

Culture and Communities Committee

10am, Tuesday, 16 March 2021

Community Councillor Complaints Procedure and Funding

Item number	
Executive/routine	Executive
Wards	All
Council Commitments	

1. Recommendations

- 1.1 To agree that proposed changes to the Community Councillor Complaints Procedure as detailed at Appendix 1 would take effect for complaints received from 17 March 2021 onwards.
- 1.2 To note the information provided in relation to Community Council funding and support in response to the Motion approved by Council on 17 September 2020.

Andrew Kerr

Chief Executive

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Community Councillor Complaints Procedure and Funding

2. Executive Summary

- 2.1 Minor changes are proposed to the Community Councillor Complaints Procedure to provide additional clarity and strengthen existing procedures.
- 2.2 An earlier version of this report was submitted to Committee in November 2020. The Committee agreed that proposals be brought back in two cycles to allow for further consultation with Community Councils. This consultation concluded on 21 January 2021 and minor additional changes are proposed as a result of the consultation. These are outlined below at paragraph 4.6.
- 2.3 In response to the Motion by Councillor Rae, information on Community Council Funding and support is provided at paragraphs 4.8 to 4.19.

3. Background

- 3.1 Community Councils (CCs) were first established in Scotland under the Local Government (Scotland) Act 1973. Each Local Authority is required to produce a Scheme that provides a framework for their creation and operation.
- 3.2 The City of Edinburgh Council reviewed its Scheme for Community Councils in 2019, implementing a number of governance improvements including streamlined election rules, improved code of conduct and a renewed focus on engagement. This process included three rounds of statutory consultation across a period of nine months. Community councillors from over 30 community councils and a wide range of stakeholders made representations through face-to-face sessions, written submissions and online questionnaires.
- 3.3 A Community Councillor Complaints Procedure for Code of Conduct breaches was developed and implemented alongside the revised Scheme. This allowed a joined-up approach and representations on proposals were sought during the statutory consultation period.

- 3.4 The renewed Scheme and Complaints Procedure were implemented in October 2019 following consideration at special meetings of the City of Edinburgh Council on 7 February 2019, 2 May 2019 and 27 June 2019.
- 3.5 A report outlining proposed changes to the Community Councillor Complaints procedure was submitted to Culture and Communities Committee on 17 November 2020. The Committee agreed that proposals be brought back in two cycles, to allow for further consultation to take place with Community Councils.
- 3.6 A consultation period started on 7 December 2020 and ran until 21 January 2021. The Council's Governance Team wrote to office-bearers of all Community Councils and the secretary of the Edinburgh Association of Community Councils with proposals and a response form. Six responses in favour of proposals were received from Community Council office bearers and the Edinburgh Association of Community Councils. Three further submissions provided suggestions. Each was considered in turn and amendments were made to the existing proposals.
- 3.7 The City of Edinburgh Council considered a motion submitted by Councillor Rae in relation to community council support on 17 September 2020. An amended version of the motion was approved and this agreed that information be provided on grant awards for the 2019/20 and 2020/21 financial years with explanatory information.

4. Main report

Community Council Complaints Procedure

- 4.1 The Community Council Complaints Procedure has been in place for approximately 16 months and four complaints have been submitted during this period.
- 4.2 Two of the qualifying complaints have been dealt with under method one. This is the streamlined process for resolving complaints directly with the community council concerned and is reserved for those complaints which are relatively straightforward and require little or no investigation.
- 4.3 Two complaints have been dealt with under method two. This is for complaints that are complex or serious and require an investigation with independent determination provided by a Community Council Complaints Panel.
- 4.4 Successful application of this procedure has allowed Code of Conduct breaches to be considered in a manner that was not previously available to community councils or supporting officers. In each case the process has afforded the community council in question the opportunity to move forward and draw a line under events.
- 4.5 It is proposed that the procedure is kept under continuous review to ensure it remains relevant and appropriate. Whilst not essential under the current governance framework, it is felt that political oversight of proposed changes gives authority to the procedure, ensures independent scrutiny and allows officers to draw upon the experience of elected members, many of whom regularly attend community council meetings and some who have sat on complaints panels.

