



Sawbridgeworth Town Council

Policy 3.2

COMPLAINTS PROCEDURE

(Helping to improve services)

To be reviewed, Finance, Policy and Economic Development Committee 15th April 2024

Consideration for adoption, Full Town Council Meeting 29th April 2024

1. Formal Complaints – General

1.1 Complaint Management and Nominated Investigator

The Clerk to the Council is responsible for managing the formal complaints process.

The investigation of any given complaint will be handled by a nominated investigator. The nominated investigator will be as follows:

In the case of a complaint against a member or any member of staff, The Clerk, at his/her sole discretion, designate to another member of staff to investigate.

In the case of a complaint against the Clerk, the Mayor

In the case of a complaint against a member, the Clerk (however note that his/her role is limited in this case to facilitation of the process and the establishment of the facts – see section 3)

The process for dealing with complaints against the Council (acting as a corporate body) and/or its officer(s) differs from the process for dealing with complaints against one or more councillors. The respective processes are described in sections 2 and 3 below. If a prospective complainant has any doubt which applies, they may seek guidance from the Clerk.

1.2 Criteria for Consideration of Complaints

The Council has an obligation to use its resources efficiently in the interests of its parishioners.

Whilst all complaints are taken seriously, the Council may decline to consider complaints falling into certain categories if it appears that to do so would be contrary to the public interest and/or represent a significant waste of public resources. Complaints will not normally be investigated in the following circumstances:

1. The complaint appears to be motivated principally by malice or deliberate wasting of officer/member time, “tit-for-tat” or politically motivated.
2. It appears that there can be no relevant breach of generally acceptable standards of conduct and/or the Members Code of Conduct (as applicable), for example, that it relates to the private life of an individual.
3. The complaint is about dissatisfaction with a decision made by full Council or a committee of Council duly recorded in minutes, unless it is alleged that the decision in question is discriminatory or unlawful.

4. It is about the behaviour of someone who is no longer an officer or member. This will not however, exclude complaints about the consequences of decisions made someone who is no longer an officer or member.
5. The complainant has provided insufficient information adequately to consider the complaint.
6. The complaint has been received more than 2 months after the alleged incident (or the date on which the alleged incident became apparent if later) unless there are exceptional circumstances e.g. allegation of bullying, harassment etc. or some other exceptional reason why the complaint could not have been brought within 2 months.
7. The same, or similar, complaint has already been investigated and there is nothing further to be gained by a new investigation.
8. It is an anonymous complaint, unless it is clearly in the public interest to examine it and there is adequate evidence available.
9. Where the Officer or Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction and/or compensation.
10. The complaint is not sufficiently serious to warrant investigation.
11. The complaint is about the process by which a complaint was handled or about the outcome (this should be pursued through the appeals process).

The decision to reject a complaint will rest with the Clerk (or in the case of a complaint against the Clerk, with the Mayor) and may be made at any time during the consideration of a complaint. The rationale for rejecting the complaint will be clearly set out in writing.

A complainant may appeal a decision to decline consideration of a complaint. The appeal will be heard by the Grievance, Appeals and Complaints Committee according to the summary process set out below.

If the Committee upholds the appeal, then the decision to reject it will be set aside and complaint will be fully investigated by the in accordance with the complaints process.

If the committee rejects the appeal, then the complainant will be notified and no further action will be taken. The complainant will not be permitted to make any further complaint in relation to the same incident or series of incidents and the Council and/or its officer may decline to enter into further correspondence on matters related to the complaint.

1.3 Timings for Dealing with Complaints

The Town Council will try to adhere to the timings outlined in this policy, but in the case of a complex complaint, or the absence of a member of staff who is involved in the complaint, may mean that the timings must vary. Should this occur then the complainant will be kept advised of the revised timescales.

2. Formal Complaints about Services Provided by the Council

This section applies to complaints about services provided by the Council. It also applies to complaints about the behaviour of staff employed by the Council when acting in an official capacity.

2.1 Finality of Submission

The required detail as set out above should, other than in exceptional circumstances, be submitted within two weeks of the initial notification of a formal complaint.

