

MIDLOTHIAN COUNCIL

This document explains the local procedure for dealing with complaints against a Midlothian Councillor. Complaints may be made by members of the public, Council staff or by Councillors.

Nothing in this document affects a person's right to make a complaint to the Standards Commission. Their address is:-

Standards Commission for Scotland
Room T2.21, Scottish Parliament
Edinburgh EH99 1SP
Tel: 0131 348 6666 Fax: 0131 557 9243
Email: enquiries@standardscommission.org.uk

The Procedure is in two stages:

Stage 1 - Preliminary Stage – This Stage will be used by Councillors and Council employees

Stage 2 - Informal Resolution Stage – This stage will be used by Members of the Public. It is also the second stage for Complaints by Councillors and Council Employees.

Complaint by a Councillor or a Council Employee

Where any Councillor is alleged to have breached the Councillors' Code of Conduct ("the Code of Conduct") the following procedure will apply.

The procedure is in two stages with the aim of achieving a satisfactory outcome for all involved – Preliminary Stage and an Informal Resolution Stage.

The Preliminary Stage must always be used and only if this fails to produce a satisfactory outcome will the Informal Resolution Stage be invoked.

Stage 1 - Preliminary Stage

1. The Complainer who alleges a breach of the Code of Conduct will discuss the issue with the Councillor who is alleged to be in breach of the Code of Conduct (the Complainee). Both parties should seek to resolve the complaint at this stage.
2. If the Complainer is not willing to speak to the Complainee directly, he/she will approach his/her political group Leader or, in the case of a Council employee, a line manager who will assist in resolving the issue through discussion with both parties separately or together.
3. If the political group Leader is the subject of the allegation, the Provost or Leader of the Council or another Senior Councillor (for example political group chair, depute group leader or group whip) will assist the Complainer to achieve a resolution of the complaint. If the Provost or the Leader of the Council is the subject of the allegation, the Provost/Leader of the Council (whoever is not the subject of the allegation) will try to resolve the issue in accordance with paragraph 2 above.
4. If either party is not satisfied with the outcome of the meeting with the political group Leader or line manager, he/she will raise the matter with either the Provost or the Leader of the Council (if they are not the subject of the complaint) or another Senior Councillor who will seek to resolve the matter.
5. If the Complainer is not satisfied after the Preliminary Stage, he/she may proceed to the Informal Resolution Stage (Stage 2)

Stage 2 - Informal Resolution Stage

How to make a complaint

1. Under Stage 2, any complaint about the conduct of a Councillor should be sent in writing to either the Chief Executive or the Monitoring Officer. The complaint must also include the following details:-

- (a) The name and address of Complainer;
- (b) The name of the Complainee;
- (c) The nature of the conduct alleged;
- (d) The part of the Councillors' Code of Conduct ("the Code of Conduct") which is alleged to have been breached; and
- (e) Any supporting evidence.

2. In the absence of any of the details required in paragraph 1 above, the Chief Executive/ Monitoring Officer reserves the right to treat a complaint as invalid and not proceed with the complaint in accordance with this procedure.

3. The Chief Executive/Monitoring Officer before processing the complaint requires to be satisfied that the preliminary stage has been exhausted and/or was not appropriate.

Prima facie evidence of alleged criminal offence

4. If at any stage during the course of the complaints procedure prima facie evidence of the commission of a criminal offence comes to the attention of the Chief Executive/Monitoring Officer, the police will be informed as soon as possible. In that event, the complaints procedure will be suspended until after the outcome of any police investigation or criminal prosecution.

Standards Commission for Scotland ("the Commission")

5. If at any stage during the course of the complaints procedure prima facie evidence of the commission of a serious breach of the Code of Conduct comes to the attention of the Chief Executive/Monitoring, the complaint will be referred to the Public Standards Commissioner for investigation as soon as possible. In that event, this procedure will not apply and the complaint will be determined by the Public Standards Commissioner and/or the Standards Commission for Scotland, as appropriate. The Chief Executive/Monitoring Officer shall advise the Public Standards Commissioner, the Complainer and the Complainee accordingly.

6. In the event that a complaint against a Councillor is also submitted to the Standards Commission by the Complainer, then this procedure will not apply and the complaint will be determined by the Public Standards Commissioner and/or the Standards Commission for Scotland, as appropriate. The Complainer shall advise the Chief Executive/Monitoring Officer and the Complainee if he/she decides to make a complaint to the Standards Commission.

Acknowledgement of Complaint

7. The Chief Executive/Monitoring Officer shall record the date of receipt of every valid complaint i.e. those complaints that meet the requirements set out on paragraphs 1 and 3 above; issue an acknowledgement of receipt to the Complainer within 5 working days and send a copy of the complaints procedure to him/her. The Chief Executive/Monitoring Officer shall advise the Complainer that the full details of his/her complaint will be sent to the Complainee. The Chief Executive/Monitoring Officer may seek clarification from the Complainer in relation to any aspect of the complaint. The date of receipt of such clarification shall then be deemed to be the date of receipt of the complaint.

Intimation of the Complaint to the Councillor

8. Within 5 working days of the date of receipt of the complaint (or as soon as possible thereafter), the Chief Executive/Monitoring Officer shall intimate the complaint to the Complainee. The Complainee shall be informed of the following:-

- (a) Identity of the Complainer;
- (b) the exact nature of the complaint;
- (c) The provisions of the Code of Conduct which he/she is alleged to have contravened.

The Complainee shall be sent a copy of the complaints procedure.

9. The Chief Executive/Monitoring Officer may arrange for such enquiries to be carried out as he considers appropriate, in order to clarify or resolve the complaint. In the event that the Chief Executive/Monitoring Officer determines that the complaint is not well founded, he will advise the parties accordingly and give his reasoning.

10. The Chief Executive/Monitoring Officer may invite the parties to attempt to resolve the complaint informally, by any means, including by attending a meeting convened by him for that purpose. Neither the Complainer nor the Complainee shall be bound to attend such a meeting.

11. The Chief Executive/Monitoring Officer may consult with the Chair of the Standards Committee in relation to any aspect of the complaint and/or the application of this procedure.

Acceptance of Complaint

12. In the event that the Complainee accepts that the complaint is well founded and the Complainer is satisfied with the outcome, the Chief Executive/Monitoring Officer shall be entitled to treat the matter as resolved.

Final Decision

13. The decision of the Chief Executive/Monitoring Officer in relation to a complaint under this procedure shall be final.