4.6 The following changes are proposed:

- 4.6.1 **Direct Engagement Resolution – 4.4** – A limited number of complaints have been received that are minor in nature but are not suitable for being progressed under method one due to the involvement of office bearers. This paragraph clarifies that in such situations the CEC Investigation Officer is able to seek to resolve such complaints by engaging directly with the CC in question. In a typical situation the CEC Investigation Officer will request that the CC undertake a minor action that would satisfy the complainant and thus lead to the withdrawal of the complaint. The addition of this paragraph does not stop a complainant from progressing a complaint through the formal route should they still desire to do so.
- 4.6.2 **Multiple complaints on the same issue – 5.3** – The CEC Investigation Officer to be permitted to reset or extend the timeline of any existing investigation in this event. The existing complainant must be notified. Additional complaints will bring new information to the attention of the investigating officer. The ability to extend the deadline allows the consistency of being able to consider cases together, whilst ensuring that sufficient time is available for secondary complaints to be fully investigated.
- 4.6.3 **Receipt of complaint – 5.7** – The Procedure previously outlined that complainants should be notified as to method which will be utilised at this stage. However, it has become apparent that this cannot be advised until the CEC Investigation Officer has reviewed the case. This requirement should be removed from this stage of the process.
- 4.6.4 **Method 1 Resolution – 6.2** – Additional clarity has been provided to enshrine the right of response of persons subject to a complaint. This was not articulated previously.
- 4.6.5 **Method 1 Resolution – 6.2** – Community Council Office Bearers to be required to report back on any actions taken to the next scheduled meeting. This was not articulated previously.
- 4.6.6 **Method 1 Response – 6.3** – The CEC Investigation Officer is to be provided with a copy of the correspondence sent to the complainant. Previously the Community Council were only required to state how they had dealt with the complaint.
- 4.6.7 **Method 1 Response – 6.3** - The subject of the complaint is now to receive notification of the complaint outcome.
- 4.6.8 **Method 2 - Exemption from Publication – 7.4** – The report produced by the CEC Investigation Officer for consideration by the Panel will be exempt from publication. This is consistent with how the Council considers other complaints and appeal meetings and in line with legislation, including Schedule 7A of the Local Government (Scotland) Act 1973.

- 4.6.9 **Maintaining Confidentiality** – The previous stated requirement to “maintain confidentiality at all times” was not deemed possible and contradictory with the rest of the document which does not allow for anonymous complaints. This section has been removed and instead additional wording has incorporated at 10.4 and 10.5 which outlines that confidentiality will be maintained where possible and that all data protection requirements will be followed.
- 4.6.10 **Procedures of the Complaints Panel – 7.3** – One consultation response noted that the complaints procedure did not outline the procedural standing orders for the Panel. Text has been included to clarify that the business of the Panel will be conducted according to CEC Standing Orders and that any other relevant procedural or legislative considerations will be considered.
- 4.7 The Procedure will be kept under continuous review, with the Governance Team maintaining a log of matters raised. Future proposals for change will be brought back to Committee for consideration as and when required.

Community Council Funding and Support

- 4.8 Each Community Council is entitled to an annual grant from the City of Edinburgh Council for the purpose of administration. Administration is defined as activities such as postage, photocopying, production of leaflets, newsletters and website maintenance. It is not expected that the grant will cover all community council activities and the guidance issued advises that community councils should look to fundraise or to alternative grant sources if they wish to conduct activities that fall outwith the very narrow statutory definition in the Local Government (Scotland) Act 1973:
- 4.8.1 to ascertain, co-ordinate and express to the local authorities for its area, and to public authorities, the views of the community which it represents, in relation to matters for which those authorities are responsible.*
- 4.9 The grant comprises a standard lump sum (£522.00) plus a per capita component of 2p for every person living in the community council area based on the most recent census figures.
- 4.10 Community Councils are discouraged from accumulating a surplus at the end of the financial year amounting to twice the annual grant from the Council, unless such surpluses are dedicated to specific projects designed to elicit community opinion on local issues or otherwise support community needs.
- 4.11 The issuing of grants is dependent on the submission of independently audited accounts approved by an Annual General Meeting by the 1st of November each year.
- 4.12 Each community council has the power as an independent body to raise its own financial resources and apply for further grants through the Council’s grant system.

