

Council Policy	Elected Members, Committee Members and Candidate Code of Conduct Behaviour Complaints Management Policy		
Reference	<i>Strategic Community Plan 2013- 2023</i> Priority Area: Major Strategy:	<i>Corporate Business Plan 2020 - 2024</i> Priority Area: Actions:	
Responsible Officer	Chief Executive Officer		
Policy Area	Executive Services		
Council Adoption Date	25 May 2021	Version Number	V1
Amendment Dates		Next Review Date	

This Policy replaces all previous policies related to this topic.

1. Policy Objective

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and Town of Cottesloe Code of Conduct for Council Members, the procedure for dealing with complaints about alleged breaches of the behaviour requirements included in Division 3 of the Town of Cottesloe Code of Conduct for Council Members, Committee Members and Candidates.

2. Policy Scope

This Policy applies to complaints made in accordance with Clause 11 of the Town of Cottesloe Council Members, Committee Members and Candidates Code of Conduct. This Policy applies to Council Members, Committee Members, Candidates and any person who submits a complaint in accordance with this Policy.

3. Definitions

3.1. **Act** means the *Local Government Act 1995*.

- 3.2. **Complaints Officer** means a person authorised by resolution of Council under clause 11(3) of the Code of Conduct to receive complaints and withdrawals of complaints. The role of the Complaints Officer is addressed in clause 5.1 of this Policy.
- 3.3. **Breach** means a breach of Division 3 of the Town of Cottesloe Council Members, Committee Members and Candidates' Code of Conduct.
- 3.4. **Candidate** means a candidate for election as a Council Member, whose nomination has been accepted by the Returning Officer under s.4.49 of the Act, but does not include a Council Member who has nominated for re-election. A person is a Candidate from the date on which their nomination is accepted, until the Returning Officer declares the election result in accordance with s.4.77 of the Act.
- 3.5. **Candidate Complaint** means a Complaint alleging a Breach by a Candidate. Candidate Complaints are dealt with in clause 6.2 of this Policy.
- 3.6. **Code of Conduct** means the Town of Cottesloe's Council Members, Committee Members and Candidates Code of Conduct.
- 3.7. **Committee** means a committee of Council, established in accordance with s.5.8 of the Act.
- 3.8. **Committee Member** means a Council Member, employee of the Town of Cottesloe or other person who has been appointed by the Council to be a member of a Committee, in accordance with s.5.10(1) of the Act. A person is a Committee Member from the date on which they are appointed, until their appointment expires or is terminated by Council resolution.
- 3.9. **Complaint** means a complaint submitted under Clause 11 of the Code of Conduct.
- 3.10. **Complainant** means a person who has submitted a Complaint in accordance with this Policy.
- 3.11. **Complaints Assessor** means a person appointed by the Complaints Officer in accordance with clause 5.2 and clause 6.10 of this Policy.
- 3.12. **Complaint Documents** means the Complaint Form and any supporting information, evidence, or attachments provided by the Complainant.
- 3.13. **Complaint Form** means the form approved under clause 11(2)(a) of the Code of Conduct.
- 3.14. **Council** means the Council of the Town of Cottesloe.
- 3.15. **Council** means a formal meeting of the Council that is called and convened in accordance with the Act. It does not include informal meetings, such as workshops or briefings.
- 3.16. **Council Member** means a person who is currently serving a term of office as an elected member of the Council in accordance with the Act.
- 3.17. **Finding** means a finding made in accordance with clause 12(1) of the Code of Conduct as to whether the alleged Breach has or has not occurred.
- 3.18. **Plan** means a Plan that may be prepared and implemented under clause 12(4)(b) of the Code of Conduct, to address the behaviour of the person to whom the complaint relates (the Respondent), if a Finding has been made that a Breach has occurred.

