
CORPORATE GOVERNANCE AND FINANCE HEARINGS SUB-COMMITTEE/PANEL

Committee: Corporate Governance and Finance Committee

Date: 21 July 2014

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[P45]

1.0 **ISSUE**

1.1 To consider the reconstituting of the Hearings Sub-Committee/Panel to conduct any Hearings required into potential breaches of the Members Code of Conduct by District and Parish Councillors and to appoint Members to the Sub-Committee.

2.0 **RECOMMENDATION(S)**

2.1 That a Corporate Governance and Finance Hearings Sub-Committee be established, based on a Membership of 7 in accordance with the Terms of Reference attached as Appendix 1, and Members be appointed to the Sub-Committee on the proportionate basis of 4 Conservative 2 Liberal Democrat and 1 Independent Members (or on an alternative basis requiring a Nem Con vote).

3.0 **BACKGROUND/OPTIONS**

3.1 At the Council meeting on 26 July 2012, Council approved the adoption of a new Code of Conduct for Members and a new Members complaints procedure to meet the requirements of the revised Standards Regime to be implemented in accordance with the provisions of the Localism Act 2011. These resolutions included the establishment of a Finance and Governance Hearings Sub-Committee, based on a Membership of 7 (3:3:1) as per the Terms of Reference included in the officer's report, which may be reviewed by the Finance and Governance Committee within 6 months of the Full Council decision. They also included the appointment of an Independent Person and Deputy Independent Person to assist with Code of Conduct complaints under the provisions of the Localism Act 2011, and appointment of 2 non-voting Co-opted Town/Parish Council Members to serve on the Finance and Governance Hearings Sub-Committee/Hearings Panels in accordance with the Terms of Reference for those bodies approved by the Council. The Independent Person and Deputy Independent Person and 2 non-voting Co-opted Town/Parish Council Members were subsequently appointed (with terms of office to 2015 to coincide with the terms of office for District Councillors) as follows:

Independent Person – Mr Raith Overhill
Deputy Independent Person – Mrs Sue Booth

Co-opted Town/Parish Council Members

Cllr Rosemary Aitchison (Soham TC)

Cllr Tim Owen (Dullingham PC)

3.2 As the requirements of the Standards Regime are ongoing, there is a need to re-establish a Sub-Committee under the new Committee structure to conduct any Hearings required into potential breaches of the Members Code of Conduct by District and Parish Councillors and to appoint Members to the Sub-Committee. Such a Sub-Committee would fall within the Terms of Reference for this Committee.

3.3 Attached at Appendix 1 are the draft Terms of Reference for the Sub-Committee and at Appendix 2 the Hearing Procedure for the Hearings Sub-Committee Panel. When the Hearings Sub-Committee was originally established in 2012, it was done on a non-proportionate basis via a Nem Con vote. However in 2013, appointments to the Hearings Sub-Committee were made on a proportionate basis. This gives an allocation of seats on the basis of 4 Conservative 2 Liberal Democrat and 1 Independent Members on the Hearings Sub-Committee for 2014/15.

4.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

4.1 There are no additional financial implications arising from this report.

4.2 Equality Impact Assessment (INRA) not required.

5.0 APPENDICES

5.1 Appendix 1 – draft Terms of Reference for CG&F Hearings Sub-Committee

Appendix 2 - Hearing Procedure for CG&F Hearings Sub-Committee Panel

Background Documents

Location

Contact Officer

Agenda and Minutes of
Council meeting 26 July
2012 and 14 May 2013

Room 214B
The Grange
Ely

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CORPORATE GOVERNANCE & FINANCE HEARINGS

SUB-COMMITTEE

1. Constitution

- 1.1 The Sub-Committee shall comprise of 7 Members of the Council, who shall be appointed annually by full Council from the full Membership, and up to 2 co-opted non-voting Town or Parish Councillors.
- 1.2 The Sub-Committee and any Panel quorum is 3 Members, with the attendance of the appointed Independent Person (lead or the deputy). Where the Panel considers a complaint against a Town or Parish Councillor, the Town or Parish co-optee must be in attendance at the Panel Hearing.

2. Objectives

- 2.1 To support the Corporate Governance & Finance Committee in its duty to promote and maintain high standards of Councillor conduct.

