

Public Document Pack



NOTICE OF MEETING

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| Meeting | Conduct Advisory Panel |
| Date and Time | Wednesday, 23rd June, 2021 at 2.00pm |
| Place | Ashburton Hall, Ell Court, The Castle, Winchester |
| Enquiries to | members.services@hants.gov.uk |

John Coughlan CBE
Chief Executive
The Castle, Winchester SO23 8UJ

FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Filming Protocol available on the County Council's website.

AGENDA

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to the circumstances described in Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Non-Pecuniary interest in a matter being considered at the meeting should consider whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

3. MINUTES OF THE PREVIOUS MEETING (Pages 3 - 4)

To confirm the minutes of the previous meeting.

4. CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements the Chairman may wish to make.

5. DEPUTATIONS

To receive any deputations notified under Standing Order 12.

6. AMENDMENT OF CODE OF CONDUCT FOR MEMBERS (Pages 5 - 20)

To consider a report of the Head of Law & Governance and Monitoring Officer providing an update on the review of the County Council's Code of Conduct for Members following the publication of the Local Government Association's Model Councillor Code of Conduct 2020 and to seek the Panel's agreement to recommend the proposed amendments to the Code of Conduct for Members to the County Council for approval.

7. DISCLOSABLE PECUNIARY INTERESTS - DISPENSATIONS (Pages 21 - 28)

To consider a report of the Head of Law & Governance and Monitoring Officer seeking renewal of a number of dispensations granted by the Conduct Advisory Panel under Section 33 of the Localism Act 2011 ('Localism Act') in respect of participation and voting in Meetings in cases where Members or Co-opted Members of the County Council have a Disclosable Pecuniary Interest ('DPI').

8. AMENDMENT OF ARRANGEMENTS FOR DEALING WITH THE ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS THAT A MEMBER OR CO-OPTED MEMBER OF THE COUNTY COUNCIL HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT FOR MEMBERS, AND HEARING PROCEDURE (Pages 29 - 46)

To consider a report of the Head of Law & Governance and Monitoring Officer seeking approval to a Pre-Hearing and Hearing Procedure in respect of the determination of allegations of breach of the Code of Conduct for Members, and consequential amendment to the County Council's Arrangements for the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Hampshire County Council Code of Conduct for Members.

ABOUT THIS AGENDA:

On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.

ABOUT THIS MEETING:

The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require wheelchair access, please contact members.services@hants.gov.uk for assistance.

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

Agenda Item 3

AT A MEETING of the Conduct Advisory Panel of HAMPSHIRE COUNTY
COUNCIL held remotely on Friday, 20th November, 2020

Chairman:

* Councillor Mark Kemp-Gee

| | |
|----------------------------|----------------------------------|
| Councillor Keith Evans | Councillor Peter Latham |
| * Councillor Adam Carew | * Councillor Tom Thacker |
| Councillor Peter Chegwyn | * Councillor Rhydian Vaughan MBE |
| * Councillor Andrew Gibson | * Councillor Patricia Stallard |
| * Councillor Keith House | |
| * Councillor Gavin James | |

*Present

25. **APOLOGIES FOR ABSENCE**

Apologies were received from Councillors Evans and Latham

26. **DECLARATIONS OF INTEREST**

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Personal interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 5 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

27. **MINUTES OF THE PREVIOUS MEETING**

The minutes of the meeting of 24 October 2019 were considered and agreed.

28. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman made no announcements on this occasion.

29. **DEPUTATIONS**

No deputation requests had been received.

30. **APPROVAL OF ABSENCE OF AN ELECTED MEMBER OF THE COUNTY COUNCIL - SECTION 85 LOCAL GOVERNMENT ACT 1972**

The Conduct Advisory Panel considered a report of the Monitoring Officer proposing the granting of a period of absence for an elected Member of the County Council pursuant to Section 85 of the Local Government Act 1972.

In introduction to the report the Panel heard that the proposed absence was due to ongoing individual circumstances and not Covid-19 related. It was confirmed that the Panel had delegated authority from the County Council to grant a leave of absence. It was questioned whether in addition to the proposed individual leave of absence, the general Covid-19 dispensation should be extended. Members noted that attendance at remote meetings was now well established and mechanisms were in place to identify individual Members who could not attend for health reasons.

The recommendations in the report were considered and it was

RESOLVED

That the Conduct Advisory Panel approve a period of absence pursuant to Section 85 of the Local Government Act 1972 for a period of six months from the 20 November 2020 for Councillor Dibbs for health reasons.

Chairman,

HAMPSHIRE COUNTY COUNCIL

Decision Report

| | |
|------------------------|---|
| Decision Maker: | Conduct Advisory Panel |
| Date: | 23 June 2021 |
| Title: | Amendment to the Code of Conduct for Members |
| Report From: | Head of Law and Governance and Monitoring Officer |

Contact name: Barbara Beardwell

Tel: 03707 793751

Email: barbara.beardwell@hants.gov.uk

1. Executive Summary

1.1. The purpose of this report is to update the Conduct Advisory Panel on the review of the County Council's Code of Conduct for Members following the publication of the Local Government Association's Model Councillor Code of Conduct 2020 and to seek the Panel's agreement to recommend the proposed amendments to the Code of Conduct for Members to the County Council for approval.

2. Contextual information

2.1. Part 7 of the Localism Act 2011 (the Act), Sections 26-37 introduced revised arrangements in respect of the Code of Conduct for Members. Subject to certain requirements, including the duty to adopt a code dealing with the conduct that is expected of Members and voting Co-opted Members when they are acting in that capacity, local authorities have the discretion to determine what may be included in their codes of conduct according to their own needs and resources.

2.2. By virtue of Part 1, Chapter 9, Paragraph 1.3.1 of the Constitution, the Conduct Advisory Panel has been delegated the role of advising the County Council on the adoption or revision of the Members' Code of Conduct under the Act.

2.3. In 2018, the Committee on Standards in Public Life (CSPL) undertook a review of the standards framework established by the Act. The CSPL review concluded with 26 recommendations for improvement being made to Government and other bodies, in addition to 15 areas of best practice directed at local authorities. One of the CSPL recommendations was directed at the Local Government Association (LGA) and concerned the creation of an updated model code of conduct which can be adapted by local authorities.

2.4. At its meeting on 24 October 2019, the Conduct Advisory Panel considered the CSPL's 15 best practice recommendations.

