

ELECTED MEMBERS POLICIES

Council Code of Conduct Division 3

Complaint Handling



Policy Number:	E11
Relevant Delegation:	DE2-13 Appoint persons to receive and withdrawals of complaints
Adoption Details:	23 August 2022
Last Review Details:	

POLICY OBJECTIVE:

1. To provide clear guidance on the procedure for dealing with complaints about alleged breaches of behaviour requirements under Policy E1 Code of Conduct: Council Members, Committee Members & Candidates.
2. To ensure an effective, transparent, fair and accessible complaints handling process that supports high standards of behaviour.

POLICY SCOPE:

1. This policy applies to complaints received against a Council Member, Committee Member or Candidate under the Code of Conduct which relate to behaviour (a breach of Division 3).
2. This Policy does not deal with complaints about services delivered by the Shire or complaints against employees of the Shire.
3. Complaints which relate to Division 4 of Policy E1 Code of Conduct: Council Members, Committee Members & Candidates is dealt with under Sections 5.105(1), 5.107, 5.109 and 5.110 of the *Local Government Act 1995* and is not covered by this Policy.
4. Complaints of a serious breach, as defined in Section 5.102A of the *Local Government Act 1995*, are dealt with under Sections 5.114, 5.115 and 5.116 of the *Local Government Act 1995* and is not covered by this Policy.

POLICY STATEMENT:

PRINCIPLES

1. Procedural Fairness

The principles of procedural fairness will apply when dealing with a Complaint.

The Respondent will be afforded a reasonable opportunity to be heard prior to any findings being made. Decisions are to be made in an objective and impartial manner with an absence of bias (or the perception of bias) and any findings made are to be based on proper and genuine consideration of the evidence.

2. Consistency

Each Complainant and Respondent will be dealt with according to their circumstances and each Complaint considered and determined on its merits. However, the Shire will ensure consistent decision making in relation to a Complaint, with similar circumstances resulting in similar decisions where appropriate.

3. Confidentiality

To protect both the Complainant and Respondent, the Shire will take all reasonable steps to maintain confidentiality when dealing with a Complaint. Information gained in the course of managing a Complaint is to be managed in a secure manner and must not be disclosed or used inappropriately.

4. Accessibility

Information on how to make a Complaint is available on the Shire's website, or alternatively from the Shire's Administration Office upon request.

1. MAKING A COMPLAINT

- 1.1 Any person may make a Complaint alleging that an Elected Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct.
- 1.2 A Complaint must be made within one (1) month after the alleged Breach.
- 1.3 Where a Complaint is made more than one (1) month after the alleged breach, the Complaints Officer will give the Complainant written notice that the Complaint cannot be made.
- 1.4 A Complaint must be made by completing the Complaint Form in full and providing the completed forms to the Complaints Officer.
- 1.5 A Complaint must be made in accordance with the Complaint Form and specify which requirement(s) of the Code of Conduct is alleged to have been breached. It must also include the name and contact details of the Complainant.
- 1.6 Where a Complaint Form omits required details, the Complaints Officer will invite the Complainant to provide this information to enable the Complaint to be progressed.
- 1.7 A Complaint in relation to a Candidate must be made in accordance with the above process but cannot be dealt with unless the Candidate is subsequently elected as an Elected Member.

2. WITHDRAWING A COMPLAINT

- 2.1 A Complainant may withdraw their Complaint, in writing, at any time before a Finding has been made in relation to the Complaint.
- 2.2 A Complainant may withdraw a Complaint by advising the Complaints Officer, in writing, that they wish to do so.
- 2.3 After receiving a withdrawal of the Complaint, the Complaints Officer will terminate the process commenced under this Policy.

