

Appendix 3 – Hearings Procedure

Cambridgeshire County Council - Hearings Procedure

1. Introduction

- 1.1. The Chair will introduce the hearing and the Hearings Panel (“the Panel”).

2. Preliminary Issues

- 2.1. The Monitoring Officer (“MO”) will present a brief report outlining the purpose of the hearing and giving directions to the Panel on the process to be followed and the evidential burden to be met.
- 2.2. The Chair will ensure that any preliminary issues arising are dealt with including:
 - 2.2.1. any disagreements about the procedure or timings for the hearing;
 - 2.2.2. any queries on the documentation received in connection with the hearing;
 - 2.2.3. disclosure of any interests by the Members on the Panel;
 - 2.2.4. absences noted – including any absence of the Subject Member at the heart of the complaint or the Investigating Officer (“IO”) and a decision taken on whether the hearing can continue in their absence.
 - 2.2.5. the sub-committee will also consider whether the press and public should be excluded for any part of the hearing.

3. Presentation of Investigation Report

- 3.1. The Investigating Officer will introduce his/her report and present a summary of the report’s findings with particular reference to:
 - 3.1.1. the findings of fact in the report;
 - 3.1.2. the inferences drawn from them.
- 3.2. The Panel will have opportunity to ask questions of the Investigating Officer for clarification and further information
- 3.3. The Subject Member will have opportunity to ask questions of the Investigating Officer for clarification and further information only, no cross-examination is permitted.
- 3.4. The Panel will then be given the opportunity to ask further questions of the Investigating Officer arising out of Subject Members queries

4. Witnesses called by the Investigating Officer

- 4.1. The Investigating Officer may call witnesses (if required) to give evidence on matters relating to the facts of the hearing.

Note: the Chair may restrict the calling of witnesses if it appears to him/her that the calling of the witness will add nothing further to the evidence on the facts of the case.

- 4.2. The Panel will be given the opportunity to ask questions of the witness for clarification and information on the facts only.
- 4.3. The Subject Member will be given the opportunity to ask questions of the witness for clarification and information on the facts only (no cross examination is permitted).
- 4.4. The Panel may ask further questions of the witness in response to any issues arising as a result of the questions put by the Subject Member.

5. Submissions by the Subject Member

- 5.1. The Subject Member will present his response to the findings of the Investigating Officer's report summarising:
 - 5.1.1. any points of disagreement on the facts as contained in the Investigating Officer's report; and
 - 5.1.2. his/her version of the events

Note: the Subject Member may only raise points of disagreement on the facts at the hearing which have previously been raised as part of the pre-hearing process. New points may only be raised at the hearing with the permission of the Panel. The Panel may allow such new points if they feel it would be in the public interest to do so and that there is good reason for the point not to have been raised earlier in the pre-hearing process.

- 5.2. The Panel will have opportunity to ask questions of the Subject Member for clarification and further information
- 5.3. The Investigating Officer will have opportunity to ask questions of the Subject Member for clarification and further information only, no cross-examination is permitted.
- 5.4. The Panel will then be given the opportunity to ask further questions of the Subject Member arising out of Investigating Officer's queries.

6. Witnesses called by the Subject Member

- 6.1. The Subject Member may call witnesses (if required) to give evidence on matters relating to the facts of the hearing.

Note: the Chair may restrict the calling of witnesses if it appears to him/her that the calling of the witness will add nothing further to the evidence on the facts of the case.

- 6.2. The Panel will be given the opportunity to ask questions of the witness for clarification and information on the facts only.
- 6.3. If appropriate, the Investigating Officer will be given the opportunity to ask questions of the witness for clarification and information on the facts only (no cross examination is permitted).
- 6.4. The Panel may ask further questions of the witness in response to any issues arising as a result of the questions put by the Investigating Officer.

7. Concluding remarks

- 7.1. Once the evidence has been heard from the Investigating Officer and the Subject Member, the Chair may invite the **IO** and/or Subject Member if they wish to make any brief concluding remarks. No new evidence may be introduced at this stage.
- 7.2. The Chair will check that the Panel are satisfied that they have sufficient information to enable them to make a decision on the facts of the case. If not, the Chair may recall the Investigating Officer and/or the Subject Member to clarify any points raised during the hearing. (Note: where either the Investigating Officer or the Subject Member is recalled, the other party must be given the opportunity to respond on any points that are clarified.)

8. Findings of Fact

- 8.1. The Panel will then consider whether the facts found in the Investigating Officer's report are established on the balance of probabilities. The Panel may retire to consider this and may be accompanied by an administrative officer. The Panel may also invite the Independent Person and/or Monitoring Officer to accompany them to provide advice.
- 8.2. The Chair will state the Panel's findings (with reasons) as to the established facts of this case.

9. Failure to comply with the Code of Conduct

- 9.1. Once the facts of the case are established by the Panel, the Chair will direct the Panel to consider, on the basis of the established facts, whether or not there has been a breach of the Member's Code of Conduct by the Subject Member.
- 9.2. If required, the Chair may invite the Investigating Officer to provide his/her comments on whether there has been a breach of the Member's Code of Conduct.
- 9.3. The Chair may also invite the Subject Member to make representations to the Panel on whether there has been a breach of the Member's Code of Conduct.
- 9.4. The Panel will then deliberate on whether or not a breach of the Member's Code of Conduct has occurred. The Panel may retire to consider this and may be accompanied by an administrative officer. The Panel may also invite the Independent Person and/or Monitoring Officer to accompany them to provide advice.
- 9.5. The Chair will state the Panel's findings (with reasons) on whether or not there has been a breach of the Member's Code of Conduct.
- 9.6. If the Panel find that there has not been a breach of the Member's Code of Conduct, the Chair may close the hearing.

