

**PROTOCOL FOR DEALING WITH
COMPLAINTS MADE AGAINST
ELECTED MEMBERS OF LEITRIM COUNTY
COUNCIL**

Policies and Procedures



26th October 2022

Contents

1.0	Introduction	2
2.0	Complaints	2
3.0	Processing of the Complaint	3
4.0	Actions	4
4.1	Report of Investigation	4
4.2	Referral to the Standards in Public Office Commission	5
4.3	Referral to An Garda Síochána	6
4.4	Any other Course of Action Considered Appropriate	6
5.0	Withdrawal of a Complaint	7
6.0	Appeal	7
	Appendix 1 – Complaint Form	8

PROTOCOL FOR DEALING WITH COMPLAINTS MADE AGAINST ELECTED MEMBERS OF LEITRIM COUNTY COUNCIL

This protocol is written having regard to the Code of Conduct for Councillors published by the Department of Housing, Planning and Local Government, and the Local Government Act 2001, as amended by the Local Government Reform Act 2014, with specific reference to Part 15 Ethical Framework for the Local Government Service.

This protocol is only intended to deal with complaints of contravention of the Code of Conduct of Councillors. Complaints which are considered to come under other policies and procedures will be dealt with in accordance with those policies and procedures e.g. Dignity at Work Policy and Procedures.

1.0 Introduction

The Code of Conduct for Councillors sets out principles and standards of conduct, respect, dignity, equality and integrity for Councillors, in performing their functions and in their relationship with each other, Council employees and with the public. The code is intended to inform the public, of the conduct it is entitled to expect from its elected representatives and uphold public confidence in local government.

2.0 Complaints

There may be an occasion when a person considers that the standards set out in the Code may not have been achieved and Leitrim County Council has put in place a process under which complaints about a Councillor's conduct can be examined or investigated and under which decisions on complaints about a Councillor's conduct can be made.

- 2.1 Complaints submitted about the conduct of Councillors of Leitrim County Council should be made in writing and addressed to the Ethics Registrar of the Leitrim County Council or can be emailed to customerservices@leitrimcoco.ie
- 2.2 Complaint forms are available from the Local Authority and can be posted or emailed on request.
- 2.3 A complaint, of any alleged contravention of the Code of Conduct of Councillors, should detail:
 - a) Complainant's name, address and contact details.
 - b) The name of the Councillor – Who the complaint is about.
 - c) Details of the alleged misconduct or breach of the Code of Conduct for Councillors, including where possible, dates, witness details and other supporting or relevant information.

- 2.4 If any of the following are clear from the complaint the allegation may not be considered further:
- a) The Councillor, the subject of the complaint, is not a Member of the Local Authority in question, at the time the alleged breach of code of conduct occurred.
 - b) Where the alleged breach of code of conduct is a continuation of a situation / set of circumstances currently under consideration by the Ethics Registrar.
 - c) Where the specific alleged breach of code of conduct was previously considered.
 - d) Anonymous complaints are recorded but generally not investigated. An anonymous complaint may, however, be investigated if it relates to a particularly serious or significant matter and there is enough prima facie detail or supporting evidence provided to examine / investigate the incident.
 - e) Where the alleged breach of code of conduct is minor in nature and would not warrant an investigation.
 - f) Where the complaint relates to a private/civil matter.
- 2.5 The complaint will be acknowledged within a period of 10 days from receipt.
- 2.6 In the event a complaint is not receiving further consideration in accordance with paragraph 2.4 above, the complainant will be permitted to appeal the decision not to examine/ investigate, by providing additional information within 10 days of the date of the Ethics Registrar's letter.
- 2.7 The Ethics Registrar will inform the Councillor who was subject to the complaint, that a complaint had been received and the decision reached by the Ethics Registrar.
- 2.8 All information obtained through the course of the process must be treated in a confidential manner and meet the requirements of the Data Protection Acts 1988 and 2003, and Freedom of Information 2014.

