



Councillor Code of Conduct Dispute Resolution Procedure

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1 Purpose

The purpose of the Councillor Code of Conduct Procedure (**Procedure**) is to support the Councillor Code of Conduct (**Code**) by detailing the procedural steps required to be taken in respect of each of the elements of the Dispute Resolution Process set out in Schedule 1 of the Code.

2 Scope

The Procedure supports the Councillor Code of Conduct and specifically, Schedule 1 of the Code.

3 Procedures Context

The Procedure has been developed to provide additional context and information to ensure transparent and consistent application and administration of the Dispute Resolution Process set out in the Code.

4 Dispute Resolution Procedure

General

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute will use their best endeavours to resolve the matter between themselves in a courteous and respectful manner.

While all Councillors are committed to resolving disputes in the most conciliatory and least disruptive manner possible, there may be times when assistance is required to reach a satisfactory outcome. In these situations, Councillors have agreed to follow a dispute resolution process that features:

- direct negotiation between the parties in dispute with facilitation and guidance from the Mayor and as required, the Chief Executive Officer;
- mediation by an external mediator engaged by the Chief Executive Officer; and
- internal arbitration.

The administrative procedures for each element of the Dispute Resolution Process are set out later in this section. Process flowcharts are provided at page 7 of this Procedure.

The roles of the parties who may be involved in the dispute resolution process / procedure are set out in the table below.

Title	Role	How Appointed
Mayor	First point of contact for a Councillor who is unable to resolve a dispute with a fellow Councillor within 28 days.	Elected by Councillors
Deputy Mayor	To act as the point of contact for a Councillor who is unable to resolve their dispute involving the Mayor within 28 days.	Elected by Councillors

Title	Role	How Appointed
Chief Executive Officer	To act in place of the Mayor and Deputy Mayor as the point of contact for a Councillor unable to resolve their dispute involving the Mayor and Deputy Mayor within 28 days. To assist in the facilitation and guidance of direct negotiations, as required. To engage an external mediator, if required for the Dispute Resolution Process.	Appointed by Council
1. Mayor; or 2. Deputy Mayor in place of the Mayor; 3. Chief Executive Officer if both the Mayor and Deputy Mayor are involved in the dispute, or as required.	Initiate direct negotiation between effected parties to resolve the dispute.	Refer above
Principal Councillor Conduct Registrar	Receive and process applications for appointment of arbiter. Other functions set out in section 149 of the Act.	Appointed by the Secretary to the Department responsible for administering the Act.
Councillor Conduct Officer	Assist with internal arbitration processes, assist the Principal Councillor Conduct Registrar to perform their functions and in relation to any requests for information under section 149(3) of the Act.	Appointed by Chief Executive Officer
Independent Mediator	Mediate and document any agreement reached at mediation.	Appointed by the Chief Executive Officer
Arbiter	Consider any referred application, make findings, give reasons and recommend sanctions if appropriate.	Appointed by the Principal Councillor Conduct Registrar
Council	Consider arbiter's findings, statement of reasons and any recommended sanctions.	Publicly elected every four years

1. Direct negotiation with Mayoral assistance

If the Councillors who are parties to a disagreement cannot resolve their differences in a courteous and respectful manner, one or both parties may request the Mayor (or if the Mayor is a party to the dispute, the Deputy Mayor; or if both the Mayor and Deputy Mayor are involved in the dispute, the Chief Executive Officer) to convene a direct negotiation meeting to attempt to resolve the dispute. The Mayor may seek support from a third party, following discussion with and approval by the Chief Executive Officer, to assist with facilitating the process.

The request must be in writing and where it relates to an alleged contravention of the Councillor Code of Conduct, must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is/are alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be the applicants' representative (where the request is made by a group of Councillors); and

- be signed and dated by the requestor or the requestor's representative. (For the purposes of this requirement, a request sent by email is taken to be signed by the person who sent the email and their representative, if applicable).

The Mayor will then convene up to two meetings (as considered necessary) between the parties and attend those meetings to facilitate proceedings and provide guidance about the process and what is expected of Councillors, including in relation to the role of a Councillor under section 28 of the Act and the observation of the Councillor Code of Conduct.

The Mayor will document any agreement reached at the meeting. Copies of the agreement will be provided to both parties and the Chief Executive Officer. Where one party does not adhere to the agreement, the other party can request external mediation or arbitration.

If resolution of the dispute is not possible through the Mayor's intervention, the Mayor or one or more of the other parties involved in the dispute can make a written application to the Chief Executive Officer for an external mediator to be appointed.

2. External Mediation

A Councillor or a group of Councillors can make written application to the Chief Executive Officer for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for direct negotiation. The application process to be undertaken is the same as for where direct negotiation fails and the applying party wishes to proceed to external mediation.

Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is/are alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be the applicants' representative (where the application is made by a group of councillors); and
- be signed and dated by the applicant or the applicant's representative.

