

Complaint Investigation - Behaviour Complaints

Policy Objective

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

Details the high-level consideration and investigation of complaints in support of the mechanism for dealing with complaints detailed in the Code of Conduct. This policy is intended to:

- contribute to procedural fairness, unbiased decision-making, integrity and good governance.
- provide guidance on the key matters to be considered in the preparation, and in the course of an investigation in relation to breaches of the Code of Conduct.

This policy applies to council members, committee members, candidates and any person who submits a complaint in accordance with this Policy, where a complaint has been received by the City in accordance with Clause 11 of the Code of Conduct.

This policy does not apply to the investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct which must be referred to the appropriate authority.

Policy Detail

In accordance with section 5.104 of the *Local Government Act 1995* (the Act), every Western Australian local government is to adopt a prescribed code of conduct to be observed by council members, committee members and candidates.

The City's Code of Conduct has been adopted for this purpose and sets out principles and standards of behaviour council members, committee members and candidates must observe and the considerations for dealing with complaints detailed in the Code of Conduct. This Policy is intended to promote accountable, ethical and unbiased decision-making and consistent conduct.

1. Persons authorised to receive complaints and withdrawals

In accordance with clause 11(3) of the Code of Conduct, the Director Corporate and Governance and Manager Governance, Strategy and Risk are authorised as Behaviour Complaints Officers to receive complaints and withdrawals under the Code of Conduct.

2. Assessment of complaint

In accordance with clause 11(2) of the Code of Conduct, a complaint must be made -

- a) in writing on the form available on the City's website; and
- b) to a Behaviour Complaints Officer as outlined above; and
- c) within one month after the occurrence of the alleged breach.

In dealing with a complaint under the Code of Conduct, one or all of the following factors will be considered in assessing a complaint.

- (i) Whether an alternative and satisfactory means of redress is available;
- (ii) Whether the complaint is trivial, frivolous or vexatious;
- (iii) How serious the complaint is and the significance it has for the complainant and the City;
- (iv) Whether it indicates the existence of a systemic problem throughout the Council; or
- (v) Whether it is one of a series of complaints about the same council member, indicating a pattern of conduct or a continuous problem.

3. Nature of the investigation

- a) An investigation into a complaint, may be conducted by an employee or an external contractor, mediator, or arbitrator appointed by the Behaviour Complaints Officer (or an employee or external contractor appointed by the CEO where the complainant is the Behaviour Complaints Officer) depending upon:
 - (i) the nature of the complaint;
 - (ii) the resources needed to conduct an investigation; or
 - (iii) whether any additional authorisations from Council are required.
- b) Subject to the matters detailed in clause 3.1, additional resources are authorised by Council, to investigate a complaint including the referral of the complaint to a third party.
- c) All investigations must be conducted without any bias, and in an impartial and objective manner without any actual or perceived conflict of interest.

4. Powers of investigation

- a) The employees detailed in clause 1 are authorised to commence an investigation and given the necessary powers and authority to oversee an investigation process under the Code of Conduct and in line with this policy, and any other supporting complaint investigation procedures.
- b) Any employee or other person appointed to perform an investigation into a complaint made under the Code of Conduct has the necessary powers to:
 - (i) inquire with all parties relevant to a complaint to provide any evidence or statements relevant to the matter, and the subject of the complaint; and
 - (ii) obtain any information from other parties in relation to policies, procedures and practices including access to relevant records and witness statements.

5. Evidence

- a) For the purposes of an investigation into a complaint, evidence can take the form of:
 - (i) oral or written evidence (recollections); and

- (ii) documentary evidence (records); and
 - (iii) expert evidence (technical advice); and
 - (iv) site inspections.
- b) The person or persons appointed under clause 1 are to maintain a central investigation file detailing any documentary evidence obtained, and that file is to be maintained in the City's record keeping system with restricted access to ensure confidentiality.
- c) If legal proceedings arise at some future stage, evidence should be gathered in accordance with the rules of evidence, pursuant to the *Evidence Act 1906*.

