

Culture and Communities Committee

10am, Tuesday, 17 November 2020

Review of the Community Council Complaints Procedure

Item number	
Executive/routine	Executive
Wards	All
Council Commitments	

1. Recommendations

- 1.1 To agree that proposed changes to the Community Council Complaints Procedure as detailed at Appendix 1 would take effect for complaints received from 18 November 2020 onwards.

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Review of the Community Council Complaints Procedure

2. Executive Summary

- 2.1 Minor changes are proposed to the Community Council Complaints Procedure to provide additional clarity and improve the robustness of procedures.

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 wide range of stakeholders made representations through face-to-face sessions, written submissions and online questionnaires.
- 3.3 A Community Council 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.

4. Main report

- 4.1 The Community Council Complaints Procedure has been in place for approximately 12 months and three 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 One complaint has 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. Successful application of the 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.
- 4.4 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.
- 4.5 The following changes are proposed:
- 4.5.1 **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.
- 4.5.2 **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.
- 4.5.3 **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.
- 4.5.4 **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.
- 4.5.5 **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.

4.5.6 **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 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.

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.

6. Financial impact

6.1 Any financial implications are expected to be contained within existing budgets.

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 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 highlighted a range of matters and has 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.

8. Background reading/external references

- 8.1 [Review of Scheme for Community Councils – City of Edinburgh Council – 27 June 2019](#)

9. Appendices

Appendix 1 –Community Councillors Complaints Procedure

Community Councillors Complaints Procedure

~~October~~ November 2019 2020

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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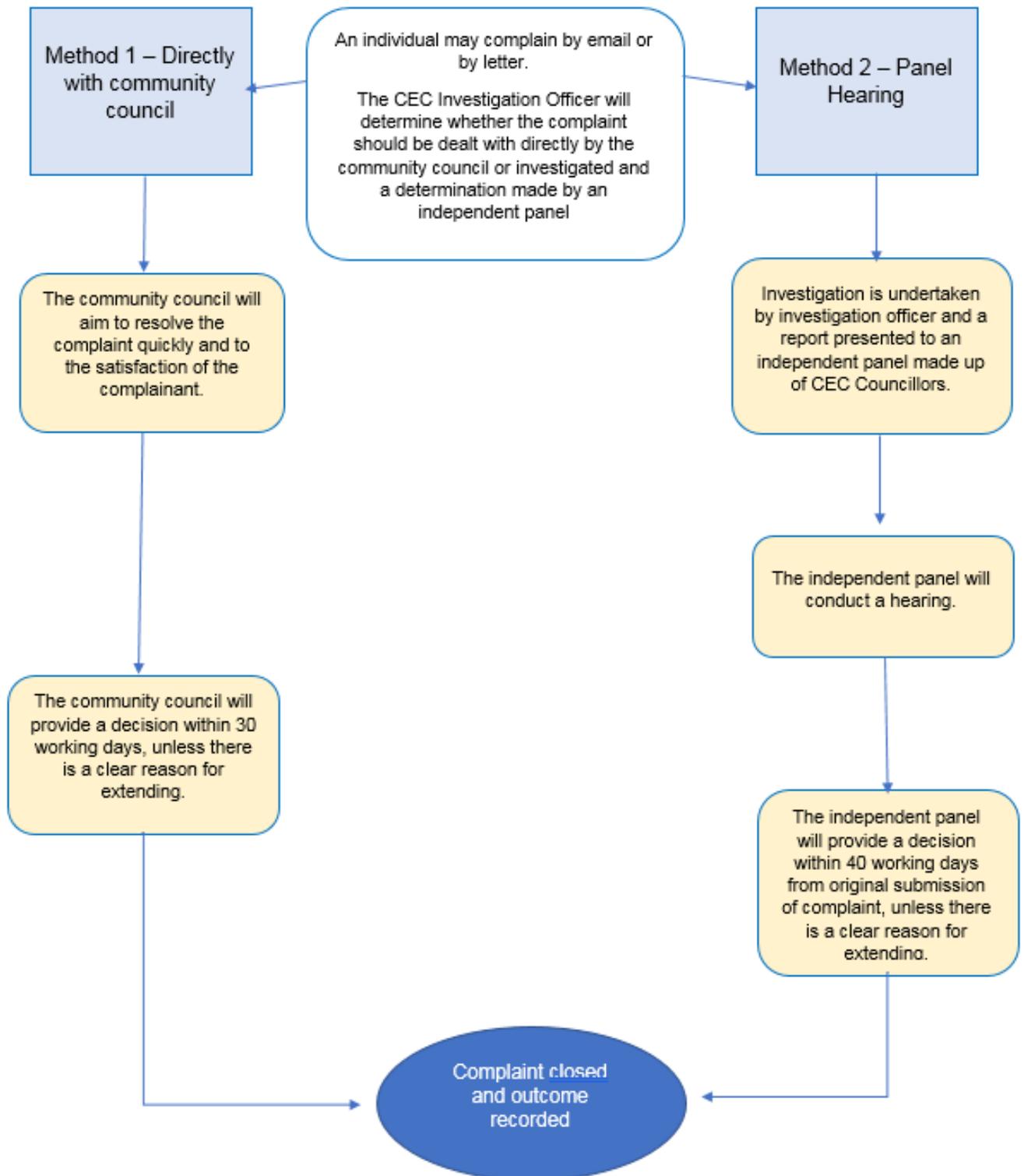
1. How to use this procedure

- 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 routes for the resolution of complaints:
- a. **Directly with Community Council (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.

	Method 1 – Directly with community council	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

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 **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 of the code of conduct have been breached.
 - 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.
- 5.7 **Acknowledge**
- All complaints must be acknowledged on receipt. Acknowledgement will include details regarding the method to be utilised and detail the expected response period.

6. Method 1: Directly with Community Council

- 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 within 30 working days.
- 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 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 sent 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.
- 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~~ 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.

11. Who can make a complaint?

- 11.1 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.
- 11.2 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.

- 11.3 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.
- 11.4 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.