

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

ADVICE

(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*¹ 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.