

POL-C-184 Complaints Management Relating to Conduct for Councillors, Committee Members and Candidates

1. PURPOSE

This policy sets out how a complaint may be lodged, how that complaint will be managed and if a breach of the Code of Conduct for Councillors, committee members and candidates (the Code) has occurred, what actions may be imposed.

2. OBJECTIVE

To have a structured framework for dealing with alleged breaches of the Code that is equitable, objective, timely and transparent.

Where the behaviour of an elected member, committee member or candidate does not comply with the Code, it is intended that Council address the behaviour through resolution, education and other remedial actions that it considers appropriate, rather than formal sanctions.

3. SCOPE

Only complaints that relate to Division 3 of the Code of Conduct for Councillors, committee members and candidates are to be dealt with under this policy.

Complaints that relate to Division 4 of the Code of Conduct for Councillors, committee members and candidates are to be dealt with under the process established by the Local Government Standards Panel (the Standards Panel).

Where an individual does not comply with any action required by Council, then Council may determine that the matter be referred to the Standards Panel as an alleged contravention of a rule of conduct. The Standards Panel has the authority to make binding decisions regarding allegations of minor misconduct.

4. POLICY STATEMENT

4.1 What is a Code of Conduct Complaint?

4.1.1 A complaint that shows or tends to show conduct on the part of an elected member in connection with their role as an Elected member or the exercise of their functions as an elected member that would constitute a breach of the standards of conduct prescribed under Division 3 of the Councillors' Code of Conduct if proven.

4.1.2 Is made within one month of the alleged conduct occurring.

4.1.3 Is submitted on the prescribed form with sufficient supporting information to enable assessment of the complaint.

4.1.5 The following are not "code of conduct complaints" for the purposes of this policy:

- a) complaints about the standard or level of service provided by Council or an elected member;
- b) complaints that relate solely to the merits of a decision made by Council or the exercise of a discretion by Council or an elected member;
- c) complaints about the policies or procedures of Council;

- d) complaints about the conduct of an elected member arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the Councillors' Code of Conduct;
- e) a matter that is addressed by the Presiding Member during a meeting;
- f) where an elected member complies with a request for remedial action in accordance with the relevant law, or Council resolution.

4.2 How to Make a Code of Conduct Complaint

- 4.2.1 Any person can make a complaint concerning an elected member's conduct under Division 3 of the City's Code of Conduct for Councillors.
- 4.2.2 Any complaint must be lodged within one month of the alleged breach occurring.
- 4.2.3 Complaints about an alleged breach should be made to the Complaints Officer
- 4.2.4 Complaints must be in writing and in the prescribed form.
- 4.2.5 Relevant information needs to be provided to the City in order for the complaint to be investigated and responded to appropriately. It is important to provide as much detail as possible, as the complaint will form part of the evidence considered by Council or its delegate when deciding whether a breach of the Code of Conduct has occurred.

4.3 What Complaints May be Declined at the Outset?

- 4.3.1 Without limiting any other provision in this policy, the Complaints Officer may decline to deal with a complaint under this policy where they are satisfied that the complaint:
 - a) is not a code of conduct complaint; or
 - b) is not made within one month of the alleged conduct occurring; or
 - c) is trivial, frivolous, vexatious or not made in good faith; or
 - d) relates to a matter the substance of which has previously been considered and addressed by the Council and does not warrant further action; or
 - e) is not made in a way that would allow the alleged conduct and any alleged breaches of the Councillors' Code of Conduct to be readily identified.

4.4 Opportunity for Facilitation/Mediation

- 4.4.1 It is recognised that facilitation and/or mediation may support both parties reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint.
- 4.4.2 Facilitation or mediation requires the consent of both parties and may not be appropriate in all circumstances.
- 4.4.3 It is important that both parties enter facilitation/mediation with an open mind and a willingness to reach a resolution.
- 4.4.4 The following will be offered to both parties prior to the complaint being progressed:
 - a) Facilitated discussion with Mayor/Deputy Mayor and both parties; and/or
 - b) Independent mediator to facilitate satisfactory resolution with both parties.
- 4.4.5 If, after facilitation/mediation, both parties are satisfied that the matter is resolved, the complaint may be withdrawn in writing.