The complainant may be asked to confirm when all information has been submitted. In the absence of such confirmation the nominated investigator will be entitled to advise, with no less than one weeks' notice, a deadline for submission. This must be no less than 2 weeks after initial notification of the complaint. Once the deadline is passed the complainant will not normally be permitted to introduce new evidence.

The Council will not be obliged to consider any complaint until either the complainant advises that he/she has submitted all evidence he/she wishes to submit or the deadline for submission notified by the nominated investigator has expired.

2.2 Investigation and Determination

The nominated investigator will carry out an investigation into the complaint. During the course of the investigation, he/she will make such enquiries of the complainant, the subject of the complaint and others as he/she reasonably sees fit however it will remain the responsibility of the complainant to produce evidence in support of the complaint.

In considering the complaint the investigator will be entitled to have regard to the differing standards expected according to circumstances. For example, transactions of a 'business to business' nature may be considered against criteria which differ in some respects to those which apply when the Council is dealing with an individual as a parishioner.

The nominated investigator may suggest a resolution alternative to that suggested by the complainant or discuss a resolution with the complainant. If agreement can be reached on the resolution the matter will be closed.

In the absence of agreement on a resolution the nominated investigator will provide a written determination setting out the decision made on the merit of the complaint (and, if appropriate, the nature of any proposed resolution) as well as the rationale in support of that decision. Normally this will be within ten working days however if the Clerk, relevant members of staff, the complainant or other key individuals are absent for any reason or the investigation is particularly complex the investigation may take up to one month.

If the complainant is satisfied with the resolution the complaint is closed.

2.3 Appeal Against Determination of Complaint

Making an Appeal

If the complainant is not satisfied with the outcome of a formal complaint, then he/she has recourse to appeal. Appeals will be heard by the Grievance, Appeals and Complaints Committee. This has delegated authority from the Town Council to review and decide on complaints against the Council and a decision made by the committee is final.

To appeal the determination of a complaint and/or the resolution proposed by the nominated investigator the appellant must set out, in writing, the grounds for appeal. These must be specific; it is not sufficient for the complainant simply to state that he/she disagrees with the determination.

For example:

- If the appeal is against the decision on the merits of the complaint, then the appellant must set out clearly why he/she considers that the rationale given in the determination by the nominated investigator is not valid.
- If the appeal is against the proposed resolution, then the complainant must set out what alternative resolution is proposed and why this is reasonable having regard to the nature of the complaint.
- If the appeal is on the grounds of failure to follow process the complainant must set out the nature of the failure and explain in what way the outcome was materially affected by the failure.

Appeals must be made within four weeks of the issue of the written determination at first instance; appeals made outside this timescale will be disallowed.

At this stage the appellant is not required to submit evidence in support of his/her arguments, however, they must outline the arguments as set out above.

The nominated investigator will consider whether the complainant has met these requirements. There will be a presumption in favour of allowing an appeal, however if the nominated investigator reasonably considers that the grounds for appeal have not been clearly or adequately stated in accordance with the above then he/she may deny leave to appeal. The applicant may contest the decision to deny leave to appeal and if he/she does so then the Complaints (Appeals) Committee will determine in summary session whether or not leave to appeal is to be granted. If leave is granted by the Committee, then the appeal process will proceed as if leave to appeal had not initially been denied.

Exchange of Evidence

Not less than seven clear working days before the meeting of the Committee the complainant will provide the Town Council with copies of all documentation, or other evidence (such as photographs) that they intend to introduce to the meeting in support of their appeal. The Town Council will provide to the complainant any further evidence it intends to rely on in support of its determination.

The Appellant may not, other than in exceptional circumstances, introduce evidence pertaining to the substantive complaint which was not produced at the time of the initial determination unless it was not reasonably practical to do so. The Committee may, at its sole discretion, strike out such evidence if it is produced. Failure to produce evidence for the initial determination will not constitute a reason for admitting evidence at appeal.

Hearing Preliminaries

Three members of the Grievance, Appeals and Complaints Committee will review an appeal. This will ensure the panel is quorate and that the number of members present is not excessive. The Committee is subject to all of the normal meeting notification, agenda and minute requirements, as laid down in the Town Council's Standing Orders.