3. Terms of Reference

- 3.1 To appoint Hearing Panels for Stage 6 complaints handling comprising 3 elected Members, to consider a complaint against an East Cambridgeshire District, Town or Parish Councillor, where there is an allegation that the Councillor has failed, or may have failed, to comply with their Authority's Code of Conduct **and** the Monitoring Officer, or her Deputy or appointed investigator's report has concluded that there appears to have been a breach of their Authority's Code.
- 3.2 The Panel shall be appointed from the Sub-Committee membership, with an elected Member acting as a reserve Member. Such a Panel can be a combination of any of the Members of the Sub-Committee.
- 3.3 In holding a Stage 6 complaints hearing, the Panel:
 - 3.3.1 Will hold the hearing in public session, unless representations have been received from the complainant and/or the Councillor subject to the complaint, by the Monitoring Officer/Deputy Monitoring Officer not to do so, and there is a legal basis under the Local Government Act 1972 to hold in exempt session.
 - 3.3.2 May, with the consent of both the complainant and the Councillor subject to the complaint, consider this without the attendance of the parties (a "paper" hearing).
 - 3.3.3 May, if it considers it reasonable to do so, proceed with any hearing in the absence of one of the parties.

- 3.3.4 Must ensure that this is conducted having regard to the hearings procedure and any government guidance, or guidance issued by the Monitoring Officer, Deputy Monitoring Officer or legal advisor.
 - 3.3.5 Must ensure that any Councillor that is subject to the complaint is given the opportunity to attend, and/or submit or present evidence and make representations, either orally or if the member chooses, in writing; and (b) either personally, or by legal representative, or with the Panel's consent, any other representative.
 - 3.3.6 May arrange or agree to the attendance of such witnesses, as the Monitoring Officer, Deputy Monitoring Officer or investigator considers appropriate.
 - 3.3.7 May adjourn the hearing proceedings at any stage prior to the final determination of the complaint.
 - 3.3.8 Will allow the Councillor who is subject to the complaint to call such witnesses in support, subject to the Panel limiting the numbers of witnesses that a person may call, if it considers that the number the person proposes to call is unreasonable.
 - 3.3.9 Will seek and take into account the views of the Independent Person at the Panel Hearing *before* making its final determination on the matter.
 - 3.3.10 **[in cases where the complaint relates to a Town or Parish Councillor]** Will seek and take into account the views of the Town or Parish co-optee at the Panel Hearing *before* making its final determination on the matter.
 - 3.3.11 Will determine whether the Councillor subject to the complaint has breached their Authority's Code of Conduct and provide reasons for any decision.
- 3.4 If the Panel concludes that the Councillor subject to the complaint has breached their Authority's Code of Conduct, the Panel may confirm the following sanctions:
- 3.4.1 No action.
 - 3.4.2 That the Councillor be trained.
 - 3.4.3 That the Councillor be censured.
 - 3.4.4 That a recommendation is made to the District Council's full Council to censure the District Council.
 - 3.4.5 **[in the case where the complaint relates to a Town or Parish Councillor]** recommend to the Town or Parish Council that the Town or Parish Council censures the Councillor at a Town or Parish meeting.

3.5 To assist with good governance, if requested by Corporate Governance & Finance Committee.

4. Delegation to Officers

4.1 The Monitoring Officer is authorised to act in relation to any matter of immediate urgency, which must be dealt with before the next meeting of the Committee provided the Chairman or Vic-Chairman of the Sub-Committee is consulted prior to delegated decisions being made.

4.2 There shall be delegated to the Monitoring Officer, the exercise of any power or function of the Council in routine matters related to the implementation District, Town and Parish Councillor complaint procedures.

This delegation shall not be taken to include any matter reserved by law to the Finance and Governance Committee or the Full Council.

4.3 There are further delegated to the officers indicated below the exercise of any power or function of the Council set out below:

To make arrangements for a Panel hearing including Members sitting on the Panel, and, where relevant, Town or Parish co-optees attendance	Principal Democratic Services Officer or Democratic Services Officer
To make arrangements for the hearing to be held in exempt session, if representations are received and there is a legal basis for the exempt session under the Local Government Act 1972	Monitoring Officer or Deputy Monitoring Officer or Principal Democratic Services Officer
To agree that a reserve Panel Member may substitute for one of the allotted Members at the hearing	Monitoring Officer or Deputy Monitoring Officer in her absence
To undertake any pre or post hearing preparation for the hearing including (although not limited to) notifying and requiring attendance of the complainant, the Councillor subject to the complaint and any witnesses	Monitoring Officer or Deputy Monitoring Officer
To undertake any post hearings decision training or instruct others (internally or externally) to do so	Monitoring Officer or Deputy Monitoring Officer



