep your identity confidential from the person about who you are making the complaint.

In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint.

If you have serious concerns about these your name and a summary or details of your complaint being released, please complete Section 4 of the complaint form.

We are unlikely to withhold your identity or the details of your complaint unless the Monitoring Officer believes that

there are reasonable grounds for believing that the Complainant or any other person (eg a witness):

- is either vulnerable or at risk of threat, harm or reprisal;
- may suffer intimidation or be victimised or harassed;
- suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough, Town or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough, Town or Parish Council.

OR where early disclosure of the complaint:

- may lead to evidence being compromised or destroyed; or
- may impede or prejudice the investigation; or
- would not be in the public interest.

Details in support of your request to withhold your identity will be required for consideration by the Monitoring Officer (acting in consultation with the Independent Person).

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer (acting in consultation with the Independent person) will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for

confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

WHAT HAPPENS TO YOUR COMPLAINT?

When we receive your complaint, we will write to you to let you know that we have received it.

Details of the complaint will be given to:

- the Monitoring Officer,
- The Independent Person of Ashford Borough Council (a person who is not a councillor, but has been appointed by the council to carry out certain functions in relation to the code complaint system)
- the councillor(s) you are complaining about
- the parish or town clerk (if applicable)

The Monitoring Officer (acting in consultation with the Independent Person) will decide whether or not the complaint is valid under the Code of Conduct, and if it is will either:

- Not refer the complaint for investigation; or
- Refer the complaint for investigation; or
- Apply the informal resolution process either before or after an investigation; or
- Following Investigation; to refer the complaint to the Hearing Panel; or
- Take no action and close the matter; or

- Refer the complaint to the relevant political group leader for action.

In deciding whether to accept the complaint as valid, the Monitoring Officer (and if applicable the Independent Person) will use the following criteria:

Legal jurisdiction criteria test:

- Did the alleged conduct occur before the adoption of the Code of Conduct?
- Was the person complained of a member of the Borough, Town or Parish Council at the time of the alleged conduct?
- Was the person complained of acting in an official capacity at the time of the alleged conduct?
- Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- Is the complaint about dissatisfaction with the Borough, Town or Parish Council's decisions, policies and priorities, etc. ?

If the complaint fails one or more of the Legal jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will normally be notified accordingly with reasons, within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

Local assessment criteria test:

If the complaint satisfies the Legal jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- The complaint is a 'repeat complaint', unless supported by substantial new or further evidence on a serious matter
- The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- The Complainant is unreasonably persistent, malicious and/or vexatious;
- The alleged misconduct happened more than 3 months ago;
- The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;

- The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- The complaint is about a person who is no longer a Borough, Town or Parish Councillor or Co-opted Member.

If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will normally be notified accordingly with reasons, within 30 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

You will be kept advised as to decisions taken and progress on your complaint.

THE INVESTIGATION

If the Monitoring Officer (acting in consultation with the Independent Person) refers your complaint for investigation you will have an opportunity to provide the investigator with any further detailed information or documents that you consider to be relevant, so therefore please avoid sending us large amounts of background information with your complaint.

At the end of an investigation the Monitoring Officer will, having consulted with the Independent Person, decide whether there is evidence of a failure to comply with the Code of Conduct. He will then either:

- take no action or

- seek informal resolution or
- refer the matter for consideration by the Hearing Panel

A Hearing Panel is a panel made up of a small number of councillors of the Borough Council who have been appointed to the Council's Standards Committee. The Hearing Panel can decide if there has been a breach of the Code, and if so what sanction to recommend or impose.

Additional Help & Information

Complaints should be submitted in writing using the correct form. This includes printed and electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language. However, we recommend that you always try to find a friend or relative who can speak or read English to help you with your enquiry initially. This will help both you and us to deal with your needs more effectively.

Further information (including information on possible sanctions) can be found in the Council's "Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011" (www.ashford.gov.uk/councillor-complaints)

If you need advice or any support in completing this form, please contact Legal Support (telephone No. 01233 330588)

or email legal.support@ashford.gov.uk as soon as possible.