



### 0.3 COMPLAINTS POLICY (ALLEGED BREACH)

Distribution:	Council Members, Committee Members and Candidates
Responsible Officer:	Chief Executive Officer
Date Adopted:	17 March 2021 – Version 1 – Resolution 326. OM 170321
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#### Objective

The objective of this Policy is to prescribe the processes for the management of complaints involving council members, committee members and candidates in matters relating to breaches of the behaviour requirements in Section 3 of the Code of Conduct.

#### Policy scope:

- This Policy is limited to complaints about behaviour breaches by council members, committee members and candidates.
- A person may make a complaint, in accordance with the Code of Conduct, alleging a behaviour breach.

#### Standard

#### APPOINTMENT OF INVESTIGATOR OR COMPLAINTS PANEL

1. The Chief Executive Officer is to appoint a person with relevant legal knowledge who is not an employee of the Shire, to review and consider one or more Complaints of behaviour breach and to report on the outcome of any investigation to the Chief Executive Officer for provision to the council.
2. As an alternative to appointment of an Investigator, in any case where the Chief Executive Officer considers it appropriate, the Chief Executive Officer may appoint a panel of three persons to perform the function of the Investigator under this Policy. At least one of the number of such a panel must be a person with relevant legal knowledge. Any such panel is to make its decisions by a majority vote and is to appoint one of its number as chair and to perform its consideration and determination on a Complaint in accordance with due process and consistently with the provisions of this Policy.
3. The Chief Executive Officer is to deal with the remuneration of an Investigator or the members of a Complaints Panel, and a complaints mediator, in accordance with Clause 17.

## PROCESS FOR MAKING A COMPLAINT

### 1. Initiation of Complaint

- a. Any person may make a Complaint alleging a behaviour breach.
  - b. A Complaint must be in writing on the Shire's approved form – 'Complaint About Alleged Behaviour Breach form'.
  - c. The complainant must lodge the Complaint with the Shire's Behaviour Complaints Officer.
  - d. The complainant must provide with the Complaint, details of the alleged behaviour breach together with any supporting evidence.
  - e. The Complaint must be lodged within one month of the occurrence of the alleged behaviour breach.
  - f. A Complaint must be submitted by the complainant.
2. A Complaint cannot be submitted anonymously.
  3. The Behaviour Complaints Officer is to provide all Complaints to the Investigator in accordance with the following clause.
  4. The Behaviour Complaints Officer within 14 days of receiving a Complaint:
    - a. must contact the complainant acknowledging that the Complaint has been received;
    - b. as part of the acknowledgment process, must provide the complainant with a copy of the Shire's Complaints Policy;
    - c. must provide the council or committee member to whom the Complaint relates with a copy of the Complaints Policy and a copy of the Complaint (including the name of the complainant); and
    - d. must send to the Investigator, the Complaint together with details of the alleged breach and any supporting evidence provided by the complainant.
  5. Complaints are to be dealt with and considered in an order based on the order in which they are received by the Behaviour Complaints Officer.
  6. A Complaint relating to a candidate is only to be referred to an Investigator if and when the candidate is elected as a council member, but in any event the Complaint must be lodged within one month of the occurrence of the alleged behaviour breach.

## MEDIATION

1. The Investigator must offer mediation to both parties as the first option for dealing with a Complaint and before progressing with the consideration or determination of the Complaint.
2. If issues raised in the Complaint are resolved to the satisfaction of both parties in mediation or otherwise before the determination of the Complaint, the complainant must lodge a Withdrawal of Complaint in writing with the Behaviour Complaints Officer.
3. Before making a determination in relation to a Complaint, the Investigator must provide the council member or committee member to whom the Complaint relates with an opportunity to respond to the allegations in the Complaint and to provide their own comments and evidence for consideration within fourteen (14) days of the notification of the Complaint to them by the Behaviour Complaints Officer.
4. After considering a Complaint, the Investigator must make a determination as to whether or not the alleged behaviour breach has occurred.
5. The determination must be made within twenty-one (21) days:

