



## **SUMMONS**

NOTICE IS HEREBY GIVEN THAT A MEETING OF THE HART DISTRICT COUNCIL WILL BE HELD IN COUNCIL CHAMBER ON THURSDAY, 26TH NOVEMBER, 2020 AT 7.00 PM

Joint Chief Executive

CIVIC OFFICES, HARLINGTON WAY  
FLEET, HAMPSHIRE GU51 4AE

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## **AGENDA**

**This meeting is being administered under the provisioning of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meeting) (England and Wales) Regulations 2020. The Provision made in this regulation applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the Council governing the meeting and such prohibition or restriction had no effect.**

**This Agenda and associated appendices are provided in electronic form only and are published on the Hart District Council Website**

### **1 SUSPENSION OF STANDING ORDERS**

The Chairman to seek Council agreement to suspend Standing Order, 9.3 (Show of Hands for Voting), 22.1 (Standing to Speak) and 22.2 (Chairman Standing).

### **2 MINUTES OF PREVIOUS MEETING (Pages 5 - 10)**

To confirm the Minutes of the Council Meeting held on 24 September 2020.

### **3 APOLOGIES FOR ABSENCE**

To receive any apologies for absence from Members\*.

**\*Note:** Members are asked to email Committee services in advance of the meeting as soon as they become aware they will be absent.

#### 4 DECLARATIONS OF INTEREST

To declare disposable pecuniary, and any other interests\*.

**\*Note:** Members are asked to email Committee Services in advance of the meeting as soon as they become aware they may have an interest to declare.

#### 5 COUNCIL PROCEDURE RULE 12 - QUESTIONS BY THE PUBLIC

To receive any questions from members of the public submitted pursuant to Council Procedure Rule 12.

*Note: The text of any questions under Council Procedure Rule 12 must be given to the **Chief Executive** (email [committeeservices@hart.gov.uk](mailto:committeeservices@hart.gov.uk)) not later than noon on **Friday, 20 November 2020**.*

#### 6 COUNCIL PROCEDURE RULE 14 - QUESTIONS BY MEMBERS

To receive any questions from Members submitted pursuant to Council Procedure Rule 14.

*Note: The text of any question under the Council Procedure Rule 14.3 must be given to the **Chief Executive** not later than **5.00pm on Monday, 23 November 2020**.*

The text of any question under Council Procedure Rule 14.4 must be submitted to the **Chief Executive** before **10.00am on Thursday, 26 November 2020**.

#### 7 CHAIRMAN'S ANNOUNCEMENTS

#### 8 CABINET MEMBERS' ANNOUNCEMENTS

#### 9 CHIEF EXECUTIVE'S REPORTS

#### 10 MINUTES OF COMMITTEES

The Minutes of the following Committees, which met on the dates shown, are submitted.

In accordance with Council Procedure Rule 14.1, Members are allowed to put questions at Council without Notice in respect of any matters in the Minutes to the Leader of the Council or any Chairman of the relevant meeting at the time those Minutes are received by Council.

| Meeting               | Date              | Page Numbers | For Decision |
|-----------------------|-------------------|--------------|--------------|
| Overview and Scrutiny | 15 September 2020 | 11-13        |              |
| Overview and          | 20 October 2020   | 14-16        |              |

|                   |                  |       |   |
|-------------------|------------------|-------|---|
| Scrutiny (draft)  |                  |       |   |
| Audit (Draft)     | 27 October 2020  | 4-6   |   |
| Cabinet           | 1 October 2020   | 15-22 |   |
| Cabinet (draft)   | 5 November 2020  | 23-25 | <b>Minute 56 – Revised Financial Regulations</b><br><b>Minute 57 – Revised Draft update to Contract Standing Orders</b>   |
| Licensing (draft) | 3 November 2020  |       |   |
| Standards         | 13 August 2020   | 1     |   |
| Standards (draft) | 3 November 2020  | 2-4   | <b>Minute 4 – Members’ Code of Conduct Update</b> (see item 12 below)<br><b>Minute 5 – Guidance on the Code of Conduct – Public Interest Test</b> (see item 13 below) |
| Planning          | 14 October 2020  | 13-14 |   |
| Planning (draft)  | 11 November 2020 | 15-17 |   |

**11 PROCEDURE TO BE FOLLOWED IN EVENT OF A GRIEVANCE AGAINST A MEMBER OF THE COUNCIL** (Pages 11 - 17)

To present for consideration an updated procedure to be followed in event of a grievance against a Member of the Council.

**12 MEMBERS' CODE OF CONDUCT - UPDATE** (Pages 18 - 36)

To consider the recommendations of the Standards Committee (Minute No 4) that minor adjustments be made to the Hart District Council Members Code of Conduct (update with tracked changes attached as Appendix 1).

**13 GUIDANCE ON THE CODE OF CONDUCT - PUBLIC INTEREST TEST** (Pages 37 - 41)

To consider the recommendation from Standards Committee (Minute No 5) that the public interest test, as set out in Appendix 1, for the assessment of allegations that there has been a Breach of the Code of Conduct, be adopted.

**14 OUTSIDE BODIES - FEEDBACK FROM MEMBERS**

To receive any updates from Members who are representatives of the Council on an Outside Body.