- 4.13 The Council offers additional support to community councils, including free photocopying, printing and in some cases free lets of facilities for community council meetings.
- 4.14 An accommodation subsidy based on their accommodation costs for the previous year is allocated to community councils. Online hosting, such as subscription costs for Zoom or Microsoft Teams, can be classed as accommodation costs when evidencing the requirement for an accommodation subsidy. Accommodation subsidies are issued as follows:
- 4.14.1 Community Councils in free lets - £0
 - 4.14.2 Community Councils paying £125 or less - £100
 - 4.14.3 Community Councils currently paying more than £125 - £150
- 4.15 The Council's Governance Team provides governance support to community councils, including procedural advice, distribution of guidance, answering queries on governance matters, administration and issue of grants, archiving of minutes and facilitating the community councillor complaints procedure.
- 4.16 Basic guidance on electronic meeting platforms was issued in September 2020. This included the offer of a small grant for online hosting in the 2020/21 financial year if community councils could demonstrate need. No community councils have applied for this grant to date.
- 4.17 Grants for the 2019/20 period were issued in two batches. Thirty-seven community councils received payments across June and July 2019. Eight community councils failed to submit accounts and thus did not receive a grant payment for the period. 22 received an accommodation subsidy.
- 4.18 Grants for the 2020/21 period were issued to 44 community councils across three batches in July and August 2020. 22 received an accommodation subsidy.
- 4.19 An analysis of submitted accounts for the 2019/20 period found that 85% of community councils had carried forward reserves that amounted to the value of at least one years grant amount. 50% carried forward reserves which amounted to at least two times their annual grant. A small proportion (15%) carried forward reserves which amounted to three or more times their annual grant.

5. Next Steps

- 5.1 The revised Complaints Procedure will take effect from the date at 1.1. The document will be uploaded to the Community Council information webpages and a summary of the changes will be electronically circulated to all community councils through office bearers.
- 5.2 Community Council administration grants for 2021/22 will be issued in line with the qualifications outlined in this report following conclusion of the current 2020/21 financial year.

6. Financial impact

- 6.1 Any financial implications are expected to be contained within existing budgets.
- 6.2 There is no scope within existing budgets to adjust the Community Council Administration Grant or to offer additional funds.

7. Stakeholder/Community Impact

Original Consultation

- 7.1 The Community Council Complaints Procedure was part of a suite of documents that underwent multiple rounds of statutory consultation during 2019. Community councillors from over 30 community councils and a wide range of stakeholders made representations through face-to-face sessions, written submissions and online questionnaires. The resulting Procedure was considered by a special meeting of the City of Edinburgh Council on three occasions.

Implementation of the procedure

- 7.2 Whilst the first 12 months of operation can be deemed a success, in most cases unsolicited feedback was provided by participants in the process. This identified a number of issues that have informed the proposed amendments. A formal process for collating feedback from complainants and those subject to complaints will be considered for future cases.
- 7.3 The investigating officer for the first case considered under method two provided detailed feedback designed to capture any issues with implementing the procedure. This evidence was invaluable and the process will be repeated for future cases.

Additional Consultation

- 3.8 A further consultation on the proposed amendments to the complaints procedure started on 7 December 2020 and ran until 21 January 2021, as requested by Committee. This was conducted electronically as face-to-face drop in sessions were not possible due to COVID-19 restrictions. Six responses in favour of proposals were received from Community Council office bearers and the Edinburgh Association of Community Councils. Three further submissions provided suggestions. Each was considered in turn and amendments were made to the existing proposals.

8. Background reading/external references

- 8.1 [Review of Scheme for Community Councils – City of Edinburgh Council – 27 June 2019](#)
- 8.2 [Community Councils – Motion by Councillor Rae – 17 September 2020](#)

8.3 [Review of the Community Council Complaints Procedure – 17 November 2020](#)

9. Appendices

Appendix 1 –Community Councillors Complaints Procedure

Community Councillors Complaints Procedure

March 2021

Foreword

Community councils in Edinburgh are established under the City of Edinburgh Council's (CEC) [Scheme for Community Councils](#) (the Scheme), as provided for under the Local Government (Scotland) Act 1973 and thereafter, the Local Government etc (Scotland) Act 1994. The Scheme sets out the roles and responsibilities of community councils and councillors. Furthermore, the Scheme contains a Code of Conduct for Community Councillors which must be adhered to by all those who hold the position.

From time to time complaints will be made about the conduct of individual community councillors. These complaints will be dealt with through the Community Councillor Complaints Procedure.

Please note that CEC has a separate [procedure](#) to record and manage complaints by members of the public about CEC services and this should not be confused with the Community Councillor Complaints Procedure.

