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AT A MEETING of the Conduct Advisory Panel of HAMPSHIRE COUNTY COUNCIL held at the castle, Winchester on Wednesday, 23rd June, 2021

Chairman:

* Councillor Mark Kemp-Gee

* Councillor Tim Davies
* Councillor David Drew
* Councillor Keith House
Councillor Gavin James
* Councillor Peter Latham

* Councillor Patricia Stallard
* Councillor Kim Taylor
* Councillor Tom Thacker
* Councillor Rhydian Vaughan MBE

*Present

31. **APOLOGIES FOR ABSENCE**

There were no apologies for absence.

32. **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 Non-Pecuniary interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 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.

33. **MINUTES OF THE PREVIOUS MEETING**

The Minutes of the meeting held on 20 November 2020 were agreed as a correct record and signed by the Chairman.

34. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman welcomed everyone to the meeting and for the benefit of new Members to the Panel, introductions were made.

35. **DEPUTATIONS**

There were no deputations on this occasion.

36. **AMENDMENT OF CODE OF CONDUCT FOR MEMBERS**

The Panel considered the report (Item 6 in the Minute Book) seeking approval of two amendments to the Code of Conduct for Members as set out in Appendix 1 to the report, paragraphs 3.9 (equalities duties) and 3.14 (bullying and harassment).

The Head of Law & Governance and Monitoring Officer presented the report and expanded on the background to these amendments including a consultation with other Councils in Hampshire together with comparator County Councils and national park authorities referred to in paragraph 2.9 of the report.

During the course of discussion, it was noted that the footnote on page 13 of Appendix 1 providing the Advisory, Conciliation and Arbitration Service (ACAS) description of bullying was helpful.

RESOLVED:

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 the supporting report.

37. **DISCLOSABLE PECUNIARY INTERESTS - DISPENSATIONS**

The Panel considered the report (Item 7 in the Minute Book) seeking agreement to the granting of a number of dispensations as set out in section 3 of the report.

RESOLVED:

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.

38. **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**

The Panel considered the report (Item 8 in the Minute Book) setting out a Pre-Hearing and Hearing Procedure in regard to 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 such complaints. The report was presented by the Head of Law & Governance and Monitoring Officer.

During the course of discussion, some amendments were proposed to paragraphs 2, 4 and 6 of the Pre-Hearing Procedure regarding the agreement of the Monitoring Officer to a request to call witnesses, and to paragraph 18 of the Hearing Procedure regarding the determination of the findings of fact in the interests of clarity and fairness to all parties concerned. The Monitoring Officer had no objections to the amendments proposed but did remind the Panel that the Procedure deals how a local authority hearing is conducted, which is not a legal process.

RESOLVED:

That the Conduct Advisory Panel approve:

- a) the revised Arrangements as contained at Appendix 1 of the supporting report;
- b) the Pre-Hearing and Hearing Procedure, as amended by the Panel, appended to these Minutes.

Chairman,

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, *such agreement not to be unreasonably withheld*. 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, *such agreement not to be unreasonably withheld*. 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, *such agreement not to be unreasonably withheld*. 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, *on the balance of probabilities* 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:

<https://documents.hants.gov.uk/aboutthecouncil/ArrangementsdealingwithMemberComplaints.pdf>

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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