- 2.5. The Panel agreed that, once the LGA model code of conduct had been published, the County Council's Code of Conduct for Members should be reviewed to take account of the new model provisions and to adopt the CSPL's best practice recommendations 1 and 2, as follows:
1. Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.
 2. Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.
- 2.6. In respect of best practice recommendation 2, it was considered that the existing obligations within the County Council's Code of Conduct for Members were sufficient for the purpose of requiring councillors to comply with any formal standards investigation but that there should be included a reference to trivial and malicious allegations by councillors in order to be consistent with the CSPL's best practice.
- 2.7. The Panel further agreed that, following the review, the revised Code of Conduct be presented to the Panel for approval and recommendation to the County Council.
- 2.8. In December 2020, the LGA published its Model Councillor Code of Conduct 2020 (Model Code) which can be accessed via:
- [Model Councillor Code of Conduct 2020 \(local.gov.uk\)](https://www.local.gov.uk/model-councillor-code-of-conduct-2020)
- 2.9. In the interests of promoting consistency for shared members, a consultation exercise has been undertaken with Southampton and Portsmouth City Councils and the Hampshire District and Borough Councils to identify whether other local authorities will be revising their codes of conduct to adopt the provisions of the Model Code. The consultation also included comparator County Councils and national park authorities.
- 2.10. Only one authority indicated that they may seek to adopt the Model Code. The consensus from the consultation was that most authorities will not be adopting the Model Code at this time on the basis that it does not add material value to existing codes of conduct which, in many cases, have already been recently updated to implement best practice recommendations of the CSPL. There is also a recognition that there is likely to be the need for a further review if the Government accepts any of the CSPL's recommendations requiring legislative change, such as in relation to sanctions for breaches of the code of conduct.

3. Proposed Amendments to the Code of Conduct for Members

- 3.1. A review of the County Council's Code of Conduct for Members has been undertaken by Officers taking account of the Model Code and the consultation responses received from other authorities in Hampshire and beyond.

- 3.2. It is not proposed that the Conduct Advisory Panel should recommend to the County Council the adoption of the Model Code. This is primarily because the format of the Model Code is significantly different to the County Council's Code of Conduct for Members but does not add new content of material value. In addition, there would be potential for confusion for Members as other Hampshire authorities are retaining their existing codes of conduct. Finally, there is potential for further significant changes if the Government amends the Act to adopt recommendations made by the CSPL.
- 3.3. However, in order to address the CSPL's best practice recommendation 1, it is proposed that the Code of Conduct for Members be amended to include an express prohibition on bullying and harassment and that the definition and examples of bullying and harassment included within the Model Code be incorporated into the Code of Conduct for Members. The revised Code of Conduct, incorporating these amendments, is attached at Appendix 1.
- 3.4. With regard to the CSPL's best practice 2, it is noteworthy that the Model Code does not include provision expressly prohibiting councillors from making trivial or malicious allegations.
- 3.5. If the Conduct Advisory Panel is minded to recommend to the County Council the incorporation of the Model Code's definition of bullying, this includes malicious behaviour. It is considered that, taken together with the existing provisions contained within the Code of Conduct for Members that require Members to value their colleagues and Officers of the County Council and engage with them in an appropriate manner, and to treat all people with respect and propriety, this is sufficient to be consistent with the CSPL's best practice. It is therefore not proposed to make any additional amendment to the Code of Conduct for Members to incorporate express reference to trivial or malicious allegations by councillors.
- 3.6. Finally, although the Code of Conduct for Members currently imposes obligations to comply with legislation, policies and procedures, and to treat others with respect, it is proposed that it would be appropriate to recommend to the County Council the addition of an express reference to the need to have due regard to the County Council's equality duties. The revised Code of Conduct, attached at Appendix 1, includes some suggested additional wording addressing this.

4. Recommendation

- 4.1 It is recommended that the Conduct Advisory Panel approve for recommendation to the County Council the revised Code of Conduct for Members as contained in Appendix 1 of this report.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.

Other Significant Links

| Links to previous Member decisions: | |
|---|-----------------|
| <u>Title</u> | <u>Date</u> |
| Conduct Advisory Panel – Report on Local Government Ethical Standards And Members' Code Of Conduct: (Public Pack)Agenda Document for Conduct Advisory Panel, 24/10/2019 14:00 (hants.gov.uk) | 24 October 2019 |
| Direct links to specific legislation or Government Directives | |
| <u>Title</u> | <u>Date</u> |
| Localism Act | 2011 |
| Relevant Authorities (Disclosable Pecuniary Interests) Regulations | 2012 |

| Section 100 D - Local Government Act 1972 - background documents | |
|--|-----------------|
| <p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p> | |
| <u>Document</u> | <u>Location</u> |
| None | |

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

Equality objectives are not considered to be adversely affected by the proposals within this report.

2. Impact on Crime and Disorder:

Not applicable.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.

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Part 4

Codes and protocols

Appendix A – Code of Conduct for Members

Part 1: General Provisions and Interpretation

1. Introduction

This Code of Conduct is adopted by the County Council pursuant to its statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members of the County Council. This Code applies to all Members and Co-opted Members of the County Council.

This Code is based on and is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership as referred to in the Localism Act 2011.

In the interests of transparency and openness, and in accordance with the requirements of the Localism Act 2011, a copy of the Register of Members' Interests is published on the County Council's website, and is available for public inspection at the County Council's offices at all reasonable hours.

2. Scope

This Code applies to all Members and Co-opted Members of the County Council when acting in their official capacity, or when giving the impression that they are acting as a representative of the County Council.

Where a Member or Co-opted Member is a member of more than one local authority, but acting on behalf of the County Council, such Member or Co-opted Member is, for the avoidance of doubt, bound by this Code of Conduct.

3. General obligations of Members and Co-opted Members

As a Member of Hampshire County Council, your conduct will address the principles of the Code of Conduct by:

- 3.1 Representing the needs of residents, and putting their interests first.
- 3.2 Dealing with representations or enquiries from residents, members of communities within the administrative area of Hampshire County Council and visitors fairly, appropriately and impartially.
- 3.3 Not allowing other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the County Council's area, or the good governance of the County Council in a proper manner.
- 3.4 Exercising independent judgement and not compromising your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties.
- 3.5 Listening to the interests of all parties, including relevant advice from statutory and other professional officers of the County Council, taking all relevant information into consideration, remaining objective and making decisions on merit.
- 3.6 Being accountable for your decisions and co-operating when scrutinised internally and externally.
- 3.7 Contributing to making the County Council's decision-making processes as open and transparent as possible.
- 3.8 Restricting access to information when the wider public interest, the County Council's Constitution, or the law requires it.
- 3.9 Behaving in accordance with all the County Council's legal obligations, the County Council's policies, protocols and procedures, [and having due regard to the County Council's equality duties in the performance of your duties as a Member of the County Council](#).
- 3.10 Ensuring that when using or authorising the use by others of the resources of the County Council that such resources are not used improperly for political purposes.
- 3.11 Having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 or otherwise.
- 3.12 Not knowingly doing anything which might cause the County Council to breach any legislation.

- 3.13 Valuing your colleagues and Officers of the County Council and engaging with them in an appropriate manner.
- 3.14 Always treating all people and organisations with respect and propriety [and not bullying or harassing any person¹](#).
- 3.15 Providing leadership through behaving in accordance with these principles.

Part 2: Disclosable Pecuniary Interests

1. Introduction

A disclosable pecuniary interest is an interest falling within the Schedule set out at Paragraph 3 below of:

- 1.1 Yourself; or
- 1.2 Your spouse or civil partner, or someone you are living with as if you were husband and wife or civil partners, where you are aware that that other person has the interest.