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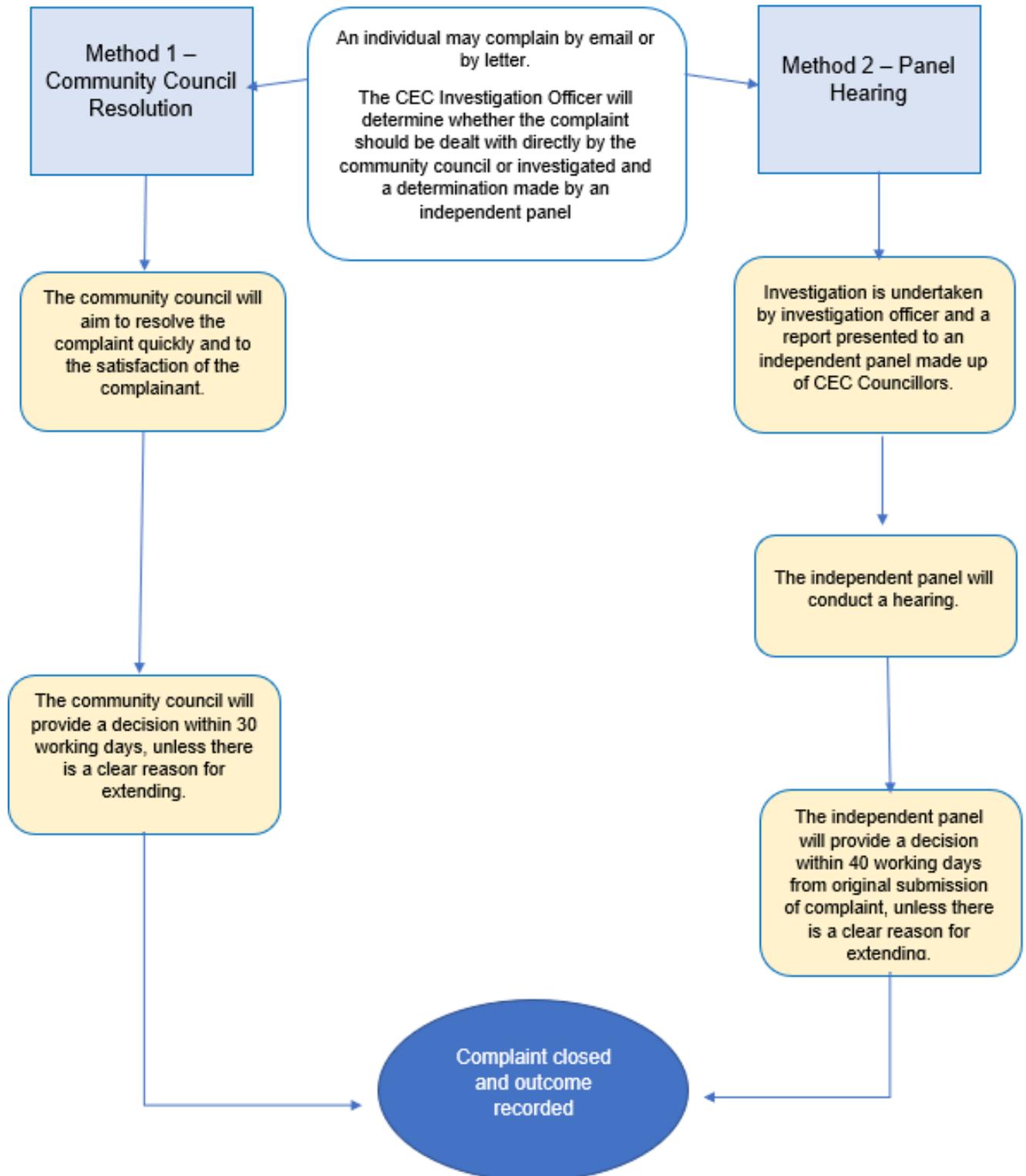
1. How to use this procedure

- 1.1 This procedure explains how complaints regarding Community Councillor's conduct should be handled by the City of Edinburgh Council and subsequently the community council or Investigation Officer tasked with dealing with the complaint. Information for complainants is available on the [CEC website](#).
- 1.2 When using this document please also refer to the Scottish Public Services Ombudsman (SPSO) Statement of Complaints Handling Principles' and best practice guidance on complaints handling, from the Complaints Standards Authority at the SPSO (www.valuingcomplaints.org.uk).

2. What is a complaint?

- 2.1 Complaints must relate to alleged breaches of the Code of Conduct for Community Councillors, contained within the City of Edinburgh Council Scheme for Community Councils.
- 2.2 A complaint is not:
 - A dispute of a personal nature which does not encompass an individual's role as a community councillor.
 - An issue that is in court or has already been heard by a court or a tribunal.
 - A disagreement with a decision, where a statutory right of appeal exists.
 - An attempt to reopen a previously concluded complaint or to have a complaint reconsidered, where a final decision has been reached.
- 2.3 This list is not exhaustive.
- 2.4 These issues will not be treated as complaints but individuals will be directed to the appropriate procedures.