EAST CAMBRIDGESHIRE DISTRICT COUNCIL'S HEARING PROCEDURE

THE HEARING PROCEDURE FOR THE CORPORATE GOVERNANCE FINANCE HEARINGS SUB-COMMITTEE PANEL

The **Corporate Governance** Finance Hearings Sub-Committee Panel ("the Panel") needs to have an efficient and effective hearing process to deal with any hearings regarding allegations that a Councillor has breached their Authority's Code of Conduct. This will assist Members of the Panel to deal with all the issues that need to be resolved in a way that is fair to the Councillor that is subject of the allegation. This procedure is intended to encourage a consistent approach and promote and maintain high standards of Councillor conduct.

Interpretation

1. "**Complainant**" means the person who referred the formal complaint relating to the Councillor to the Monitoring Officer.

"**Councillor**", includes a co-opted Councillor, means the Councillor (or former Councillor) of the authority who is the subject of the allegation being considered by the Panel, unless stated otherwise. This may be a Councillor (or former Councillor) of Council or a Town or Parish Council in the area. It also includes the Councillor's (or former Councillor's) nominated representative.

"**Independent Person**", includes the lead or deputy person appointed by the District Authority under s28 Localism Act 2011.

"**Investigator**" means the Monitoring Officer, Deputy Monitoring Officer or any nominated internal or external investigator or their representative(s).

"**Legal Adviser**" means the officer responsible for providing legal advice to the Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

2. The Councillor may be represented or accompanied during the hearing by a Solicitor, Counsel or, with the permission of the Panel, another person.

Legal Advice

3. The Panel may take legal advice from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Panel will be shared with the Councillor and the Investigator if they are present.

Voting

4. Each Member of the Panel will have one vote, and all matters/issues will be decided by a simple majority of votes cast, with the Chair having a second or casting vote should that be needed. Abstentions will not be permitted.
5. The Independent person shall be consulted before any final determination, but will not be entitled to vote.

6. If the complaint relates to a Town or Parish Councillor, a co-opted Town or Parish representative will attend the hearing and shall be consulted by the Panel before any final determination, but will not be entitled to vote.
7. The Panel's decision will record whether it was unanimous or taken by a majority.

Quorum

8. The Proper (Democratic Services) Officer or his/her representative will confirm whether the Committee is quorate. A quorum for the Panel will be three elected Members of the authority. The Independent Person must be in attendance throughout the hearing and, where the matter involves an allegation of misconduct against a Town or Parish Councillor, a co-opted Town or Parish representative must be in attendance throughout the hearing. If the Monitoring Officer or Deputy Monitoring Officer has agreed that the reserve Member may substitute for the named Member on that Panel, then the Panel is then deemed to include that Member as part of the Panel with a right to come to a decision on the complaint and any sanctions.

Setting the Scene and Preliminary Procedural Issues

9. The Panel Members may consider the hearing as a "paper" hearing, in the absence of the Complainant or Councillor PROVIDING the Complainant or Councillor has agreed to this¹. In such situations the Investigator may or may not be in attendance, and any report prepared will be considered, together with any evidence or submissions made by the Complainant or Councillor. The Panel will confirm if they are going to consider this as a paper hearing and the reasons for doing so. If the Panel decides that it cannot proceed without the attendance of the Complainant or Councillor or Investigator, the hearing shall be adjourned to arrange attendance.
10. Where there is a hearing with parties in attendance, the Chairman will formally introduce those present, any apologies will be notified and the Chair of the Panel will explain how the Panel is going to handle the hearing.
11. The Panel will then resolve any issues, which may include (although not be limited to) confirming whether they can proceed in the absence [*which does not fall within the category of paper hearing*] of the Complainant or Councillor, or the absence of a witness who has been asked to attend; reasons for any substitutions; admission of late evidence (witness or documentary); the number of witnesses to be called; and any application for lay representation by the Councillor.
12. After dealing with any preliminary issues, the Panel will then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.

