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.

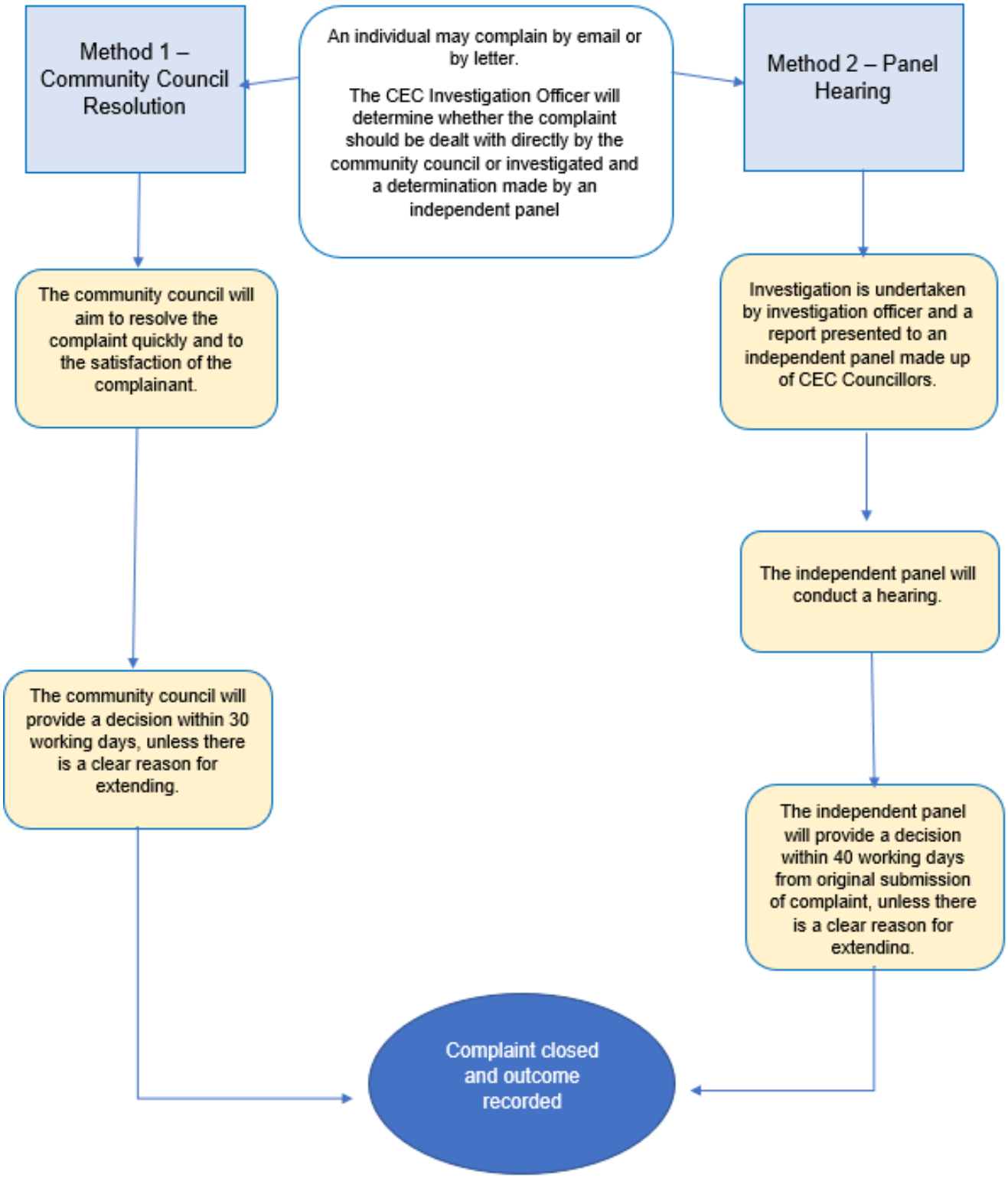
2.2 A complaint is not:

- 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

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 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 breaches of the code of conduct 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**

- Within 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 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. 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.