4.5 Complaint Management Principles

- 4.5.1 Anyone who believes an elected member has breached Division 3 of the Councillors' Code of Conduct can easily and simply make a complaint.
- 4.5.2 Complaints can be made without fear of retribution.
- 4.5.3 Complaints will be responded to in a timely manner.
- 4.5.4 Complaints will be managed in a fair, objective, equitable and consistent manner.
- 4.5.5 The confidentiality and privacy of complainants will be protected.
- 4.5.6 Ensure the application of natural justice and procedural fairness.
- 4.5.7 Regularly analyse complaints data to improve the conduct of Councillors where possible.

4.6 Roles

4.6.1 Complaints Officer

- a) Authorised in accordance with clause 11(3) of the Code of Conduct to accept complaints and withdrawal of complaints.
- b) Is not an advocate for the complainant or respondent. The Complaints Officer provides procedural information and assistance to both the complainant and respondent.
- c) Liaises with and provides administrative support to the independent consultant in their role as Complaints Assessor and as appointed under this policy.
- d) Will liaise with the CEO to facilitate submitting reports to Council or its delegate.
- e) In undertaking their functions, the Complaints officer will apply the principles of this policy.

4.6.2 Complaint Assessor

- a) Appointed by the Complaints Officer in accordance with 4.7 of this policy.
- b) Is an impartial third party who will undertake the functions specified in this policy. In undertaking their functions, the Complaint Assessor will liaise with the Complaints Officer to manage the administrative requirements of dealing with the complaint in accordance with this policy.

4.7 Independent Consultant

- 4.7.1 The Complaints Officer will engage a suitably qualified and experienced independent consultant to be the Complaint Assessor, and assist with the assessment of complaints and preparation of reports for Council or its delegate to consider in accordance with the City's Procurement Policy.
- 4.7.2 Council will set aside money in the annual budget for this purpose.
- 4.7.3 In the event an appropriate consultant cannot be engaged or is not available the Complaints Officer has the opportunity to refer the matter to a City officer (as determined by the CEO) to assist in assessing and processing the complaint.
- 4.7.4 Any independent consultant engaged to assist with complaints will be required to follow the City's process to ensure consistency.

4.8 How Are Code of Conduct Complaints Managed?

4.8.1 Complaint Initiated

- a) On receipt of a valid complaint, the Complaints Officer within ten (10) days acknowledges receipt of the complaint and forwards it to the independent consultant for assessment.
- b) On receipt of a valid complaint from the Complaints Officer, the independent consultant:
 - i. Contacts the complainant acknowledging that the complaint has been received and advising of process and expected timeline for complaint to be dealt with;
 - ii. Provides the Councillor who is the subject of the complaint with a copy of the complaint and provides them with an opportunity to respond to the allegations in the complaint and to provide their own evidence for consideration;
 - iii. If, in the consultant's opinion, the complaint discloses a serious breach (rather than a breach of the Code of Conduct), the complaint is to be referred to the Department of Local Government.
- c) Independent consultant collates the complaint information, prepares a draft report and provides a copy to both parties for comment. Once feedback is received, the report will be finalised and submitted to Council or its delegate for consideration. The report will include:
 - i) An outline of the process followed, including how the respondent was provided with an opportunity to be heard;
 - ii) Complaint documents as attachments;
 - iii) The response documents received from the respondent (if any) as attachments;
 - iv) A recommendation for the Council (or its delegate) including reason(s);
 - v) A proposed plan for the Council (or its delegate) if considered appropriate.

4.8.2 Council Finding

- a) Council or its delegate considers the complaint information and makes a finding as to whether the conduct did or did not constitute a breach of the Code of Conduct. Council or its delegate must also provide reasons for its finding.
- b) Council or its delegate must be satisfied that, on the balance of probabilities, it is more likely than not that a breach occurred.

4.8.3 How Council Considers Complaints

- a) It is important to understand that Council or its delegate does not have any powers to investigate complaints.
- b) Council or its delegate can only make decisions based on the evidence presented to it in complaints and in responses from Councillors who are the subject of complaints.
- c) Council or its delegate decisions are based on its evaluation of whether it is more likely that the alleged breach occurred than that it did not occur, based on the evidence available.