- 3.19. **Response Documents** means the response provided by the Respondent to the Complaint, and includes any supporting information or evidence that is supplied.
- 3.20. **Respondent** means a person who is the subject of a Complaint made in accordance with this Policy
- 3.21. **Town** means the Town of Cottesloe.

Policy Statement

4. Principles

4.1. Procedural fairness

The principles of procedural fairness, or natural justice, will apply when dealing with a Complaint under this Policy. In particular:

- (a) the Respondent will be afforded a reasonable opportunity to be heard before any findings are made, or a plan implemented;
- (b) the decision maker should be objective and impartial, with an absence of bias or the perception of bias; and
- (c) any findings made will be based on proper and genuine consideration of the evidence.

4.2. Consistency

The application of this Policy should lead to consistency in process and outcomes. While each Complainant and Respondent will be dealt with according to their circumstances, and each Complaint considered and determined on its merits, similar circumstances will result in similar decisions.

4.3. Confidentiality

The Town of Cottesloe will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.

Council Members, Local Government employees and contractors 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.

Complainants will be advised of the level of confidentiality they can expect, and that breaches of confidentiality on their part may prejudice the progress of their Complaint.

4.4. Accessibility

The Town will ensure that information on how to make a complaint, including this Policy, is available at the Town's Administration Building and on the Town's website. The Town will make information available in alternative formats if requested.

Any person wishing to make a complaint may contact the Complaints Officer if they require assistance in completing the complaint form or otherwise navigating the complaints process.

5. Roles

5.1. Complaints Officer

The Complaints Officer:

- (a) is 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 the respondent, however will provide procedural information and assistance to both Complainant and Respondent in accordance to this and other Council Policies.
- (c) will appoint, liaise with, and provide administrative support to the Complaints Assessor and/or the Complaint Mediator in accordance to this and other Council Policies.
- (d) will liaise with the Local Government to facilitate the calling and convening of Council meetings if required.
- (e) will apply the Principles of this Policy in undertaking their role.

5.2. Complaints Assessor

The Complaints Assessor:

- (a) is appointed by the Complaints Officer in accordance with clause 6.10 of this Policy; and
- (b) is an impartial third party who will undertake the functions specified in this Policy and in undertaking their functions will apply the Principles of this Policy; and
- (c) will liaise with the Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

5.3. Complaints Mediator

The Complaints Mediator:

- (a) is appointed by the Complaints Officer in accordance with clause 6.8 of this Policy.
- (b) is an impartial third party who will undertake the functions specified in this Policy and in undertaking their functions will apply the Principles of this Policy.
- (c) will liaise with the Complaints Officer to manage the administrative requirements of dealing with the Complaint in accordance with this Policy.

6. Procedure

6.1. Making a Complaint

Any person may make a Complaint alleging that a Council Member, Committee Member or Candidate has behaved in a way that constitutes a breach of Division 3 of the Code of Conduct.

A Complaint:

- (a) must be made within one (1) month after the alleged Breach; and
- (b) must be made by completing the Complaint About Alleged Breach Form (Complaint Form) in full and providing the completed forms to the Complaints Officer; and
- (c) 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; and
- (d) is required to include the name and contact details of the Complainant; therefore anonymous complaints cannot be accepted.

Where a Complaint Form omits required details, the Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed, provided that the Complaint must be complete within the time frame in sub para (a) above.

Where a Complaint is made more than 1 month after the alleged breach, the Complaints Officer will give the Complainant written notice that the Complaint cannot be made.

6.2. Candidate Complaints

A Complaint in relation to a Candidate must be made in accordance with clause [6.1](#), but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.

Within 7 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 candidate complaints; and
- (b) To the Respondent, including a summary of the complaint, and advising of the procedure for candidate complaints.

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.

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.

6.3. Withdrawing a Complaint

A Complainant may withdraw their Complaint:

- (a) at any time before a Finding has been made in relation to the Complaint; and
- (b) by advising the Complaints Officer in writing that they wish to do so.

