

CARDIFF COUNTY COUNCIL
STANDARD AND ETHICS COMMITTEE

LOCAL RESOLUTION PROTOCOL

PANEL HEARING PROCEDURE

1. Introduction

- 1.1. Cardiff Council has adopted a Local Resolution Protocol. The purpose of the Protocol is to enable “minor member on member” allegations of breaches of the Member’s Code of Conduct to be dealt with at a local level, rather than being referred to the Public Services Ombudsman for Wales.
- 1.2. In accordance with the Protocol a sub-committee of the Standards and Ethics Committee has been formed to carry out hearings in relation to alleged breaches. This sub-committee is referred to in this document as the “**Hearings Panel**”.
- 1.3. This document sets out how matters may be referred to the Hearings Panel and the Procedure that the Panel shall adopt in relation to matters that are referred to it.

2. Referral to the Hearing Panel

- 2.1. The Protocol provides for the parties involved in the complaint to first attempt to informally resolve the matter with the assistance of the Monitoring Officer. The complaint may be referred to a meeting of the Hearing Panel if:
 - a. the Monitoring Officer is of the view that making informal attempts to mutually resolve the matter is inappropriate; or
 - b. having made attempts to mutually resolve the matter, the Member who is making the complaint (known as the “**Complainant**”) asks the Monitoring Officer to refer the matter to the Hearing Panel.
- 2.2. In such cases the Monitoring Officer will make arrangements convene a meeting of the Hearing Panel and to refer that matter to it.
- 2.3. Prior to the Hearing, the Monitoring Officer will arrange for the following documents to be made available to the Panel Members, the Complainant and the Member against whom the complaint is made (known as the “**Respondent**”).¹

¹ We have not provided timescales in an attempt to leave flexibility as to how these documents are produced and how quickly a Panel can be convened.

- a. A brief written summary from the Complainant, comprising of:
 - i a brief summary of the conduct that has given rise to the complaint;
 - ii a list of any witnesses the Complainant wishes to call to appear before the Hearing Panel;
 - iii a list and copies of any documents the Complainant wishes to draw to the attention of the Hearing Panel; and
 - iv details of the paragraphs of the Code that are alleged to have been breached.

- b. Following the Monitoring Officer giving the Respondent a copy of the documents referred to in paragraph a above, a brief written summary of the response from the Respondent to the allegations, including:
 - i a brief summary of the Respondent's response to the facts as alleged by the Complainant;
 - ii a list of any witnesses the Respondent may wish to call to appear before the Hearing Panel; and
 - iii a list and copies of any documents the Respondent may wish to draw to the attention of the Hearing Panel.

- c. If the Monitoring Officer believes it appropriate in the circumstances, a brief written report from the Monitoring Officer in relation to any investigations into or attempts to settle the complaint or any other matter the Monitoring Officer believes to be relevant to the deliberations of the Hearing Panel.

2.4. If a matter involves "cross allegations" with two or more Members making allegations of breaches of the Code against each other, the Monitoring Officer (in consultation with the Chair) may convene one Hearing to deal with all such allegations simultaneously. In such circumstances the Monitoring Officer may amend the requirements of paragraph 2.3 to ensure that fair opportunity to present and respond to complaints are afforded to each Member prior to the Hearing.

3. Legal Advice and the Monitoring Officer's Role at Hearings

- 3.1. The Monitoring Officer (or the Deputy Monitoring Officer) shall be in attendance at Hearings to advise the Hearing Panel.

- 3.2. If the Monitoring Officer has investigated a complaint, he/she will attend a Hearing in his/her role as the person who has investigated the complaint and will not be present to provide legal advice to the Committee. In such cases, the Deputy Monitoring Officer or another of the Authority's lawyers will be present to advise the Committee.

- 3.3. The Committee may take legal advice from its advisor at any time before or during the Hearing or while the outcome is being considered.

The substance of any legal advice given to the Committee should be shared with the Complainant and Respondent, but not the detail of the request for legal advice.

4. Representation

- 4.1. Members may be represented or accompanied during the Hearing by another Member, or any other person if they so desire. However, when making a decision on representation Members should bear in mind that Local Resolution is intended to provide a relatively informal forum to resolve relatively minor complaints.
- 4.2. Members are responsible for meeting their own costs of any representation.

5. Composition and Decisions of the Hearing Panel

- 5.1. The Hearing Panel shall be composed of three independent members of the Standards and Ethics Committee. The Standards and Ethics Committee may also resolve to co-opt suitably experienced independent persons to serve as members on the Hearing Panel.
- 5.2. The Hearing Panel shall appoint one of them to serve as Chair for each Hearing.
- 5.3. Except for decisions that are expressed in this Procedure to be taken by the Chair, any decision of the Hearing Panel shall be made on the basis of a simple majority vote.

