

Purpose

To explain the basics and set out what to expect from a Misconduct Appeal Hearing for C&S Council Attendants.

Interpretation (C&S constitution definitions)

“Attendant” means a person attending a General Meeting who has a deliberative vote at that meeting, as defined in §4.5.6;

“C&S” means the Clubs & Societies Council, as defined in Part 2;

“C&S member” means a member of C&S, as defined in §2.3.1;

“C&S Office Bearer” means an office bearer of C&S, defined in §2.4.3;

“Club” means a club, society, association or other groups recognised by C&S, as prescribed in §6.1.1 and

“Executive” means the Executive of C&S.

How we got here

If the Executive forms the view that a Club may be guilty of misconduct, it may resolve to conduct a misconduct hearing. If, after conducting a misconduct hearing in accordance with the C&S constitution, the Executive resolves that a Club is guilty of misconduct, the Executive may impose any combination of penalties set out in §7.2.7 of the C&S constitution, with these penalties being communicated to a club via a penalty notice. If, within 10 academic days of being served a penalty notice, a Club serves a written notice of appeal stating objection to the penalty, a Misconduct Appeal Hearing shall be scheduled.

Misconduct Appeal Hearing

A misconduct appeal hearing shall proceed as a hearing de novo and the normal rules for General Meetings of C&S Council apply.

At a misconduct appeal hearing, C&S shall act as an appeal tribunal and (i) permit evidence to be given orally and/or in writing; (ii) act according to fairness and good conscience and the substantial merits of the case, without regard to technicalities or legal forms; (iii) give the appellant a reasonable opportunity to be heard; (iv) give the Executive a reasonable opportunity to be heard; (v) shall not be bound to conduct any proceeding in a formal manner; and (vi) hear and determine the matter as quickly as is consistent with the requirements of fairness.

There can be 1 written submission on behalf of the Club and 1 on behalf of the Executive. These submissions will be included and sent out in the Final Agenda.

A misconduct appeal hearing shall be conducted in the manner determined by C&S at the General Meeting during which the appeal is heard. A procedural motion at the start of the meeting setting out time limits is usual, ensuring that a reasonable opportunity to be heard will be fully met.

At a misconduct appeal hearing, (i) each Executive Member; (ii) the appellant, if the appellant is an Attendant; and (iii) the appellant’s representative, if the appellant is a Club, must abstain from voting on any resolution, and have the abstention noted.

If, after hearing a misconduct appeal in accordance with the constitution, C&S resolves that an appellant Club is guilty of misconduct, it may resolve to impose a penalty on the appellant, which may include any combination of

(i) reprimanding the appellant and/or 1 or more of its representatives;

(ii) directing the appellant to apologise for its behaviour, in a method determined by C&S;

- (iii) directing 1 or more of the appellant's representatives to undertake training as determined by C&S;
- (iv) directing the club to submit minutes of Committee Meetings for a specified period of time;
- (v) directing the Club to repay the cost of any property damage that has occurred due to the misconduct;
- (vi) restricting the Club's eligibility to hold specified types of events for a specified period;
- (vii) removing from 1 or more of the appellant's representatives the eligibility to hold, or be nominated for, office in any Club, for a specified period of time, or indefinitely;
- (viii) restricting or removing the appellant's access to services provided by C&S;
- (ix) restricting or removing the appellant's eligibility to apply for, or receive, specified forms of financial or other assistance from C&S, for a specified period of time;
- (x) altering the appellant's affiliation status, for a specified period of time, or indefinitely; and
- (xi) deregistering the appellant.

Who chairs a Misconduct Appeal Hearing?

A person (i) elected by and from the Attendants; (ii) who is not an Executive Member; (iii) who is not the appellant, if the appellant is a person; and (iv) who is not a member of the appellant, if the appellant is a Club, shall preside as chair for the duration of the misconduct appeal hearing.

Questions should be directed via the chair towards either the Club representative or the Executive representative.

The chair shall have a casting vote, but not a deliberative vote.

Who attends a Misconduct Appeal Hearing?

Attendants are the members of C&S. This includes the C&S affiliated Club Presidents and the C&S Office Bearers (President, Vice President, Treasurer, Secretary and 5 General Representatives).

A club President who is a member of the Appellant's Club will have an obvious conflict of interest and should appoint an eligible proxy for the Misconduct Appeal Hearing.

A club President may appoint a person as their proxy for the Misconduct Appeal Hearing, if the proxy appointment is made in accordance with §4.5.12-§4.5.18 of the C&S constitution. Any proxy who is a member of the Appellant's Club will have an obvious conflict of interest and should not participate in the meeting.

In accordance with §4.5.16 of the C&S Constitution, if the Appellant is a club, no club shall be represented by more than 1 person. As a matter of fairness, only 1 person shall speak on behalf of the Executive.

In accordance with §4.5.16 of the C&S Constitution, Observers will not be allowed.

The appellant shall not be represented at a misconduct appeal hearing by a duly qualified legal practitioner or other agent acting for fee or reward, unless C&S, after having considered all the relevant circumstances, is satisfied that such representation is necessary in order to ensure fairness.

Attendant Conduct

An Attendant must not:

- (i) act in breach of this Constitution; the MSA constitution; the Statutes, Regulations or Rules of the University; or the fiduciary duties owed to the Club's members; or
- (ii) engage in conduct that is racist, sexist, queerphobic, transphobic, ableist, militaristic, or otherwise unbecoming a member, or prejudicial to the interests, of C&S; or
- (iii) disseminate any physical campaign materials or material intended or reasonably likely to alter the voting intention of attendees.

Further, an Attendant must be present for the duration of the Appeal to cast a deliberative vote and not record any of the proceedings. The Misconduct Appeal Hearing will be held entirely in-person.