- a. from receiving a Complaint from the Behaviour Complaints Officer; or
  - b. from receiving a copy of the response to the allegations by the person to whom the Complaint relates, whichever is the later.
6. A determination by the Investigator that the alleged behaviour 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.
7. Having made a determination on the alleged behaviour breach, the Investigator must inform the Behaviour Complaints Officer by providing a determination and reasons for it in a Determination and Reasons Report (**Report**).
8. The Report must be provided to the Behaviour Complaints Officer within fourteen 14 days of making the determination.
9. If the Investigator makes a determination that the alleged breach has occurred, the Report must make a recommendation if further action is required and make a recommendation on the plan to address the behaviour of the person to whom the Complaint relates (**action plan**).
10. The Investigator may recommend to the council to dismiss a Complaint in accordance with clause 13 of the model code, and if the Investigator concludes that the behaviour the subject of the Complaint is an offence under a local law that deals with meeting procedures, the Complaint should not be dealt with further as a behaviour breach, but should be referred back to the Behaviour Complaints Officer.
11. The Investigator's deliberations and determination are to be confidential and reported only to the Behaviour Complaints Officer, but subject to any consultation with the person to whom the Complaint relates under the following clause.

## **ACTION PLANS**

1. When preparing an action plan under clause 7.7 of this Policy, the Investigator must consult with the person to whom the Complaint relates. The member must be provided with the opportunity to be involved in matters such as the timing of meetings or training.
2. An action plan may include a requirement for the person to whom the Complaint relates to do one or more of the following –
  - a. Engage in mediation;
  - b. Undertake counselling;
  - c. Undertake training; or
  - d. Take other action the local government considers appropriate.
3. An action plan should be designed to provide the member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives. The plan should outline:
  - a. the behaviour(s) of concern;
  - b. the actions to be taken to address the behaviour(s);
  - c. who is responsible for the actions; and
  - d. an agreed timeframe for the actions to be completed.

## **REPORT PROVIDED TO COUNCIL**

1. The Behaviour Complaints Officer must provide a confidential report to council including:
  - a. a copy of the Complaint;

- b. the Report of the Investigator together with the evidence received by the Investigator and any submissions or other communications from the parties;
- c. a recommendation on the question whether or not a behaviour breach has occurred;
- d. a recommendation as to whether any and if so, what further action is required; and
- e. if further action is required, a recommendation must be provided to the council on an action plan to address the behaviour of the person to whom the Complaint relates.

## COUNCIL FINDING

1. The council must not make a finding that a behaviour breach has occurred without first having given the person to whom the Complaint relates a reasonable opportunity to be heard.
2. A finding that the alleged behaviour 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.
3. If the council makes a finding that the alleged breach has occurred, it may resolve to –
  - a. take no further action; or
  - b. prepare and implement an action plan recommended by the Investigator with or without modifications as it thinks fit.
4. Based on the Investigator's Report, the evidence and any further comments or submissions by the parties, the council may:
  - a) dismiss the Complaint in accordance with clause 13 of this Policy;
  - or
  - b) find that the alleged breach has occurred; or
  - c) find that the alleged breach has not occurred; or
  - d) if the finding is that the breach has occurred, decide that no further action is required; or
  - e) if the finding is that a breach has occurred, decide that further action is required and consider the adoption of an action plan; or
  - f) adopt an action plan to address the behaviour of the person to whom the Complaint relates.
5. If the council makes a finding that the alleged breach has occurred, it must give reasons for that finding.

## BEHAVIOUR COMPLAINTS OFFICER ACTING ON COUNCIL FINDING

When the council makes a finding in relation to a Complaint, the Behaviour Complaints Officer must give the complainant and the person to whom the Complaint relates written notice of –

1. the finding and the reasons for the finding; and
2. if the finding is that the alleged breach has occurred, council's decision on the course of action to be taken including the options in clause 8.2 above.

## CONFIDENTIALITY OF COMPLAINTS

The fact of a Complaint having been made and the details of a Complaint and the processes undertaken in connection with a Complaint including the referral to an Investigator are confidential matters and should not be disclosed unless and until the council has made a formal finding of breach in respect of the Complaint.

## DISMISSAL OF COMPLAINT

1. The council must dismiss a Complaint where:
  - a) the behaviour occurred at a council or committee meeting and the behaviour was dealt with at that meeting; and
  - b) either:
    - i. the behaviour was dealt with by the person presiding at the meeting; or
    - ii. the person responsible for the behaviour has taken remedial action in accordance with the local law of the local government that deals with meeting procedures.
2. In any event behaviour that is an offence under a local law that deals with meeting procedures cannot be dealt with as a behaviour breach.