2. Interpretation

In the Schedule set out at Paragraph 3 below, the following words or expressions mean as follows:

- 2.1 'the Act' means the Localism Act 2011;
- 2.2 'body in which the relevant person has a beneficial interest' means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
- 2.3 'director' includes a member of the committee of management of an industrial and provident society;
- 2.4 'land' excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone

¹ [The Advisory, Conciliation and Arbitration Service \(ACAS\) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others. The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.](#)

or jointly with another) to occupy the land or to receive income;

- 2.5 'M' means a member of a relevant authority;
- 2.6 'member' includes a co-opted member;
- 2.7 'relevant authority' means Hampshire County Council of which M is a member;
- 2.8 'relevant period' means the period of 12 months ending with the day on which M gives a notification for the purposes of Section 30(1) or Section 31(7), as the case may be, of the Act;
- 2.9 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (2000 c. 8) and other securities of any description, other than money deposited with a building society.

3. Schedule of Disclosable Pecuniary Interests

| Subject | Prescribed description |
|--|--|
| Employment, office, trade profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | <p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (1992 c. 52).</p> |
| Contracts | <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p> |
| Land | Any beneficial interest in land which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | <p>Any tenancy where (to M's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p> |
| Securities | Any beneficial interest in securities of a body where: |

| | |
|--|--|
| | <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |
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Part 3: Registration and Disclosure of Disclosable Pecuniary Interests

1. Obligations

- 1.1 You must, within 28 days of taking office as a Member or Co-opted Member of the County Council, notify the County Council's Monitoring Officer of any disclosable pecuniary interests as defined by regulations made by the Secretary of State (as set out at Part 2 of this Code), where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
- 1.2 You must also, within 28 days of becoming aware of any new disclosable pecuniary interest, or change thereto, notify the County Council's Monitoring Officer of such new or changed interest.
- 1.3 If you have a disclosable pecuniary interest included on the Register of Members' Interests, you must disclose this interest at any meeting of the County Council, its Committees or the Executive at which you are present and participating in the business. Such interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. You do not need to disclose details of the interest itself.
- 1.4 If a disclosable pecuniary interest has not been entered onto the County Council's Register of Interests, then you must also disclose the interest to any meeting of the County Council, its Committees or the Executive at which you are present where you have such an interest in any matter being considered. Such interest should be disclosed at the commencement of consideration of the business or

when the interest becomes apparent. Following disclosure of a disclosable pecuniary interest not on the County Council's Register or the subject of pending notification, you must notify the Monitoring Officer of such interest within 28 days, beginning with the date of disclosure.

- 1.5 Unless a dispensation has been granted by the County Council, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest. You must as soon as it becomes apparent that you have such an interest (save for in circumstances set out at Paragraph 1.6 below) withdraw from the chamber or room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business. If acting as a single Executive Member you may not take any further steps in relation to the matter other than for the purpose of arranging for the matter to be dealt with otherwise than by yourself.
- 1.6 Without prejudice to Paragraph 1.5 above where you have a disclosable pecuniary interest in any business of the County Council (including any meeting of a Select Overview and Scrutiny Committee of the County Council) you may, notwithstanding such disclosable pecuniary interest, attend such meeting for the purpose of making representations, answering questions or giving evidence relating to such business, provided members of the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 4: Registration of Gifts and Hospitality

You must, within 28 days of receipt, notify the County Council's Monitoring Officer of any gift or hospitality you receive, if such gift or hospitality has an estimated value of at least £50.

Part 5: Registration and Disclosure of Personal Interests

1. Without prejudice to requirements contained at Part 3 of this Code in respect of the Registration and Disclosure of Pecuniary Interests, you may in addition notify the County Council's Monitoring Officer of any Personal Interests you consider it appropriate to be entered on the Register of Members' Interests.
2. You have a "personal interest" in an item of business where it relates to or is likely to affect any of the following bodies of which you are a member: a public or charitable body, any body to which you have been appointed by the authority, any political party, trade union or other body one of whose

principal purposes is to influence public opinion or policy.

3. You also have a “personal interest” in an item of business where a decision in relation to it might reasonably be regarded as affecting the well being or financial position of yourself, a member of your family or person with whom you have a close association, more than other council tax payers, ratepayers or inhabitants of the authority’s area.
4. You shall disclose a “personal interest” at a meeting of the County Council, its Committees or the Executive, where you consider that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting.
5. Disclosure of a personal interest does not affect your ability to participate in discussion or vote on the relevant item, provided it is not also a disclosable pecuniary interest. If you consider, having taken advice in appropriate circumstances, you should not participate in the business being considered, you should leave the chamber or room where the business is being considered, after exercising any right to speak which a member of the public would have.

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HAMPSHIRE COUNTY COUNCIL

Decision Report

| | |
|------------------------|---|
| Decision Maker: | Conduct Advisory Panel |
| Date: | 23 June 2021 |
| Title: | Disclosable Pecuniary Interests - Dispensations |
| Report From: | Head of Law and Governance and Monitoring Officer |

Contact name: Barbara Beardwell

Tel: 03707 793751

Email: barbara.beardwell@hants.gov.uk

1. Executive Summary

1.1. The purpose of this report is to seek renewal of a number of dispensations granted by the Conduct Advisory Panel under Section 33 of the Localism Act 2011 ('Localism Act') in respect of participation and voting in Meetings in cases where Members or Co-opted Members of the County Council have a Disclosable Pecuniary Interest ('DPI').

2. Contextual information

2.1. Part 7 of the Localism Act, Sections 26-37 introduced revised arrangements in respect of the Members' Code of Conduct, and the registration and disclosure of Members' Interests.

2.2. Section 31 (4) of the Localism Act provides that where a Member or Co-opted Member of the County Council has a DPI in a matter under consideration at a Meeting such Member may not:

- a) Participate, or participate further, in any discussion of the matter at the meeting, or
- b) participate in any vote, or further vote, taken on the matter at the Meeting.

By virtue of Section 31(5) to 31(8) of the Localism Act such provisions are extended to meetings and decisions made by the Executive pursuant to Executive Arrangements.

2.3. Section 33 of the Localism Act provides that the County Council may grant a dispensation from either or both of the restrictions set out in the Localism Act referred to at Paragraph 2.2 above of this report. This function was delegated to the Conduct Advisory Panel by the County Council at its meeting on 17 May 2012. Subsequent to this date the function of dealing with minor or routine dispensations was delegated by the Conduct Advisory Panel at its meeting on 20 October 2014 to a Sub-Committee of the Panel. Significant

applications, e.g. those affecting all Members are dealt with by the Panel.

- 2.4. The Conduct Advisory Panel may grant a dispensation under Section 33 of the Localism Act if, having regard to all the circumstances, it considers that:
- a) without the dispensation the number of Members participating in any particular business would be so great a proportion of the body transacting the business so as to impede transaction of the business; or
 - b) without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
 - c) that granting the dispensation is in the interests of persons living in the County Council's area; or
 - d) that without the dispensation each Member of the Executive would be prohibited from participating in any Executive business; or
 - e) that it is otherwise appropriate to grant a dispensation.