After receiving a written withdrawal of the Complaint, the Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

6.4. Notice to Complainant

Within 7 days after receiving a Complaint, the Complaints Officer will provide written notice to the Complainant that:

- (a) confirms receipt of the Complaint; and
- (b) explains the application of confidentiality to the complaint; and
- (c) includes a copy of this Policy; and
- (d) if necessary, seeks clarifications or additional information; and
- (e) seeks the Complainant's interest in participating in Mediation, in accordance with clause 6.8 of this Policy.

6.5. Complaints that are Inappropriate under this Policy

The purpose of the Code of Conduct is to guide the decisions, actions and behaviours of Council Members, Committee Members, and Candidates for election as a Council Member. A breach of the Rules of Conduct (as per Division 4 of the Code of Conduct) is a minor breach under s5.105(1) of the LG Act, and is not the intended subject of this Policy. The objective of this Policy is to deal with matters relating to breaches of the behaviour requirements in Division 3 of the Code of Conduct, and all Complaints under this Policy should be made with that objective in mind.

Consequently, Complaints such as the following are inappropriate to be dealt with under this Policy:

- (a) Complaints made with the intent of addressing personal grievances or disagreements; and
- (b) Complaints made to express dissatisfaction with a Council or Committee Member's lawfully made decisions or performance of their role; and
- (c) Minor breaches under s5.105(1) of the LG Act; and
- (d) Serious breaches under s5.114 of the LG Act; and
- (e) Allegations of corruption.

If in the opinion of the Complaints Officer that the Complaint is inappropriate under this policy, the Complaints Officer will advise the Complainant in writing and provide the Complainant options (if any) in order for them to pursue their Complaint via other means.

6.6. Vexatious or Unreasonable Persistence Complaints

The Town acknowledges that some Complainants may persist in disagreeing with the action or decision taken in relation to their complaint or they may contact Council or the Chief Executive Officer persistently about the same issue.

Where a complaint has been considered by the Complaints Officer and the Council in accordance with this Policy, but the Complainant refuses to accept the decisions and actions, as outcomes of the complaint, the Chief Executive Officer (or Complaints Officer) may advise the Complainant, in writing that no further consideration will be given to complaints of any kind, that is the same, or substantially the same, and raises no new matters for consideration, when compared with previous communications. In considering application of this process the Chief Executive Officer must have regard for Guidelines on Complaint Handling (Ombudsman Western Australia Jan 2017).

6.7. Notice to Respondent

Within 14 days after receiving a Complaint, the Complaints Officer will provide written notice to the Respondent that:

- (a) advises that a Complaint has been made in accordance with the Code of Conduct and this Policy; and
- (b) includes a copy of the Complaint Documents, redacted of any personal details of the Complainant except for their name;
- (c) explains the application of confidentiality to the Complaint;
- (d) outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
- (e) includes a copy of this Policy; and
- (f) if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

If the Complainant has agreed to participate in Mediation, the Complaints Officer will ask the Respondent if they are also willing to participate in accordance with clause 6.8 of this Policy.

6.8. Mediation

The Town recognises that mediation may support both parties reaching a mutually satisfactory outcome that resolves the issues giving rise to the Complaint. Mediation requires the consent of both parties to the Complaint and may not be appropriate in all circumstances.

To commence the process, the Complaints Officer will, as the first course of action upon receiving a complaint, offer the Complainant and the Respondent the option of Mediation. If both parties agree to participate in Mediation, the Complaints Officer will:

- (a) pause the formal process and will appoint a suitably qualified and experienced Complaint Mediator, in accordance with the Town's Purchasing Policy; and
- (b) endeavour to appoint a Complaint Mediator within a reasonable period; and
- (c) provide written notice of the appointment to the Complainant and the Respondent.

