

CHC Members code of conduct: Dealing with alleged breaches during the coronavirus pandemic

April 2020



CYNGOR IECHYD CYMUNED
COMMUNITY HEALTH COUNCIL

BWRDD CYMRU | WALES BOARD

Dealing with alleged breaches of the CHC Member's Code of Conduct during the coronavirus pandemic

Like all public bodies in Wales, the way we work and carry out our activities has changed in response to the coronavirus pandemic.

We will do our very best to respond to any concerns about an alleged breach of the CHC member's code of conduct in a timely way. However, during this time our resources may be stretched, and some of our staff and members may not be available.

This means that the time it takes to investigate a complaint about a member may take longer than usual.

It also means that no hearings or appeal hearings will be held physically. They may be held virtually using video conferencing technology where this is appropriate.

Sometimes members may make a mistake or breach the code of conduct. Where this is minor and the member recognises their mistake they should be offered support and advice, if necessary appropriate learning and development should be put in place.

Such breaches should be addressed quickly and informally by the CHC Chair and senior member of CHC staff.

The member assessment will give a further opportunity for the member to reflect on the incident and what they have learnt as a result.

The following policy applies in cases where:

- a breach of a more serious nature is alleged e.g. with the potential to bring the CHC into disrepute or,
- there is an alleged repeat of similar minor breaches despite the offer of support or development opportunities or,
- if the member does not accept or agree that there has been a breach.

**THIS POLICY APPLIES TO ALL CHC MEMBERS,
INCLUDING CO-OPTED MEMBERS.**

Alleged breach by a CHC member during the coronavirus pandemic

Investigation

With agreement from the Chair, the Chief Officer of the relevant CHC will commission an investigation. This will be conducted by someone within the CHC movement separate to the incident and not otherwise involved in the code of conduct procedure.

It may take us longer to appoint an Investigating Officer. If this happens we will let everyone involved know.

We will do our very best to respond to any concerns in a timely way. However, during this time our resources may be stretched, and some of our staff and members may not be available.

The investigation shall seek to identify the facts surrounding any alleged breach (es) including hearing directly from the member. Wherever possible, the investigating officer will speak to people by teleconference or videoconference instead of meeting them face-to-face.

It is not the role of the Investigating Officer to make any judgement about the case but only to produce a factual report. It may take the Investigating Officer longer to write the report during this period. If this is the case, we will let everyone involved know.

In exceptional circumstances and following consultation between the Chief Officer of the relevant CHC and the Board of Community

Health Councils in Wales (the Board of CHC's), the Board of CHC's may recommend to the Welsh Ministers that a temporary suspension of the member is appropriate. Where the member was appointed by 3rd sector or Local Authority this recommendation can only be made after consulting the relevant appointing body.

The findings of the Investigating Officer's report shall be considered by the Chief Officer of the CHC who shall determine if there is a case to answer.

Code of Conduct hearing

If it is deemed that there is a case to answer the member may be invited to attend a virtual Code of Conduct hearing using video conferencing facilities. If it is not possible to arrange video conferencing facilities in a way that ensures a fair and confidential hearing then the process will be put on hold until face-to-face meetings are possible.

If it is appropriate to proceed, the virtual hearing will be conducted by a panel consisting of 3 members of the conduct committee.

Should the panel require support with any procedural aspects of the process then a request may be made to the Board of CHC's who will arrange for officer level support to be provided by another CHC.

The member will have the right to be accompanied by a friend or a fellow member not acting in a legal capacity. To ensure everyone is safe during this unprecedented time, we ask all participants to follow government guidance and use the technology made available.

During the virtual hearing the investigating officer will present their report along with supporting evidence. The report and any supporting evidence should be provided to the member 2 weeks in advance by email.

The member (or their friend or fellow member) will have the opportunity to:

- ask questions of the investigating officer or of any witnesses relating to the evidence they present, and
- Present their case and any supporting evidence.

The panel will have the opportunity to ask questions of the member or any witnesses based on the evidence presented.

Outcome

Following consideration of the evidence presented the panel will determine if the allegation is upheld.

If the allegation is not upheld then the decision will be communicated to the member as soon as reasonably practicable.

If the allegation is upheld the panel will then go on to determine the appropriate course of action. This might include recommendations for learning and development and in these circumstances the member will be informed of the outcome and asked to confirm their agreement to the recommended programme of learning and development.

If the panel do not deem that learning and development would be appropriate or successful, or should the member refuse to undergo the recommended course of learning and development, the panel will consult with the Executive Committee (but excluding the Chair of the CHC) as to whether the Board of CHCs should be asked to consider making a recommendation to the Welsh Ministers that the member's membership of the CHC should be terminated.

The outcome will be communicated to the member in writing at this stage and in the event that the CHC intends to ask the Board to consider making a recommendation to terminate membership, then the member will also be informed of this intention and given the opportunity to appeal in accordance with the Appeal Process below.

Appeal process

A member who wishes to appeal must lodge their intention to appeal within 14 calendar days of receiving written notification of the outcome.

This notification of intention to appeal should indicate the grounds on which this appeal is based.

