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# NOTICE OF MEETING

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## GOVERNANCE AND AUDIT AND STANDARDS - (HEARING) SUB COMMITTEE

**FRIDAY, 15 NOVEMBER 2013 AT 10.30 AM  
(PLEASE NOTE LATER START TIME)**

### CONFERENCE ROOM B - CIVIC OFFICES

Telephone enquiries to Stewart Agland, Customer, Community & Democratic Services on 023 9283 4055

Email: [stewart.agland@portsmouthcc.gov.uk](mailto:stewart.agland@portsmouthcc.gov.uk)

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(NB This agenda should be retained for future reference with the papers for the meeting.)

Please note that the agenda and non-exempt papers for the meeting are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting, and must include the purpose of the deputation. Email requests are accepted.**

**Please note that deputations for this meeting should clearly state to which item they relate and will be heard immediately before that item after which it will be recommended that the sub-committee moves into exempt session as appropriate.**

**Please also note that if the item to which the deputations relate is not considered, those deputations will not be heard.**

## AGENDA

- 1 Election of Chair
- 2 Declarations of Members' Interests
- 3 Consideration of a preliminary matter in relation to a complaint against a Member (Pages 1 - 6)

**(The sub-committee will hear or receive the relevant deputations for this item at this point in the meeting)**

The sub-committee is asked to consider the recommendation made in the attached City Solicitor's report.

- 4 Consideration of the report of Nigel Pascoe QC into a complaint against a Member (this item may not be considered depending on the decision on item 3 above) (Pages 7 - 10)**

**(If this item is to be considered, the sub-committee will hear or receive the relevant deputations for this item in open session, together with the City Solicitor's attached cover report, before it considers moving into exempt session for the remainder of the item).**

The Investigating Officer's exempt report and appendices will be tabled on the day. The sub-committee is requested to determine the matter before it.

- 5 Exclusion of Press and Public**

That in view of the contents of item 4 on the agenda, the (Hearing) sub-committee is **RECOMMENDED** to adopt the following motion:

**“That, under the provisions of Section 100A of the Local Government Act, 1972 as amended by the Local Government (Access to Information Act, 1985), the press and public be excluded for the consideration of the following item:-**

**Item 4 - on the grounds that it contains information defined as exempt in Part 1 of Schedule 12A to the Local Government Act, 1972 under paragraphs 1, 2 and 7(A).  
Paragraph Exemption Nos:**

- 1. Information relating to any individual**
- 2. Information which is likely to reveal the identity of an individual**
- 7(A). Information which is subject to any obligation of confidentiality**

**Although there is a public interest favouring public access to local authority meetings, given the legally and personally sensitive information contained in the report and appendices, the public interest in maintaining the exemption outweighs the public interest in disclosing the (exempt) information**

**(NB The exempt/confidential committee papers on the agenda will contain information which is commercially, legally or personally sensitive and should not be divulged to third parties. Members are reminded of standing order restrictions on the disclosure of exempt information and are invited to return their exempt documentation to the Officer at the conclusion of the meeting, for shredding.)**



Agenda item:

<b>Decision maker:</b>	Governance & Audit & Standards Hearing Sub-Committee
<b>Subject:</b>	Consideration of a preliminary matter in relation to a Complaint against a Member
<b>Date of decision:</b>	15 <sup>th</sup> November 2013
<b>Report by:</b>	Strategic Director and City Solicitor
<b>Wards affected</b>	N/A
<b>Key decision (over £250k)</b>	No

