

AT A MEETING of the CONDUCT ADVISORY PANEL IN HAMPSHIRE COUNTY COUNCIL COMMITTEE held at The Castle, Winchester on 4 September 2012.

PRESENT:

Chairman:
p Councillor Mark Kemp-Gee

Councillors:

p Peter Chegwyn	p Pamela Mutton
a Keith Evans	p Jenny Radley
p Jane Frankum	p Tom Thacker
a Andrew Gibson	p Seán D. T. Woodward
p Keith House	

NB: Councillors Colin Davidovitz; Phryn Dickens; Roger Kimber; Carol Leversha; Anna McNair Scott and Frank Pearce attended at the invitation of the Chairman.

13. APOLOGIES FOR ABSENCE

Apologies were received from Councillors Keith Evans, who was engaged on County Council business elsewhere and Andrew Gibson.

14. 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 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.

15. MINUTES

The Minutes of the meeting held on 4 July 2012 were confirmed as a correct record and signed by the Chairman.

Matters arising:

Members requested a copy of the guidance dated August 2012 issued by the Department of Communities and Local Government, as referred

to in Minute 11. This would be circulated to the Panel after the meeting.

16. CHAIRMAN'S ANNOUNCEMENTS

- a) The Chairman drew to Members attention to an issue arising from the guidance that had been issued by the DCLG, that a Member cannot have any participation in a meeting, including exercising their rights as a member of the public, that would be considering a matter in which a Member had a Disclosable Pecuniary Interest (DPI).

The Monitoring Officer was of the view that this particular point of the DCLG Guidance was contrary to the provisions of the Localism Act 2011 which applied where a Member or Co-opted Member of the County Council was present at a meeting and participating in discussion of the business or a vote, and furthermore that the guidance had no statutory weight and thus could not override the provisions of the Localism Act. The Monitoring Officer however felt that to avoid any confusion and to provide clarity to Members that Counsels' opinion be sought to ensure that a robust position could be taken in the future, and to avoid any conflict with provisions of the new Members' Code of Conduct adopted by the County Council on 19 July 2012. The Panel agreed with this suggestion, particularly as many County Council Members are also Members of District or Parish Councils and highlighted the Importance of consistency being applied across all Hampshire Councils.

The Monitoring Officer would therefore seek Counsel's advice and confirm the outcome with the Panel in due course, and share the advice with Monitoring Officers at Hampshire District and Borough councils. The Monitoring Officer also undertook to investigate if any advice had been issued by the Local Government Association.

- b) The Chairman invited Councillor Woodward to speak at this point of the proceedings with regard to a matter linked to the above debate. The Monitoring Officer's advice was sought as to whether or not a County Councillor, as a member of the River Hamble Harbour Board or the River Hamble Harbour Management Committee, who also pays River Hamble harbour dues had a DPI in a meeting considering such matters.

The Monitoring Officer advised that, in her view, whilst this would have constituted a prejudicial interest under the previous Code of Conduct, the rules with regard to DPIs in Regulations made under the Localism Act 2011 were different and that she did not consider that liability of individual Members in respect of payment of harbour dues, when such matter was being

considered by the River Hamble Harbour Board or Management Committee constituted a DPI. However, ultimately it was a matter for each Member to decide. Notwithstanding that the matter, in her view, was not a DPI, Members with a liability to pay harbour dues might wish, in the interests of openness and transparency to disclose this when present at any meeting considering the payment of harbour dues.

Councillors Keith House and Seán D. T. Woodward declared a non-pecuniary interest, as members of the River Hamble Harbour Management Committee and the River Hamble Harbour Board respectively, at this point of the proceedings.

Members accepted this advice, however for the avoidance of doubt it was suggested that a dispensation by the Conduct Advisory Panel be granted to County Council Members and to Co-opted Members of the River Hamble Harbour Board or Management Committee. As a meeting of the River Hamble Harbour Management Committee was scheduled for Friday 7 September 2012, the Chairman agreed to consider the request to grant the dispensation as a matter of urgency pursuant to Section 100B(4) of the Local Government Act 1972.

The Monitoring Officer advised that a dispensation could be granted for the avoidance of doubt under Section 33(2)(a) of the Localism Act 2011 if the Conduct Advisory Panel were of the view that without the dispensation the number of persons prohibited from participating a body transacting the business would be so great as to impede transaction of the business. The following recommendation was put to the vote and carried:

RESOLVED:

That having regard to all the circumstances, a dispensation should be granted under Section 33(2)(a) of the Localism Act 2011 to any Member or Co-opted Member of the County Council with liability to pay River Hamble harbour dues when considering any matter or report concerning the River Hamble harbour dues.

- c) Finally, the Chairman asked the Panel to note a change to the interview schedule for the afternoon, for the position of Independent Person, due to unforeseen circumstances.