3. RESPONDING TO A COMPLAINT

- 3.1 Within five (5) days of receiving a Complaint, the Complaints Officer will contact the:
 - a. Complainant:
 - Confirming receipt of the Complaint.
 - Outlining the process that will be followed and possible outcomes.
 - Explaining the application of confidentiality to the Complaint.
 - Including a copy of this Policy.
 - If necessary, seeking clarification.
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- b. Respondent:
- Advising that a Complaint has been made and include a copy of the Complaint and supporting documents.
 - Outlining the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes.
 - Including a copy of this Policy.
 - If applicable, advise that further information has been requested from the Complainant and will be provided in due course.
- 3.2 Notifications and correspondence sent by email will include a Read Receipt request.
- 3.3 Complaints will normally be dealt with in the order in which they are received.
- a. If more than one (1) Complaint is received that relates to the same alleged behaviour, the Complaints may be progressed concurrently where appropriate.
- 3.4 A Complaint in relation to a Candidate must be made in accordance with point 1 above but cannot be dealt with unless the Candidate is subsequently declared elected as an Elected Member.
- 3.5 Within five (5) days after receiving a Candidate Complaint, the Complaints Officer will provide written notice:
- a. To the Complainant confirming receipt and advising of the procedure for complaints.
- b. To the Respondent, including a summary of the Complaint and advising of the procedure for complaints.
- 3.6 No action will be taken until the results of the election are declared by the Returning Officer. If the Respondent is elected, then the Complaint will be dealt with in accordance with this Policy. Timeframes that would otherwise commence on the receipt of a Complaint will be taken to commence on the election date.
- 3.7 If the Respondent is not elected, the Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with.

4. MEDIATION

- 4.1 The Mediator may be the Complaints Officer or other such person as determined by either the Complaints Officer or Chief Executive Officer. It is recommended that the Mediator has undertaken some form of qualification or training in dispute resolution to facilitate the Mediation.
- 4.2 It is recognised that mediation may support both parties to a Complaint to reach a mutually satisfactory outcome that resolves the issues giving rise to the complaint and the Complaints Officer will, in the first instance, offer and encourage the Complainant and the Respondent to participate in Mediation.
- 4.3 If both parties agree to participate in Mediation, the formal process will be paused.
- 4.4 The objective of Mediation will be to reach a resolution. For example, an offer by the person to whom the Complaint relates to issue a voluntary apology in response to a
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- Complaint, even in the absence of a request from the Complainant, qualifies for consideration as mediation and resolution.
- 4.5 If Mediation is commenced, both the Complainant and Respondent may decline to proceed with the process at any time. The process may also be terminated on the advice of the Mediator.
 - 4.6 Successful mediation outcomes will be reported to Council through the Audit and Risk Committee via anonymous information report.
 - 4.7 If Mediation is terminated or does not achieve a resolution that results in the withdrawal or agreed closure of the Complaint, the Complaints Officer will resume the formal process required under this Policy.

5. ASSESSMENT OF A COMPLAINT

- 5.1 The Respondent is to be provided with a reasonable opportunity to be heard before any opinions or recommendations are formed.
- 5.2 If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Complaints Officer will determine whether or not to dismiss the Complaint.
- 5.3 If a Complaint is dismissed, the Complainant and the Respondent will be given written notice of the decision and the reasons for the decision in accordance with the Code of Conduct. This concludes the process in relation to the Complaint.
- 5.4 If the Complaint is not dismissed, the Complaints Officer or Investigator (as appropriate) will consider the Complaint and make a Finding as to whether the alleged Breach that is the subject of the Complaint has or has not occurred.
- 5.5 If it is determined that the alleged Breach did not occur, the Complainant and the Respondent will be given written notice of the Finding and the reasons for the Finding. This concludes the process for the Complaint.
- 5.6 If it is determined that the alleged breach did occur, the Complaints Officer or Investigator (as appropriate) will decide whether to recommend further action and/or prepare a Plan to address the behaviour.
- 5.7 If the Complaints Officer or Investigator (as appropriate) decides to take no further action, the Complainant and the Respondent will be given written notice of this decision and the reasons for the Finding. This concludes the process for the Complaint.
- 5.8 If the Complaints Officer or Investigator (as appropriate) decides to prepare a Plan, the Respondent is to be consulted and any submissions made by the Respondent are to be considered before preparing and implementing a Plan.