3. Complaints procedure flowchart



4. The complaint handling process

- 4.1 The procedure provides two formal routes for the resolution of complaints:
- a. **Community Council Resolution (Method 1)**, and
 - b. **Panel Hearing (Method 2)**
- 4.2 The CEC Investigation Officer will determine which method should be utilised on receipt of a complaint.
- 4.3 Method 1 aims to provide a quick, simple and streamlined process for resolving complaints directly with the community council concerned. Method 2 allows for more detailed investigation and an independent determination by the Community Council Complaints Panel in instances where complaints are more complex or serious.
- 4.4 A limited number of complaints will be relatively simple and straightforward but not suitable for resolution by the community council themselves due to the involvement of office bearers. In such cases the CEC Investigation Officer may seek permission from the complainant to engage with the Community Council in question and seek a resolution. This will allow for complaints to be resolved or withdrawn at this early stage without proceeding to the formal routes outlined below.

	Method 1 – Community Council Resolution	Method 2 – Panel Hearing
Type of complaint	Simple, straightforward complaint requiring little or no investigation	Complaints that are complex or serious and require an investigation (to be determined by the CEC Investigation Officer)
Timescale to respond	30 working days (to be acknowledged within 3 working days)	40 working days (to be acknowledged within 3 working days)
Extensions	Must be authorised by the CEC Investigation Officer.	Must be authorised by the CEC Investigation Officer.
Investigation	The community council concerned	CEC Investigation Officer
Who responds	The community council concerned	The Community Council Complaints Panel

Response format	Verbal or written – whichever is appropriate (good practice to follow up a verbal response in writing)	Written
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5. On receipt of a complaint

- 5.1 A complaint can be made in writing or by email.
- 5.2 A complainant may nominate a third-party representative to make a complaint on their behalf.
- 5.3 More than one complaint about the same incident or issue will be considered together. The CEC Investigation Officer may decide to reset or extend the timeline of any existing investigation in this event. The existing complainant will be notified if this is the case
- 5.4 All complaints must be submitted to the CEC Investigation Officer. Representations submitted elsewhere, including directly to community councils or other CEC officers, will not be formally considered as complaints.
- 5.5 On receipt of a complaint the CEC Investigation Officer will acknowledge, record and determine which method shall be utilised.
- 5.6 **Acknowledge**
- All complaints must be acknowledged on receipt. Acknowledgement will ~~include details regarding the method to be utilised and~~ detail the expected response period.
- 5.7 **Record**
- The individual shall be asked for all necessary information to get a full understanding of their complaint.
 - Clarification shall be sought regarding what the individual wants to achieve by complaining and what ~~provisions~~ breaches of the code of conduct ~~have been breached~~ are alleged.
 - The following details shall be recorded as a minimum:
 - complainant details;
 - date complaint was received;
 - nature of the complaint; and
 - the community councillor to which the complaint refers.

6. Method 1: Community Council Resolution

- 6.1 Method 1 aims to quickly resolve straightforward complaints, which require little or no investigation. On receipt the CEC Investigation Officer will direct such complaints to the office-bearers of the parent community council for the community councillor subject to the complaint (excluding office-bearers subject to complaints themselves). They will be responsible for resolving and responding to the complaint.

6.2 Resolve

- On the spot if possible – if an apology is appropriate the [guidance as set out by the SPSO](#) should be followed.
- The subject of the complaint should be approached and given the opportunity to give their account of events and address the specific points raised.
- A meeting of the community council may be required to consider the complaint and appropriate course of action.
- If Office Bearers choose to resolve the complaint without a meeting of the community council, they must report on the decision and action taken at the next possible meeting.

6.3 Respond

- Respond wWithin 30 working days, [respond to the complainant and notify the subject of the complaint of the outcome.](#)
- Responses to complaints can be verbal or in writing – whichever is most appropriate. It is good practice to follow up a verbal response in writing for clarification. Templates are available on request from the CEC Investigation Officer.
- It is important to keep a full and accurate record of the decision reached and given to the complainant. As a minimum, the following information should be recorded:
 - detail of the complaint;
 - date closed (the date the verbal response is provided or the letter/email is sent); and
 - outcome of complaint (upheld, not upheld or partially upheld).
- The CEC Investigation Officer must be informed [in writing](#) as to how the community council has dealt with the complaint once this has been closed.
- The CEC Investigation Officer must be provided with a copy of the [correspondence with to the complainant.](#)

7. Method 2: Panel Hearing

- 7.1 Complaints handled via the Panel Hearing Method are typically complex, serious or require detailed examination before a position can be stated. These complaints will be identified on receipt by the CEC Investigation Officer.
- 7.2 The Investigation Officer will conduct the investigation or appoint a suitable individual to do so on their behalf. This individual will carry out an investigation which aims to establish all the facts relevant to the points made in the complaint.

