

Councillor Complaints Policy



Responsible Division	Office of the CEO
Responsible Business Unit	Governance and Organisational Planning and Development
Responsible Officer	Manager Governance and Organisational Planning and Development
Affected Business Units	All business units
ECM Document Set ID	4349607

Purpose

To establish, in accordance with Clause 15(2) of the *Local Government (Model Code of Conduct) Regulations 2021* and the City of Bayswater 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 City of Bayswater Code of Conduct for Council Members, Committee Members and Candidates.

To give effect to the City of Bayswater's commitment to an effective, transparent, fair and accessible Complaints handling process that supports high standards of behaviour of Council Members, Committee Members and Candidates.

Scope

This Policy applies to Complaints made in accordance with Clause 11 of the City of Bayswater Code of Conduct for Council Members, Committee Members and Candidates.

This Policy applies to Council Members, Committee Members, Candidates and any person who submits a Complaint in accordance with this Policy.

Definitions

For the purpose of this policy —

Act means the *Local Government Act 1995*.

Behaviour Complaints Officer means a person authorised in writing by Council resolution under clause 11(3) of the Code of Conduct to receive Complaints and withdrawals of Complaints. The role of the Behaviour Complaints Officer is addressed in Part 2.1 of this Policy.

Breach means a breach of Division 3 of the City of Bayswater 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*, 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*.

Candidate Complaint means a Complaint alleging a Breach by a Candidate. Candidate Complaints are dealt with in Part 3.2 of this Policy.

Chief Executive Officer means the Chief Executive Officer of the City of Bayswater.

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

Committee means a committee of Council, established in accordance with s.5.8 of the *Act*.

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

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

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

Complaint Assessor means the employee or independent external assessor who will assess the Complaint under Part 3.7 of this Policy.

Complaint Documents means the Complaint – Alleged Breach Form and any supporting information, Evidence, or attachments provided by the Complainant.

Complaint – Alleged Breach Form means the form approved under clause 11(2)(a) of the Code of Conduct by Council resolution.

Complaint Report means the report prepared by the Complaint Assessor as dealt with in Part 3.8 of this Policy.

Council means the Council of the City of Bayswater.

Council or Committee Meeting means a formal meeting of the Council or a Committee that is called and convened in accordance with the *Act*. It does not include informal meetings, such as workshops or briefings.

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*.

Evidence means the available facts or information which indicate whether the allegation of a Breach is true or valid. Local governments must use any information provided by the Complainant and the Respondent, in addition to any other available Evidence as to whether a Breach has occurred.

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.

Respondent means a person about whom a Complaint has been submitted in accordance with this Policy.

Response Documents means the response provided by the Respondent to the Complaint, and includes any supporting information or Evidence that is supplied.

Other terms used in this policy that are also used in the *Local Government Act 1995* have the same meanings as they have in the *Act*.

Policy Statement

1. Principles

1.1 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.

1.2 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.

1.3 Confidentiality

- (a) The City of Bayswater (the City) will take all reasonable steps to maintain confidentiality when dealing with the Complaint, in order to protect both the Complainant and Respondent.
- (b) Council Members, City 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.
- (c) 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.

1.4 Accessibility

- (a) The City will ensure that information on how to make a Complaint, including this Policy, is available at the City of Bayswater Civic Centre and on the City's website. The City will make information available in alternative formats if requested.
- (b) Any person wishing to make a Complaint may contact the Behaviour Complaints Officer if they require assistance in completing the Complaint – Alleged Breach Form or otherwise navigating the Complaints process.

2. Roles

2.1 Behaviour Complaints Officer

- (a) The Behaviour Complaints Officer is authorised in accordance with clause 11(3) of the Code of Conduct to accept Complaints and withdrawal of Complaints.
- (b) The Behaviour Complaints Officer is not an advocate for the Complainant or the Respondent. The Behaviour Complaints Officer provides procedural information and assistance to both Complainant and Respondent.
- (c) The Behaviour Complaints Officer will provide the Complaint Assessment under part 3.7 of this Policy, or may appoint an independent assessor to do so.
- (d) In undertaking their functions, the Behaviour Complaints Officer will apply the Principles of this Policy.

2.2. Chief Executive Officer

- (a) The Chief Executive Officer has authority to make a finding as to whether an alleged breach the subject of a complaint has occurred in accordance with the principles and specified requirements established in this policy.
- (b) Where a finding is made that a breach has occurred, the Chief Executive Officer has authority to:
 - (i) Take no further action; or
 - (ii) Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- (c) The Chief Executive Officer has authority to dismiss a complaint. If the complaint is dismissed, the Chief Executive Officer must determine reasons for the dismissal.