The member may appeal against the decision of the panel to uphold some or all of the allegations or any consequent action by the CHC, including a request to the Board of CHC's to consider making a recommendation to the Welsh Ministers to terminate membership.

The appeal should be explicit as to the grounds of appeal and whether this is an appeal against the judgement of the panel, any consequent action determined by the CHC, or against any procedural aspect of the investigation and hearing itself.

A virtual appeal panel will be appointed and the administrative arrangements put in place within 14 calendar days and wherever possible the appeal heard within 28 calendar days of the notification of appeal being received.

If this is not possible due to the current circumstances we will inform everyone involved. The virtual appeal panel will consist of the chair of the CHC along with 2 board members who have not previously been involved in the process.

In exceptional circumstances it may be necessary to extend this deadline with the agreement of both parties but every effort should be made to hear the appeal promptly.

Should the appeal panel require support with any procedural aspects of the appeal then a request may be made to the Board of CHC's who will arrange for officer level support to be provided by another CHC.

The purpose of the appeal is to establish if the decision taken at the Code of Conduct hearing was reasonable in light of the grounds raised by the member. The appeal is not a re-hearing of the original evidence.

The appeal hearing will consider specifically whether the action determined upon by the CHC was fair and reasonable. The appeal hearing may look at whether the procedure was applied correctly.

The appeal will take account of any substantial new information cited in the grounds for appeal.

Both the Chief Officer of the CHC and the member and his/her representative will remain 'virtually' present throughout the proceedings until the panel adjourn to deliberate in private.

The member (or their friend or colleague) shall confirm their grounds of appeal and provide information supporting their case.

Questioning

The Chief Officer will have the opportunity to ask questions of the member.

The appeal panel shall have the opportunity to ask questions of the member.

The members of the appeal panel shall have the opportunity to ask questions of the Chief Officer.

The member (or their friend or fellow member) shall have the opportunity to ask questions of the Chief Officer.

Summing up

The Chief Officer will present the justification for the CHC's decision and will have the opportunity to sum up. The member (or their friend or colleague) will have opportunity to sum up.

New information must not be introduced at this stage by either party.

Reaching a decision

The appeal panel may, at its discretion, adjourn the appeal hearing in order that further information may be sought and reviewed.

The appeal panel shall deliberate in a virtual private session, only recalling both parties to clarify any points of uncertainty on evidence already given. If a recall is necessary both parties shall return.

When a decision is reached by the appeal panel they should inform the member and chief officer of the outcome immediately or within 7 calendar days. In either case, the decision will be notified to all parties in writing within 7 calendar days of the appeal. If this is not possible, we will let everyone involved know.

Recommendation to the Welsh Ministers

If no appeal has been received by the CHC within 14 days of the outcome being communicated to the member, or if an appeal is received but the outcome is upheld on appeal, then the CHC will contact the Board of CHC's to ask that they consider making a recommendation to the Welsh Ministers to terminate membership.

The Board of CHC's, having first carried out any further consultation that is required with the CHC, will decide whether that recommendation should be made. If the member has been appointed by 3rd sector or Local Authority, the relevant body must also be consulted by the CHC Board before a recommendation is made.

Following a decision by the Board of CHC's on whether to recommend termination, a letter must be sent to the member

notifying them of whether a recommendation to the Welsh Ministers is being made.

Alleged breach by a CHC Chair during the coronavirus pandemic

Where a CHC Chair is alleged to have breached the Code of Conduct the following process applies:

Investigation

With agreement from the Chair of the Board of CHC's, the Chief Executive of the Board of CHC's will commission an investigation. This will be conducted by someone separate to the incident and not otherwise involved in the Code of Conduct procedure. It may take us longer to appoint an Investigating Officer. If this happens we will tell everyone involved.

We will do our very best to respond to any concerns in a timely way. However, during this time our resources may be stretched, and some of our staff and members may not be available.

The investigation shall seek to identify the facts surrounding any alleged breach (es) including hearing directly from the CHC chair. Wherever possible, the investigating officer will speak to people by teleconference or videoconference instead of meeting them face-to-face.

It is not the role of the Investigating Officer to make any judgement about the case but only to produce a factual report. It may take the Investigating Officer longer to write the report due

to current circumstances. If this is the case, we will let everyone involved know.

In exceptional circumstances the Board of CHC's may, following consultation with the relevant CHC, recommend to the Welsh Ministers a temporary suspension of the CHC Chair's membership.

Where the CHC Chair was nominated as a member by the 3rd sector or Local Authority a recommendation to suspend membership can only be made after consulting the relevant appointing body.

The findings of the report shall be considered by the Chair of the Board of CHC's and nominated SMT member who shall determine if there is a case to answer.

Code of Conduct hearing

If it is deemed that there is a case to answer the CHC Chair will be invited to attend a virtual Code of Conduct hearing using video conferencing facilities. If it is not possible to arrange video conferencing facilities in a way that ensures a fair and confidential hearing then the process will be put on hold until face-to-face meetings are possible.

The virtual hearing will be conducted by 3 members of the Corporate Governance Committee, one of whom should be the Chair of the Corporate Governance Committee. A nominated SMT

member will be in attendance to provide support on any procedural matters if required.