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## 1 Background

- 1.1 Members will be aware that a complaint has been made that Councillor Mike Hancock has failed to comply with Portsmouth City Council's Code of Conduct and a report has been produced into that complaint by Nigel Pascoe QC. That report has been referred to this Sub-Committee for determination.
- 1.2 The procedure for dealing with complaints in respect of the Code of Conduct is in accordance with the arrangements which were approved by Council on the 17<sup>th</sup> July 2012.
- 1.3 In accordance with those arrangements the consideration and determination of complaints is delegated to Sub-Committees of the Governance and Audit and Standards Committee. The Sub-Committee's powers arise out of the delegations given to it by Governance and Audit and Standards Committee.
- 1.4 A matter has arisen in relation to the consideration of the complaint, which Governance and Audit and Standards Committee has asked the Sub-Committee to consider. Previously Members of the Assessment Sub-Committee, who decided that the complaint should be referred for investigation, queried whether they had the power to postpone the investigation of the complaint. The concern which was raised was whether it was reasonable to proceed with the investigation of the complaint when a claim based on similar facts was the subject of High Court proceedings. The Advice of Ian Wise QC was sought on the point. His advice was that the Sub-Committee had no power to postpone the investigation of the complaint. (Appendix A)
- 1.5 The investigation was subsequently concluded and Elisabeth Laing QC's advice has been sought and she advised on whether, or not, it would be reasonable for the Sub-Committee to adjourn the hearing of the complaint pending the outcome of the proceedings in the High Court. Her advice is attached at Appendix B.

- 1.6 Elisabeth Laing QC is of the view that this is a decision which the Sub-Committee could make. In reaching a decision, a relevant consideration which they could take into account, is that if the Sub-Committee concluded its determination before the High Court case is concluded there is a risk of that decision being inconsistent with the High Court decision. That could lead to injustice as there is no mechanism by which the Council's decision could be reconsidered.
- 1.7 As stated in paragraph 29 of Elisabeth Laing QC's advice this is not necessarily a decisive factor. Other factors include:-
- The greater suitability of the High Court procedure for determining contested issues of fact.
  - The desirability of quick decision making in standards cases.
  - The fact that the complainant and not the councillor issued the High Court proceedings.
  - The fact that in contrast to disciplinary proceedings in other fields the council's powers to protect the public are limited.
- 1.8 Whatever decision is reached this is one for the Sub-Committee to make having given the two parties the opportunity to express their views through deputations. They may in doing so raise other material considerations.

On the 7<sup>th</sup> November the Governance and Audit and Standards Committee delegated the consideration of this preliminary matter to this Sub-Committee.

## **2 Purpose of Report**

- 2.1 Members are asked to decide, as a preliminary matter whether to postpone the determination of the complaint until such time as the High Court proceedings are concluded.

## **3 Recommendation**

- 3.1 Members are asked to note the advice of both Counsel and decide as a preliminary matter whether or not to postpone the determination of the complaint until such time as the High Court proceedings are concluded.

## **4 Equality Impact Assessment (EIA)**

- 4.1 The contents of this report do not have any relevant equalities impact and therefore an equalities assessment is not required.

## **5 City Solicitor's Comments**

- 5.1 The City Solicitor's comments are included in this report.

**6 Head of Finance & S151 Officer Comments:**

6.1 There are no financial implications arising from the recommendations set out in this report.

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Signed by: Michael Lawther Strategic Director and City Solicitor

**Appendices:**

Appendix A – Advice of Ian Wise QC  
Appendix B - Advice of Elisabeth Laing QC

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
None	

## Advice of Ian Wise QC

Further to our discussions earlier today I write to confirm my advice that in the event that the ongoing investigation into the complaint against Cllr Hancock was stayed as requested by Cllr Hancock's solicitors in their letter of 24 June 2013 the following consequences are likely:

1. There would be a very strong likelihood that Birnberg Peirce would issue judicial review proceedings on Ms behalf;
2. Any such judicial review challenging a decision to halt the investigation pending the resolution of the civil claim would be likely to succeed. In my opinion such an application would have very strong prospects of success, the prospects being in my view as high as 90%;
3. The costs to the local authority of defending such an application, bearing in mind the probability that the council would have to bear both side's costs, would be between £20-£50,000;
4. The outcome of such court action by Ms would be to require the council to proceed with the investigation and so in my view nothing substantive would be gained from staying the inquiry at this stage;
5. In addition to the financial implications of this the council should also be aware of the inevitable bad publicity that fighting such a judicial review would bring. Such bad publicity would not only have political ramifications but would also reflect badly on the reputation of Portsmouth City Council who, if they fought such a hopeless case would be liable to heavy criticism from a High Court judge. This would inevitably be picked up by the national media given the high profile of this case;
6. In summary I advise that there are no good grounds for halting the current investigation and if the council were to do so they would be very likely to find themselves in a hopeless position defending a judicial review which would almost certainly succeed. If the council put itself in this position it would be unlikely to gain anything of note, all that would be achieved would be a slight delay of a few months in the progress of the investigation. That dubious advantage would be at considerable financial and reputational cost.