17. **REVISED ARRANGEMENTS FOR THE ASSESSMENT, INVESTIGATION AND DETERMINATION OF COMPLAINTS OF BREACH OF THE NEW CODE OF CONDUCT FOR MEMBERS OF THE COUNTY COUNCIL**

The Panel considered the report of the Chief Executive (Item 5 in the Minute Book) proposing revised arrangements for the assessment, investigation and determination of complaints of breach of the new Code of Conduct for Members and Co-opted Members of the County Council.

The Chairman had invited all County Councillors to attend the meeting to put forward their views on the proposed revised arrangements. Councillors Davidovitz, Dickens, Kimber, Leversha, McNair Scott and Pearce were in attendance and submitted their views as summarised below:

- i) Concern that the Freedom of Information (FOI) framework was being used inappropriately, rather than business as usual dialogue between Members being undertaken.

The Monitoring Officer explained that FOI is a statutory process, which is open to Members to use, in the same way as any other member of the public, and provisions for its use and who by cannot therefore be included in the County Council's Code of Conduct for Members or other protocols and procedures. The Monitoring Officer offered to look into protocols in this regard, and respond directly to any Member who has concerns.

- ii) Further to the discussion detailed at Minute 16b) above, Councillor Pearce raised the matter of whether or not a County Councillor, as an appointed representative of the County Council on the Chichester Harbour Conservancy who also pays harbour dues constitutes a DPI? There was then some general discussion as to whether a dispensation might be needed in respect of items which were specifically excluded from constituting a prejudicial interest under the previous Members' Code of Conduct, for example the setting of Council Tax, Members' Allowances Scheme and so on, to avoid a similar situation arising. The Monitoring Officer explained that the rules surrounding DPI's were different to the previous rules constituting prejudicial interests, but offered to look into this matter further, and that if needs be 'for the avoidance of doubt' a paper could be brought to a future meeting of the Conduct Advisory Panel suggesting a general dispensation in respect of such matters for certainty and to avoid impediment to the County Council's business. The Monitoring Officer invited Members to contact her separately following the meeting on any specific examples of concern.

The Monitoring Officer agreed to investigate this matter further and confirm her findings to the Panel in due course.

- iii) An alternative procedure for the assessment, investigation and determination of complaints of breach of the Code of Conduct for Members was suggested, which was felt to be a little less prescriptive and simpler than the Options set out in the Annexes to the report.

The Monitoring Officer explained that Version 1 set out in Annex 1 to the report allowed for an initial filtering by the Monitoring Officer to determine, in consultation with the Chairman of the Conduct Advisory Panel and an Independent Person, whether a complaint should be accepted for further consideration, weeding out inappropriate, trivial and vexatious complaints at the outset thus avoiding Members' time being wasted. The version set out in Annex 2 to the report would bring a complaint straight to a Member Assessment Panel, hence excluding the initial filtering process of Version 1.

During the course of debate, support for Version 1 was evident being the shortest and simplest version that dismisses, at an early stage in the proceedings, inappropriate, trivial and vexatious complaints. A proposal was submitted that when carrying out the initial filtering of complaints received, the Monitoring Officer do so in consultation with the Independent Person only and not involve any Member at this stage. On balance, the Panel highlighted the importance of having the Chairman of the responsible body involved at the initial filtering stage to provide advocacy for Members. Furthermore, the Panel were of the view that a flowchart setting out the procedure a complaint would take would be helpful.

RESOLVED:

That the Conduct Advisory Panel recommended that Version 1 of the revised arrangements for the assessment, investigation and determination of complaints of breach of the new Code of Conduct for Members, as set out in Annex 1 to the supporting report, including a flowchart to be drafted by the Monitoring Officer setting out the procedure to be incorporated into a revised draft to be submitted to the Conduct Advisory Panel for approval at its next meeting.

18. **REMUNERATION AND TERM OF OFFICE FOR THE ROLE OF INDEPENDENT PERSON UNDER THE NEW STANDARDS ARRANGEMENTS**

The Panel considered the report of the Chief Executive (Item 6) in the Minute Book seeking the Panel's views on the remuneration and term

of office for the role of Independent person under the new Standards Arrangements arising from the Localism Act 2011.

RESOLVED:

That the Conduct Advisory Panel

- a) recommends to the County Council that a suitable allowance in respect of the remuneration of Independent Person(s) required to be appointed by the County Council in consequence of the Localism Act be an annual allowance of £675, plus expenses, but that this should be reviewed after one year once the likely commitments of the post are better known; and
- b) recommends to the County Council that the term of office of any Independent Person(s) appointed by the County Council in consequence of the Localism Act should be four years, save in the case of a previous Independent Member of the County Council's Standards Committee, in which case the term of office will expire on 30 June 2013.