Findings of fact and whether the Councillor fail to follow the Councillor's Authority Code of Conduct:

13. If there is no disagreement about the facts, the Panel can then move on to the next stage of the hearing.
14. If the Councillor disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she will be required to give good reasons for not mentioning it before the hearing. After considering the Councillor's explanation for not raising the issue at an earlier stage, the Panel may then:-
 - a. allow the Councillor to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary and such matters shall be taken into account when the Panel reaches its decision on the facts; or

¹ As per 3.3.2 of the Finance & Governance Sub-Committee terms of reference.

- b. postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already in attendance.
15. Where representations on the facts have been made (and have been disputed by the Councillor), the Panel may ask the Investigator (if present), or legal representative, to start by outlining the relevant facts (that are agreed and what disputed).
16. If there is a disagreement, the Investigator, if present, will be invited to make any necessary representations to support the relevant findings of fact in the report. This may include representations on behalf of the Complainant where appropriate. Subject to any limitation set by the Panel under paragraph 11, the Investigator may call any relevant witnesses (including the Complainant) to give evidence.
17. The Panel will give the Councillor an opportunity to challenge any evidence put forward by any witness called by the Investigator (directly or through the Chair). The Panel will also consider any verbal or written representations from the Investigator in relation to the alleged breach of the Code of Conduct.
18. The Councillor will then be given the opportunity to make representations to support his or her version of the facts and reasons why he or she believes he or she has not, or has failed to follow the Code and (subject to any limitation set by the Panel under paragraph 11) to call any witnesses to give evidence.
19. At any time, the Panel, Independent Person or Town/ Parish Representative may question any of the people involved (including the Complainant) or any of the witnesses, and may allow the Investigator (and the Complainant through the Chair) to challenge any evidence put forward by any witnesses.
20. The Investigator and then Councillor will be invited to make any final relevant points on fact or the alleged failure to follow the Code.
21. The Panel Members, Independent Person, any co-opted Town or Parish representative and Legal Advisor will then retire to another room to consider all the documentary and witness evidence and decide what the relevant facts were, followed by whether the Councillor failed to follow the Code of Conduct and reasons for the decision. The Panel shall seek the views of the Independent Person and co-opted Town or Parish representative present, and take these into account when reaching its decision.
22. On the Panel's return, the Chair will announce the Panel's decision and reasons for its findings of fact and whether or not the Councillor has failed to follow his or her Authority's Code of Conduct. The decision will note any views expressed by the Independent Person and co-opted Town or Parish representative. *Even in the event that the Panel concludes that there has been no failure to follow the Councillor's Authority Code of Conduct, the Panel may still consider whether it should make any recommendations, which the Panel believes will promote and maintain high standards of conduct amongst Councillors or co-opted Councillors.*

If the Councillor has not failed to follow the Councillor's Authority Code of Conduct:

23. If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the Panel will announce its decision and reasons.
24. If relevant, the Panel may make any recommendations to the Council or other relevant authority, with a view to promoting high standards of conduct amongst Councillors or co-opted Councillors.

If the Councillor has failed to follow the Councillor's Authority Code of Conduct:

25. If the Panel decides that the Councillor has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Councillor as to: -
 - a. whether or not the Panel should impose a sanction; and
 - c. what form any sanction should take.
26. The Panel may question the Investigator and Councillor, and take legal advice, to make sure they have the information they need in order to make an informed decision.
27. The Panel Members, Independent Person, any co-opted Town or Parish representative and Legal Advisor will then retire to another room to consider whether or not to impose a sanction on the Councillor and, if so, what the sanction should be and the reasons for the decision. The Panel shall seek the views of the Independent Person and co-opted Town or Parish representative present, and take these into account when reaching its decision. The Panel may also consider and make general recommendations to the District, Town or Parish Council, which they believe will promote and maintain high standards of conduct by Councillors or co-opted Councillors.

Sanctions relating to the Councillor:

28. The Panel may decide to:
 - a. Take no action.
 - b. Recommend that the Councillor undertake training and/ or
 - c. Censure the Councillor, and/ or
 - d. Recommend to the District Council that the District Councillor be subject to formal censure at Full Council.
 - e. Recommend to the Town or Parish Council that the Town or Parish Councillor be subject to formal censure at Town or Parish meeting.
29. On its return, the Chair will announce the Panel's decision and reasons.

The Written Decision

30. The Panel will announce its decision on breach of the Code and Sanctions on the day as detailed above and will produce a full written decision within 5 working days, which, unless held in exempt session, will be available on the District Council's website within 14 working days, together with any hearing minutes.