## WITHDRAWAL OF COMPLAINT

1. A complainant may withdraw their Complaint any time before it is considered by the council.
2. The withdrawal of a Complaint must be –
  - a. in writing; and
  - b. given to the Behaviour Complaints Officer.

## COMPLIANCE WITH PLAN REQUIREMENT

1. The Behaviour Complaints Officer is to monitor the actions in timeframes set out in an action plan.
2. If an action plan includes any of the requirements in clause 8.2 above (i.e. in clause 12.6 of the model code), failure to comply with that requirement is a breach of clause 23 of the model code and as a breach of the Rules of Conduct is a minor breach under section 5.105(1) of the LG Act.

## COMPLAINTS THAT ARE INAPPROPRIATE UNDER THIS POLICY

The purpose of the Town's Code of Conduct is to guide the decisions, actions and behaviours of council members, committee members, and of candidates running for election as a council member. A breach of the Rules of Conduct is a minor breach under section 5.105(1) of the LG Act, and is not the intended subject of this Policy. The objective of this Policy is to deal with matters relating to breaches of the behaviour requirements in Division 3 of the Code of Conduct, and all Complaints under this Policy should be made with that objective in mind. Consequently, Complaints such as the following are inappropriate to be dealt with under this Policy:

- a) Complaints made with the intent of addressing personal grievances or disagreements;

- b) Complaints made to express dissatisfaction with a council or committee member's lawfully made decisions or performance of their role;
- c) Minor breaches under section 5.105(1) of the LG Act;
- d) Serious breaches under section 5.114 of the LG Act;
- and e) Allegations of corruption.

## COST IN THE COMPLAINTS PROCESS

1. No fee is charged to lodge a Complaint under this Policy.
2. The Investigator or the members of a Complaints Panel, or a mediator, appointed pursuant to the Policy may charge the Shire a fee to cover the costs of dealing with the Complaint whether or not a breach is ultimately found.
3. Any fee charged by an Investigator or the members of a Complaints Panel, or a mediator, is to be based on the time spent in connection with the Complaint and may be established in advance on a quotation or otherwise in accordance with the Town's purchasing policy.

### **Policy definitions:**

In this Policy –

**behaviour breach** means a breach of a behaviour requirement in Section 3 of the Code of Conduct.

**Behaviour Complaints Officer** means a person authorised in writing by the council, or by the Chief Executive Officer exercising authority delegated by the council, to receive complaints and withdrawals of complaints under clause 10 of the Code of Conduct, and the person so authorised in writing may be the same person as the Shire's complaints officer under section 5.120 of the *Local Government Act 1995 (WA)* (**LG Act**).

**candidate** - an individual is considered a candidate when their nomination for election is accepted by a Returning Officer under section 4.49 of the LG Act. The Code of Conduct applies to the candidate from that point. Any alleged behaviour breach may only be dealt with if and when the candidate is elected as a council member.

**committee member** - includes any council member, local government employee or unelected member of the community, in any of those cases, who has been appointed by the council to be a member of a council committee.

**complainant** means a person complaining of a behaviour breach by a council or committee member of the Town or a candidate.

**Complaint** means a complaint made under clause 11(1) of the Code of Conduct.

**Complaints Panel** means a panel of persons appointed under clause 4.2 to consider and determine Complaints, as an alternative to appointment of an Investigator.

**council member** means an individual who has been elected as a council member under the LG Act. This Policy also applies to a council member who is a committee member on a council committee.

**evidence** means the available facts or information which go to indicate whether or not an allegation of a breach is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as any other available evidence, to decide whether a breach has occurred.

**Investigator** means a person appointed as Investigator under clause 4.1 of this Policy.

**Report** means the report for the council of the outcome of the investigation of a Complaint dealing with the following:

- (1) whether or not the Investigator considers that the behaviour breach the subject of the Complaint has occurred;
- (2) the evidence relied on by the Investigator under clause 12(3) of the model code for that conclusion; and
- (3) a recommendation as to whether no further action should be taken on the Complaint, or as to the terms of a plan under clause 12(4)(b) of the model code.

Other terms used in this Policy that are also used in the LG Act have the same meanings as they have in the Act unless the contrary intention appears.

### **Legislation**

*Local Government Act 1995 (WA)*

*Local Government (Model Code of Conduct) Regulations 2021*

### **Resource Documents**

Complaint Form – Alleged Breach

Strategic Community Plan

### **Procedures Manual**

Nil

### **Local Law**

Nil

### **Delegation**

Nil