The Mayor or Councillor/s making application will notify all parties related to the dispute and provide a copy of the application at the same time that it is submitted to the Chief Executive Officer.

The Chief Executive Officer will ascertain (in writing) whether or not the party/parties who received the application are prepared to attend an external mediation. If the party/parties decline to participate in an external mediation, they are to provide their reasons for doing so in writing to the Chief Executive Officer, who will advise the Mayor.

It is not a contravention of this Councillor Code of Conduct for a party to decline to participate in an external mediation. However, the reasons provided for declining to participate may be taken into account if the matter subsequently becomes the subject of an application for internal arbitration.

If the receiving party/parties agree to participate in an external mediation, the Chief Executive Officer will advise the applicant and the Mayor.

The Chief Executive Officer will engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The parties may have a support person with them at the mediation. However, in the spirit of mediation legal representation is not appropriate during this process.

If the parties cannot resolve the dispute at the initial external mediation, a further meeting may be convened with the consent of both parties.

The mediator will document any agreement reached through the mediation process. Copies of the agreement will be provided to all parties to the dispute, the Mayor and Chief Executive Officer. Where one party does not adhere to the agreement, the other party can request arbitration.

3. Internal Arbitration

If Mayoral assistance and/or external mediation fail to resolve a dispute involving an alleged contravention of this Councillor Code of Conduct, or if the dispute involves a breach or potential breach of the standards of conduct imposed by section 139(3)(a) of the Act and Schedule 1 of the regulations, Council (following a resolution of Council to do so), a Councillor (including the Mayor) or a group of Councillors may make a written application under section 143 of the Act to the Principal Councillor Conduct Registrar for arbitration, alleging that a Councillor has contravened this Councillor Code of Conduct. An application under section 143 of the Act must be made within 3 months of the alleged misconduct occurring.

The application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is/are alleged to have been contravened;
- if the application relates to an alleged breach of the standards of conduct found in Schedule 1 of the regulations, specify the clause of the standards of conduct that the Councillor is alleged to have breached;
- specify the conduct the Councillor is alleged to engage in that resulted in the contravention;
- include evidence in support of the allegation;
- name the Councillor appointed to be the applicants' representative (where the application is made by a group of councillors); and
- be signed and dated by the applicant or the applicant's representative.

An applicant may withdraw an application for an internal resolution procedure. However, once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Councillor Conduct Registrar will:

- consider whether an internal arbitration process is warranted by:
 - ensuring that the application is not frivolous, vexatious, misconceived or lacking in substance;
 - ensuring that there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct; and
 - ensuring the application either involves a breach or potential breach of the standards of conduct imposed by section 139(3)(a) of the Act and Schedule 1 of the regulations or Mayoral assistance and/or external mediation has already failed to resolve the dispute;
- advise the Mayor and Chief Executive Officer of the application;
- provide a copy of the application to the Councillor Conduct Officer to provide to the Councillor who is the subject of the allegation at the earliest practical opportunity, but not later than two working days from receipt of the application;
- identify an arbiter to hear the application from the panel list of eligible persons from which an arbiter must be selected (as established by the Secretary).
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved;
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the arbiter;

- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter;
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired;
- after consultation with the arbiter, advise the applicant and respondent Councillors of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process.

The role of the arbiter is to:

- consider matters alleging a contravention of the Councillor Code of Conduct by a Councillor once the application for internal arbitration process has been approved by the Principal Councillor Conduct Registrar;
- make findings in relation to any matters alleging a contravention of the Councillor Code of Conduct, which the arbiter must give to Council along with reasons supporting the findings;
- give a written statement of the findings and the reasons supporting them to the Councillor who is alleged to have breached the Councillor Code of Conduct at the same time the findings and reasons are provided to Council;
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct; and
- in all respects comply with their obligations under the Act.

In considering an alleged contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Councillor Conduct Registrar, fix a time and place to hear the matter;
- authorise the Principal Councillor Conduct Registrar to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the matter, including directions hearings if required;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the matter allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and, in his or her discretion (subject to section 141(2)(b) of the Act), grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

Where an application by a Councillor to have legal representation is granted by an arbiter, the costs of that legal representation will be borne in its entirety by the Councillor.

An arbiter:

- may find that a Councillor who is a respondent to an internal arbitration procedure application has not contravened the Code and/or the standards of conduct prescribed in Schedule 1 of the regulations;
- may find that a Councillor who is a respondent to an internal arbitration procedure has contravened the Code and/or the standards of conduct prescribed in Schedule 1 of the regulations; and
- will suspend consideration of an internal arbitration procedure during the Election Period for a General Municipal Election.