- 7.3 The CEC Investigation Officer will also establish an independent complaints panel (Community Council Complaints Panel) made up of no less than three CEC Councillors. Care shall be taken to ensure that the Panel is sufficiently independent. The business of the Panel shall be conducted according to CEC Standing Orders and any other relevant procedural or legislative considerations that apply to committees of the Council.
- 7.4 The CEC Investigation Officer will submit a report with recommendations to the Panel for determination. The report will be exempt from publication (as provided for under Schedule 7A of the Local Government (Scotland) Act 1973).

Resolution of complaint

Independent Complaints Panel (Community Council Complaints Panel)

- 7.5 A hearing will be held to consider the report submitted by the CEC Investigation Officer. This shall be subject to CEC Standing Orders.
- 7.6 The Panel will make a final determination on the complaint.
- 7.7 The following sanctions can be applied in the case of an individual community councillor:
- Censure of behaviour and a written undertaking to behave in accordance with the Scheme's Code of Conduct.
 - Suspension from community council meetings and activities for a period of time to be agreed by a majority of the Panel.
 - Request by a majority of the panel members for the named community councillor to step down.
 - In serious cases, an expulsion from the community council, approved by a unanimous vote of the Panel.
- 7.8 The decision of the Panel will be communicated ~~by letter~~ in writing -within 40 working days of receipt of the initial complaint to:
- The complainant.
 - The community councillor subject to the complaint.
 - The office bearers of their community council.
- 7.9 All Panel meetings will be held in private (as provided for under Schedule 7A of the Local Government (Scotland) Act 1973) and all materials relating to the complaint/investigation will be sent to the CEC Investigation Officer on completion for archiving. This will be retained for three years as detailed by the CEC Retention Schedule (ref 20.004.003).

8. Extensions to timelines

- 8.1. In exceptional circumstances, where there are clear and justifiable reasons for doing so, the CEC Investigation Officer may authorise an extension to the timeline. Examples of when this may be appropriate include:
- individuals concerned being temporarily unavailable;
 - essential accounts or statements, required to establish the circumstances of the case, are needed from individuals, but they cannot help because of long-term sickness or leave;
 - where it is not possible to obtain further essential information within normal timescales;
 - when operations are disrupted by unforeseen or unavoidable circumstances, for example severe weather conditions; and
 - the individual has agreed to mediation as a potential route for resolution.
 - Multiple complaints submitted in relation to the same issue.
- 8.2. This list is not exhaustive.
- 8.3. An extension to the timescale must be considered as soon as it becomes apparent that this is required. All parties will be informed if permission for an extension is given. The complainant shall be made aware of delays or complexities that may impact progress.

9. Time limit for making complaints

- 9.1. Complaints should be made within six months of the incident occurring, unless there are special circumstances for granting an extension. Any such circumstances will be considered on a case by case basis by the CEC Investigation Officer.

~~10. Maintaining confidentiality~~

- ~~10.1 The complainant and subject's confidentiality should be maintained at all times. All complaints will also be subject to legal requirements including data protection legislation.~~

10. Who can make a complaint?

- 10.1 Anyone who is affected by the community council can make a complaint. Sometimes an individual may be unable or reluctant to make a complaint on their own. Complaints brought by third parties will be accepted where personal consent has been given.
- 10.2 Individuals under 16 may complain themselves or can ask a trusted adult such as a parent, older brother or sister, or a guardian to complain on their behalf.

- 10.3 If an individual considers themselves to be a vulnerable adult they can complain directly, or they can ask a trusted person to complain on their behalf.
- 10.4 Anonymous complaints are not permitted under this procedure, however, if the complaint relates to a sensitive incident or issue, the CEC Investigation Officer can allow the name of the complainant to be withheld in such limited circumstances. In these circumstances, wherever possible the complainant and subject's confidentiality will be maintained.
- 10.5 All complaints will be subject to legal requirements including data protection legislation.