A dispensation granted under this Section must specify the period for which it has effect, not exceeding four years.

3. Existing Dispensations Granted by the Conduct Advisory Panel

General Dispensations – Council Tax and Precept and Members Allowances Scheme - Expiring 31 July 2021

- 3.1. Included within the list of DPI's which Members are required to register is any beneficial interest of the Member, his/her husband or wife/civil partner or person with whom they are living as such, within the administrative area of the County Council. It is considered that this provision could apply to all Members of the County Council.
- 3.2. It is considered that if a dispensation were not granted then any Member with a beneficial interest in land within the administrative area of Hampshire County Council would be prevented from taking part in business relating to the setting of Council Tax and Precept. Clearly, the proportion of Members with the DPI would be so great a proportion of any body of Members considering such matter so as to impede the transaction of the business. For this reason a general dispensation has been granted.
- 3.3. Similarly Members are required to disclose as a 'DPI' any 'employment, office, trade, profession or vocation carried on for profit or gain'. In this regard the view of the Monitoring Officer is that whilst Members hold public office, such office is not carried out for profit or gain for the purposes of the DPI regulations, the receipt of an allowance being compensatory (relating to time spent and expenses incurred) and therefore not 'carried out for profit or gain'. On this basis the fact that a Member of Co-opted Member of the County Council is in receipt of an allowance under the County Council's Members' Allowances Scheme, or the Members' Allowances Scheme of another relevant authority, would not constitute a DPI and therefore would not prevent

a Member from participating in the business of the County Council. This advice is supported by leading Counsel's opinion.

- 3.4. It is however recognised that there is no judicial interpretation of this point, and Members have therefore considered that, notwithstanding the view of the Monitoring Officer and leading Counsel that the receipt of an allowance under the Members allowances scheme does not constitute a DPI, a dispensation should be granted 'for the avoidance of doubt', so that there is no question that Members and Co-opted Members of the County Council in receipt of an allowance may not participate or vote on County Council business.

Dispensation – Officer Members Health and Wellbeing Board – Expiring 31 July 2021

- 3.5. Whilst being a Committee of the County Council, the Health and Wellbeing board is unique in that it has Officers of the County Council who are Co-opted members of the board with full voting rights. As such, they are bound by the County Council's Members' Code of Conduct which prohibits those with a DPI (which as employees of the County Council they would have), from participating or voting in any business relating to Hampshire County Council. For this reason a dispensation has been granted in order to allow Officer Members to participate and vote on the work of the Health and Wellbeing Board.

Dispensation – Members and Co opted Members of River Hamble Harbour Board – Expiring 31 July 2021

- 3.6. In addition a query has been raised previously about the status of moorings on the River Hamble and whether or not being a mooring holder constitutes a Disclosable Pecuniary Interest. As it can be argued that a mooring is an interest in land and it is possible that a number of Members are mooring holders it is considered appropriate to grant a general exemption for any Members and Co opted Members who are mooring holders to participate and vote in County Council business relating to the River Hamble.

Specific dispensation – Member of River Hamble Harbour Board – Expiring 31 July 2021

- 3.7. The County Council discharges its duties as the Harbour Authority for the River Hamble through the River Hamble Harbour Board which includes Co-opted Members who represent various interests on the river. Co-opted Members of the Board are selected on the basis that they have relevant experience in recreational sailing, the marine industry and environmental management. Mr Moody is one of the Co-opted Members and has declared that he receives a small annual honorarium from the Hamble River Boat Yard and Marina Operators Association for carrying out their secretarial duties. Interests such as this are likely to arise from time to time given the experience required for appointment as a co-opted Member of the Board.

This annual honorarium is however a DPI, and without a dispensation would have the effect of preventing Mr Moody's participation in a number of items of business which are considered by the Board. A dispensation has therefore been granted to enable Mr Moody to participate in the business of the Board when dealing with matters which would affect Hamble River Boat Yard and Marina Operators Association. Mr Moody has recently been reappointed to the River Hamble Harbour Board and has requested that his dispensation be extended.

4. Future Direction

- 4.1. As Members will note, existing dispensations granted by the Conduct Advisory Panel expire on 31 July 2021. The reason for this is when last considered by the Conduct Advisory Panel, it was thought sensible in the interest of efficiency to align the expiry date of dispensations. Since a dispensation may be granted for up to four years, this is best done in accordance with the County Council's four year electoral cycle.
- 4.2. It is therefore suggested that all existing dispensations referred to in this report be extended to 31 July 2025. This would enable a meeting of the Conduct Advisory Panel to be convened following the County Council elections in May 2025 and appointment of any Co-opted Members, to consider any general dispensations which might be required, and any specific dispensations arising out of individual Member or Co-opted Member circumstances. Should any further 'ad hoc' dispensations be required, these could be granted by a Sub-Committee of Members of the Conduct Advisory Panel in accordance with existing arrangements approved by the Panel.

5. Recommendations

- 5.1. It is recommended that the Conduct Advisory Panel grant the following dispensations:
 - a) A dispensation under Sections 33(2)(a) and (d) of the Localism Act expiring on 31 July 2025 to all Members of the County Council from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling all Members of the County Council to participate and vote in any business of the County Council relating to the setting of the Council Tax or Precepts, when they would otherwise be prevented from doing so in consequence of a beneficial interest in land within the administrative area of Hampshire.
 - b) A dispensation under Sections 32(2)(a) and (d) of the Localism Act expiring on 31 July 2025 to all Members and Co-opted Members of the County Council in receipt of an allowance under the Hampshire County Council Members' Allowances Scheme or Members' Allowances Scheme of another relevant Authority from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling all Members and Co-opted Members of the County Council to participate and vote in any business of the County Council where they may otherwise be prevented from doing so in consequence of being in

receipt of a Members' Allowance.

- c) A dispensation under Section 33(2)(e) of the Localism Act expiring on 31 July 2025 to all Officer Members of the Health and Wellbeing Board for Hampshire from the provisions of Sections 31(4)(a) and (b) of the Localism Act enabling them to fully participate and vote in any business of the Health and Wellbeing Board for Hampshire when they would otherwise be prevented from doing so by virtue of a DPI deriving from their employment by the County Council.
- d) A dispensation under Section 33(2) (a) and (c) of the Localism Act expiring on 31 July 2025 to all Members of the River Hamble Harbour Board and the River Hamble Management Committee enabling them to fully participate and vote in any business of the River Hamble Harbour Board and River Hamble Management Committee when they would otherwise be prevented from doing so by virtue of a Disclosable Pecuniary Interest arising from holding a mooring on the River Hamble.
- e) A dispensation under Section 33(2)(c) of the Localism Act expiring on 31 July 2025 to Mr Moody enabling him to fully participate and vote in any business of the River Hamble Harbour Board when he would otherwise be prevented from doing so by virtue of a Disclosable Pecuniary Interest arising from the honorarium he receives from the Hamble River Boatyard and Marina Operators Association.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.