The arbiter will give a copy of their findings and the statement of reasons to the Mayor, Chief Executive Officer, the applicant, the respondent Councillor/s and the Principal Councillor Conduct Registrar. At the same time as the arbiter provides the findings and statement of reasons, where a Councillor has been found to have contravened the standards of conduct prescribed in Schedule 1 of the regulations, the arbiter will recommend an appropriate sanction or sanctions for the contravention as provided in section 147 of the Act. Where a Councillor has been found to have contravened the Code but not the standards of conduct prescribed in Schedule 1 of the regulations, the arbiter may recommend any of the possible sanctions set out in section 147 of the Act for a contravention of the standards of conduct prescribed in Schedule 1 of the regulations.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions will be submitted to the next Council meeting. The matter will be listed for consideration during the closed session of the meeting. Council will determine whether the findings, statement of reasons and any sanctions to be applied should be retained in confidence or made public either wholly or in part, in accordance with the Act.

If an arbiter has found that a contravention of the Code has occurred, Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, resolve to do any or all of the following:

- direct the Councillor to make an apology in a form or manner specified by Council;
- direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding two months on a date specified by Council, the Councillor:
 - be removed from any position where the Councillor represents Council; and
 - to not chair or attend any delegate committee meetings or any other meeting specified in the direction.

Councillor Conduct Panels for serious misconduct

Allegations of "serious misconduct" as defined by section 3 of the Act may be heard on application by a Councillor Conduct Panel in accordance with the process set out in the Act.

An application alleging serious misconduct must be made within 12 months of the alleged misconduct occurring.

Dispute Resolution Options - Flowcharts

The following flowcharts have been developed from the detail contained in section 4 of this Dispute Resolution Procedure and must be read in conjunction with the detail set out in section 4.

Whilst the dispute resolution steps are designed to reach resolution, no stage of the resolution process (with the exception of those prescribed in the *Local Government Act 2020* or the *Local Government (Governance and Integrity) Regulations 2020*) is a mandatory step.

1. Direct negotiation with Mayoral assistance - Flowchart

Step 1. Applicant must submit written request with various information.



Step 2. Within 5 days, Mayor will provide acknowledgement of receipt to applicant.



Step 3. Mayor will convene meeting to resolve dispute between parties.
(A further meeting may be convened, where required).

Note: *If dispute remains unresolved, the parties are encouraged to progress to External Mediation but may choose to omit this step and move straight to internal arbitration.*

2. External Mediation - Flowchart

Where direct negotiation with Mayoral assistance is unsuccessful or written application* is made to the Chief Executive Officer for a dispute to be referred for external mediation. (Written application* must include various information).

Step 1. A Councillor or a group of Councillors (applicant) will lodge a written application with Chief Executive Officer (CEO) requesting an external mediator be appointed.



Step 2. The applicant to notify other parties of request and provide a copy of application at the same time it is submitted to CEO.



Step 3. The CEO will write to other parties to check whether willing to attend external mediation. (If other parties decline to participate, must provide reasons in writing to CEO, who advises the Mayor).



Step 4. If other parties agree to participate, the CEO to advise applicant and Mayor.



Step 5. The CEO to engage an external mediator at earliest opportunity.



Step 6. Mediator to document agreement reached at meeting/s and provide copies to all parties, Mayor and Chief Executive Officer).

Note: *If a party does not comply with agreement or dispute remains unresolved, the applicant has recourse to the Internal Arbitration Process (only where matter relates to an alleged breach of Councillor Code of Conduct or involves a breach of standards of conduct imposed by section 139(3)(a) of the Local Government Act 2020 and Schedule 1 of the regulations).*

3. Internal Arbitration - Flowchart

Step 1. Council (following a resolution of Council to do so), a Councillor (including the Mayor) or a group of Councillors to make application to Principal Councillor Conduct Registrar (PCCR) with various information provided.
(Must be made within 3 months of alleged misconduct occurring).



Step 2. PCCR will examine application and if satisfied, will undertake a range of administrative matters including advise the Mayor and Chief Executive Officer of the application; arrange for a copy of the application to be provided to the Councillor who is the subject of the allegation; and appoint an Arbiter to hear the matter.



Step 3. Appointed Arbiter to convene a hearing and give all parties to the application an opportunity to be heard. (Not open to the public).
(The appointed arbiter may hold as many meetings as required to properly consider the matter and will ensure that the rules of natural justice are observed).



Step 4. Appointed Arbiter will –

A. Determine matter and provide findings and statement of reasons to the Mayor, Chief Executive Officer, all parties and the PCCR (confidential information). If appropriate, at the same time the arbiter will recommend appropriate sanctions.

OR

B. If matter deemed to involve serious misconduct, will refer the matter in writing to the PCCR. (PCCR will inform all parties, where a referral is made by Arbiter).

Request for Councillor Conduct Panel - Flowchart

Step 1. Application with supporting information made to PCCR to establish a panel.
(An application alleging serious misconduct must be made within 12 months of alleged misconduct occurring).



Step 2. If satisfied, the PCCR will establish a panel to consider matter.