- d) It is important that individuals include as much relevant and verifiable information and evidence as possible on the form and in responses and submissions to the Complaint Assessor.
- e) Council or its delegate may refuse to deal with complaints, or make a finding of no breach, where there is inadequate evidence to support claims made.
- f) Evidence may include copies of meeting agendas and minutes, audio/video recordings or transcripts from meetings, copies of correspondence such as letter or e-mails and other information.
- g) Personal opinions, suspicions about motives and other non-factual information cannot be considered by the Complaints Assessor, Council or its delegate and should not be submitted.
- h) Where Council is the decision-maker, the decision will be made on the evidence provided in the report prepared by the Complaint Assessor. No additional submissions or deputations will be permitted. Both complainant and respondent of the complaint for Council decision are not permitted to be present during the debate or vote on the matter.
- i) Council's delegate does not have authority to change the Complaint Assessor's report and/or recommendation. Any reports that do not meet the required standard are to be referred back to the Complaint Assessor. Council's delegate always has the option to refer the matter to Council if deemed necessary.

4.9 Action Plans

- 4.9.1 Where Council or its delegate determines an action plan is to be prepared and implemented, consultation must be undertaken with the Councillor to whom the plan relates.
- 4.9.2 The action plan is to be designed to provide the Councillor with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives. It is not to include measures that are intended to be a punishment.
- 4.9.3 The action plan is to outline:
 - a) the behaviour(s) of concern
 - b) the actions to be taken to address the behaviour(s)
 - c) who is responsible for the actions
 - d) an agreed timeframe for the actions to be completed
- 4.9.4 Actions and timeframes are to be agreed between the elected member and the Complaints Officer within the parameters set by Council or its delegate and monitored by the Complaints Officer for compliance. Completion of action plans will be communicated to Council via memorandum from the CEO.
- 4.9.5 An elected member who does not undertake the actions required following a breach of the Code of Conduct will be referred to the Standards Panel by the CEO for the matter to be considered as a minor breach under the Rules of Conduct.
- 4.9.6 If individual circumstances warrant, the CEO may refer the non-compliance to Council for a decision prior to referral to the Standards Panel.

4.10 Withdrawal of Complaints

- 4.10.1 A complainant may withdraw their complaint at any point prior to Council or its delegate making a finding.

4.10.2 Withdrawal of complaints must be in writing and submitted to the Complaints Officer.

4.11 Confidentiality

4.11.1 To ensure procedural fairness, lodgement and details of complaints lodged are to remain confidential until such time as Council or its delegate resolve otherwise.

4.11.2 Councillors, staff and consultants who have a role in handling a specific complaint will be provided with sufficient information to fulfil their role. They must manage this information securely, and must not disclose or inappropriately use this information.

4.11.3 The complainant's contact information will not be provided to the respondent. Only their name will be provided.

4.11.4 The complainant's name and contact information will not be included in any publicly available documents.

4.11.5 Where the Complaints Officer is aware of a Division 3 complaint at the time of lodgement of a complaint against Division 4, the Complaints Officer will advise the Standards Panel of the Division 3 complaint.

4.12 Candidates

4.12.1 An individual is considered a candidate when their nomination for a local government election is accepted by the Returning Officer under section 4.49 of the Act. The Model Code applies to the individual from that point.

4.12.2 Any alleged breach by a candidate of the Model Code may only be addressed by Council if and when the individual is declared elected as an elected member.

4.13 Recordkeeping and Reporting

4.13.1 If a breach has been determined by the Council, the finding and any required action will be made public on the City's website (where breaches are registered).

4.13.2 The City will report on the number of complaints received and assessed and the number of breaches in its annual report.

4.13.3 The Complaints Officer will maintain a database of complaints for analysis and potential improvement purposes.

Document Control

Document Approvals:			
Version #	Council Adoption		
1.	Ordinary Meeting of Council 12 May 2021 - adopted draft policy		
Document Responsibilities			
Custodian:	Manager Governance & Strategy	Custodian Unit:	Governance & Strategy
Document Management:			
Risk Rating:		Review Frequency:	Biennial
Next Review:	2023	ECM Ref:	
Compliance Requirements:			
Legislation:	Local Government Act 1995 Local Government (Model Code of Conduct) Regulations 2021		
Industry:	Ombudsman Western Australia Guidelines on Complaint Handling ISO 10002:2018 – Quality management – Customer satisfaction – Guidelines for complaints handling in organisations		
Organisational:	Code of Conduct for Councillors, Committee Members and Candidates Pol-C-141 – Councillor Allowances, Expenses and Recognition Pol-C-169 – Election Caretaker Provisions Pol-C-173 – Councillor Professional Development and Training Pol-C-172 – Attendance at Events – Councillors and CEO		
Strategic Community Plan:	Governance G1.1 – Provide accountable and transparent leadership		