The whole committee or a subset may, at their discretion, hold a separate meeting prior to the hearing to consider matters of procedure or other matters aside from the substantive appeal.

The Committee members hearing the appeal will endeavour to agree a meeting date and time which is convenient the appeal and when the necessary staff are available. In the event that a

mutually agreeable date cannot be found which is within six weeks of receipt of grounds of appeal (or such longer timescale as the Committee may, at its sole discretion, determine), the Committee may set a date giving not less than two weeks' notice.

Meetings will be held at the Town Council Offices commencing between 9am and 7pm unless otherwise determined by the Committee.

The Hearing Meeting

(a) As far as possible the Council carries out its business in public, matters that involve individual identified members of staff, may require the exclusion of the press and public. The Committee shall consider whether the circumstances are such that this is the case.

(b) The Chair of the Committee shall introduce everyone and explain the procedure to be used in order to consider the complaint made. The meeting should be as informal and friendly as possible, without prejudicing the need to consider properly the matter under discussion.

(c) The Committee will review the written material presented

(d) The parties will be given the opportunity to make representations:

- The appellant (or representative) will be invited to outline the grounds for appeal and panel members given the opportunity to ask any question of the complainant.
- If relevant, the Chief Executive Officer (or other appropriate Officer) will explain the Council's position and panel members shall ask any questions of the Chief Executive Officer, the appellant and such other persons as they see fit.
- The appellant is to be offered the opportunity of a last word as a means of summing up their position.
- The Clerk is to be offered the opportunity of a last word as a means of summing up their position.

(e) The Committee may decide that a recess and/or further meeting is required before a determination can take place, to gather more evidence or for any other reason.

(f) The Committee may decide both to make and to communicate a decision at the meeting, or to communicate the decision via a written judgement to be issued at a later date.

(g) The Clerk and complainant will be asked to leave the room while Committee members decide the appeal. The Committee may ask that they remain available in case points of clarification are necessary, (in which case both parties should be invited back for questioning) or advise that they are free to depart on the basis that a written judgement will be issued.

If judgement is to be issued at the meeting both parties will be asked to return to hear the decision.

(h) The Committee will issue a determination at the meeting or subsequently in writing and, if appropriate a proposed resolution. This shall be final.

2.4 Summary Hearings of the Grievance, Appeals and Complaints Committee

Certain matters set out above will be determined by the Grievance, Appeals and Complaints Committee in a summary hearing. These are as follows:

- Appeal against the rejection of a complaint under section 1.2
- Appeal against the decision to refuse leave to appeal under section 2.3

A summary matter will be determined by three members of the Grievance, Appeals and Complaints Committee and unless that Committee determines otherwise the decision will be on the basis of written evidence only.

Not less than seven clear working days before the meeting of the Committee the complainant will provide the Town Council with a written rationale for appealing the rejection/refusal of leave to appeal which should respond to the reasons for refusal notified by the Council.

2.5 Impact on Council Staff

A formal complaint is a serious matter. A complaint against a member of the Council's staff could result in disciplinary action; or in cases of gross misconduct dismissal from the Council's employment.

The Grievance, Appeals and Complaints Committee is not authorised to impose any sanction on members of Staff. This is, in all cases, a matter for the Council's formal disciplinary procedure.

The Council will not under any circumstances enter into any correspondence, or discussion, with any complainant about any action taken, formally or informally against any member of its staff. This is expressly to protect the employment rights to which all employees of the Council are entitled.

3. Formal Complaints about the Behaviour of Councillors

3.1 Introduction and Submission

This section applies to complaints about the behaviour of an individual Councillor or group of Councillors. The Clerk to the Council is responsible for managing the formal process from complaints against members in association with the Mayor or the Deputy Mayor if the Mayor is the subject of the complaint.

Councillors are bound by a Code of Conduct which is approved by Council and is the minimum

standard of behaviour which the Council expects from its members. Complaints will be judged on their merits having due regard to the code of conduct.