The objective of Mediation will be to reach an agreed resolution that satisfies the Complainant that the formal process is no longer required, allowing them to withdraw the Complaint, in accordance with clause 6.3 of this Policy. For example, an offer by a Respondent to issue a voluntary apology in response to a Complaint, even in the absence of a request from the Complainant, qualifies for consideration as Mediation.

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 Complaint Mediator.

If Mediation is terminated or does not achieve an agreed outcome that results in the withdrawal of the Complaint, the Complaints Officer will resume the formal process required under this Policy.

6.9. Order of Complaints

Complaints will normally be dealt with in the order in which they are received.

If more than one Complaint is received that relates to the same alleged behaviour, the Complaints Officer may decide to progress those Complaints concurrently.

6.10. Appointment of Complaints Assessor

If Mediation is not commenced, is terminated or does not achieve an agreed outcome resulting in the withdrawal of the Complaint, the Complaints Officer:

- (a) will engage a suitably licenced, qualified and experienced Complaints Assessor, in accordance with the Town's Purchasing Policy; and
- (b) will endeavour to appoint a Complaints Assessor within a reasonable period; and
- (c) will provide written notice of the appointment to the Complainant and the Respondent.

6.11. Search of Local Government Records

The Complaints Assessor may request the Complaints Officer to search for any relevant records in the Town's Record Management System.

In particular, if the behaviour is alleged to have occurred at a Council or Committee Meeting, the Complaints Officer will provide any Local Government records that provide evidence that 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, and/or
- (c) the Respondent has taken remedial action in accordance with the Town's Local Government (Meetings Procedure) Local Law 2021.

The Complaints Assessor must provide the Complainant and 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 Complaints Assessor, copies must also be provided to the Respondent.

6.12. Assessment of the Complaint

The Complaints Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under clause 6.4 and 6.7 of this Policy.

The Complaints Assessor must ensure that the Complainant and Respondent are provided with a reasonable opportunity to be heard before forming any opinions, or drafting the Complaint Report, drafting of a proposed Action Plan, and proposed recommendations for Council's consideration.

6.13. Complaint Report

The Complaints Assessor will prepare a Complaint Report that will:

- outline the process followed, including how the Complainant and Respondent were provided with an opportunity to be heard;
- include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
- include recommendations on each decision that may be made by the Council; and
- include reasons for each recommendation, with reference to Part 7 of this Policy.

If the Complaint Report recommends that an Action Plan is prepared and implemented in accordance with clause 12(4)(b) of the Code of Conduct and clause 6.14 of this Policy, the Complaint Report must include the proposed Action Plan.

The Complaints Assessor will liaise with the Complaints Officer to include the Complaint Report and all other relevant information in the Agenda for a meeting of Council. The Complaints Officer will be responsible for preparation of an Officer Report which will be a confidential report to Council. The recommendations of the Complaint Report will be provided as the Officer Recommendations.

6.14. Action Plan

The Proposed Action Plan:

- (a) may include requirements for the Respondent to do one (1) or more of the following:
 - (i) engage in mediation;
 - (ii) undertake counselling;

- (iii) undertake training;
 - (iv) take other action the Complaints Committee considers appropriate (e.g. an apology); and
- (b) should be designed to provide the Respondent with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives expressed in the Code of Conduct; and
- (c) may also outline:
 - (i) the actions to be taken to address the behaviour(s);
 - (ii) who is responsible for the actions;
 - (iii) any assistance the Local Government will provide to assist achieve the intent of the Plan; and
 - (iv) a reasonable timeframe for the Plan action(s) to be addressed by the Respondent.

6.15. Report provided to Council

The Complaints Officer must provide a confidential report to Council, no later than 1 month after receipt of the Complaint Report from the Complaints Assessor, which includes:

- (a) A copy of the Complaint
- (b) The Complaint Report from the Complaints Assessor
- (c) Any submissions received or other communications from the Complainant and Respondent during the complaint assessment process;
- (d) A recommendation on the question whether a behaviour breach has occurred;
- (e) A recommendation as to whether any and if so, what further action is required; and
- (f) If further action is required, a recommendation must be provided to the council on an action plan to address the behaviour of the person to the complaint relates.