6. Appropriate standard of proof

In any investigation into a complaint, all allegations must be proved "on the balance of probabilities", that is, it must be more probable for a reasonable person than not, that the allegations of the subject of the complaint are substantiated.

7. Procedural fairness

- a) All investigations of a complaint are to observe due process and procedural fairness.
- b) Procedural fairness for an investigation shall include:
 - (i) ability for a person or persons that is the subject of a complaint an opportunity to respond;
 - (ii) all parties given a reasonable opportunity to put forward their case, whether in writing, in person, or otherwise;
 - (iii) the careful consideration of all evidence obtained during the course of the investigation;
 - (iv) inquiries or an investigation being made before the making of a decision;
 - (v) taking into account all relevant factors including mitigating and aggravating factors;
 - (vi) ensuring any conflicts of interest are managed appropriately;
 - (vii) acting fairly and without bias; and
 - (viii) conducting the investigation without undue delay.
- c) All parties to a complaint are to maintain confidentiality and not disclose any element of a complaint during the complaint process or after any decision of Council. After the finalisation of a complaint, information relating to the complaint can only be disclosed if required under written law.
- d) The subject of a complaint and the complainant are entitled to have a support person present whilst providing any oral evidence. The role of a support person is to provide emotional and practical support during the meeting. A support person cannot act as an advocate or argue on behalf of the complainant or subject of a complaint. A support person cannot be a nominated witness to the complaint.

8. Investigation report

- a) At the conclusion of the investigation a confidential report is to be prepared detailing:
 - (i) the substance of the complaint;
 - (ii) the nature and extent of the investigation into the complaint;
 - (iii) the evidence obtained during the investigation into the complaint;
 - (iv) the recommended finding in relation to the complaint;
 - (v) any recommended action plan prepared to address the behaviour of the person to whom the complaint relates.

9. Management of actions

- a) All findings made in contravention of the Code of Conduct, and any associated actions, will be monitored and managed by persons detailed in clause 1 of this policy and clause 11(3) of the Code of Conduct.

10. Reporting

- a) The City will maintain a register of complaints lodged with those persons authorised under clause 1 and dealt with under the Code of Conduct. Complaints will only be included on the register if a finding has been made following completion of any investigation and Council consideration. The register is not required to be made public.

Reference/Associated Documents

Local Government Act 1995

Local Government (Model Code of Conduct) Regulations 2021

City of Belmont Standing Orders Local Law 2017

City of Belmont Code of Conduct for Council Members, Committee Members and Candidates

Council Policy – Customer Complaints Management

Reference to Internal Procedure

Guideline – Complaint Investigation and Management - Behaviour Complaints

Definitions

Act means the *Local Government Act 1995*.

Breach means a breach of Division 3 of the *City of Belmont Code of Conduct for Council Members, Committee Members and Candidates*.

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. 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.

CEO means the Chief Executive Officer of the City.

City means the City of Belmont, being a local government established as a body corporate under section 2.5 of the Act.

Code of Conduct means the *City of Belmont Code of Conduct for Council Members, Committee Members and Candidates*.

Committee Member means a Council Member, employee of the City of Belmont 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.

Complaint means a complaint submitted under Clause 11(1) of the Code of Conduct.

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

Conflict of Interest:

Actual conflict of interest means when there is a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest.

Perceived conflict of interest means when a reasonable person, knowing the facts would consider that a conflict of interest may exist.

Council means the Council of the City of Belmont.

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.

Employee means a person:

- (a) employed by the City under section 5.36(1) of the Act; or
- (b) engaged by the City under a contract for services.

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.

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.

Vexatious complaint means a complaint that is not supported by any evidence and there is other evidence to suggest that the complaint was made primarily for the purpose of causing annoyance.

This Policy is supported by:		
Policy No:	CP60	
Strategic Community Plan:	Goal 5: Responsible Belmont Strategy: 5.6 Deliver effective, fair and transparent leadership and decision-making, reflective of community needs and aspirations	
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Policy Owner:	Manager Governance, Strategy and Risk	
Policy Stakeholder:	N/A	
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22/08/2023	Review - Minor	12.10