A formal complaint can either

- be submitted in writing to the Council offices, it should be addressed to the Clerk, marked “Confidential”. Alternatively the complaint may be sent by email to the Chief Executive Officer whose contact details are on the Town Council Website.
- Be submitted in writing to the monitoring officer at East Herts District Council who have obligations to investigate certain complaints against Town and Parish Councillors

The following details the process which Sawbridgeworth Town Council will use to investigate a complaint. Complaints submitted to East Herts District Council will be investigated in accordance with their process.

The complaint should cover as much detail as possible and enclose any relevant supporting documentation.

3.2 Investigation of Facts

The Clerk will advise the Member(s) against whom a complaint has been made and may make reasonable enquiries to clarify salient facts. Normally this will be within ten working days however, if the Clerk or relevant individuals are absent for any reason or the investigation it may take up to one month or longer if further information is required from the complainant.

3.3 Meeting of the Parties

The Mayor (or Deputy Mayor if the Mayor is a party to the complaint) and the Clerk will call a meeting of the complainant and the member or member concerned and, at their sole discretion, such other individuals as are relevant to the case.

At the meeting the parties will present their dispute and will endeavour to resolve the matter.

The Mayor and the Clerk may recommend such further action as they deem fit with the objective of reaching a consensual resolution. In the event that a consensual resolution is reached then the matter is closed.

3.4 Investigation and Determination in the Absence of Consensual Resolution

If no consensual resolution is reached and the complainant wishes to pursue the matter further then a formal investigation will be carried out to determine whether a breach of the members’ code of

conduct has occurred.

The Clerk, or other appropriate officer, or if appropriate, an independent person will carry out a full investigation of the facts and produce a report which both parties will be offered the opportunity to comment on.

A meeting of the Complaints and Disciplinary Committee will be held at which the report of the Clerk will be reviewed. The Committee will be supported by an independent person and may interview the complainant, the respondent(s) and such other individuals as they deem fit.

If present the parties will be asked to leave the room while members decide whether or not a breach of the code of conduct has occurred. If a point of clarification is necessary, both parties should be invited back.

In any case both parties will be asked to return to hear the decision, or to be advised when the decision will be made.

The Committee will issue a determination and, if it considers that a breach has occurred may order that a sanction be imposed or recommend to council the imposition of a sanction (see below).

3.5 Appeal

Either party may appeal against:

- The determination of whether a breach of the code of conduct has occurred (other than where a determination has been made by EHDC)
- The sanction (if any) imposed by the Town Council

Appeals must be made in writing to the Clerk within fourteen calendar days of the determination and must state the rationale for the appeal. The Clerk will advise the other party of the appeal and offer them the opportunity to prepare a written response.

The appeal will be heard by the Grievance, Appeals and Complaints Committee who will consider only those matters against which the appeal has been made. The Committee will review the argument made by the appellant and the response and may, but is not obliged to, interview the parties. The parties are therefore advised to make their arguments clear in the written submissions.

The Committee will issue a determination. There will be no further internal appeal.

3.6 Sanctions

The range of sanctions available against members is limited and in particular the Council has no right to suspend members. The following sanctions may be considered by the determining Committee:

- A formal letter to the member(s) found to have breached the code;
- Appropriate communication if required.
- A recommendation to Council that the member(s) be formally censured by motion;
- A recommendation to Council that the member(s) be removed from one or more committee(s) (but not full Council) subject to statutory and constitutional requirements (note that the Council cannot prevent members from attending Committee meetings).

3.7 Referral to East Herts District Council

A complainant may at any point in the proceedings refer any alleged breach of the members' code of conduct for investigation by East Herts District Council. It should be noted, however, that East Herts District Council may at their option decline to investigate or may refer the matter back to the Town Council if the Town Council's procedure has been bypassed.

If a referral is made or if at any time, the Town Council becomes aware that the complaint is also being considered by the Monitoring Officer of East Herts District Council, the Clerk may suspend further consideration of the complaint pending the outcome of the investigation by EHDC.

The determination by EHDC will, unless circumstances dictate otherwise, be taken as definitive by the Complaints and Disciplinary Committee which will consider (if appropriate) the question of sanctions only, having regard to any sanction imposed or recommended by EHDC.

