



Cloch Housing Association

Board Code of Conduct – Breach of the Code Protocol

Policy Name	Breach of the Code Protocol (previously included in the Code of Conduct)
Policy Category	Corporate & Governance
Policy Number	053.1
Date Adopted	23/09/2021
Last Review	21/09/2022
This Review	20/09/2023
Next Review	September 2024
Equalities Impact Assessment Required	No
Link to other policies	Code of Conduct for Board Members.
Consultation	No
Need for Procedure	No

Cloch Housing Association Protocol for Managing an Alleged/Suspected Breach of Code of Conduct

1. Introduction

- 1.1 This protocol will be used by Cloch to deal with any alleged breaches of our Code of Conduct for Governing Body Members. It is based on the Model Protocol provided by SFHA.

2. Who is Responsible?

- 2.1 The Chair has delegated authority to deal with all potential breaches of the Code, unless the allegation relates to them. In that event, the Vice Chair should take on the responsibilities that the protocol allocates to the Chair. It may be necessary to ask other members of the Board to take on responsibilities should the allegation relate to both the Chair and Vice Chair.
- 2.2 The Chair should consult with other office-bearers (or members of the Board) to instruct, progress and conclude internal and external investigations carried out in accordance with this protocol.
- 2.3 The Scheme of Delegation identifies who has primary responsibility for overseeing the management of alleged breaches of the Code of Conduct

Delegated Authority to Oversee Potential Breaches	Any two from the following
Chair or Vice Chair with support from CEO or other member of the Leadership Team	Chair, Vice-Chair, Secretary or other members of the F&CS

- 2.4 No one who is directly involved in a matter that gives rise to a concern that there may have been a breach of the Code of Conduct should be involved in reviewing or managing/conducting an investigation of the matter. Consequently, it may be necessary to ask other members of the Board to take on the responsibilities that the Protocol allocates to the Chair and other office bearers.
- 2.5 The Chair may seek advice from our solicitors in exercising all of the responsibilities associated with this protocol.

3. What Constitutes a Breach?

3.1 A breach of the Code of Conduct is a serious matter. This Protocol is a process that will apply to managing and/or responding to alleged breaches of the Code of Conduct. Breaches can include:

- Conduct by a Board member during a meeting (which might involve a member being obstructive, offensive or disregarding the authority of the Chair or failing to observe Standing Orders)
- Complaints that the conduct of a Board Member has failed to meet the requirements of the Code of Conduct; is contrary to Cloch's Values, Rules or policies; threatens the reputation of Cloch; risks bringing the organisation into disrepute or undermines Cloch and/or its people
- Inappropriate behaviour towards colleagues, staff, customers or partners

3.2 Some complaints and/or concerns may relate to relatively minor matters, whilst other may involve more significant issues. Consequently, different approaches are likely to be appropriate, depending on the details of individual circumstances, recognising that it may not always be appropriate to undertake a formal investigation in response to an isolated and/or relatively minor issue.

4. Initial Review to Determine if Further Investigation Required

4.1 When a complaint is received or a concern is raised, consideration should be given as to which is the most appropriate course of action. This may (but may not) require some initial review of the complaint or allegations before concluding on a specific approach. The review should be carried out by those members of the Board appointed in accordance with 2.2 of this Protocol, with support from the CEO if required.

4.2 It may be that such a review concludes that there is no substance to the concern or allegation. Depending on the circumstances, it may be appropriate to report the outcome of such a review to the Board. This might be the case, for example, if an anonymous complaint is received which cannot be investigated because of a lack of information.

4.3 Anonymous complaints or allegations can be difficult to resolve but, in the event that anonymous information is received or made known, an initial review should be undertaken to establish whether there is the potential for any substance to the concern. If so, an investigation should be undertaken, although it is recognised that it may not be possible to conclude any such investigation satisfactorily.

4.4 Minor issues, actions or conduct at an internal meeting or event are unlikely to constitute a breach of the Code of Conduct that warrant investigation. The Chair (and other office bearers) should exercise their judgement in determining which of the

courses of action set out in this Protocol is more appropriate.