7. Decision Making

7.1. Objectives and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 1 of this Policy and in reference to Division 2 – General Principles of the Code of Conduct.

7.2. Dismissal of Complaint

The Council must dismiss a Complaint in accordance with clause 13(1)(a) and (b) of the Code of Conduct if it is satisfied that -

- (a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (a) either —

- (i) the behaviour was dealt with by the person presiding at the meeting; or
- (i) the Respondent has taken remedial action in accordance with the Town's *Local Government (Meetings Procedure) Local Law 2021*.

7.3. Council Finding

A finding that the alleged behaviour breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur. This may involve first considering whether the behaviour occurred, on the balance of probabilities, and then whether that behaviour constituted a breach of a requirement of Division 3 of the Code of Conduct. The Council will have due regard to the findings of the Complaints Assessor, however are not bound to adopt the recommendations provided within the Complaint Report.

In determining whether an alleged breach has occurred, Council may resolve to:

- (a) dismiss the Complaint in accordance with clause 7.2 of this Policy; or
- (b) find that the alleged breach has not occurred and take no further action; or
- (c) find that the alleged breach has occurred.

The Council meeting's minutes will reflect the Council's finding and the reasons for the Council's finding.

7.4. Actions resulting from determining an Alleged Breach has occurred

If the Council makes a finding that the alleged breach has occurred, it must:

- (a) resolve to take no further action; or
- (b) resolve to prepare and implement an action plan to address the behaviour of the person to whom the Complaint relates.

In determining whether to take no further action, or prepare and implement an Action Plan, the Council may consider:

- (a) the nature and seriousness of the breach(es);
- (b) the Respondent's submission in relation to the contravention;
- (c) whether the Respondent has breached the Code of Conduct knowingly or carelessly;
- (d) whether the Respondent has breached the Code of Conduct on previous occasions;
- (e) likelihood or not of the Respondent committing further breaches of the Code of Conduct;
- (f) personal circumstances at the time of conduct;
- (g) need to protect the public through general deterrence and maintain public confidence in Local Government; and
- (h) any other matters which may be regarded as contributing to or the conduct or mitigating its seriousness.

If the Council resolves to prepare and implement an action plan to address the behaviour of the person to whom the Complaint relates, the action plan can either be:

- (a) The proposed action plan as recommended by the Complaints Assessor without modifications; or
- (b) The proposed action plan as recommended by the Complaints Assessor with modifications; or
- (c) An action plan determined by Council, in consideration of the requirements of clause 6.14 of this policy.

Prior to resolving to prepare and implement an action plan which is materially different from any proposed action plan recommended the Complaints Assessor (if any), the Council will provide an opportunity to the Respondent to make a submission on the Council's proposed action plan. In providing an opportunity for the Respondent to make a submission, Council may adjourn any further consideration on the matter for no more than 48 hours.

The Council meeting's minutes will reflect the actions resolved by Council to address the behaviour of the person to whom the Complaint relates, if it has resolved an alleged breach has occurred.

8. Implementing Council's Findings and Actions

8.1. Advice to Complainant and Respondent on Council's Findings

When the Council makes a finding in relation to a Complaint, the Complaints Officer must give the Complainant and the Respondent written notice of –

- (a) the finding and the reasons for the finding as determined under clause 7.3; and
- (b) if the finding is that the alleged breach has occurred, Council's decision on the Actions determined under clause 7.4.

8.2. Compliance with Action Plan Requirement

The Complaints Officer is to monitor the actions and timeframes set out in the action plan resolved under clause 7.4

Failure of the respondent to meet the requirement of the action plan is a breach of clause 23 of the Code of Conduct and as a breach of the Rules of Conduct is a minor breach under s5.105(1) of the Act.