Other Significant Links

| Links to previous Member decisions: | |
|---|-----------------|
| <u>Title</u> | <u>Date</u> |
| Disclosable Pecuniary Interests – General Dispensation | 30 October 2012 |
| Disclosable Pecuniary Interests – Dispensation for Officer Member of the Health and Wellbeing Board for Hampshire | 2 October 2013 |
| Disclosable Pecuniary Interests – Dispensation for Member of the River Hamble Harbour Board | 20 October 2014 |
| Arrangements for the Granting of Dispensations | 20 October 2014 |
| Disclosable Pecuniary Interests – Dispensations | 22 June 2016 |
| Direct links to specific legislation or Government Directives | |
| <u>Title</u> | <u>Date</u> |
| Localism Act | 2011 |
| Relevant Authorities (Disclosable Pecuniary Interests) Regulations | 2012 |

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

| <u>Document</u> | <u>Location</u> |
|-----------------|-----------------|
| None | |

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

Equality objectives are not considered to be adversely affected by the proposals within this report.

2. Impact on Crime and Disorder:

Not applicable.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.

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HAMPSHIRE COUNTY COUNCIL

Decision Report

| | |
|------------------------|--|
| Decision Maker: | Conduct Advisory Panel |
| Date: | 23 June 2021 |
| Title: | Amendment of the Arrangements for the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Hampshire County Council Code of Conduct for Members, and Pre-Hearing and Hearing Procedure |
| Report From: | Head of Law and Governance and Monitoring Officer |

Contact name: Barbara Beardwell

Tel: 03707 793751

Email: barbara.beardwell@hants.gov.uk

1. Executive Summary

1.1. The purpose of this report is to seek the Conduct Advisory Panel's approval to a Pre-Hearing and Hearing Procedure in respect of the determination of allegations of breach of the Code of Conduct for Members, and consequential amendment to the County Council's Arrangements for the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Hampshire County Council Code of Conduct for Members ('the Arrangements').

2. Contextual information

2.1. Part 7 of the Localism Act 2011 ('the Act'), Sections 26-37 introduced revised arrangements in respect of the Code of Conduct for Members. Under the provisions of Section 28 of the Act, the County Council is required to have arrangements in place for the Assessment, Investigation and Determination of allegations of breach of the Code of Conduct for Members. This function is delegated by the County Council to the Conduct Advisory Panel. By virtue of Part 1, Chapter 9, Paragraph 1.3.3 of the Constitution, this function is delegated to the Conduct Advisory Panel.

2.2. In pursuance to this delegation, the Conduct Advisory Panel has approved the Arrangements. The Arrangements were last updated by the Conduct Advisory Panel at its meeting on 24 October 2019. A copy of the Arrangements

2.3. While within the Arrangements there is provision for the overall Assessment, Investigation and Determination of allegations of breach of the Code of Conduct for Members, there is no specific provision in the event an allegation

of breach of the Code of Conduct for Members proceeds to a Hearing, how such Hearing should be conducted. It is therefore suggested that a formal Hearing Procedure (including a Pre-Hearing Procedure) might be helpful.

- 2.4. Attached at **Appendix 1** is a suggested revised form of the Arrangements reflecting the above, together with at **Appendix 2** a suggested Pre-Hearing and Hearing Procedure.

3. Recommendations

3.1. It is recommended that the Conduct Advisory Panel approve:

- a) the revised Arrangements as contained at Appendix 1 of this report;
- b) the Pre-Hearing and Hearing Procedure contained at Appendix 2 of this report.

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.

Other Significant Links

| Links to previous Member decisions: | |
|--|-----------------|
| <u>Title</u> | <u>Date</u> |
| Decision of the Conduct Advisory Panel | 24 October 2019 |
| Decision of the Conduct Advisory Panel | 15 June 2012 |
| Direct links to specific legislation or Government Directives | |
| <u>Title</u> | <u>Date</u> |
| Localism Act | 2011 |

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

| <u>Document</u> | <u>Location</u> |
|-----------------|-----------------|
| None | |

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

No equality impacts have been identified.

2. Impact on Crime and Disorder:

Not applicable.

3. Climate Change:

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.

HAMPSHIRE COUNTY COUNCIL

Arrangements for dealing with the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Code of Conduct for Members

1. Introduction

- 1.1. These arrangements set out the procedure to be followed when a complaint is received that a Member or Co-opted Member of Hampshire County Council has failed to comply with the Hampshire County Council Code of Conduct for Members.
- 1.2. The Code of Conduct for Members was adopted by the County Council on 19 July 2012, is attached at Appendix 1 to this Procedure, and is available for inspection and on the County Council's website and on request at the County Council's offices.

2. Making a Complaint

- 2.1. The standard Complaints Form should be used, which can also be obtained on request from the Monitoring Officer.
[Member Complaints Form](#)
- 2.2. A complaint may also be made by e mail:
members.services@hants.gov.uk

or in writing by post to:

The Monitoring Officer
Hampshire County Council
The Castle
Winchester
SO23 8UJ

- 2.3. Anonymous complaints will not be considered unless the complaint is accompanied by documentary or photographic evidence indicating an exceptionally serious or significant matter.
- 2.4. Any complaint received by the County Council concerning the conduct of the Police and Crime Commissioner for Hampshire (the Commissioner) will be referred by the County Council to the Hampshire Police and Crime Panel. The County Council must take into account any report or recommendation made to it by the Police and Crime Panel in determining whether the Commissioner has failed to comply with the County Council's Code of Conduct for Members, whether to take action in relation to the Commissioner and what action to take.

- 2.5. The Monitoring Officer will acknowledge receipt of a complaint within five working days of receipt of a completed complaint form. Where the complaint concerns the Commissioner, the acknowledgement will confirm that a referral has also been made to the Hampshire Police and Crime Panel, and notification of the referral will be sent to the Commissioner.
- 2.6. Where the Monitoring Officer considers that s/he should not perform any or all of the Monitoring Officer functions under these arrangements owing to an actual or potential conflict of interest, the Monitoring Officer will instruct the Deputy Monitoring Officer or other suitably qualified and experienced officer to act in her/his place.

3. Initial Validation of Complaint

- 3.1. Once a complaint has been received the Monitoring Officer will carry out an initial validation of the complaint. In carrying out this initial validation three tests will be applied. These are:
 - 3.1.1. Is it a complaint against one or more named Members or Co-opted Members of the County Council?
 - 3.1.2. Was the named Member or Co-opted Member in office, and acting or purporting to act in his official capacity as a Member or Co-opted Member of the County Council at the time of the alleged conduct; and
 - 3.1.3. Would the complaint, if proven, amount to a breach of the Members' Code of Conduct.
- 3.2. The Monitoring officer will normally make an initial validation within 20 working days of receipt of a complaint, and the complainant will be notified of the outcome within five working days of the decision being made.
- 3.3. In respect of a complaint that has been referred to the Hampshire Police and Crime Panel (as per paragraph 2.4), the Monitoring Officer will determine whether the requirements of the first two initial validation tests above are satisfied and will then take one of the following actions:
 - 3.3.1 If the requirements of the first two initial validation tests are satisfied, the Monitoring Officer will suspend the handling of the complaint under this procedure until the Police and Crime Panel has either provided a report or recommendation for the County Council to consider or has decided not to provide such a report or recommendation, at which time the Monitoring Officer shall resume handling the complaint under this procedure; or
 - 3.3.2 If the requirements of the first two initial validation tests are not satisfied, that is the end of the County Council's involvement. The Complainant, the Commissioner and the Police and Crime Panel will be notified of the outcome accordingly.
- 3.4 Any report or recommendation made by the Police and Crime Panel to the County Council concerning a complaint referred under para 2.4 shall be taken into account as appropriate at each stage of this procedure.