**Date of Publication: Wednesday, 18 November 2020**

## COUNCIL

**Date and Time:** Thursday, 24 September 2020 at 7.00 pm

**Place:** Council Chamber

**Present:**

## COUNCILLORS -

Kennett (Chairman)

|           |                  |            |
|-----------|------------------|------------|
| Ambler    | Davies           | Oliver     |
| Axam      | Delaney          | Quarterman |
| Bailey    | Dorn             | Radley     |
| Blewett   | Drage            | Smith      |
| Butler    | Farmer           | Southern   |
| Clarke    | Forster          | Tomlinson  |
| Cockarill | Kinnell          | Wheale     |
| Crampton  | Lamb             | Wildsmith  |
| Crisp     | Makepeace-Browne | Worlock    |
| Crookes   | Neighbour        | Wright     |

## Officers Present:

|                |                                       |
|----------------|---------------------------------------|
| Daryl Phillips | Joint Chief Executive                 |
| Helen Vincent  | Committee and Member Services Officer |
| Celia Wood     | Democratic Services Officer           |

## 38 SUSPENSION OF STANDING ORDERS

It was unanimously agreed to suspend Standing Orders 9.3 (Show of Hands for Voting), 22.1 (Standing to Speak) and 22.2 (Chairman Standing).

## 39 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting of 30 July 2020 were confirmed and signed as a correct record.

## 40 APOLOGIES FOR ABSENCE

Apologies were received from Councillor Harward.

## 41 DECLARATIONS OF INTEREST

Councillor Forster declared an interest on Item 11 on the Agenda as a Hampshire County Councillor.

#### **42 COUNCIL PROCEDURE RULE 12 - QUESTIONS BY THE PUBLIC**

Questions had been received from Mr Matthew Knowles and Mr Bruce Bulgin, which are detailed in Appendix A.

#### **43 COUNCIL PROCEDURE RULE 14 - QUESTIONS BY MEMBERS**

No questions received.

#### **44 CHAIRMAN'S ANNOUNCEMENTS**

The Chairman announced:

Currently I have no charities this year other than the Hart Lottery due to the Covid situation and therefore we are unable to organise any events until the situation improves.

#### **45 CABINET MEMBERS' ANNOUNCEMENTS**

The Leader of the Council, Councillor Neighbour had no announcements.

The Cabinet Member for Finance and Corporate Services, Councillor Radley: The current shared community safety team will be dissolved at the end of September. Each of the 3 authorities will have their own in-house team with effect from 1 October. One of the key benefits of this is that it enables us to target our own priorities rather than competing with the priorities and therefore resources (which may be different) of the other 2 councils.

We are excited to launch our own service which will consist of a Community Safety Lead Officer – we have Rachael Wilkinson joining us – she worked in the shared team and will be stepping into this lead role in Hart.

There is a shared analyst role – an officer who prepares the strategic assessment and can analyse crime / disorder data on our behalf.

The team will report directly to the Head of Community Services.

The service will focus on our local priorities around safeguarding, tackling ASB, dealing with the challenges around PREVENT & modern day slavery, and of raising awareness of community safety and developing district wide initiatives to support this.

The North Hampshire Community Safety partnership will continue. There will be one joint Community Safety Partnership Plan. Many of the partners are cross border so it is sensible to continue this approach.

There is a legal agreement – a Memorandum of Understanding to support all of the joint working.

Cabinet Member for Digital Councillor Ambler had no announcements.

The Cabinet Member for Community, Councillor Bailey:  
Hart Community Hub is continuing to provide support to volunteers who have helped 420 residents and will make the transition to Hart Voluntary.

There was a serious fire at Wickham Place. Partnership working between Vivid Housing Association and Hart Housing Team resulted in 6 households booked into the Premier Inn by midnight on the day of the fire.

The Cabinet Member for Place, Councillor Cockarill had no announcements.

The Cabinet Member for Regulatory, Councillor Kinnell.  
I would like to advise Members that a formal acceptance of the 2020 DEFRA Quality Report is on the Hart website and that quality met all UK recommendations.

Licensing – all public houses from today will close at 10pm in line with latest Covid-19 guidance.

The Cabinet Member for Environment, Councillor Oliver had no announcements.

The Cabinet Member for Commercialisation, Councillor Quarterman.  
I am pleased to announce that Hart DC has engaged the services of a team to conduct an appraisal of the options for the redevelopment of the civic quarter containing the Hart DC offices in Fleet. Led by surveyors Montagu Evans and including architects HLM, cost consultants Gleeds and community engagement specialists Create Streets, the team will enable the cross-party working group to assess the viability of potential solutions and to make recommendations for future development. We expect a full report to be available early in 2021.

## **46 CHIEF EXECUTIVE'S REPORTS**

The Joint Chief Executive reported on the awareness of the evolving picture regarding Covid-19 with statements from the Chief Medical Officer and Chief Scientific Officer on Monday, the move back to Alert Level 4 and with an announcement from the Prime Minister on Tuesday around increased preventative measures with the assumption that these may be in place for six months.

Based on this changing context at the Hampshire and Isle of Wight Local Resilience Forum meeting of the Strategic Co-ordinating Group on the 23rd September, the decision was taken by Category 1 organisations to move back into 'response' phase.

Based on this, Hart District Council confirmed that they too were moving back into 'response' phase as this helps ensure the Council can be at a level of preparedness to enable us to react, as circumstances change.

As part of this, we are working away on putting in place the provisions that will allow us to get payments out to those on low incomes who need to socially isolate which must be in place by the 12th October (with payments to eligible residents from the 28th September) which was announced at the weekend. We await guidance (due out tomorrow)

And this builds on the earlier announcement (and work currently happening at pace) that Councils will need to be ready to make further Business Grants available, in the event of a lockdown.

Members will also be aware of the new legal obligation to maintain records of staff and visitors - including displaying QR codes coming into force today. The powers of enforcement laid before Parliament on this last week, gave the powers to the County Councils and Unitary Authorities - not District Councils, however you'll appreciate we have been really active in this space, providing guidance via our Business Newsletter as well as our social media streams and our Environmental Health team will be out and about engaging and educating businesses locally on this.

#### **47 MINUTES OF COMMITTEES**

No questions on any of the meetings were raised.