3.0 Processing of the Complaint

- 3.1 Where the Ethics Registrar becomes aware of a possible contravention by a Councillor of a provision of Part 15 of the Local Government Act 2001, it is his or her duty to bring it to the attention of the Chief Executive and the Cathaoirleach/Mayor of the Council (or the Chief Executive if the matter concerns the Cathaoirleach). It is a matter for the Chief Executive and the Cathaoirleach/Mayor (or the Chief Executive, as appropriate) to consider what action should be taken in accordance with the legislation.
- 3.2 Upon examination of the complaint, the Chief Executive and the Cathaoirleach/Mayor (or the Chief Executive, as appropriate) may decide to resolve the complaint informally as an alternative to a formal investigation with possible recommendations/actions detailed in 4.4 below. In such cases, there may be no finding that the Councillor failed to comply with the Code of Conduct for Councillors.
- 3.3 Where the Chief Executive and the Cathaoirleach/Mayor (or the Chief Executive, as appropriate) makes the decision to proceed with an investigation, as detailed in 4.0 below,

the complainant will be advised that their complaint, will be put to the Councillor, the subject of the complaint.

- 3.4 The Chief Executive and the Cathaoirleach/Mayor of the Council as detailed in 3.1 above, shall notify the Councillor in question that a complaint has been made about them and provide the opportunity for the Councillor in question to provide evidence or details, within 10 days, to help establish their position.

A Councillor who is the subject of a complaint is entitled to fair procedures. An elected Member against whom a complaint or allegation has been made of a breach of the Code of Conduct for Councillors will be advised, formally of the following in writing:

- That a complaint has been made against them.
- They shall be provided with a copy, or a redacted copy, where appropriate, of the complaint.
- That no conclusions will be drawn by the Council until the facts have been investigated.
- That they are expected to assist with the investigation as far as is reasonably possible.
- That they may have a person of their choice present if an interview is to take place.
- That they have the right to respond/make a statement in relation to the complaint, either in writing or orally.
- That as far as is reasonably possible, the confidentiality of the process and their privacy will be respected.

- 3.5 The Chief Executive and the Cathaoirleach/Mayor of the Council shall also consider what action should be taken

The actions may include:

- a) That no further action be taken, either because, no breach of the Code of Conduct has been evidenced, or It is felt, based on the information submitted, that investigation of the complaint would not be merited.
- b) An informal approach for less serious matters may be adopted. (Refer to 4.4)
- c) An Investigation into the matter. (Refer to 4.0)
- d) Referral to the Standards in Public Office Commission. (Refer to 4.2)
- e) Referral to An Garda Síochána. (Refer to 4.3)
- f) Any other course of action considered appropriate in the circumstances. (Refer to 4.4).

4.0 Actions

4.1 Report of Investigation

- 4.1.1 The Chief Executive and the Cathaoirleach/Mayor of the Council shall:

- a) Cause a Terms of Reference for a 'Report of Investigation' to be prepared in writing (in advance of the preparation of the Report of Investigation).
- b) Cause such report to be sent to and be retained by the Ethics Registrar.
- c) Furnish the report to:
 - i) The Councillor (the subject of the investigation)
 - ii) The Person who made the complaint

4.1.2 The report under 4.1.1 (a) may set out the findings of the investigation together with its determinations in relation to the following matters:

- a) Whether it has been possible or not to substantiate the complaint.
- b) Whether there may have been a contravention of the Code of Conduct for Councillors by the Councillor concerned and whether the contravention is continuing.
- c) In cases where the report finds that there has not been a contravention of the Code of Conduct by the Councillor concerned, whether the person or persons to whom the report is referred is of the opinion that the complaint was frivolous or vexatious or that there was no reasonable grounds for it.
- d) In cases where the report finds the contravention is continuing, the steps to be taken by the Councillor to secure compliance with the Code of Conduct for Councillors and the period of time within which steps should be taken to ensure compliance.
- e) Whether the contravention was committed unintentionally/inadvertently, negligently, recklessly or intentionally.
- f) Whether the contravention was, in all the circumstances, a serious or a minor matter.
- g) Whether the Councillor acted in good faith and in the belief that his or her action was in accordance with the Code of Conduct for Councillors.
- h) In circumstances where a determination cannot be made, the reasons for failing to arrive at a determination.

