



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

THE GRANGE, NUTHOLT LANE,
ELY, CAMBRIDGESHIRE CB7 4EE
Telephone: 01353 665555

MEETING: **FINANCE AND GOVERNANCE HEARINGS SUB-COMMITTEE PANEL**

TIME: 10am

DATE: Tuesday 18 December 2012

VENUE: Council Chamber, The Grange, Nutholt Lane, Ely

ENQUIRIES REGARDING THIS AGENDA: Melanie Sage

DIRECT DIAL: (01353) 665555

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Membership:

District Council Members

Councillor Derrick Beckett
Councillor Will Burton
Councillor Tony Goodge

Independent Person

Mr Philip Taylor

Parish Council Member

Councillor Rosemary Aitchison –
Soham Town Council

Lead Officer:

Amanda Apcar, Deputy Monitoring Officer

Quorum: 3 District Council Members (with Independent Person in attendance and Parish Council Member in attendance where the Panel considers a complaint against a Town or Parish Councillor)

A G E N D A

1. Election of Chairman

To elect a Chairman from the District Council Members of the Panel for the duration of the Hearing.

2. Declarations of Interest

3. Complaints of Failure to Observe the Code of Conduct: Complaint Nos SC12/05 & SC12/08 – Cheveley Parish Councillor Roderick Humphries

To conduct a Hearing in relation to complaints that Parish Councillor Roderick Humphries failed to observe the Council's Code of Conduct

(Can Members of the Panel please bring your Code of Conduct Complaints Handling ring binder file, previously circulated, with you to the meeting.)

Hearings Procedure

Pages i - iv

Deputy Monitoring Officer's Report

Pages v - ix

Paginated separately in the Investigating Officer's Appendices Bundle:

Investigating Officer's Report

Pages 1 - 34

Investigating Officer's Appendices Bundle

Pages 35 – 124

Due to their size, the Investigating Officer's Report and Investigating Officer's Appendices Bundle have been circulated only to Panel Members, Legal Adviser, Investigating Officer, the Subject Member and Complainant(s). However, a copy is available to view at East Cambridgeshire District Council Offices at The Grange and a copy will also be available to view by any witness attending the Hearing on the day.



EAST CAMBRIDGESHIRE DISTRICT COUNCIL'S HEARING PROCEDURE

The Hearing Procedure for the Finance & Governance Hearings Sub-Committee Panel

The Finance & Governance 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:-

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

- 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
 - 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.