#### **48 MOTION TO COUNCIL**

The following Motion had been received from Cllr Crampton:

“Despite great efforts and good intentions from all involved, it is now abundantly clear that the closure of Fleet High Street has not been a success. The negative impact on residents particularly those living near the closure, of traffic congestion and the resulting pollution has not been outweighed by any appreciable benefits to businesses. This Council therefore resolves to have the road closures removed and to reopen the High Street as soon as is possible.”

Members discussed:

- The background as to why this motion had been brought to Council.
- Concerns around the negative impact on residents' and businesses in the area.
- The result of a survey indicating a high level of objection to the Scheme.
- A petition to have the Scheme removed
- Members were reminded that the Scheme had been debated at the last meeting and clear evidence from collecting and analysing data has not yet been submitted.
- This is a 'pop-up' scheme with flexibility built into it, other options could be considered.

Members were asked to consider an amendment to the Motion proposed by Cllr Quarterman:

“Despite great efforts and good intentions from all involved, there is a concern that the closure of Fleet High Street to traffic has not been a success. This Council therefore resolves to actively engage with retailers to understand and assess the nature of their concerns and to physically observe at peak times the impact of traffic on neighbouring roads. If compelling and verifiable evidence gathered indicates that the benefit to retailers does not outweigh any negative impact on businesses or residents, then this Council requests Cabinet to have the road closures removed and to reopen the High Street to traffic as soon as is practically possible and not later than the end of October in sufficient time to support the Christmas trading period”.

After full discussion including reference to a conflict with Standing Orders, a recorded vote was taken on the Amendment to the Motion:

**FOR the Amendment to the Motion:** Ambler, Axam, Bailey, Blewett, Butler, Clarke, Cockarill, Crisp, Davies, Delaney, Drage, Kinnell, Lamb, Makepeace-Browne, Neighbour, Oliver, Quarterman, Radley, Smith, Wildsmith

**AGAINST the Amendment to the Motion:** Crampton, Crookes, Dorn, Farmer, Forster, Southern, Tomlinson, Wheale, Worlock, Wright

Abstentions: Kennett

**Decision:** Amendment to the Motion **carried**.

Members debated on the substantive Motion (as amended):

Members discussed:

- It is clear that opinion is split and this presents a challenge to Members to follow good governance and wait for more reliable data, both in support and against the Scheme to take a clear and balanced decision.
- Scheme lead by Hart District Council with support from Fleet BID, Fleet Town Council and Hampshire County Council.
- The Scheme has been done quickly under difficult circumstances to encourage shoppers to return to the high street during the pandemic, to feel safe and allow for adequate social distancing.

A recorded vote was taken on the substantive Motion (as amended):

**FOR:** Ambler, Axam, Bailey, Blewett, Butler, Clarke, Cockarill, Crisp, Davies, Delaney, Drage, Kinnell, Lamb, Makepeace-Browne, Neighbour, Oliver, Quarterman, Radley, Smith, Wildsmith

**AGAINST:** Crampton, Crookes, Dorn, Farmer, Forster, Southern, Tomlinson, Wheale, Worlock, Wright

Abstentions: Kennett

**Decision:** Motion as amended **carried**



#### **49     OUTSIDE BODIES - FEEDBACK FROM MEMBERS**

There were no updates from Members.

The meeting closed at 9.26 pm

## **COUNCIL**

**DATE OF MEETING:** 26 NOVEMBER 2020

**TITLE OF REPORT:** PROCEDURE TO BE FOLLOWED IN EVENT OF A GRIEVANCE AGAINST A MEMBER OF THE COUNCIL

**Report of:** Monitoring Officer

### **1 PURPOSE OF REPORT**

- 1.1 To present for consideration an updated procedure to be followed in event of a grievance against a Member of the Council.

### **2 RECOMMENDATION**

Council agrees to adopt the procedure (as attached at Appendix 1) to be followed in event of a grievance against a member of the Council.

### **3 BACKGROUND**

- 3.1 The Council's Constitution contains provisions to be followed if a grievance is made against a Member of the Council. Although rarely used it is an important procedural process when either an Officer or a Member believes that they have been treated unfairly by another Member of the Council. Recent experience has shown that it is in urgent need of revision as it has not been updated since 2002.

### **4 COMMENTARY**

- 4.1 A draft of the new procedure has been shared with all Groups of the Council and all comments received have been considered in preparing this final draft. Unison has also been consulted.
- 4.2 The draft procedure now gives greater clarity on how grievance complaints should be processed both in interpretation and procedure. There is a clear emphasis on seeking an informal approach before any grievance is formalised. This puts facilitation and mediation at the heart of any resolution approach.
- 4.2 In term of the Hearing itself, it is now seen as a last resort, but it remains an avenue that will remain open to any person who wishes to pursue a grievance. The emphasis is again on an informal but also inclusive approach that allows all parties to respond to any questions and to let everyone make their case known.

### **5 ACTION**

- 5.1 Should Council agree to the adoption of the new Procedure it will immediately replace the current arrangements that are contained within the Constitution.

**Contact Details: Daryl Phillips email: [daryl.phillips@hart.gov.uk](mailto:daryl.phillips@hart.gov.uk)**

Appendix 1 – draft updated procedure to followed in event of a grievance against a Member of the Council

## **PROCEDURE TO BE FOLLOWED IN EVENT OF A GRIEVANCE AGAINST A MEMBER OF THE COUNCIL**

Councillors are expected to afford colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. Whilst it is recognised that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally.