4. Initial Assessment of Validated Complaint

- 4.1. Once a complaint has been validated by the Monitoring Officer, an initial assessment of the complaint will be carried out by the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person. The Subject Member will be informed of the complaint. A copy of the complaint will be forwarded to the Subject Member, unless the Complainant is an officer of the County Council, and the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, considers it appropriate to withhold the specific details of the complaint at this stage.
- 4.2. An Independent Person is a person other than a Member or Co-opted Member of the County Council whose views must be sought and taken into account before the County Council makes any decision about an allegation that a Member or Co-opted Member of the County Council has breached the Code of Conduct for Members which the County Council has decided to investigate, and whose views may be sought by the County Council in relation to an allegation in other circumstances, or by a Member or Co-opted Member of the County Council against whom an allegation has been made.
- 4.3. The purpose of the initial assessment by the Monitoring Officer is to determine whether the complaint should be accepted for further consideration by an Assessment Panel, or rejected.
- 4.4. In determining whether a complaint should proceed the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person will apply the following criteria:
 - 4.4.1 Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.
 - 4.4.2 Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or ‘tit for tat’? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?
 - 4.4.3 Duplication – Is the complaint substantially similar to a previous allegation considered by the Conduct Advisory Panel, or subject of an investigation by another relevant authority?
 - 4.4.4 Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action?
 - 4.4.5 Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

- 4.4.6 Anonymous – Is the complaint anonymous? Anonymous complaints will not normally be considered unless there is additional documentary or photographic evidence to support the complaint, and the complaint is sufficiently serious to consider.
- 4.5 The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within ten working days of it being made. Should it be determined by the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person that the complaint should not proceed, then that is the end of the matter.

5 Assessment Panel

- 5.1 Should it be determined, having regard to the criteria referred to at Paragraph 4.4 above, that the complaint be accepted for further consideration, a meeting of an Assessment Panel will be convened.
- 5.2 The Assessment Panel will include three members of the Conduct Advisory Panel, and will be proportionally constituted. An Independent Person will be invited to attend the meeting of the Assessment Panel.
- 5.3 A meeting of an Assessment Panel will not be open to the press or public if the Panel resolve in accordance with Part VA and Schedule 12A to the Local Government Act 1972 that this is appropriate.
- 5.4 The Assessment Panel will determine how the complaint should thereafter proceed. The views of the Independent Person will be sought by the Assessment Panel in making any decision.

6 Outcome of Assessment Panel

- 6.1 The Assessment Panel will make one of the following three decisions:
- 6.1.1 Refer the complaint to the Monitoring Officer for investigation; or
- 6.1.2 Refer the complaint to the Monitoring Officer for 'other action'; or
- 6.1.3 Determine that no further action should be taken in respect of the allegation.
- 6.2 The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the decision within ten working days of the meeting of the Assessment Panel. Where the decision of the Assessment Panel is that no further action should be taken, then that is the end of the procedure.

7 Other Action

- 7.1 On occasions the Assessment Panel might consider that action other than a formal investigation is the most appropriate way of dealing with a complaint. An example might be where it is considered that the Subject Member requires training on the Code of Conduct for Members and/or the County Council's procedures. 'Other action' might constitute but is not limited to the following:
- 7.1.1 Arranging for the Subject Member to receive training from the Monitoring Officer.

- 7.1.2 Arranging for the Complainant and the Subject Member to engage in a process of conciliation.
- 7.1.3 Any other steps (other than investigation) which appear appropriate.

8 Investigation

- 8.1 Where the decision of the Assessment Panel is to investigate the complaint, the Monitoring Officer, in consultation with the Chairman of the Conduct Advisory Panel, will appoint an Investigating Officer. The Investigating Officer may be an Officer of the County Council, or an external investigator.
- 8.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints, and the investigation will be carried out in accordance with such guidance.
- 8.3 At the end of the investigation, the Investigating Officer will produce a draft report and send copies of the draft to both the Complainant and the Subject Member for comment. The Investigating Officer will take the comments of the Complainant and Subject Member into account, before issuing his final report to the Monitoring Officer.
- 8.4 The Subject Member may take the views of an Independent Person at any stage in the investigation.

9 Investigation Consideration Panel

- 9.1 Following completion of the investigation by the Investigating Officer, the Monitoring Officer will prepare a report for consideration by an Investigation Consideration Panel. The Investigation Consideration Panel will comprise three Members of the Conduct Advisory Panel and will proportionally constituted. Membership of the Investigation Consideration Panel should be drawn, where possible, from Membership of the Assessment Panel.
- 9.2 An Independent Person will be present at the Investigation Consideration Panel, and Members of the Investigation Consideration Panel will take the views of the Independent Person into account in its determination.
- 9.3 A meeting of an Assessment Panel will not be open to the press or public if the Panel resolve in accordance with Part VA and Schedule 12A to the Local Government Act 1972 that this is appropriate.
- 9.4 The Investigation Consideration Panel shall reach one of three conclusions. These are:
 - 9.4.1 That the matter should be referred to a hearing of the Conduct Advisory Panel; or
 - 9.4.2 That the complaint can be disposed of by informal resolution; or
 - 9.4.3 That there was no failure by the Subject Member to observe the Code of Conduct for Members.

10 Informal Resolution

- 10.1 If the Investigation Consideration Panel, having consulted with the Independent Person, consider that the matter can be resolved without the

need for a formal hearing, the Panel may determine that the matter may be disposed of by way of informal resolution. “Informal Resolution” might constitute but is not limited to the following:

- 10.1.1 Arranging for the Subject Member to receive training from the Monitoring Officer.
- 10.1.2 Requesting that the Subject Member offer an apology, and / or other remedial action.
- 10.1.3 Any other steps (other than a formal hearing) which appear appropriate.
- 10.2 If the Subject Member refuses informal resolution, or to engage with the agreed outcome, the matter will be referred by the Monitoring Officer for a hearing. Where the Investigation Consideration Panel consider that an apology is appropriate, the wording shall be agreed by the Monitoring Officer, in consultation with the Chairman of the Panel.
- 10.3 Where the decision of the Investigation Consideration Panel is that the complaint may be disposed of by way of Informal Resolution, and the Subject Member co-operates with the requests of the Investigation Consideration Panel, the Monitoring Officer will report the outcome to the Investigation Consideration Panel, and that is the end of the matter.