6. APPOINTMENT OF INVESTIGATOR

- 6.1 Appendix 1 provides a flowchart outlining the process of appointing an Investigator.
 - 6.2 If Mediation is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Complaints Officer can elect to follow the formal process internally or appoint an Investigator.
 - 6.3 For breaches of a complex nature the Complaints Officer may also consider appointing an Investigator (in compliance with the Shire's Procurement Policy and subject to an appropriate budget allocation).
 - 6.4 Where an Investigator is appointed, the Complaints Officer will provide written notice of the appointment to the Complainant and the Respondent.
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7. SEARCH OF LOCAL GOVERNMENT RECORDS

- 7.1 The Investigator may request the Complaints Officer to search for any relevant records in the Shire of York's Record Management System.
- 7.2 In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Complaints Officer will be requested to identify any local government records that provide evidence which may support a decision as to whether:
- a. The behaviour occurred at a Council or Committee Meeting
 - b. The behaviour was dealt with by the person presiding at the meeting
 - c. The Respondent has taken remedial action in accordance with the Shire of York *Local Government (Council Meetings) Local Law 2016*
- 7.3 The Investigator must provide the Respondent with a copy of any records that are identified. In addition, where a clarification or additional information has been sought from the Complainant by either the Complaints Officer or the Investigator, copies must also be provided to the Respondent.

8. COMPLAINT REPORT

- 8.1 Following an assessment of the Complaint, a Complaint Report will be prepared by either the Complaints Officer or Investigator (as appropriate) that:
- a. Outlines the process followed, including how the Respondent was provided with an opportunity to be heard
 - b. Includes the Complaint Documents, the Response Documents and any relevant local government records as attachments
 - c. Includes a recommendation on each decision that may be made by the Complaints Officer or Investigator
 - d. Includes reasons for each recommendation
- 8.2 If the Complaint Report recommends that a Plan is prepared and implemented in accordance with the Code of Conduct, the Complaint Report must include a Proposed Plan.
- 8.3 Where an Investigator is appointed, the Investigator will liaise with the Complaints Officer to include the Complaint Report in an Agenda for a meeting of Council. The Complaints Officer will be responsible for preparation of an Officer Report with the Complaint Report provided as a confidential attachment. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

9. COUNCIL CONSIDERATION OF COMPLAINT AT A MEETING

- 9.1 The Agenda will be prepared on the basis that the part of the meeting that deals with the Complaint Report will be held behind closed doors in accordance with Section 5.23(2) of the Act.
- 9.2 Council will consider the Complaint Report and attachments and give due regard to the recommendations.
- 9.3 In accordance with Regulation 11(d)(a) of the *Local Government (Administration) Regulations 1996*, reasons for any decision that is significantly different from the Officer's Recommendation must be recorded in the meeting minutes.

10. COMPLYING WITH PLAN REQUIREMENTS

- 10.1 The Complaints Officer will monitor the actions in timeframes set out in a Plan.
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- 10.2 Failure to comply with a requirement included in a Plan is a minor breach under Section 5.105(1) of the Act and the Code of Conduct.
 - 10.3 The Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

11. PUBLICATION OF FINDINGS

- 11.1 Within seven (7) days of a decision determining the outcome of a Complaint, the Complaints Officer must:
 - a. Give the Complainant and the Respondent a copy of the finding and a copy of the Complaints Officer or Investigator (as appropriate) reports, minus any attachments.
 - b. Publish the Complaints Officer or Investigator (as appropriate) reports, minus any attachments, on the Shire's website.
 - c. Complete any further action required by Council.

12. ROLES

Complaints Officer

- 12.1 The Complaints Officer is authorised in accordance with Clause 11(3) of the Code of Conduct to accept complaints and withdrawal of complaints.
- 12.2 The Complaints Officer is not an advocate for the Complainant or the Respondent but provides procedural information and assistance to both Complainant and Respondent.
- 12.3 The Complaints Officer will liaise with the Chief Executive Officer to receive administrative support, including the appointment of an Investigator and the calling and convening of Special Council Meetings if required, where the Complaints Officer determines that it is necessary to do so.
- 12.4 In undertaking their functions, the Complaints Officer will apply the Principles of this Policy.