I therefore strongly advise the council not to accede to Cllr Hancock's request for a stay of the investigation and advise that the investigation continues. It would in my view be prudent for Cllr Hancock to be given a further opportunity to participate in the investigation in the light of any such decision.

If you require any clarification on the above or if I can assist further please do not hesitate to contact me.

Regards

Ian Wise QC.  
8<sup>th</sup> August 2013

**PORTSMOUTH CITY COUNCIL  
COMPLAINT ABOUT COUNCILLOR MIKE HANCOCK**

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**ADVICE**  
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(2) *would it be reasonable for the GASHS to decide to postpone the investigation?*

24. It is not for me to say what the GASHS should decide. A decision whether or not to postpone the investigation pending the resolution of the High Court claim is a decision made in the exercise of a procedural discretion. Provided that the GASHS takes into account relevant considerations, and ignores irrelevant considerations, the decision is for it to make.
25. So the question is what considerations would be material to the exercise of that discretion. I do not consider that there is any risk that, if the GASHS were to decide to hold a hearing that would be a contempt of court. The decision of the Court of Appeal in *Attorney-General v Hislop*<sup>1</sup> is distinguishable, largely for the reasons given by the complainant's solicitors in their letter of 12 August 2013. Essentially, the complainant's claim will be heard by a professional judge, not a jury, and a finding following a hearing under the Council's procedures would not amount to the exertion of improper pressure on the councillor not to defend the High Court claim, nor would it be remotely likely to influence the judge who hears the High Court claim.
26. That is not the only relevant consideration, however. In their letter of 24 June 2013, the councillor's solicitors referred to the risk of inconsistent decisions. This is a relevant consideration. While it is true that the issue for the Council is a different legal issue from the issue for the High Court, the factual allegations which are relevant to both issues are the same.
27. The Council could conclude, after a hearing that there had, or had not, been a breach of the code, and the High Court could decide, after a hearing, that the complainant's factual allegations were, or were not, made out. There is a risk, therefore, of inconsistent decisions about the underlying facts. The upshot could be, either, that the Council will decide that there was a breach, and punish the councillor, only for the High Court to decide, later, that the underlying allegations were not made out, or that the Council could decide there was no breach, only for the High Court to decide that the allegations were made out.
28. It does not seem to me that the Council could re-visit its decision in either case, as it would be functus officio. Nor, it seems to me, would an application out of time for judicial review of the Council's decision be likely to succeed, as in each case, the decision would have been correct at the time it was made. This could mean that the Council loses an opportunity to find a breach of the code of conduct and to punish the councillor where the allegations are subsequently upheld by the High Court, or that the councillor is found guilty of a breach, and punished for it, in circumstances where the High Court later finds that the allegations were not made out. In neither case would the Council, or the councillor, have any remedy for that injustice.

29. That is not necessarily a decisive factor, but it is one which the GASHC should take into account in reaching a view. Other relevant factors are the greater suitability of the High Court procedure for determining contested issues of fact, the desirability of quick decision making in standards cases, the fact that the complainant, not the councillor, issued the High Court proceedings, [REDACTED] the fact that in contrast to disciplinary proceedings in other fields, the Council's powers to protect the public are, by the terms of its own procedure, limited. There may be other relevant considerations which emerge from the parties' contentions, if the GASHS decides to hold a preliminary hearing at which it hears argument from the parties, and then decides, whether or not to postpone the hearing of the complaint.
- (3) *is there any reason why the member of the GASAS should not be a member of the GASHS?*
30. There is no evidence that a member of the GASAS has leaked confidential information. What there is, rather, is the fact that confidential information has been leaked, but no-one knows who leaked it. I do not consider, in those circumstances, that there is any reason why the member of the GASAS who is the subject of an allegation that she has leaked information should not be a member of the GASHS.