The CHC Chair will have the right to be accompanied (virtually) by a friend or fellow member not acting in a legal capacity. To ensure everyone remains safe during this unprecedented time, we ask all participants to follow government guidance and use the technology made available.

During the virtual hearing the investigating officer will present their report along with supporting evidence. The report and any supporting evidence should be provided to the CHC Chair 2 weeks in advance.

The CHC Chair (or their companion) will have the opportunity to ask questions of the investigating officer or of any witnesses relating to the evidence they present.

The CHC Chair (or their companion) will have the opportunity to present their case and any supporting evidence. The panel will have the opportunity to ask questions of the member or any witnesses based on the evidence presented.

Following consideration of the evidence presented the panel will determine if the allegation is upheld.

Reaching a decision

If the allegation is not upheld then the decision will be communicated to the CHC Chair as soon as reasonably practicable.

If the allegation is upheld the virtual panel will determine the appropriate course of action.

This might include recommendations for learning and development and in these circumstances the CHC Chair will be informed of the outcome and asked to confirm their agreement to the recommended programme of learning and development.

If the panel do not deem that learning and development would be appropriate or successful, or the CHC Chair refuses to undergo the programme of learning and development, the panel can recommend to the Board of CHC's that a letter be sent to Welsh Ministers to recommend termination of membership.

Before coming to a decision on whether to make such a recommendation, the Board of CHC's must consult with the Executive Committee of the relevant CHC. If the CHC Chair has been appointed by 3rd sector or Local Authority, the relevant body must also first be consulted.

Following a decision by the Board of CHC's to recommend termination, a letter must be sent to the member notifying them of the Board's decision.

Before the recommendation is made to the Welsh Ministers the CHC Chair will be given the opportunity to appeal in accordance with the Appeal Process below.

If no appeal has been received within 14 days of the decision being communicated to the CHC Chair then the Board will make the recommendation to the Welsh Ministers.

Appeal process

A CHC Chair who wishes to appeal must lodge their intention to appeal within 14 calendar days of receiving written notification of the determination.

This notification of intention to appeal should indicate the grounds on which this appeal is based. The member should be explicit as to whether this is an appeal against the judgement of the panel, against the action determined by the Board, or against any procedural aspect of the investigation and hearing itself.

An appeal panel will be appointed and the administrative arrangements put in place within 14 calendar days and wherever possible the appeal heard within 28 calendar days of the notification of appeal being received. If this is not possible we will inform everyone involved.

The virtual appeal panel will consist of the Chair of the Board of CHC's and 2 other members of the Board of CHC's not involved in the previous panel.

In exceptional circumstances it may be necessary to extend this deadline with the agreement of both parties but every effort should be made to hear the appeal promptly.

Where appropriate a member of the SMT will be made available to support the panel or provide advice on procedural aspects but will not be involved in the decision making process.

The purpose of the appeal is to establish if the decision taken at the Code of Conduct hearing was reasonable in light of the

grounds raised by the member. The appeal is not a re-hearing of the original evidence.

The virtual appeal hearing will consider specifically whether the action determined by the CHC Board was fair and reasonable. The appeal hearing may look at whether the procedure was applied correctly.

The appeal will take account of any substantial new information cited in the grounds for appeal.

An SMT member will be nominated to represent the Board of CHCs and the nominated member along with the CHC Chair (and companion) will remain present throughout the virtual proceedings until the appeal panel adjourn to deliberate in private.

The CHC Chair (or companion) shall confirm their grounds of appeal and provide information supporting their case.

Questioning

The nominated SMT member will have the opportunity to ask questions of the CHC Chair.

The panel shall have the opportunity to ask questions of the CHC Chair.

The CHC Chair or representative shall have the opportunity to ask questions of the nominated SMT member.

The members of the panel shall have the opportunity to ask questions of the nominated SMT member.

Summing up

The nominated SMT member will present the justification for the Board of CHC's decision and will have the opportunity to sum up. New information must not be introduced at this stage.

The CHC Chair or representative will have opportunity to sum up. New information must not be introduced at this stage.

Reaching a decision

The appeal panel may, at its discretion, adjourn the appeal hearing in order that further information may be sought and reviewed.

The appeal panel shall deliberate in a virtual private session only, recalling both parties to clarify any points of uncertainty on evidence already given. If a recall is necessary both parties shall return to the virtual appeal panel hearing.

When a decision is reached by the virtual appeal panel they should inform the CHC Chair and nominated SMT member of the outcome immediately or, if the decision is to be given in writing, within 7 calendar days.

In either case, the decision will be notified or confirmed to all parties in writing within 7 calendar days of the appeal. If this is not possible, we will let everyone involved know.

Alleged breach by the Board Chair and Independent Members during the coronavirus pandemic

This procedure does not apply to the Chair of the Board of CHC's or independent members of the Board of CHC's as this is outside the scope of the CHC regulations (The Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010 as amended by The Community Health Councils (Constitution, Membership and Procedures) (Wales) (Amendment) Regulations 2015).

Alleged breaches of the Nolan Principles on the part of the Chair or Independent members of the Board of CHC's will be referred to Welsh Ministers.