This procedure is to be used to raise a grievance where either an officer or a Councillor has reason to believe that they have been treated unfairly by another Councillor. Unfairness for example, includes not having been given a proper and reasonable right of reply or right of correction to defend oneself against unreasonable public criticism.<sup>1</sup>

This procedure should not however be used to make

- Vexatious, malicious, frivolous, or trivial complaints<sup>2</sup>
- Members' complaints about officers<sup>3</sup>
- Other Code of Conduct matters<sup>4</sup>.

### **THE INFORMAL APPROACH**

Many problems can be resolved informally, for example through a quiet chat. It does not have to be in writing at this stage. An informal approach is often appropriate in cases where the allegations are less serious, or the problem is based on miscommunication or a misunderstanding. For the Officer any concerns should be raised with their Head of Service and for a Member it should be raised with their Group Leader (or for Independent Members, the Leader of the Council). Solving the problem this way should be a two-way process so that the aggrieved is able to explain the problem and say what they would like done about it. In return they can listen to advice on how best deal with the matter.

Notwithstanding the opportunity for an informal approach the aggrieved has the right to pursue a formal complaint at any time. The Council also accepts that in line with this procedure, officers have the right to raise a grievance without fear that it will

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<sup>1</sup> Nothing in this procedure seeks to prevent the expression, challenge, criticism and disagreement with views, ideas, opinions and policies but it must be done in a civil manner. Individuals must not however, be subject to unreasonable or excessive personal attack

<sup>2</sup> The Grievance process should not be used to pursue political or private differences or to make 'tit for tat' complaints. It should also not be used for complaints which are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

<sup>3</sup> These should be dealt with using the Council's internal complaints process. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable particularly as Officers do not have the right of reply. Neither is it acceptable to do so in the media, in personal publications or using blogs, tweets, Facebook or other social media.

<sup>4</sup> This grievance procedure is directed at more "workplace" related grievances. Code of Conduct complaints are more external facing and can be made by following this link: <https://www.hart.gov.uk/help-advice-1>

impact on their career development, future promotion or any other aspect of their employment.

### **FORMALLY RAISING A GRIEVANCE**

The aggrieved may raise the grievance formally if:

- they feel raising it informally has not worked
- it's a serious issue
- they do not want to resolve it informally.

It should be made in writing<sup>5</sup> to the Joint Chief Executive (or the Leader of the Council in the event that the complaint is about a Joint Chief Executive) within 15 working days from the date of

- a) the event, which is the subject of the complaint, or
- b) when the event came to the knowledge of the aggrieved.

It should

- outline what the problem is; and
- be copied to the Member against whom the complaint is made.

### **STAGE 1 – FACILITATED RESOLUTION**

1. The Joint Chief Executive and the Group Leader of the member who is the subject of the complaint (or for Independent Members, the Leader of the Council) ("the Facilitation Team") will decide, first, if the complaint has substance<sup>6</sup>. If they:
  - a) agree the complaint has substance, the complaint will move to Step 2; or
  - b) agree the complaint has no substance, the complaint will be closed, with reasons given; or
  - c) cannot agree on the question of substance it will be referred to the Chairman of the Council for adjudication. The decision of the Chairman of the Council will be final.
2. The Facilitation Team will meet with the Officer and the Member complained about to see if on an informal basis the complaint can be resolved. No formal note of the meeting will be made but a note on the outcome will be sent to all participants on a private and confidential basis.

#### **Possible outcome for Steps 1 to 2**

If an agreement is reached between all parties involved, then no further action is required. If no agreement is reached the aggrieved may ask to have the grievance heard at an Appeal Panel.

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<sup>5</sup> In writing means either by hard copy letter or by email from a Hart email account.

<sup>6</sup> The complaint must have something in it and be of meaningful quality.

## **TIME FOR THE RESOLUTION OF THE STAGE 1 PROCESS**

All the Steps should be completed as quickly as possible. Whilst exact timing will depend on the availability of individuals to attend the meetings it is expected that all parties will cooperate and to make themselves available to attend any meeting to ensure that the matter is dealt with speedily (i.e. within 10 working days of the complaint having been found to have substance). If a party fails to attend a meeting or prolongs securing a date for a meeting, without giving an acceptable reason, consideration will be given as to whether the complaint should be dismissed or whether it should continue straight to an Appeal Panel Hearing.

## **STAGE 2 – APPEAL PANEL HEARING (“the Hearing”)**

The aggrieved should, within 10 working days of the completion of Stage 1 (Facilitated Resolution), give the Monitoring Officer written notice to ask to have the complaint heard by an Appeal Panel (“the Panel”).

### **Panel Membership and Chairmanship**

Drawn from the Appeals Committee, the Panel will consist of cross-party membership and comprise three Members, and an Independent Person appointed by the Council under Section 28 of the Localism Act. The Independent Person will be invited to Chair the Hearing (the Panel Chairman).

### **Hearing Arrangement**

The Hearing will normally and be arranged to take place within 15 working days of receipt of the request from the aggrieved to have the complaint heard by the Panel.

### **Confidentiality**

Whilst the outcome of any Hearing will be made public, the Hearing, proceedings and any paperwork which it receives, will remain confidential to all the respective parties to the Hearing. Only those persons who need to know should be given access to relevant information and they in turn, should treat that information as confidential.

### **Hearing Participation**

The parties will be asked to attend the Hearing and they each may be accompanied by a companion<sup>7</sup>. In the absence of a party it will be a matter for the discretion of the Panel as to whether it continues or is rescheduled<sup>8</sup>.

It is not anticipated that any party will bring legal representation. The Hearing is not a form of legal proceedings and grievances should not normally raise points of law.

The aim of the Hearing is:

- reconciliation

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<sup>7</sup> It is anticipated that the companion will not be a legal representative. For a Member the companion may be a fellow Member of the Council or a colleague from a recognised local party association. For an Officer the companion may be a work colleague (i.e. someone employed by the Council) or a Trade Union representative.

