

Guidance 8

COMMUNITY COUNCIL COMPLAINTS AND REVIEW PROCEDURE

Complaint received regarding an individual Community Councillor

When there is a complaint by another member of the Community Council or an identified third party (note - anonymous complaints should not be accepted or actioned by the Community Council) that a member of a Community Council is in breach of the Community Councillors' Code of Conduct or has otherwise brought the Community Council into disrepute is received (collectively known as a "breach") then the following procedure must be followed. (flow chart also provided as Appendix 1)

Note: If a Community Council considers that it requires legal advice in dealing with a complaint, independent legal advice should be sought. Funding for legal advice is available, subject to the guidelines in Guidance 13, from Aberdeenshire Council. Further details can be sought from the Area Office.

Step 1 – The Chair or another Office Bearer or if no office bearer can act, an elected member of the Community Council should:-

1. acknowledge receipt of the complaint by letter or e-mail
2. make the subject of the complaint aware of the complaint by letter or e-mail and provide them with a copy of the complaint.
3. make contact with the complainant and the person being complained about to discuss the nature of the complaint and see if it is possible to resolve the complaint without progressing further.
4. By resolve - this could be action taken to the satisfaction of the complainant which results in withdrawal of the complaint. Any such agreement should be recorded in writing and should be put on the agenda of the next ordinary meeting to ratify the actions of the Chair/Office Bearer or seek any approval from the Community Council.

The acknowledgement and attempt for resolution should be done as soon as practicable after receipt of the complaint. Such time period to be reasonable.

All correspondence in this matter should be documented and retained in line with normal retention periods

If no resolution can be found, the complaint should be considered using the following process.

Step 2 –

The Chair (or if the complaint is against the Chairperson, then the Vice-Chairperson or other Officer Bearer) shall within 7 days of identifying that the complaint cannot be resolved informally-must inform the parties that:-

1. the matter will have to be heard by the Community Council.

2. they have up to seven days to provide, if they wish, a written statement to support their position and the written statement will form part of the information provided to the Community Council at the Meeting to hear the complaint.
3. that they will be invited to the meeting to speak to the Community Council and answer questions from the Community Council.

These actions should be done on the same day for all parties.

4. After taking reasonable steps to ensure that all parties wishing to, can attend, the Chair should then arrange for the complaint to be discussed in private session within 28 days of the acknowledgement being sent either:-
 - at the next ordinary meeting of the Community Council; or
 - at a Special Meeting set up for this purpose.
5. Once the meeting is arranged, the Chair must ensure that all parties are provided with the date, time, venue, agenda, process and complaint materials, at least seven days before the meeting.

The Meeting where the complaint is heard (detailed process provided as Appendix 2)

The members of the Community Council who will be invited to the private session are Full and Co-opted members. Ex Officio members will also be invited but will have no vote.

The meeting at which the complaint will be considered must be quorate in terms of the Community Council's constitution.

The parties will be heard in the following order (hearing process guidance available).

1. Complainant
2. Subject of Complaint

The parties to the complaint will only be in the room whilst they are speaking with the Community Council.

The Community Council needs to first consider whether the complaint has merit and whether the Community Council is required to make any further decision. If the Community Council determines that there is no merit, then the process ceases, and the parties must be informed.

If the complaint does have merit, then the Community Council must decide if there has been a breach.

If the Community Council considers that a breach has occurred, it must then determine the severity of the breach.

The Community Council whilst deciding the severity of the breach may also consider whether further investigation is required and must at this point identify and agree the

process and timescales for it to carry out the further investigation. It should also consider whether an interim suspension is required. If the Community Council is content that it has all of the information required, it must determine an appropriate sanction (see below)

Degree of Breach	Possible sanctions (Examples only)
No Breach	No sanction
Breach	<ul style="list-style-type: none"> a) Apology b) Training (exact nature to be specified) c) Mediation d) Restriction of communication between parties (to be clearly specified) e) Written undertaking to behave within the Code of Conduct and any or all of a) to d) above
Serious Breach	<ul style="list-style-type: none"> f) Written undertaking to behave within the Code of Conduct and any or all of a) to d) above g) Suspension for set period (and any or all of a) to d) above) h) Instruction to stand down from Office Bearer's position i) Expulsion. This must be a unanimous decision of the Community Council. (of those present and voting)