*conclusion*

31. I have two broad conclusions.
- (1) Now that the independent person has produced his report, the GASAS has no further role. Under the Council's procedure, the complaint is very likely to be referred to the GASHS for a hearing. In that situation, the GASC could decide that an appropriate way forward would be for a preliminary hearing to be held by the GASHS, at which the parties can make their submissions about postponement, and the GASHS can then decide whether or not the hearing before it should be postponed pending the determination of the complainant's High Court claim.
  - (2) There is, at present, no reason why any member of the GASAS should not sit as a member of the GASHS.

Elisabeth Laing QC  
4<sup>th</sup> September 2013





Agenda item:

<b>Decision maker:</b>	Governance & Audit & Standards Hearing Sub-Committee
<b>Subject:</b>	Consideration of the report of Nigel Pascoe QC into a Complaint against a Member
<b>Date of decision:</b>	15 <sup>th</sup> November 2013
<b>Report by:</b>	Strategic Director and City Solicitor
<b>Wards affected</b>	N/A
<b>Key decision (over £250k)</b>	No

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## 1 Background

- 1.1 Members will be aware that a complaint has been made that Councillor Mike Hancock has failed to comply with the Portsmouth City Council's Code of Conduct and a report has been produced into that complaint by Nigel Pascoe QC. The purpose of this meeting is for you to consider that report and decide on one of the findings set out in Para 1.4 below.
- 1.2 The procedure to be followed by you at the hearing is set out in Appendix A. A copy of the procedure has in advance of today's meeting been supplied to both the Complainant and Councillor Hancock.
- 1.3 The Hearing is a formal meeting of the Council and is not a court of law. It does not hear evidence under oath but it does decide factual evidence on the balance of probabilities.
- 1.4 The Sub-Committee can decide one of the following findings:-
  1. That the Member did not fail to comply with the Code of Conduct; or
  2. That the Member did fail to comply with the Code of Conduct, but that no action needs to be taken in respect of the matters considered at the hearing: or
  3. That the Member did fail to comply with the Code of Conduct and that one of, or any combination of, the following sanctions should be imposed by the Sub-Committee
    - a. Censure of the Member;
    - b. Restriction for a period not exceeding six months of the Member's access to the premises of the Authority or that Member's use of the resources of the Authority, provided that those restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the Member's ability to perform the functions of a Member;
    - c. Recommending to the Member's Group Leader that he be removed from any or all Committees or Sub Committees of the Authority;

1.5 Once a decision is reached the finding and the reasons shall be confirmed in writing to the Member and the person who made the complaint as soon as is reasonably practicable. A summary of the findings and the reason for them will also be placed on the Council's website

## **2 Purpose of Report**

2.1 To advise Members of the procedure to be followed on the consideration of the Report of Nigel Pascoe QC and the findings which they may reach.

## **3 Recommendation**

3.1 That the Sub Committee consider the report of Nigel Pascoe QC in accordance with the attached procedure and decide on one of the findings in 1.4 above.

## **4 Equality Impact Assessment (EIA)**

4.1 The contents of this report do not have any relevant equalities impact and therefore an equalities assessment is not required.

## **5 City Solicitor's Comments**

5.1 The City Solicitor's comments are included in this report.

## **6 Head of Finance & S151 Officer Comments**

6.1 There are no financial implications arising from the recommendations set out in this report.

.....  
Signed by: Michael Lawther Strategic Director and City Solicitor

## **Appendix: Appendix A**

### **Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

<b>Title of document</b>	<b>Location</b>
None	n/a

## Hearing Procedure

1. Deputations will be heard/received immediately before a decision is made whether or not to move into exempt session.
2. The Sub-Committee will decide whether or not to move into exempt session.
3. Nigel Pascoe QC will present his report to the Sub-Committee. (It is not his intention to call any witnesses).
4. Councillor Hancock or his legal representative will then be able to ask any questions of Mr Pascoe in relation to the report.
5. The Sub-Committee may ask any questions of Mr Pascoe.
6. Councillor Hancock will then present his response, if he wishes to do so, this will include the calling of any witnesses.
7. The Sub-Committee may ask any questions which they wish of Councillor Hancock and any witnesses.
8. The Sub-Committee will then retire and reach its conclusion.
9. The Sub-Committee will then return and announce its decision in public session.

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