<sup>8</sup> If a party cannot be available at the time proposed for the hearing the hearing may be postponed at the sole discretion of the Panel and an alternative time set not more than five working days after the date originally proposed. Only one deferment per party is allowed.

- to put right things that may have gone wrong.

The Monitoring Officer will attend to advise the Panel. A Joint Chief Executive may attend to observe but not participate in the Hearing.

### **Hearing Principles**

Both parties may present their own case, or they may be represented by a companion. The companion can:

- present and/or sum up the respective party's case and say things to support their case
- Make notes and speak to their respective party during the hearing.

Both parties can if they choose, submit a written explanation of their respective case. This must be sent to the Monitoring Officer not less than 5 working days before the Hearing. The submission will be circulated and by the Monitoring Officer to the Panel and the other party subject to the Hearing. No further submissions will be accepted after that.

Neither party (nor any of their respective companions if present) will be allowed to cross-examine or directly question the other party– all comments must be put through the Panel. No party will be allowed to do anything that prevents the other party from explaining their side of things.

### **HEARING PROCEEDINGS**

The Panel Chairman will decide the procedure for the hearing and will reinforce the message that there should be no formal presentation of evidence. It will take the form of a round-the-table discussion managed by the Panel Chairman. It is intended to be an informal process and allows for all parties to respond to any questions that the Panel might have, and to let everyone make their case known.

The Panel Chairman will ensure that while Panel questioning may be thorough, all questioning must be fitting for the relative informality of the Hearing. No questioning shall be leading, argumentative (e.g. badgering), or aggressive. A party may decline to answer a question if they consider the question to be inappropriate.

After the respective cases have been explained and the questioning completed, the Panel Chairman will bring the Hearing to a close. The aggrieved and the Member (and any companions if present) will then leave the room. The Panel and the Monitoring Officer will remain to deliberate and frame the Panel's decision.

### **THE DECISION**

The Panel's decision will be final. The Panel will give a decision as soon as possible after the hearing. An informal decision may be communicated immediately but a formal written note confirming the Panel's final decision will be sent to the aggrieved and the Member within 5 working days of the hearing.

### **DECISION TO UPHOLD A GRIEVANCE**

If a Grievance against a Member is upheld, the Member shall send a suitable written note of apology to the aggrieved within 5 working days of receiving the Panel's decision. The Member must also make a public apology at the first available meeting of Full Council following the Hearing decision.

The Panel may also in serious cases consider recommending to Council (or recommend to the Leader of the Council in respect of a Cabinet member) that consideration should be given to relieving the Member of special duties such as portfolio holder, chairman of a committee or panel, Member of working party, etc.

The Monitoring Officer should also remind the Member that, notwithstanding the action taken under the Grievance Procedure, individuals may have a right to pursue the matter through the relevant legal channels.

DRAFT



## COUNCIL

**DATE OF MEETING:** 26 NOVEMBER 2020

**TITLE OF REPORT:** MEMBERS' CODE OF CONDUCT – UPDATE

**Report of:** Monitoring Officer

### 1 PURPOSE OF REPORT

- 1.1 To consider the recommendations of the Standards Committee (Minute No 4) that minor adjustments be made to the Hart District Council Members Code of Conduct (update with tracked changes attached as Appendix 1). The areas highlighted in **yellow** represent the original changes that were recommended to Standards Committee. The changes recommended post Standards Committee are shown as “tacked” changes in **blue**.
- 1.2 These changes reflect the recommendations of the Parliamentary Committee on Standards in Public Life<sup>1</sup> and a consultation by the Local Government Association on a draft model Code of Conduct<sup>2</sup>.

### 2 RECOMMENDATION

Standards Committee recommends to Full Council that the HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT be adjusted as set out in Appendix 1.

### 3 BACKGROUND

- 3.1 Codes of conduct play an important role in upholding ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

### 4 CONSIDERATIONS

- 4.1 The Parliamentary Committee on Standards in Public Life (PCSPL) highlights the danger of drawing a too narrow scope for the application of the Code of Conduct. It makes it difficult to effectively deal with some instances of poor behaviour, with social media use.
- 4.2 The PCSPL recognises the question of public and private capacity raises significant questions about the privileges and responsibilities of representatives. It says that democratic representatives need to have their right to free speech and expression protected and not unduly restricted; but

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<sup>1</sup> See CSPL website for further details [www.gov.uk/government/news/theprinciples-of-public-life-25-year](http://www.gov.uk/government/news/theprinciples-of-public-life-25-year)

<sup>2</sup> <https://www.local.gov.uk/code-conduct-consultation-2020>

equally the public interest demands that they meet certain responsibilities in that role.

- 4.3 However, it recognises the widespread use of social media presents a particular challenge to deciding whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, the PCSPL consider that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This would be the case even if the individual posts a 'disclaimer' to suggest that the account is a personal one.
- 4.4 The PCSPL also recognises that in individual's private life – that is, private behaviour in a personal capacity – should rightly remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), but it says that those in high-profile representative roles, including councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made while speaking in public or on publicly accessible social media sites.
- 4.5 This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, considering the heightened protection granted to political expression.
- 4.6 **The Parliamentary Committee on Standards in Public Life, therefore, recommends that Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media.**
- 4.7 **It also recommends that local authority's code of conduct should apply to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.**

These recommendations are reflected in the recent consultation by the Local Government Association on a draft model Code of Conduct:

*"The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting] in [public or in] your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where*

*you could be deemed to be representing your council or if there are potential implications for the council's reputation.]"*

- 4.8 The only other change suggested is for completeness to include reference to "harassment" in the context of bullying and intimidation. Harassment is repeated behaviour which upsets or annoys people.