- 4.5 Two routes are described in this Protocol: Route A and Route B.
- 4.6 SHR requires that alleged breaches of the Code which are to be investigated under either Route A or Route B must be regarded as Notifiable Events, in accordance with the terms of the SHR's Statutory Guidance. The Chair is responsible for ensuring that the necessary notifications are made to the Scottish Housing Regulator, and that the SHR's requirements (as set out in the relevant guidance¹) in terms of reporting the outcome of the investigation are met.

5. Route A

- 5.1 Route A is an internal and informal process to address potential minor breaches. This is intended to be a relatively informal process, used to address e.g. one-off discourtesy at an internal meeting, isolated or uncharacteristic failure to follow policy.
- 5.2 Alleged breaches that occur during the course of a meeting or other internal event (and which have not happened before) will, unless the Chair believes it to be serious, be dealt with by the Chair of the meeting, either during the meeting/event and/or within 24 hours of the meeting. In these circumstances, the Chair may ask the member to leave the meeting or a vote may be taken to exclude the member from the rest of the meeting.
- 5.3 After the meeting, the Chair or sub-committee Chair will discuss such behaviour with the member and may require the member to apologise or take such other action as may be appropriate (Route A). Where the Chair regards such behaviour as being serious, it should be investigated in accordance with Route B as will repeated incidents of a similar nature.
- 5.4 It may be appropriate for the Chair to record the terms of the discussion in a letter to the Board member e.g. to confirm the provision of training or support or to record a commitment to uphold a specific policy or to record an apology.
- 5.5 It is possible that a concern that it is initially agreed can be addressed via route A ends up being the subject of a formal investigation, if more significant issues emerge, or actions are repeated.

6. Route B

- 6.1 Route B will involve formal investigation of repeated breaches or an alleged significant/major breach. Investigations may be conducted internally or independently, according to the circumstances and people involved.

¹ Scottish Housing Regulator (2019) [Notifiable Events guidance](#)

- 6.2 An investigation under Route B will usually be overseen by the Chair and another office-bearer or Board member.
- 6.3 The Chair or office-bearer, in consultation with the other office-bearers, will decide whether to instruct an independent investigation or carry out an internal investigation.
- 6.4 In the event that the Chair or other office-bearer is the subject of a complaint, an independent investigation should be conducted, overseen by the Vice-Chair and another Board member.
- 6.5 If the Chair is likely to be involved in an investigation (e.g. as a witness), it will be necessary for the office bearers to consider who should be involved in overseeing the investigation.
- 6.6 The CEO can support the implementation of the Protocol (unless involved in the issue, in which case the role should be assigned to another senior member of staff).
- 6.7 Our Scheme of Delegation identifies who has primary responsibility for overseeing the management of alleged breaches of the Code of Conduct (see section 2.3)
- 6.8 Allegations of a potential breach should normally be made to the Chair or, where the complaint relates to the Chair, to another office-bearer. Where a complaint is made to the CEO, the matter should immediately be notified to the Chair.
- 6.9 Alleged breaches may be the subject of written complaints or allegations; they may also be witnessed by someone. However the alleged breach is identified, the Chair and Secretary should ensure that there is always a written statement of the complaint or allegation that is used as the basis for the investigation. If no written complaint is made, the statement of the matter should be prepared by someone unconnected to the event/situation (e.g. a verbal complaint made by a Board member should be recorded by someone who was not present when the issue arose – this could be a member of staff).
- 6.10 The Board member who is the subject of the complaint/allegation that is to be investigated will be notified in writing of the alleged breach within seven working days, either of occurring or of receipt of the complaint. A Board member who is subject to an investigation should take leave of absence until the matter is resolved. Rule 37.8 of the 2020 Model Rules contain the provisions to secure this. The letter will inform the Board member of the nature of the potential breach, the arrangements for the investigation and will advise that leave of absence will be in place for the duration of the investigation. Board members are expected to co-operate with such

investigations².

- 6.11 An alleged breach of the Code of Conduct which is being dealt with via Route B will be notified to the Board, normally by the Chair or Secretary, within seven working days, either of occurring or of receipt of the complaint. The notice (which should be confidential) will not describe the detail of the complaint and will set out the proposed arrangements for investigation, including who will conduct the investigation and which members of the Board are responsible for its oversight.
- 6.12 The appointment of an external Investigator (when it is decided to be the appropriate response) should be approved by the Board members responsible for overseeing the investigation.
- 6.13 An internal investigation (when it is decided to be the appropriate response) will be carried out by at least two and not more than three Members of the Board who are not responsible for overseeing the investigation. In selecting the Board members, we will seek to ensure that the investigators represent the profile of the Board.