4.2 Referral to the Standards in Public Office Commission

4.2.1 The Chief Executive and the Cathaoirleach/Mayor of the Council as detailed in 3.1 above has exhausted all local avenues in an investigation, and is of the opinion that the matter should be referred to the Standards in Public Office Commission, they shall:

Prepare a report in writing in relation to the matter and furnish it together with any relevant document or other thing in its possession to the Standards in Public Office Commission.

Note: The Standards in Public Office Commission supervises the Ethics in Public Office Acts 1995 and 2001, the Local Government Act 2001 (Part 15 Ethical Framework for Local Government Service) and the Regulation of Lobbying Act 2015.

4.2.2 Where a report prepared by the Standards in Public Office Commission relates to:

- a) the Cathaoirleach/Mayor of a Local Authority, it shall be furnished to the Leas-Cathaoirleach/Deputy Mayor of the Authority and to its Chief Executive.
- b) any other Councillor of a Local Authority, it shall be furnished to the Cathaoirleach/Mayor of the Authority and to its Chief Executive.

4.2.3 Where a Standards in Public Office Commission Report of Investigation is furnished to a Local Authority, it shall be considered by the Elected Council.

4.3 Referral to An Garda Síochána

The Chief Executive and the Cathaoirleach/Mayor of the Council, either during or at the conclusion of the investigation, is of the opinion that he or she has information which he or she knows or believes might be of material assistance in preventing the commission by any other person of a relevant offence, or securing the apprehension, prosecution or conviction of any other person for a relevant offence they should disclose that information as soon as it is practicable to do so. On this basis they may prepare a report in writing in relation to the matter and furnish it together with any relevant document or other thing in its possession to the Director of Public Prosecutions and/or another body with the statutory power and function of investigation of particular matters.

The Report of Investigation, detailed in 4.1 above, will be paused and not concluded until the Director of Public Prosecutions and/or another body complete the relevant statutory investigation.

4.4 Any other Course of Action Considered Appropriate

The Chief Executive and the Cathaoirleach/Mayor of the Council to whom the complaint is referred to, as detailed in 3.1, may decide on any other course of action considered appropriate, as an alternative to investigation or seek to resolve the complaint informally. In such cases, there may be no finding that the Councillor failed to comply with the Code of Conduct for Councillors.

Possible actions that may be considered include:

- a) Recommendation that the Councillor concerned undertake training.
- b) Recommendation that the Councillor concerned and the complainant engage in a process of conciliation / mediation.
- c) Instituting changes to procedures of the Council if they have given rise to the complaint.
- d) Writing to the Councillor concerned to remind them of the provisions of the Code of Conduct for Councillors.
- e) Writing to the Councillor concerned recommending that an apology be made to the complainant.

- f) Writing to the subject Member to remind them of the requirements under Part 15 Ethical Framework for the Local Government Service.

5.0 Withdrawal of a Complaint

Where a complainant wishes to withdraw their complaint once an investigation has commenced, the person or persons, to whom the complaint is referred to, as detailed in 3.1, may decide whether to grant the request. The person or persons, to whom the complaint is referred will consider:

- a) Whether the public interest in taking the action outweighs the complainant's desire to withdraw it.
- b) Whether action can be taken without the complainant's participation.

Note: The complainant or the Councillor, the subject of the complaint, reserves the right to refer the complaint to the Standards in Public Office Commission at any time.