3. Procedure

3.1 Making a Complaint

- (a) 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.
- (b) A Complaint must be made within one month after the alleged Breach.
- (c) A Complaint must be made by completing the Complaint – Alleged Breach Form in full and providing the completed forms to the Behaviour Complaints Officer.
- (d) The Complainant must lodge the Complaint with the City's Behaviour Complaints Officer. Complaints lodged by a third party will not be accepted.
- (e) A Complaint must be made in accordance with the Complaint – Alleged Breach Form and specify which requirement(s) of the Code of Conduct is or are alleged to have been Breached.
- (f) A Complaint is required to include the name and contact details of the Complainant therefore anonymous Complaints cannot be accepted.
- (g) Where a Complaint – Alleged Breach Form omits required details, the Behaviour Complaints Officer will invite the Complainant to provide this information in order for the Complaint to be progressed. If the information is not provided within 14 days of this request, the Complaint will not be accepted.

- (h) Where a Complaint is made more than 1 month after the alleged Breach, the Behaviour Complaints Officer will give the Complainant written notice that the Complaint cannot be accepted.
- (i) The Behaviour Complaints Officer may choose not to accept the complaint if an alternative means of redress is available that is satisfactory to all parties.
- (j) The Behaviour Complaints Officer may choose not to accept the complaint if it is trivial, frivolous or vexatious.

3.2 Candidate Complaints

- (a) A Complaint in relation to a Candidate must be made in accordance with 3.1, above, but cannot be dealt with unless the Candidate is subsequently declared elected as a Council Member.
- (b) Within 7 days after receiving a Candidate Complaint, the Behaviour Complaints Officer will provide written notice:
 - (i) To the Complainant confirming receipt, and advising of the procedure for Candidate Complaints; and
 - (ii) To the Respondent, including a summary of the Complaint, and advising of the procedure for Candidate Complaints.
- (c) 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.
- (d) If the Respondent is not elected, the Behaviour Complaints Officer will provide the Complainant with notice that the Respondent has not been elected and that the Complaint cannot be dealt with.

3.3 Withdrawing a Complaint

- (a) A Complainant may withdraw their Complaint at any time before a Finding has been made in relation to the Complaint.
- (b) A Complainant may withdraw a Complaint by advising the Behaviour Complaints Officer in writing that they wish to do so.
- (c) After receiving a written withdrawal of the Complaint, the Behaviour Complaints Officer will take all necessary steps to terminate the process commenced under this Policy.

3.4 Notice to Complainant

- (a) Within 7 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Complainant that:
 - (i) confirms receipt of the Complaint;
 - (ii) outlines the process that will be followed and possible outcomes;
 - (iii) explains the application of confidentiality to the Complaint;
 - (iv) includes a copy of this Policy; and
 - (v) if necessary, seeks clarifications or additional information.

3.5 Notice to Respondent

- (a) Within 7 days after receiving a Complaint, the Behaviour Complaints Officer will provide written notice to the Respondent that:
 - (i) advises that a Complaint has been made in accordance with the Code of Conduct and this Policy;
 - (ii) includes a copy of the Complaint Documents;
 - (iii) outlines the process that will be followed, the opportunities that will be afforded to the Respondent to be heard and the possible outcomes;
 - (iv) includes a copy of this Policy; and
 - (v) if applicable, advises that further information has been requested from the Complainant and will be provided in due course.

3.6 Order of Complaints

- (a) Complaints will normally be dealt with in the order in which they are received.
- (b) If more than one Complaint is received that relates to the same alleged behaviour, the Behaviour Complaints Officer may decide to progress those Complaints concurrently.

3.7 Assessment of the Complaint

- (a) An assessment of the complaint may be conducted by an employee (the Behaviour Complaints Officer) or an external assessor, depending on:
 - (i) The nature of the complaint;
 - (ii) The resources needed to conduct an investigation;
 - (iii) The nature of the possible outcome.
- (b) The Complaint Assessor may seek legal advice on any aspect of the complaint.
- (c) The Complaint Assessor will undertake an assessment of the Complaint in accordance with the process outlined in the Notices given under Part 3.4 and Part 3.5 of this Policy.
- (d) The Complaint Assessor must ensure that the Respondent is provided with a reasonable opportunity to provide a response before forming any opinions, or drafting the Complaint Report or recommendations.
- (e) The Complaint will be assessed based on the evidence available including information provided by the Complainant in the Complaint Documents and by the Respondent in the Response Documents.