7. Investigation Under Route B

- 7.1 The conduct of an investigation should remain confidential, as far as possible, in order to protect those involved (witnesses, complainant(s)) and the Board member(s) who are the subject of the complaint.
- 7.2 All investigations will be objective and impartial. Investigations will normally be investigated by an independent person, unless it is decided that an internal investigation is appropriate.
- 7.3 Investigations should not usually take more than six weeks to conclude.
- 7.4 The investigator(s) will be supported by the CEO (or other senior member of staff if the CEO is involved in the complaint). The Chair and other office-bearer, with any support they feel necessary, will brief the agreed advisor/investigator and then consider their recommendations at the end of the investigation, before reporting to the Governing Body.
- 7.5 All investigations will be the subject of a written brief which sets out the Board's requirements and which includes the statement of the alleged breach (scope, timescale, reporting requirements, access to information etc.). The brief may refer to any action previously taken that is relevant.
- 7.6 All investigations will include at least one interview with the Board member who is the subject of the allegation, who will be invited to provide any relevant information. The

² Code of Conduct F7

interview(s) may be conducted face to face or remotely (by telephone or video call). Board members may be accompanied during an interview by a friend (at their request), as a companion to provide support and not to represent. It is not appropriate for another Board member to fulfil this role nor is it appropriate for the RSL to meet any costs (other than reasonable expenses as provided for in the relevant policy) in respect of a companion's attendance.

8. Considering the Outcome of the Investigation

- 8.1 The advisor/investigator will normally present their report to the Board. Before doing so, the report will be reviewed by those overseeing the investigation to ensure that the Brief has been met and that the report is adequate to support the Board's consideration and decision making.
- 8.2 The Board member whose conduct is being investigated will not be party to any of the discussions relating to the investigation.
- 8.3 The report will be considered at a meeting of the Board which may be called specifically for this purpose. It is the responsibility of the Board to consider the report and findings from the investigation and to determine:
- Whether there has been a breach;
 - How serious a breach is;
 - What action should be taken.
- 8.4 The Board will report the findings of the investigation and the proposed action to the member concerned within seven days of the meeting at which the report of the investigation was considered.

9. Action to Deal with a Breach

- 9.1 If, following investigation, a breach of the Code is confirmed, action will be taken in response. This action will reflect the seriousness of the circumstances. It may take the form of some or all of the following:
- A discussion with the member concerned (which may be confirmed in a subsequent letter);
 - advice and assistance on how their conduct can be improved;
 - the offer of training or other form of support;
 - a formal censure (e.g. in the form of a letter setting out the conclusions, expressing concern and specifying that there must be improvement / no repetition etc);
 - a vote to remove the Member from the Board.

- 9.2 Where, it is concluded that a serious breach has occurred, the Board may require the member to stand down from their position in accordance with the Rules.
- 9.3 If the Board proposes to remove a member, following investigation, the member will have the right to address the full Board before their decision is taken at a special meeting called for that purpose. Any such decision must be approved by a majority of the remaining members of the Board], in accordance with Rule³ (44.5)
- 9.4 A record of the outcome of an investigation will be retained in the Board member's file for 12 months.
- 9.5 The outcome of any investigation will be notified to the Scottish Housing Regulator, in accordance with the requirements of the Notifiable Events Statutory Guidance.

10. Definitions

- 10.1 Cloch will regard the following actions as a "serious breach" of the Code of Conduct (this list is not exhaustive):
- Failure to act in our best interests and/or acting in a way that undermines or conflicts with the purposes for which we operate.
 - Support for, or participation in, any initiative, activity or campaign which directly or indirectly undermines or prejudices our interests or those of our service users, or our contractual obligations.
 - Accepting a bribe or inducement from a third party designed to influence the decisions we make.
 - Consistent or serious failure to observe the terms of the Code of Conduct.
 - Serious inappropriate behaviour towards a colleague, member of staff, tenant, customer, partner or stakeholder

11. Approval and Review

- 11.1 This protocol was approved by the Board of Cloch Housing Association on 20 September 2023.

³ SFHA Model Rules (2020)

