

Decision maker:	Governance & Audit & Standards Committee
Subject:	Consideration of a preliminary issue in relation to a Complaint against a Member
Date of decision:	7 November 2013
Report by:	Strategic Director and City Solicitor
Wards affected	N/A
Key decision (over £250k)	No

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. The complaint has been referred for consideration by the Governance and Audit and Standards Hearings Sub-Committee which is to meet on 15th November 2013.
- 1.2 The procedure which is being followed is in accordance with the arrangements which were approved by Council on the 17th July 2013.
- 1.3 In accordance with those arrangements the consideration and determination of complaints is delegated to Sub-Committees of 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 and confirmed by Council. It has the power to decide the procedure to be adopted in each case.
- 1.4 An issue has arisen in relation to the consideration of the complaint which is not provided for within the existing delegation to the Sub-Committee. 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 complaint. (Appendix A)
- 1.5 The investigation has now been concluded and Elizabeth Laing QC's further advice has been sought 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 Counsel 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 Counsel'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 heard the views of the two parties who may raise other material considerations.

2 Purpose of Report

2.1 To seek the delegated authority to the Hearing Sub-Committee to decide as a preliminary matter whether or not, following representations from both the Complaint and Councillor Hancock, to postpone the final determination of the complaint until such time as the High Court proceedings are concluded.

3 Recommendation

3.1 That Members ask the Hearing Sub-Committee to consider as a preliminary matter whether or not to postpone the final 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 1 – Advice of Ian Wise QC

Appendix 2 - Advice of Elizabeth 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
1 The City Solicitor's file in relation to the complaint	City Solicitor's Office