**Contact Details: Daryl Phillips [daryl.phillips@hart.gov.uk](mailto:daryl.phillips@hart.gov.uk)**

Appendix 1 – draft updated Hart Members Code of Conduct 2020

**HART DISTRICT COUNCIL  
MEMBERS' CODE OF CONDUCT 2020  
(DRAFT)**

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## INTRODUCTION

This Code of Conduct (the Code) applies to every elected member and co-opted member<sup>1</sup> of Hart District Council. As a Councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

The Code does not apply to the actions of the authority as a whole, nor to the conduct of its officers and employees. It also does not cover matters under the Localism Act 2011 where criminal sanctions apply.

The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code, and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, at least annually, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code.

A very clear line, however, must be drawn between this Code's requirements of respect for others, including those with opposing views, and the freedom to disagree with the views and opinion of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other. Nothing within this Code seeks to stifle free speech.<sup>2</sup>

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<sup>1</sup> Co-opted member is a person who is not an elected Member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee

<sup>2</sup> Councillors will not be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, considering the increased protection given to political expression (see Advice Note attached)

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## CONTENTS

|  |          |
|--|----------|
| <b>INTRODUCTION .....</b>  | <b>1</b> |
| <b>KEY PRINCIPLES OF THE CODE OF CONDUCT .....</b>   | <b>4</b> |
| Duty .....   | 4        |
| Selflessness.....  | 4        |
| Objectivity .....  | 4        |
| Accountability.....  | 4        |
| Openness .....   | 4        |
| Honesty and integrity .....  | 4        |
| Leadership.....  | 4        |
| Respect 4  |          |
| <b>GENERAL PRINCIPLES .....</b>  | <b>5</b> |
| 1. You must treat others with respect .....  | 5        |
| 2. Do not bully, harass or intimidate another person.....  | 5        |
| 3. Do not compromise the impartiality of anyone who works for, or on behalf of, the Council.....                             | 6        |
| 4. Do not disclose confidential information and you must always comply with data protection principles .....                 | 6        |
| 5. Do not prevent anyone getting information that they are entitled to by law .....  | 6        |
| 6. Do not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else ..... | 6        |
| 7. Do not misuse Council resources .....   | 6        |
| 8. Do have regard to advice from the Monitoring Officer or S151 Chief Finance Officer .....                                  | 6        |
| <b>INTERESTS.....</b>  | <b>7</b> |
| General Principles.....  | 7        |
| Mandatory Registration of Disclosable Pecuniary Interests.....   | 7        |
| Criminal Sanctions .....   | 7        |
| Gifts and Hospitality .....  | 7        |
| <b>OTHER MATTERS .....</b>   | <b>8</b> |
| Conduct at Meetings.....   | 8        |
| Recording, photography and use of social media at meetings .....   | 8        |
| Remuneration, Allowances and Expenses .....  | 8        |
| Appointments to Partner Organisations.....   | 8        |
| Dealings with the Council.....   | 9        |
| Responsibilities to the Council as a Member of the Public .....  | 9        |
| Communications .....   | 9        |
| Training.....  | 9        |

**HART DISTRICT COUNCIL  
MEMBERS' CODE OF CONDUCT 2020**

**DECLARATIONS OF INTERESTS ..... 9**

|   |    |
|---|----|
| Declaration of a DPI at a meeting of the Council .....                      | 9  |
| Dispensations which do not amount to DPIs .....                             | 10 |
| Declaration of "Other" Interests .....                                      | 10 |
| What is so significant that it is likely to prejudice your judgement? ..... | 10 |
| What you should do if you have a "prejudicial" interest .....               | 10 |
| Bias/Predetermination.....  | 11 |
| Dual-Hatted Members.....  | 11 |

**ANNEX 1 ..... 12**

**DISCLOSABLE PECUNIARY INTERESTS..... 12**

**ADVICE NOTE: Article 10 of the European Convention on Human Rights (ECHR).... 14**

**ADVICE NOTE: Use of Social media ..... 15**

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## KEY PRINCIPLES OF THE CODE OF CONDUCT

The following general principles<sup>3</sup> upon which this Code of Conduct is based should be used for guidance and interpretation only. They define the standards that members should uphold and serve as a reminder of the purposes of the Code of Conduct. These principles and the Advice Notes at the end of the Code accompany, but do not form part of, the Code of Conduct itself. However, a failure to act in accordance with these general principles may in itself amount to a breach of the Code of Conduct.

**Duty** - You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

**Selflessness** - You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

**Objectivity** - In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** - You are accountable to the public for your decisions and actions and must submit yourself to the scrutiny necessary to ensure this. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

**Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty and integrity** - You must be truthful and you must not place yourself in situations where your honesty and integrity may be questioned. You must not behave improperly and must on all occasions avoid the appearance of such behaviour.

**Leadership** - You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

**Respect** - You must respect all other councillors and all Council employees and the role they play. Similarly, you must respect members of the public when performing duties as a Councillor.

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<sup>3</sup> Article 28 of the Localism Act 2011.



# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## GENERAL PRINCIPLES

The rules of good conduct apply in all situations where you act, claim to act, or give the reasonable impression or perception that you are acting as a member or representative of Hart District Council<sup>4</sup>

<sup>5</sup>..<sup>6</sup>

You may also act as a representative of the Council on another body, for example where you have been appointed by the Council to an outside body. When acting for that other body, you must comply with the Hart Code of Conduct, unless it conflicts with lawful obligations of the other body.

### 1. You must treat others with respect

You should follow the principles of mutual respect in all your dealings and be prepared to accept that others may have equally strong views in good faith that differ from your own.

You should always treat colleagues with respect and not engage in any behaviour towards other members or staff which might reasonably be interpreted as discriminatory, bullying or harassment.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate and does not in itself amount to bullying or failing to treat someone with respect.