3.8 Complaint Report

- (a) The Complaint Assessor will prepare a Complaint Report that will:
 - (i) outline the process followed, including how the Respondent was provided with an opportunity to provide a response;

- (ii) include the Complaint Documents, the Response Documents and any relevant Local Government Records as attachments; and
 - (iii) include recommendations on each decision that may be made by the Behaviour Complaints Officer; and
 - (iv) include reasons for each recommendation, with reference to Part 4 of this Policy.
- (b) If the Complaint Report recommends that a Plan is prepared and implemented in accordance with clause 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy, the Complaint Report must include a Proposed Plan.
- (c) The Complaint Report will be provided to the Chief Executive Officer or Council to make a finding.

3.9 Making a Finding

- (a) The Chief Executive Officer or Council will consider the Complaint Report and attachments and give due regard to the recommendations.
- (b) The Chief Executive Officer may not make findings on Complaints for which the Chief Executive Officer is the Complainant. Findings on these complaints must be determined by Council.
- (c) If the behaviour that is the subject of the Complaint is alleged to have occurred at a Council or Committee Meeting, the Chief Executive Officer or Council will determine whether or not to dismiss the Complaint in accordance with Clause 13 of the Code of Conduct and Part 4.2 of this Policy.
- (d) If the Chief Executive Officer or Council dismisses a Complaint, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the decision and the reasons for the decision in accordance with clause 13(2) of the Code of Conduct. This concludes the process for this Complaint.
- (e) If the Complaint is not dismissed, the Chief Executive Officer or Council will consider the Complaint and make a Finding as to whether the alleged Breach that is the subject of the Complaint has or has not occurred, in accordance with clause 12 of the Code of Conduct and Part 4.3 of this Policy.
- (f) If the Chief Executive Officer or Council finds that the alleged Breach did not occur, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of the Finding and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This concludes the process for this Complaint.
- (g) If the Chief Executive Officer or Council finds that the alleged breach **did** occur, the Chief Executive Officer or Council will decide whether to take no further action in accordance with clause 12(4)(a) of the Code of Conduct or prepare a plan to address the behaviour in accordance with clause 12(4)(b) of the Code of Conduct and Part 4.4 of this Policy.
- (h) If the Chief Executive Officer or Council decides to take no further action, the Behaviour Complaints Officer must give the Complainant and the Respondent written notice of this decision and the reasons for the Finding in accordance with clause 12(7)(a) of the Code of Conduct. This concludes the process for this Complaint.
- (i) If the Chief Executive Officer or Council decides to prepare a Plan, the Chief Executive Officer or Council will first consult with the Respondent in accordance with clause 12(5)* of the Code of Conduct. The Chief Executive Officer or Council will consider any submissions made by the Respondent before preparing and implementing a Plan.

3.10 Compliance with Plan Requirement

- (a) The Behaviour Complaints Officer will monitor the actions in timeframes set out in a Plan.
- (b) Failure to comply with a requirement included in a Plan is a minor Breach under section 5.105(1) of the *Act* and clause 23 of the Code of Conduct.
- (c) The Behaviour Complaints Officer must provide a report advising Council of any failure to comply with a requirement included in a Plan.

4. Decision Making

4.1 Objectives and Principles

All decisions made under this Policy will reflect the Policy Objectives and the Principles included in Part 1 of this Policy

4.2 Dismissal

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

- (a) the behaviour to which the Complaint relates occurred at a Council or Committee Meeting; and
- (b) either -
 - (i) the behaviour was dealt with by the person presiding at the meeting; or
 - (ii) the Respondent has taken remedial action in accordance with the *City of Bayswater's Standing Orders Local Law 2021*.

4.3 Finding

- (a) A Finding that the alleged 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 [*clause 12(3) of the Code of Conduct*].
- (b) 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.

4.4 Action

In deciding whether to take no further action, or prepare and implement a Plan, the Chief Executive Officer or 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.

4.5 Plan Requirements

- (a) The Proposed Plan may include requirements for the Respondent to do one or more of the following:
 - (i) engage in mediation;
 - (ii) undertake counselling;
 - (iii) undertake training;
 - (iv) take other action considered appropriate (such as an apology or removal of a social media post).
- (b) The Proposed Plan 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.
- (c) The Proposed Plan 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.

5. Reporting

- (a) The City will maintain a register of complaints for which a breach of the City of Code of Conduct is found to have occurred.
- (b) The register will be available on the City's website for public inspection.
- (c) The register will include the name of the complainant.

Related Documentation

[Local Government Act 1995](#)

[Local Government \(Model Code of Conduct\) Regulations 2021](#)

Document details

Relevant delegations MCCD-D01 Model Code of Conduct 2021 – Authority to Make a Finding on Division 3 Code of Conduct Complaints

Risk evaluation High (review annually)

Strategic link Leadership and Governance:
Communicate in a clear and transparent way.

Council adoption 25 October 2022 **Resolution** 10.1.1