Investigator

- 12.5 The Investigator is appointed by the Complaints Officer in accordance with this Policy.
- 12.6 The Investigator is an impartial third party who will undertake the functions specified in this Policy.
- 12.7 In undertaking their functions, the Investigator will apply the Principles of this Policy
- 12.8 The Investigator will liaise with the Complaints Officer to manage the administrative requirements of dealing with a Complaint in accordance with this Policy.

Council

- 12.9 Council will provide the final determination on matters relating to complaints including:
 - a. Dismissing a behaviour complaint in accordance with the Code of Conduct and providing reasons for any such dismissal.
 - b. Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur (clause 12(3) of the Code of Conduct).
 - c. Determining reasons for such a Finding.
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- d. Where a Finding is made that a breach has occurred, providing the final determination whether to take no further action or prepare and implement a Plan to address the behaviour of the person to whom the complaint relates.
- 12.10 In considering the agenda report regarding a Complaint, a Council Member the subject of a Complaint, and where a Council Member makes a Complaint, should refer to the Department of Local Government, Sport & Cultural Industries Guideline on the Model Code of Conduct for Council Members, Committee Members and Candidates available on its website [Via This Link](#). The Guideline suggests Council Members are required to disclose an Impartiality Interest.

PENALTIES:

Penalties applicable to a breach Finding will be determined on a case by case basis in accordance with the Code of Conduct and this Policy.

KEY TERMS/DEFINITIONS:

Act means the *Local Government Act 1995*.

Complaints Officer means a person authorised in writing by Council resolution or by the CEO exercising delegated authority under clause 11(3) of the Code of Conduct to undertake the duties of a Complaints Officer.

Breach means a breach of Division 3 of the Code of Conduct.

Candidate an individual is considered a Candidate when their nomination for election is accepted by a Returning Officer. Any alleged behaviour breach may only be dealt with if the Candidate becomes an Elected Member.

Code of Conduct means Policy E1 Code of Conduct: Council Members, Committee Members and Candidates.

Committee means a committee of Council, established in accordance with Section 5.8 of the Act.

Committee Member includes any Elected Member, local government employee or unelected member of the community appointed by the Council to be a member of a Council committee.

Complainant means a person who has submitted a Complaint in accordance with this Policy.

Complaint means a complaint submitted under Division 3 of the Code of Conduct.

Complaint Documents means the Complaint Form and any supporting information, evidence, or attachments provided by the Complainant at the time the Complaint is made.

Complaint Form means the form approved under the Code of Conduct.

Council means the Elected Members of the Shire of York.

Council or Committee Meeting means a formal meeting of the Council or a Committee that is called and convened in accordance with the Act. It does not include informal meetings, workshops or briefings.

Elected Member means a person currently serving a term of office as an Elected Member of the Council in accordance with the Act.

Evidence means the available facts or information indicating whether an allegation is true or valid.

Finding means a finding made in accordance with Code of Conduct as to whether a Breach has or has not occurred.

Investigator means an independent party appointed in accordance with Section 5.8 of the Act for the purpose of dealing with a Complaint.

Plan means a Plan prepared and implemented under the Code of Conduct to address the behaviour of the person to whom the Complaint relates, if a Finding has been made that a Breach has occurred.

Response Documents means the response provided by the Respondent to the Complaint and includes any supporting information or evidence that is supplied.

Respondent means the person to whom a Complaint relates.

Responsible Officer: Chief Executive Officer
Contact Officer: Council & Executive Support Officer
Relevant Legislation: *Local Government Act 1995*
Local Government (Model Code of Conduct) Regulations 2021

Review History:

Date Review Adopted:	Resolution Number
Adoption – 23 August 2022	150822
Former Policy No:	

APPENDIX 1