You must be careful not to act in a way which may amount to any of the prohibited form of discrimination or do anything that hinders the Council's fulfillment of its positive duties under equality laws. Such conduct may cause the Council to breach the law, and you may find yourself subject to complaint that you have breached the Code of Conduct.

<sup>4</sup> If you identify yourself or make comments that are clearly related to your role as a councillor, then the Code will apply. This applies in conversation, in writing, or in your use of social media, even if you post a disclaimer that suggests your comments are not official posts (see Advice Note).

It is not disrespectful to question political opinions or to have a different point of view to somebody. It is disrespectful however, to use offensive language or to accuse them of dishonesty, wrongdoing or incompetence without producing any specific evidence, thereby seeking to damage their reputation.

While of course it is legitimate for you to express concern about the way in which a service is run or policy is being implemented by officers, you should avoid undermining, or making detrimental remarks about, individual named officers at meetings, or in any public forum, including on social media. This would be damaging both to effective working relationships and to the public respect for the Council. It is also unfair as in general, staff are unable to defend themselves against criticism in a public forum.

Chairman of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

### 2. Do not bully, harass or intimidate another person

Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Harassment is repeated behaviour which upsets or annoys people.

Intimidation is another form of bullying. It is the act of frightening someone into doing something that they do not otherwise want to do. This usually involves threats that make the person who is subjected to intimidation feel threatened or afraid.

Bullying, harassment and intimidatory conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of any of their colleagues, through the press or social media. It may happen once or be part

<sup>5</sup> The Code does not apply if there is no suggestion that you are acting as a councillor. Councillors are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of the Council

## HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

of a pattern of behaviours, although minor isolated incidents are unlikely to be considered bullying or harassment.

### 3. Do not compromise the impartiality of anyone who works for, or on behalf of, the Council

You should not approach or pressure anyone who works for, or on behalf of, the Council to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### 4. Do not disclose confidential information and you must always comply with data protection principles

There will be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

Legislation also gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out your Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

Personal data is confidential and is protected by the *General Data Protection Regulations* (GDPR). Never share information with family or friends or allow access to personal data disclosed to you in your role as a Councillor.

When conducting Council business, you must only use the email account provided

by the Council. **Personal email addresses that you may have should never be used.**

### 5. Do not prevent anyone getting information that they are entitled to by law

You must not prevent any person from accessing information which they are entitled to by law. This includes information under the *Freedom of Information Act* or the *Environment Information Regulations*.

### 6. Do not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

### 7. Do not misuse Council resources

You should never use the Council's resources or facilities for your own private or business purposes. It is also not appropriate to use, or authorise others to use, the Council's facilities or resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the *Local Government Act (1986)* or similar Act.

### 8. Do have regard to advice from the Monitoring Officer or S151 Chief Finance Officer

If you seek advice, or advice is offered to you, for example, on whether or not you should register an interest, you should have regard to this advice before you make your mind up.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where you disagree with officer recommendations in making a decision, you

# HART DISTRICT COUNCIL

## MEMBERS' CODE OF CONDUCT 2020

will need to take particular care in giving clear reasons for the decision.

### INTERESTS

A failure to comply with the following provisions does not amount to a breach of the Code of Conduct but may result in a criminal offence being committed.

#### General Principles

The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at all meetings that you attend and that your attendance, even as an observer, does not give rise to any suggestion that your presence could influence the outcome of the meeting. The rules which require registration of interests, along with the rules on declaration of interest, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

#### Mandatory Registration of Disclosable Pecuniary Interests

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). They are called "Disclosable Pecuniary Interests" (DPIs)

Regulations made by the Secretary of State describe the detail and timescale for registering DPIs.

You have a DPI if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see Annex 1 attached).

You must, within **28 days of taking office**, notify the Monitoring Officer of any DPI where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

You must also, within **28 days of becoming aware of any new DPI**, or change thereto,

notify the Monitoring Officer of such new or changed interest.

It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year your personal circumstances to ensure that your registration of interests is up to date.

#### Criminal Sanctions

It is a criminal offence if, without a reasonable excuse, you fail to tell the Monitoring Officer about your DPIs.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of the Council where that business involves a DPI.

#### Gifts and Hospitality

You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

You must never ask for gifts or hospitality.

You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in the Council and in local government. As a general guide, it is usually appropriate to refuse offers except:

- a) isolated gifts of a trivial character, the value of which must not exceed £25
- b) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- c) civic gifts received on behalf of the Council.

The receipt of these gifts must be registered with the Council within 28 days. This includes a requirement to disclose the name

# **HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020**

of the person who is believed to be the source of the gift or hospitality.

You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to inspect equipment, vehicles, land, or property that the Council is intending to purchase, then as a general rule you should ensure that the Council pays for the cost of these visits.

You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

You must not accept repeated hospitality or repeated gifts from the same source.

If the Council seeks sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

## **OTHER MATTERS**

The following do not in themselves comprise part of the Code of Conduct. However, you should be aware that a failure to act in accordance with the advice as set out below will be taken into account in any allegation that there has been a breach of the Code of Conduct.

### **Conduct at Meetings**

You must respect the Chairman, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees, or Sub-Committees or of any Public Bodies where you have been appointed by, or represent, the Council. You must comply with rulings from the Chairman in the conduct of the business of these meetings.

### **Recording, photography and use of social media at meetings**

You need to consider your role at meetings and ensure that nothing distracts or stops you from making good and effective

decisions. You may record proceedings in the same way as members of the public, but if you film/record a meeting from a position that is not otherwise available to the public, you must make sure that it:

- is not disruptive, overly intrusive, or impeding good decision making
- does not hinder or prejudice Officers and fellow Councillors from carrying out their duties or participating in the meeting.