For clarity – Section 17 of the Scheme provides

After following the procedure in Guidance 5, Community Councils shall have the power to

- 1. permanently expel or suspend for a period of time, a member of the Community Council who is guilty of theft, in a court of law, of Community Council assets or who is found guilty of any other offence, in a court of law, which is deemed to affect their ability to participate in the activities of the Community Council.***
- 2. permanently expel or suspend for a period of time, a member of the Community Council who has brought the Community Council into disrepute by their actions or activities.***
- 3. suspend a member of the Community Council for a period not exceeding six months, when they have consistently or flagrantly breached an adopted Code of Conduct for Community Councillors (including repeated non-declaration of interests).***
- 4. impose other sanctions or requirements on the member.***

Provided that a decision to expel must be unanimous, a decision to suspend must be with a two thirds majority and a decision to impose a sanction or

other requirements by simple majority. The decision being made by the eligible voting members of the Community Council in attendance at the meeting.

Following a decision, the complainant and the person complained against shall be advised in writing by an appropriate Office Bearer of the Community Council's decision within 7 days of the Special or Ordinary Meeting. If the decision is to hold a further investigation, the process and timescales for this must be articulated to the parties along with when and how they will be able to be involved. Details of how a review can be requested will be provided.

A full note of the discussion that takes place regarding the complaint should be taken but will remain private. The minute (which will go in the public domain) should keep all of the details and parties involved confidential. The minute should only show that a complaint has been received, if a vote has been taken and the decision of the Community Council. No discussion should be included in the public minute.

Review of Decision

Both parties to the complaint have the right to seek a review of the entire process and management of the complaint. The purpose of any review will be to determine whether the Community Council has followed the process for handling the complaint correctly. The outcome of the review will either be that the decision of the Community Council will stand, or the process just be repeated.

This request must be provided to the Area Manager within 7 days of the decision being received.

The Area Manager will set the timescales and process for this review (provided that it is completed within 12 weeks from the notification of request for review).

Complaint against the whole Community Council

Any complaint against a Community Council as a whole must be submitted in writing to the Area Manager for the appropriate area and be from an identifiable person or entity. If a complaint is received by the Community Council, it should be forwarded to the relevant Area Manager as a matter of urgency.

Process

The Area Manager must within 7 days of receipt of a complaint:-

1. acknowledge the complaint;
2. inform the Community Council of the complaint and provide it with a copy of the complaint;

The Area Manager may then contact the parties to discuss the nature of the complaint and seek a resolution prior to taking the complaint through the formal process. If the complaint is withdrawn or resolved the Area Manager can advise the Community Council of any improvements or recommended actions. If it is not resolved, then the Area Manager should:-

1. indicate that the complaint will be investigated by them; and
2. seek supporting written information from both parties

The Area Manager will, within 28 days of acknowledgement of the complaint:-

1. consider the complaint and any written response to the allegation provided by the Community Council. The Area Manager can, if required, investigate further and seek further information from either party or undertake interviews to aid the investigation of the complaint; and
2. determine whether a breach has occurred, and if so, what course of action is required and inform all parties of their decision in writing (letter or e-mail).

If:-

- the breach is of a serious nature and would require the Community Council to be placed in supported status or dissolved; or
- any party to the complaint does not agree to the recommendations proposed by the Area Manager to resolve the issue.

The Area Manager will report the matter to Area Committee at the next practicable meeting for its consideration.

The parties to the complaint can:-

- be in attendance at the relevant part of the meeting;
- request to address the Committee in line with Aberdeenshire Council's Standing Orders; and
- if the request to speak is agreed, respond to questions put to them by the Committee.

The Area Committee can, using its delegated powers –

- Note the supported status of a Community Council
- Dis-establish the Community Council
- Consider the reasons for not agreeing the recommendations of the Area Manager and determine the matter.

The matter then comes to an end.