6.0 Appeal

If a complainant is not satisfied with the outcome of the consideration of the matter by the person or persons, to whom the complaint is referred to, as detailed in 3.1 above, he or she may make a complaint to:

**Standards in Public Office Commission,
6 Earlsfort Terrace,
Saint Kevin's,
Dublin 2,
D02 W773.**

Appendix 1 – Complaint Form



Local Government Act 2001

Ethical Framework for the Local Government Service

Code of Conduct for Councillors Complaint Form

The Code of Conduct for Councillors (<https://www.gov.ie/en/publication/48675-code-of-conduct-for-councillors/>) sets out principles and standards of conduct, respect, dignity, equality and integrity for Councillors, in performing their functions and in their relationship with each other, Council employees and with the public. The code is intended to inform the public of the conduct it is entitled to expect from its elected representatives and uphold public confidence in local government. A protocol was written having regard for the Code of Conduct and is intended to deal with complaints of contravention of this code.

You may use this form to make a complaint to the Ethics Registrar for **Leitrim County Council** that a councillor has, or may have, failed to comply with the Code of Conduct for Councillors (<https://www.gov.ie/en/publication/48675-code-of-conduct-for-councillors/>).

Please use black ink, if possible, and complete sections 1 and 2 in block capitals.

Section 1: Complainant's Details

Surname:	Mr/ Mrs/ Miss/Ms/Dr/Other (please specify):
Forename(s):	
Address:	
Email:	Eircode:
Home Telephone No.	Mobile Telephone No.

Please tick the box that best describes the capacity in which you are making your complaint:

- I am complaining as a member of the public.
- I am complaining as a councillor or a former councillor.
- I am complaining as a council employee
- I am complaining on behalf of a public body – please specify the body and your position in it:
- I am complaining on behalf of a a third sector organisation - please specify the organisation and your position in it.
- I am complaining in another capacity – please provide details

Section 2: Who are you complaining about?

Name of the councillor you consider has failed, or may have failed, to comply with the Code of Conduct for Councillors:

Name of the Councillors Local Authority:

Section 3: What are you complaining about?

Provide full details of why you consider the councillor named in section 2 of this form has failed, or may have failed, to comply with the Code of Conduct of Councillors. Give as much detail as possible about the councillor's conduct, describing what the councillor did; when this happened (including the actual date(s), if possible); and where it happened. (If there is not enough space here, continue on a separate sheet and attach it to this form).

If the conduct you are complaining about happened more than six months ago, please explain why you have not complained to the Ethics Registrar before now.

Section 4: What evidence do you have to support your complaint?

Provide full details of the evidence you have, or that you are aware of, which supports your allegation that the councillor has failed, or may have failed, to comply with the Code Of Conduct for Councillors. (If there is not enough space here, continue on a separate sheet and attach it to this form.)

If possible, please provide a copy of the evidence you have referred to above, otherwise, please provide full details of where the evidence can be obtained.

Section 5: Are there any witnesses to the conduct you are complaining about?

If there are any witnesses who can confirm what you have stated about the councillors conduct, provide their full names, addresses and telephone numbers. Please also explain how you know the witness(es).

Section 6: Declaration

I wish to complain to the Ethics Registrar of Leitrim County Council that the councillor named in Section 2 of this form has, or may have, failed to comply with the Local Government Act 2001 - Code of Conduct for Councillors.

I understand that if my complaint is investigated, my name and details of my complaint will be passed to the Councillor, as part of that investigation.

I have informed any witnesses I have named in Section 5 of this form that I am passing their details to the Ethics Registrar in connection with my complaint and that if my complaint is investigated, they (the witnesses) may be required to give evidence.

Signature:

Date:

Please ensure that you have completed all sections of this form and then post it to:

**Ethics Registrar
Leitrim County Council,
Áras an Chonate,
Carrick-on-Shannon,
Co. Leitrim.
N41 PF67**

Signed electronic copies can be submitted by email to:
customerservices@leitrimcoco.ie. Please put 'For the attention of the Ethics Registrar' as the subject line of the email.