

Decision of the Independent Complaints Panel – 09/03/2021

Panel Members: Councillor Gavin Barrie (Chair), Councillor Graham Hutchison, Councillor Claire Miller

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 (CC) 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 Democracy, Governance and Resilience Senior Manager 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 in relation to an individual office bearer alleging that they had been responsible for an alleged failure to fully action a decision taken by the community council to add clarifications to previous versions of minutes. This complaint alleged breaches of two provisions of the Community Councillors' Code of Conduct.

2.5 You should take decisions solely in terms of the interest of the community that you represent.

2.14 You have a duty to ensure that your decisions, actions and representations reflect the wishes and views of the community you represent.

The CEC Investigation Officer determined that the complaint be dealt with under method two of the Community Councillors Complaints Procedure. An Investigating Officer (IO) was appointed to produce a report for submission to a meeting of the Independent Community Council Complaints Panel.

Following consideration by the Governance Team of the nature of the complaint and the detail provided it was agreed that the allegations could not be linked pre-investigation with any certainty to the specific individual named. It would thus be necessary to broaden the investigation to determine whether any of the office bearers of the community council had breached the Code.

Guidance was also provided in relation to the paragraphs of the Code of Conduct that may have been breached if the allegations contained in the complaint were upheld. It was determined that even if upheld that this would not represent a breach of paragraphs 2.5 and 2.14. Complainants are asked to provide an indication of what paragraphs they feel have been breached when submitting a complaint, however, it is standard practice for the Governance Team and IO to review the detail and provide recommendations as part of the Terms of Reference as to which Code of Conduct paragraphs it is most appropriate to explore during the investigation.

A revised Terms of Reference for investigation was agreed with the complainants. This expanded the investigation to look at all the office bearers of the community council and to instead look at the following paragraphs of the Code of Conduct:

2.12 Community councillors will individually and collectively ensure that the business of the community council is conducted according to the Scheme and the Code.

3.10 Bullying can arise as a result of an individual misusing their power and can occur through all means of communication...

Allegations

The CC, following a period of mediation, had agreed that a clarification be included in the latest set of minutes. It was also agreed that previous minutes that referred to the matter in contention would have a statement added to clarify where further detail could be found.

The allegations were that an office bearer of the community council had used their authority to personally intervene and ensure that a clarification was not added to previous minutes, as had been agreed and minuted at a later date.

The complainants noted that a note had been added to the download page of the minutes on the CC website but they felt that this did not sufficiently meet the action as agreed.

The complaint also provided significant background detail, including previous attempts to get the CC to make amendments to the minutes, a mediation process conducted with a local ward councillor and historical context as to why the clarifications had been required.

Whilst bullying or harassment paragraphs of the Code of Conduct were not specifically identified in the complaint, details were included in the complaint that suggested to the Governance Team that this might be a factor. It was deemed necessary that any subsequent investigations explored whether the alleged failure to action the decision represented bullying through misuse of power. It should be noted that the complainants in their representation to the Panel were clear that they had not originally alleged that bullying had taken place and that this should not be seen as the focus of their complaint.

The complainant set out that they felt the complaint should be resolved by

- A directional statement to the [later] minutes be included in the [earlier] minutes; and
- The replacement of copies of the [earlier] minutes to include the agreed statement.
- The amendment of the website to make it clear that these are agreed minutes consistent with the posting of all other agreed minutes.

Process of Investigation

Interviews were conducted by the IO with various individuals referenced in the complaint. This included the complainants, a local ward councillor and the office bearers. 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 IO also reviewed information provided by all parties including email correspondence, PDF documents and website screenshots.

IO Findings

It was concluded that the decision in contention, to add clarifications to previous minutes, was unclear as to whether detail should be added to, or alongside, the PDF document. Thus the office bearers of the CC had implemented the agreed action as much as was necessary by placing the clarifying statement on the minute download pages. Consequently, there was insufficient evidence to uphold the allegations in relation to breaches of the CC Code of Conduct provisions 2.12 and 3.10.

Independent Community Council Complaints Panel (ICCCP) Findings

The ICCCP met on 9 March 2021 to consider the IO report. All parties were invited to attend the meeting in order to provide any points of clarification required by the Panel.

The Panel noted that the complainants made it clear that they felt that the standard sanctions available to the ICCCP were too severe and they could not support these being applied to the office bearers in question. Instead they simply wished for clarifications to be added to the PDF minute document.

The Panel agreed that there was ambiguity as to what was intended by the minutes in question.

The Panel also examined the claim by complainants that the breach had been caused by one individual acting on their own accord. Through inspection of provided evidence and questioning of witnesses it was demonstrated that decisions regarding the minutes had been taken collectively by a number of office bearers. This was an important distinction as it meant that the decision as to how the minutes had been dealt with could not be attributed to one individual misusing their power.

The Panel agreed that they did not want to set a precedent whereby electronic versions of minutes could be amended in retrospect after having been formally approved. However, they felt that a schedule or clarification should still be added to identified outstanding physical copies in such a way that it was obvious that this was a later addition and not by amending the original document. One way that this could be done would be by way of stapling a separate piece of clearly marked paper.

The Panel noted comments from one attendee that they didn't feel sufficiently supported throughout the process. The Panel were aware of the existing support provided to attendees, including the option to be accompanied at interviews/Panel and the availability of procedural clarification throughout from the Governance Team, but asked if there was anything that could be done to soften the formalities of the procedure.

The Panel agreed the following:

- **That breaches by Office Bearers of [community council] of paragraphs 2.12 and 3.10 of the Councillors Code of Conduct are not upheld.**
- **The Panel notes that [community council] have already undertaken to review their website content. It is recommended that during this process that they ensure that all minutes which have been agreed are marked as such and that there is a consistency of naming convention throughout uploads.**
- **To recommend that the City of Edinburgh Council review the support that is provided to complainants, those subject to complaints and witnesses to ensure that it is sufficient.**
- **To recommend that, as soon as practically possible, an addendum in line with that agreed at the [later] meeting is added to any physically archived [earlier] minutes, such as those stored at [location].**

Date: 11 March 2021

Ross Murray

Governance Officer and Clerk to the Independent Complaints Panel.