COMPLAINT RECEIVED

IMMEDIATELY

- acknowledge complaint
- make subject aware of complaint and provide a copy

THEN

- Contact complainant to discuss complaint and see if it is possible to find an acceptable solution

WITHIN 7 DAYS

- If no solution available**
Inform both parties:-
- that the complaint will require to be heard by the CC
 - they have 7 days to provide a written statement and evidence to explain their position to the CC
 - they will be invited to the meeting

- Solution agreeable to both parties**
- Send an e-mail to both parties outlining the outcome and ensure any actions are undertaken
 - Retain a copy of the complaint and correspondence
 - Report the complaint and the resolution to the CC at next meeting for noting (ensuring that the details are kept confidential)
- NO FURTHER ACTION**

WITHIN 21 DAYS

- Hear the complaint, either:-
- As a confidential matter at the next arranged CC meeting (if it falls within the required timescale and allows adequate time)
 - At a special meeting arranged for that purpose
- All parties should be provided with the date, time, venue, agenda, process, and complaint materials, at least seven days before the meeting.
- MEETING PROCEDURES FOR COMPLAINT**
- Matter to be heard in private session with Full, Co-opted and Ex Officio (no vote) members invited
 - Use hearing process guidance (separate document) for the hearing
 - Ensure that all records are retained in case of a request to review from either party.
 - All parties to the complaint have the opportunity to request a review, but this is only if they consider that the process has not been correctly undertaken.

Step 1

Step 2

COMPLAINTS HEARING PROCEDURE

1. The Chair should welcome all the parties, explain the purpose and format of the Hearing and clarify that a note of the Hearing will be taken (for the record which will remain confidential) and a confidentiality restricted minute will be reported back to a formal meeting of the Community Council for approval.
2. The Chair should refer the Community Councillors to any papers already provided by parties to the complaint. These papers should include the complaints procedure from the Scheme for the Establishment of Community Councils (Scheme) and the hearing process.
3. The Chair should identify which of the parties to the complaint are present. If one or both of the parties are absent at the time indicated within the correspondence, the Chair should adjourn the meeting for 10 minutes to allow time for the parties to appear. If at the end of this time one or both of the parties are not in attendance, the Community Council should decide whether to continue with the hearing or to defer to another date.
4. If both parties are in attendance or the Community Council has agreed to continue with the process, then any parties should be asked to leave the room at this point. Once this is done the Chair should ensure that the Community Council is clear on the process before bringing in the complainant.
5. The Chair should invite the complainant to present their case in no more than 10 minutes.
6. The Chair should ask Community Councillors if they have any questions for clarification and take these in order allowing the complainant to answer fully.
7. The Chair should then thank the complainant and ask them to leave the room, indicating that they will be brought back into the meeting once the other party has been heard and the issue discussed.
8. The Chair should invite the subject of the complaint into the room to present their response to the complaint in no more than 10 minutes.
9. The Chair should ask Community Councillors if they have any questions for clarification and take these in order allowing the complainant to answer fully.

10. The Chair should then thank the subject of the complaint and ask them to wait outside indicating that they will be brought back in following consideration of the complaint by the Community Council.
11. The Community Council should first consider whether the complaint has merit.
 - 11.1 If the Community Council concludes that the complaint has no merit, it should consider why this is the case in order to be able to provide the parties with an outcome with sound reasoning.
 - 11.2 If the Community Council concludes that the complaint has merit, The Community Council should then decide whether it has enough evidence to take a decision as to whether a breach has occurred. At this point either party may be brought back to provide further clarity or if further investigation is required, the Community Council may decide to adjourn the meeting to another date to undertake the investigation or seek the required information
 - 11.3 If the Community Council considers that there has been no breach, then it should provide reasons why this is the case.
 - 11.4 If the Community Council considers that there has been a breach, then it must then consider the severity of the breach and an appropriate sanction to reflect the severity of the breach (see complaint process in the Scheme for table of possible sanctions)
12. The Chair should then invite all parties to the complaint back into the room to explain the decision of the Community Council, including any sanction and the reasons for this decision.
13. The Chair should close the meeting and indicate that the final decision will be sent to the parties within 7 days. The detailed note of the hearing should be retained in case of any request to review the decision and a confidentially restricted decision be included in the minute. Note: any review of decision will only consider whether the process has been undertaken in line with procedures and in a fair and unbiased way. If it is found that the process was deficient, the Community Council will be asked to undertake the process again.