10. Sanctions

- 10.1. If the Panel find that there has been a breach of the Member's Code of Conduct, the Chair will direct the Panel to consider what the appropriate sanction may be (if any) for the Subject Member given the established facts of the case.
- 10.2. The Chair shall invite representations from the Subject Member as to:
 - 10.2.1. whether a sanction should be imposed; and

- 10.2.2. if a sanction is to be imposed, what sanction might be appropriate in the circumstances of this case.
- 10.3. The Chair may also invite representations from the Independent Person and/or Monitoring Officer as to the appropriate sanction (if any).
- 10.4. The Panel will then decide whether a sanction should be imposed on the Subject Member and if so, what that sanction should be. The Panel may retire to consider this and may be accompanied by an administrative officer. The Panel may also invite the Independent Person and/or Monitoring Officer to accompany them to provide advice.
- 10.5. The Chair will state the Panel's findings (with reasons) on whether any sanction is to be imposed and what that sanction (if any) will be. If a sanction is to be imposed, the Chair will direct the Subject Member as to how that sanction will be put in place.
- 10.6. Where possible, a short written decision will be made available on the day of the hearing. If this is not possible, it will be made available on the next working day.
- 10.7. The Chair may then close the hearing.

11. Post Hearing

- 11.1. Within 10 working days of the hearing, a full written decision will be made available to the Subject Member, the Panel, the original complainant and any other relevant person setting out the outcome of the hearing with reasons.

Appendix 4 – Guidance on Appropriate Sanctions

Cambridgeshire County Council

Constitution & Ethics Committee

Hearings Panel

Guidance on assessing appropriate sanctions for breach of the Members' Code of Conduct

The following guidance may be considered by the Hearings Panel in determining the appropriate sanction to be imposed on a Subject Member following a finding of a breach of the Members' Code of Conduct.

This guidance does not provide an exhaustive list of factors for the Hearings Panel to consider and is indicative only.

Sanctions available to the Hearings Panel

In accordance with the Cambridgeshire County Council procedure for investigating complaints under the Members' Code of Conduct, the Hearings Panel may impose the following sanctions on a Subject Member in the event of a finding of a breach of the Member's Code of Conduct:

- Publish its findings in respect of the Subject Member's conduct;
- Report its findings to Council for information;
- Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Remove the Subject Member from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- Exclude the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- Seek informal resolution through mediation;
- Recommend that the Subject Member write an apology in connection with the complaint; or
- Recommend that the Subject Member receive further training.

The Sub-Committee should bear in mind that the purpose of such sanctions is to ensure that high standards of conduct are promoted amongst the Members.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances.

Considering the appropriate sanction

In deciding the appropriate sanction on the facts of a case the Hearings Panel may consider:

1. What was the Subject Member's intention? Did the Subject Member know that they were failing to follow the Code of Conduct?
2. Did the Subject Member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
3. Has there been a breach of trust?
4. Has there been financial impropriety, for example improper expense claims or procedural irregularities?
5. What was the result of failing to follow the Code of Conduct? OR What were the potential results of the failure to follow the Code of Conduct?
6. How serious was the incident? Is it serious enough to warrant a sanction?
7. Has the Subject Member previously been warned or reprimanded for similar misconduct? Has the Subject Member failed to follow the Code of Conduct before?
8. Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority such that a more severe sanction is required?
9. Is the Subject Member likely to do the same thing again?
10. Does the Subject Member accept they were at fault?
11. Did the Subject Member apologise to the relevant people?
12. Is this a case where alternative action such as training or mediation would be more appropriate?
13. Would an apology be appropriate?
14. How will the sanction be carried out? For example, who will provide the training or mediation?
15. Are there any resource or funding implications? For example, if a Subject Member has repeatedly or blatantly misused the authority's information technology resources, the Hearings Panel may consider withdrawing those resources from the Subject Member.

Mitigation

The Hearings Panel may consider if there are any mitigating factors which should be taken into account in considering the appropriate sanction. Such factors might include (but are not limited to):

16. The Subject Member held an honest, albeit mistaken, belief that the action did not constitute a breach of the provisions of the Code of Conduct (particularly where the Subject Member formed this view *after* taking appropriate advice).
17. A Subject Member's previous record of good service.
18. Substantiated evidence that the Subject Member's actions have been affected by ill-health.
19. Recognition by the Subject Member that there has been a failure to follow the code and subsequent co-operation in rectifying that failure
20. An apology to the affected persons where appropriate
21. Self-reporting of the breach by the Subject Member.
22. Compliance with the Code of Conduct by the Subject Member since the events giving rise to the complaint.

Aggravating Factors

The Hearings Panel may also consider the following aggravating factors in deciding the appropriate sanction to be imposed on the Subject Member. This list is non-exhaustive:

23. Any dishonesty on the part of the Subject Member
24. Continuing to deny the facts despite clear evidence to the contrary.
25. Seeking unfairly to blame other people.
26. Failure to heed appropriate advice or warnings.
27. Previous findings of a failure to follow the provisions of the Code.
28. A persistent pattern of behaviour by the Subject Member which involves repeatedly failing to abide by the provisions of the Code of Conduct.