6. General Powers of the Hearing Panel in relation to this Procedure

- 6.1. The Chair may agree to vary this procedure in any particular instance where they are of the opinion that such a variation is necessary in the interests of fairness. The Chair may also vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure).
- 6.2. Panel members may ask any questions they wish to anyone taking part in the Hearing.
- 6.3. The Panel may also require the attendance of a particular person or the production of specific documentation where they are of the view it would assist their deliberations.

7. Introductions

- 7.1. At the start of the Hearing, the Chair shall introduce each of the Members of the Hearing Panel and everyone involved in the Hearing. The Chair shall then explain the procedure that the Panel is to follow in

conducting the Hearing and should obtain confirmation from everybody taking part in the Hearing that they have understood the procedure.

8. Preliminary Procedural Issues

- 8.1. The Panel should then resolve any issues or disagreements about how the Hearing should continue, including whether all or part of the Hearing should be heard without the attendance of the public.
- 8.2. If a party wishes to adduce additional information to the Panel that was not included in the summaries they produced for circulation prior to the Hearing they should apply to the Panel for permission to do so before the commencement of the formal part of the Hearing.
- 8.3. It will assist if the Legal Advisor and the other party have been provided with details of the late information as early as possible but at least two days before the commencement of the Hearing. The Panel retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present evidence which is relevant to the matters before the Panel.
- 8.4. If any party fails to attend the Hearing, the Panel may, depending on any reasons given for such non-attendance, continue with the proceedings or adjourn the Panel to another date.

9. Stage 1 – Formal Findings of Fact

- 9.1. After dealing with any preliminary issues, the Panel should then consider whether or not there are any significant disagreements about the facts.
- 9.2. If there is no disagreement about the facts, the Panel can move on to the next stage of the Hearing.
- 9.3. If there is disagreement about the facts, the Complainant should be invited to make representations to support the allegations they are making. With the Panel's permission, the Complainant may call witnesses to give evidence. The Panel may allow the Respondent an opportunity to challenge or comment upon any evidence put forward by the Complainant or any witness called by the Complainant.
- 9.4. The Respondent should then have the opportunity to make representations to support their version of the facts. With the Panel's permission, the Respondent may call witnesses to give evidence. The Panel may allow the Complainant an opportunity to challenge or comment upon any evidence put forward by the Respondent or any witness called by the Respondent.

9.5. The Panel shall then retire to consider their decision in relation to the facts.

9.6. Once the Panel has reached a decision and the Hearing has been re-convened, the Chair will announce the Panel's findings of fact.

10. Stage 2 – Did the Member fail to follow the Code?

10.1. The Panel then needs to consider whether or not, based on the facts it has found, the Respondent has failed to follow the Code of Conduct. It should be noted that this stage of the hearing does not provide either the Complainant or the Respondent an opportunity to re-examine the facts of the case.

10.2. The Complainant should first be invited to give reasons as to why they believe (on the facts as determined by the Panel) the conduct of the Respondent amounts to a breach of the Code.

10.3. The Respondent should then be invited to give reasons as to why they believe (on the facts as determined by the Panel) their conduct does not amount to a breach of the Code.

10.4. The Panel shall then retire to consider their decision in relation to whether the facts found by the Panel amount to a breach of the Code.

10.5. Once the decision is reached and the Hearing re-convened, the Chair will announce the Panel's decision as to whether there has been a breach of the Code.

11. Stage 3 – Breach of the Code and Sanctions

11.1. If it is found that the Councillor has not breached the Code of Conduct.

- a. If the Panel determines that the Respondent has not breached the Code, the Panel shall dismiss the case.
- b. However, the Panel may consider whether it should make any general recommendations to the Members involved or all Members as a consequence of any matters arising from the Hearing.

11.2. If it is found that the Councillor has failed to follow the Code of Conduct

- a. If the Panel determines that the Respondent has failed to follow the Code, it will consider any representations from:
 - i the Complainant; and

- ii the Respondent,

as to any extenuating circumstances and whether or not the Panel should impose any sanction and what form that sanction should take.

- b. The Panel shall then retire to consider their decision in relation to whether a sanction should be imposed. In making that determination the Panel may consider any factor they consider to be relevant, including:
 - i the severity of the offence;
 - ii the level of remorse the Respondent has shown and any apologies they have made; and
 - iii whether there is any indication of the behaviour being repetitious or whether the Respondent has previously been found to have committed similar offences.
- c. Once the decision is reached and the Hearing re-convened, the Chair will announce the Panel's decision as to whether a sanction will be imposed.

11.3. Sanctions Available to the Panel

- a. The Panel may impose such sanctions as are stated as being available to it in the Protocol (as amended from time to time).

12. The Written Decision

- a. The Panel will announce its decision orally on the day.
- b. The Panel will also issue a written decision shortly after the end of the Hearing. A copy of the written decision shall be published on the Authority's website not later than 14 days after the date of the Hearing.