11 Hearing

- 11.1 Where the Investigation Consideration Panel consider that the matter should be referred to a hearing of the Conduct Advisory Panel, or Informal Resolution has been declined by the Subject Member, a Hearing Panel will be arranged. The Hearing Panel will comprise three members of the Conduct Advisory Panel and will be proportionally constituted.
- 11.2 An Independent Person will be present at the Hearing Panel, and members of the Hearing Panel will take the views of the Independent Person into account in its determination.
- 11.3 A Hearing Panel meeting will normally be open to the press and public, unless the Panel decide in accordance with Part V A and Schedule 12 A to the Local Government Act 1972, that the matter should be considered in private session.
- 11.4 The arrangements for hearings and the procedure to be followed are set out in the Hearings Procedure which can be found here: *[link to be included once agreed by Conduct Advisory Panel]*

12 Action following Hearing

- 12.1 The Hearing Panel will reach one of two conclusions:
 - 12.1.1 That the Subject Member failed to comply with the Code of Conduct for Members; or
 - 12.1.2 That there was no failure by the Subject Member to comply with the Code of Conduct for Members.
- 12.2 Where the Hearing Panel has reached a conclusion in accordance with para 12.1, the Monitoring Officer shall prepare a decision notice in

consultation with the Chair of the Hearing Panel and shall send it to the Complainant and the Subject Member. The Monitoring Officer shall make arrangements for the publication of the decision notice or, where appropriate, a summary of the decision notice on the County Council's website.

12.3 Where the Hearing Panel's decision is that there was a failure by the Subject Member to comply with the Code of Conduct for Members, the Hearing Panel may:

12.3.1 Report its findings to the County Council for information

12.3.2 Recommend to the County Council that the Subject Member be censured by resolution of the County Council

12.3.3 Recommend to the Subject Member's group leader that the Subject Member be removed from the Executive and / or Committees of the County Council and / or Outside Bodies (as appropriate).

12.3.4 Instruct the Monitoring Officer to arrange such training for the Subject Member as the Panel considers appropriate.

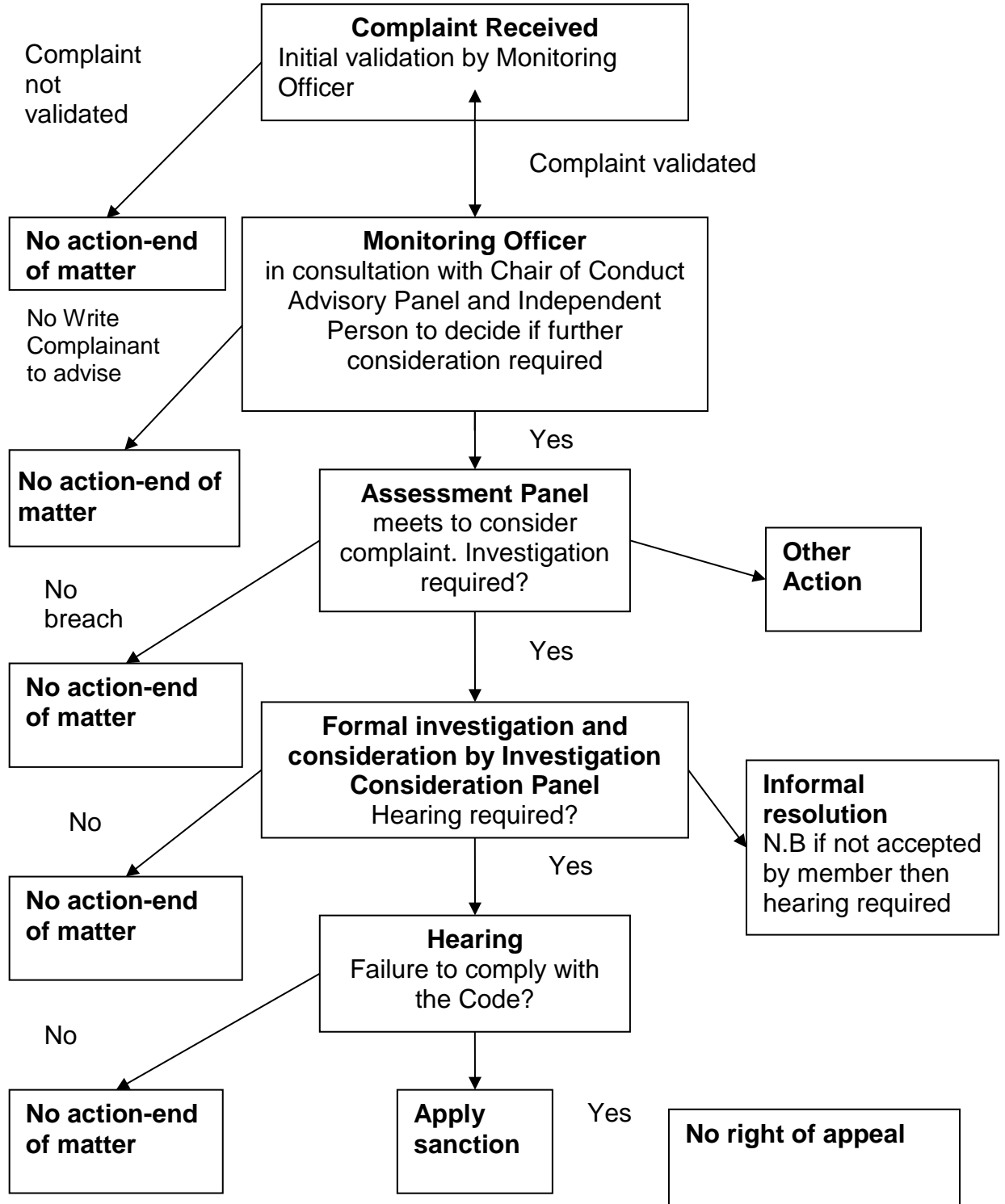
NB: A Hearing Panel has no power to suspend or disqualify a Member or to withdraw a Member's allowances. Removal of a Member from a Committee or Outside Body will require a formal decision of the County Council.

12.4 Where the decision of the Hearing Panel is that there has been no breach of the Members' Code of Conduct, then that is the end of the procedure.

13 Appeals

13.1 There is no right of appeal against any decision in respect of a Code of Conduct complaint, except through the Courts by way of judicial review.

