

Decision of the Independent Complaints Panel – 27/08/2020

Panel Members: Councillor Gavin Barrie (Chair), Councillor Hal Osler, Councillor Susan Webber

Community Councillors' Complaints Procedure

City of Edinburgh Council introduced a complaints procedure for breaches of the Community Councillors' Code of Conduct in October 2019. This was designed to complement the outputs from the statutory review of the Scheme for Community Councils (including the Code of Conduct) which took place last year.

Anyone affected by a community council can make a complaint, including those under 16 who can ask a trusted adult to complain on their behalf.

The procedure provides scope for complaints to be investigated under two different methods depending on level of materiality or complexity and is overseen by the Council's Head of Strategy and Communications who has been appointed to the post of CEC Investigation Officer.

The Procedure fills a gap that previously existed in the community council governance framework and aims to resolve complaints in a fair and timeous manner. If you would like advice on the Procedure or its effects please contact us on community.councils@edinburgh.gov.uk

Complaint

A complaint was submitted by an individual about the alleged conduct of the Respondent. This complaint alleged breaches of 17 provisions of the Community Councillors' Code of Conduct. Following consideration by the Council's Investigation Officer it was determined that the complaint be dealt with under method two of the Community Council Complaints Procedure. An Investigating Officer (IO) was appointed to produce a report for submission to a meeting of the Independent Community Council Complaints Panel.

The IO considered the evidence provided in the original complaint and focused the investigation on 10 of the outlined provisions. These were agreed in a terms of reference and were communicated with the complainant :

2.2 - As a community councillor you have a duty to act in the interests of the local community, which you have been elected or nominated to represent. You also have a duty to act in accordance with the Scheme for Community Councils (the Scheme) as set out by the Council under the terms of the Local Government (Scotland) Act 1973.

2.15 - You have a duty to promote and support the principles of this Code of Conduct by leadership and example, to maintain and strengthen the community's trust and confidence in the integrity of the community council and its members in representing the views and needs of the local area. You must also promote social inclusion and challenge discrimination in any form.

2.16 - You should behave openly and honestly, treating another community council members in a positive, respectful and non-discriminatory manner. Similarly, you should treat ex-officio community council members, staff from City of Edinburgh Council and other agencies as well as members of the community with respect.

2.19 - You should be supportive of the office bearers on the community council and refrain from trying to undermine their confidence or authority. It is unacceptable for community councillors to make personal remarks, make personal attacks or otherwise humiliate other members either at meetings or non-members or in

other settings such as internet forums and social media.

3.4 - You should not act in such a way as to bring yourself or the community council into disrepute through your actions, discussion or communications.

3.5 - Furthermore, any individual found to be responsible for anonymous activities (such as letter writing, blogging or other online activities) that would otherwise be a breach of the provisions of this Code will consequently have breached the Code.

3.6 - Bullying or harassment is completely unacceptable and will be considered to be a breach of the Code.

3.7 - Harassment is any unwelcome behaviour or conduct which has no legitimate purpose and which makes someone feel offended, humiliated, intimidated, frightened and/or uncomfortable. Harassment can be experienced directly or indirectly and can occur as an isolated incident or as a course of persistent behaviour.

3.8 - Harassment can take the form of unwelcome physical contact; inappropriate remarks or questioning; intrusive questioning; and the sending of unwelcome emails, messages or notes. This is by no means an exhaustive list.

3.9 - Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. It is the impact of the behaviour rather than the intent which is the key.

Following discussion and upon presentation of all evidence, the Independent Complaints Panel decided that the following provisions were also in scope and should be considered.

2.9 - In carrying out public business, including award of grants or decisions regarding planning applications, you should make decisions on merit and on the basis of information which is publicly known.

2.18 - You should ensure that confidential material, including details about individuals, is handled with dignity and discretion and is not used for personal or malicious purposes.

3.2 - In conducting yourself in public (including online) you must respect community councillors and key stakeholder organisations (such as the Council and Police Scotland). Community councillors should take note that their activity in public may be a breach of the provisions of this code if they are identifiable as a community councillor.

Allegations

The allegations agreed in the scope of the terms of reference centred around a tweet made from an anonymous twitter account in response to a tweet from an official community council (CC) account. The tweet read:

“This community council so opaque it doesn’t choose to share its bookkeeping from when it reconstituted as a Community Council in [date removed]. Its entire operation controlled by an @Airbnb Superhost running a de facto business without a ‘change of use’”

The tweet also provided a link to the Complainant's Air BnB' profile. This profile contained personal information including name, address and pictures.

Process of Investigation

Interviews were conducted by the IO with various individuals referenced in the complaint. This included the Complainant and the Respondent. A summary of each interview was provided to that interviewee and an opportunity to provide additional information or evidence was provided. All information submitted was reviewed by the IO and included in the final report.

The fundamental focus of the investigation was to establish if the Respondent was the owner of the anonymous twitter account and if they were responsible for the identified tweet.

IO Findings

The investigation found a significant amount of circumstantial evidence linking the Respondent with the anonymous twitter account and the aforementioned tweet.

The Respondent was given the opportunity to confirm or deny ownership and chose not to.

There were sufficient findings to recommend that the breaches of the CC Code of Conduct Provisions 2.2, 2.15, 2.16, 2.19, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 were upheld.

Independent Community Council Complaints Panel (ICCCP) Findings

The ICCCP met on 27 August 2020 to consider the IO report. The Complainant and the Respondent were both invited to attend the meeting in order to provide any points of clarification required by the Panel.

The Respondent withdrew their agreement to participate in the Panel on the day of the meeting. The reason cited was that the Respondent was not provided with the names of the three councillors making up the panel in advance. The Respondent instead advised that they would be happy to provide further clarifications by email if required.

The Panel agreed that on the balance of probability the Respondent was responsible for the tweet. The failure of the individual to directly answer when questioned on this by the IO and failure to attend the Panel meeting was taken into consideration.

The Panel drew attention to the provisions of the Code of Conduct that make it very clear that activities on social media can be considered a breach and that anonymous activity falls within this scope.

The Panel agreed the following:

- To censure the Respondent in relation to the Code breaches outlined.
- That the Respondent receive a three-month suspended suspension from all meetings of the CC. This suspension will come into effect if the Respondent fails to attend both mediation and social media training, otherwise it will be overturned.
- To uphold that there had been a breach of the following provisions of the Code of Conduct: 2.2, 2.9 (in part), 2.15, 2.16, 2.19, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9.

- Breach of provision 2.9 was upheld in part as the tweet was misleading and based on false information, however, elements relating to alleged financial impact by the Complainant were not endorsed by the Panel.
- The Panel further advised that whilst a breach of provision 2.18 of the Code of Conduct was not upheld, they did believe that personal information had been handled without dignity and discretion and it had been used for personal and malicious purposes.
- That all members of the CC receive Social Media training.
- That mediation is conducted between the Complainant and Respondent.
- That an anonymised summary document be produced and circulated to all CCs with a request that this is considered as an item at a future meeting. This document should be published in an online archive for future reference.
- That a copy of the findings be communicated to the Respondent's nominating Local Interest Group.
- That the Respondent's nominating Local Interest Group be requested to resubmit their registration forms and accompanying documents as provided for under Schedule 2 point 12 of the Scheme for Community Councils.

Date: 31 August 2020

Ross Murray

Governance Officer and Clerk to the Independent Complaints Panel.