Procedure for the Assessment, Investigation and Determination of Complaints of Breach of the New Code of Conduct for Members of the County Council



CODE OF CONDUCT FOR MEMBERS - HEARING PROCEDURE

PRE-HEARING PROCEDURE

1. The Monitoring Officer shall write to the Investigating Officer informing them of the date of the hearing, inviting them to attend to present their investigation report and to answer any questions the Panel may have in respect of the investigation and/or the report. The letter will outline the hearing procedure and ask the Investigating Officer:
 - a. Whether the Investigating Officer would like to call any witnesses to give evidence at the hearing and, if so, their reasons for wanting to call each witness ; and
 - b. To provide any representations regarding whether any part of the hearing should be held in private.
2. Where the Investigating Officer wishes to call relevant witnesses to give evidence at the hearing, the Monitoring Officer will consider the request in consultation with the Chairman of the Conduct Advisory Panel and may agree to it. The Monitoring Officer shall send written notification to the Investigating Officer of their decision.
3. The Monitoring Officer shall write to the member who is the subject of the complaint (“the Subject Member”) informing them of the date of the hearing and inviting them to attend. In doing so, the Monitoring Officer will remind the Subject Member as to their ability to consult an Independent Person at any stage in the investigation. The letter shall outline the hearing procedure, including details of which witnesses will be attending to give evidence, and ask the Subject Member:
 - a. To provide any representations regarding whether any part of the hearing should be held in private; and
 - b. For details of any additional relevant witnesses the Subject Member would like to attend the hearing, giving reasons.
4. Where the Subject Member requests that additional witnesses attend the hearing, the Monitoring Officer will consider the request in consultation with the Chairman of the Conduct Advisory Panel and decide whether to agree to it. The Monitoring Officer shall send written notification to the Subject Member of their decision.
5. The Monitoring Officer shall write to the Complainant informing them of the date of the hearing and inviting them to attend. The letter shall outline the hearing procedure and shall enquire whether the Complainant wants to make any representations regarding whether any part of the hearing should be held in private.

6. Where either the Subject Member or the Complainant wishes to be represented at the hearing, they must send a written request to the Monitoring Officer, giving their reasons for the request. The Monitoring Officer may, in consultation with the Chairman of the Conduct Advisory Panel agree to a request for representation at the hearing. The Monitoring Officer shall send written notification of their decision.
7. At least 14 calendar days before the hearing, the Monitoring Officer shall prepare a pre-hearing process summary and send it to the Independent Person, the Investigating Officer, the Subject Member and the Complainant. This should summarise the complaint, outline the main facts that are agreed and those which are not agreed, note whether the Subject Member and/or Complainant will attend and outline the procedure to be followed at the Hearing.

HEARING PROCEDURE

START OF THE HEARING

1. At the start of the hearing, the Panel will elect a Chair.
2. Once elected, the Chair should:
 - Introduce those present in the hearing.
 - Confirm that all parties have the correct documentation before them.
 - Summarise the procedure for the hearing.
 - Ask the parties if there are any preliminary procedural issues.
 - Make clear to all those present that the Panel may take legal advice, in private if necessary, from the Monitoring Officer at any time during the hearing or while they are considering the outcome.

PRELIMINARY PROCEDURAL ISSUES

3. The Panel will decide whether the hearing should be heard in public or not. Under the County Council's Conduct Arrangements there is a presumption that the hearing will be in public, unless in accordance with Part VA and Schedule 12A of the Local Government Act 1972 the Panel determine otherwise. The Panel will consider any objections to the hearing taking place in public. They may choose to adjourn the meeting if necessary in order to take legal advice from the Monitoring Officer. The Panel will take a vote and once the Panel has made its decision, the Chair will announce the Panel's decision to the meeting.
4. The Panel should then resolve any other preliminary procedural issues or disagreements about how the hearing should continue. This is the time when any application to postpone the hearing should be made, except where otherwise provided for by this procedure.

5. Any disputes on the Investigator's findings of fact will be determined at the next stage.

FAILURE OF THE SUBJECT MEMBER TO ATTEND

6. If the Subject Member fails to attend a hearing of which he/she has had notice, the Panel may:
 - Unless it is satisfied that there is good reason for such failure, consider the allegation and make a determination in the absence of the Subject Member; or
 - Adjourn the hearing to another date.

DETERMINATION OF THE FINDINGS OF FACT

7. The Investigating Officer will present their report which will include the comments of the Subject Member and the complainant(s) on the report.
8. The Chair should summarise the facts that are agreed and the facts that are in dispute (based on the hearing process summary prepared by the Monitoring Officer) and check with the Subject Member and Investigating Officer that they agree. If there is disagreement, the Chair should clarify which facts are agreed and which are in dispute. .
9. If there is no disagreement about the facts, the Panel will record this and move to the next stage of the hearing. If there is a disagreement, the following procedure will apply.
10. The Investigating Officer will be invited to make representations to support the disputed findings of fact.
11. The Subject Member (or their representative) will be given the opportunity to challenge the evidence put forward by the Investigating Officer by asking them questions.
12. The Subject Member (or their representative) will then be given the opportunity to make representations.
13. The Investigating Officer will be given the opportunity to challenge the evidence put forward by the Subject Member by asking them questions.
14. At any time, the Panel and Independent Person may question the Investigating Officer or the Subject Member.
15. The above procedure may include the cross examination of witnesses by the Investigating Officer and/or the Subject Member, if any are called to give evidence.

16. The Investigating Officer will be invited to sum up their investigation and make any concluding representations. The Subject Member will be invited to sum up their case and make any concluding representations.
17. The Panel will adjourn to consider the representations and evidence in private in consultation with the Independent Person. The Panel may choose to take any legal advice, in private, from the Monitoring Officer.
18. The Panel will make its finding of facts in private and should then go on to consider whether, based on the facts it has found, the Member has failed to comply with the Code of Conduct for Members, and if so which Paragraph(s) of the Code. In making its decision the Panel will seek and take account of the views of the Independent Person.

DECISION OF PANEL

19. The hearing will be reconvened, and the Panel's decision as to whether or not the facts amount to a breach(s) of the Code of Conduct for Members, together with its reasons, shall be announced by the Chairman. The Chairman shall in announcing the Panel's decision indicate that in reaching its decision the Panel has sought and taken account of the views of the Independent Person. The decision will include a brief statement of facts, the provisions of the Code of Conduct for Members engaged by the allegation(s), and the reasoning of the decision maker.
20. The Subject Member (or their representative) will be invited to make representations on the decision of the Panel, (should the Panel find that there has been a breach(s) of the Code of Conduct for Members) before the Panel decides any sanction.
21. The Panel may, at any time, question the Subject Member, Investigating Officer or Independent Person on any point raised in the representations.
22. The Subject Member (or their representative) and the Independent Person will be invited to make any final relevant points.
23. The Panel may, should it consider it appropriate to do so, consider any representations in private before announcing its decision as to any sanction. The Panel may choose to take legal advice, in private, from the Monitoring Officer while they are considering the outcome.
24. If the Panel determines that the Member has failed to comply with the Code of Conduct, it will consider:
 - Whether the Panel should apply a sanction; and
 - What form any sanction should take.

Options open to the Panel are set out at Paragraph 12 of the County Council's Conduct Arrangements: *[revised link to be included once agreed by Conduct Advisory Panel]*

25. Where the Panel decides that the Subject Member has not failed to comply with the Code of Conduct for Members, that is the end of the matter.

RECORD OF DECISION

26. As soon as practicable the Monitoring Officer will prepare a formal decision notice in consultation with the Chair and send a copy to the Complainant and the Subject Member. The decision notice will include a brief statement of facts, the provisions of the Code of Conduct for Members engaged by the allegation(s), the view of the Independent Person, the reasoning of the decision maker and any sanction applied. The decision notice or, where appropriate, a summary of the decision notice will be published on the County Council's website.

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