As a registered Data Controller, you must also comply with, and demonstrate compliance with, all the data protection principles as well as the other General Data Protection Regulation (GDPR) requirements. In addition, when filming or recording a meeting, you too must comply with any Hart Safeguarding, or corporate Equality Policy and Objectives, as well as the Freedom of Information Act.

### **Remuneration, Allowances and Expenses**

You must comply with the rules for the payment to councillors of remuneration, allowances, and expenses.

### **Appointments to Partner Organisations**

You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

If you become a director of a company as a nominee of the Council, you will assume personal responsibilities under the Companies Acts. A conflict of interest may arise for you between the company and the Council. In such cases, it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest. The same applies if you assume other responsibilities such as becoming a director of a charitable trust.



# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## Dealings with the Council

You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, tenant, or recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action that could lead members of the public to believe that preferential treatment is being sought.

## Responsibilities to the Council as a Member of the Public

The law makes specific provision that if a councillor is in **two months** arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues.

If you owe a debt to the Council, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision that may create suspicion of a conflict of interest.

## Communications

You must be clear when communicating with the media or speaking in public, and particularly if you are using social media, that you do not give the impression you are acting in an official capacity when you are acting in a personal capacity.

Since the judgment of whether you are perceived to be acting as a councillor will be taken by someone else, it is safest to assume that any online activity can be linked to your official role.

## Training

You must attend mandatory training provided by the Council and receive, attend and consider updates when required.

## DECLARATIONS OF INTERESTS

It is your responsibility to make decisions

about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor about a particular matter. You can, of course, seek advice from the Monitoring Officer. In making decisions for which you are personally responsible, you are advised to err on the side of caution.

You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the *objective test* ("the objective test") which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing the Council.

## Declaration of a DPI at a meeting of the Council

Your obligation to disclose a DPI to a meeting applies when you are aware of or ought to be aware of the existence of the DPI.

If you are present in any capacity (and this includes a private capacity) at a meeting of the Council, its executive (Cabinet), or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the Council, and you have a DPI relating to any business that is or will be considered at the meeting, **you must declare that interest and you must not participate in:**

- any discussion of the business at the meeting, or if you become aware of your disclosable DPI during the meeting participate further in any discussion of the business, or
- any vote or further vote taken on the matter at the meeting.

## HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

If the interest is not registered, you must still disclose the interest to the meeting. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

These prohibitions apply to any form of participation including speaking (or even observing the meeting) as a member of the public. **You must leave the room.** You cannot remain in the public gallery even if only to observe any discussion or vote on the matter.

In certain circumstances, you can request from the Monitoring Officer a dispensation from these prohibitions.

### Dispensations which do not amount to DPIs

You do not have a DPI in the following circumstances:

1. Setting of Council Tax or precept or local arrangements for council tax support;
2. Housing: where you (or your spouse or partner) hold a tenancy or lease with the Council as long as the matter does not relate to your particular tenancy or lease;
3. Housing Benefit: where you (or your spouse or partner) directly receive housing benefit in relation to your own circumstances; or
4. An allowance, travelling expense, payment, or indemnity for Councillors.

### Declaration of "Other" Interests

Sometimes you may have "other" interests in a matter if that matter affects the well-being of you, members of your family, or people with whom you have a close association, more than it would affect most people in the ward affected by the decision, or in the Council's area.

An "other" interest can affect you, your family or close personal associates positively and negatively. Therefore, if you or they have the potential to gain or lose from a matter under consideration, a personal interest may need to be declared in both situations.

Your obligation to disclose an "other" interest to a meeting only applies when you are aware of or ought to be aware of the

existence of the personal interest. Providing that the "other" interest does not amount to a "prejudicial" interest, you can remain in the room, participate in any discussion, and vote on the business at the meeting.

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a "prejudicial" interest.

The mere existence of local knowledge or connections within the local community, however, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

### What you should do if you have a "prejudicial" interest

If you have a "**prejudicial**" interest in a matter being discussed at a meeting, even if you are only attending to observe the meeting from the public gallery, you must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to you **and you must leave the room immediately. You cannot stay in the room or the public gallery.**

This Code of Conduct, however, aims in certain circumstances to still provide you with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you will be provided with the same opportunity. You will be able to make representations, answer questions, or give evidence, even if you have a prejudicial interest in the item. **You may not however, take part in the discussion.**

You must **immediately leave after** you have made your representations, given

## HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

evidence, or answered questions, and before any debate starts.

If the meeting decides that you should finish speaking, despite your intention to say more, you must comply with the meeting's decision. Although members of the public may be allowed to observe the discussion and vote on the matter, **you are not allowed to do so and must leave the room immediately**. Failure to do so may be viewed as an attempt to **improperly influence** the meeting.

### Bias/Predetermination

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct but you still need to make clear that you are not biased or predetermined going into the decision making process.

Even though you may have been scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact.

You are entitled to have a **predisposition** one way or another as long as you have not pre-determined the outcome. In essence, you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you might take. You are able to express an opinion providing that you can show that you have come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

However, there is still a need for anyone proposing to participate in decisions to examine their position with scrupulous care. This should be in the light of how proposed involvement is likely to be seen by critical external observers ("the objective test").

### Dual-Hatted Members

Membership of another public body gives rise to a personal interest where you are involved in discussions or decisions relating to that other public body.

You should be able however, to regard most interests arising out of membership of

another public authority as being personal non-prejudicial interests, even where there are financial implications. Examples of the sort of situation where the interest may become prejudicial, and will therefore rule you out of participation in any discussions and decision-making, are:

- a) Consideration of a licensing or planning application submitted by the other authority of which you are a member;
- b) A discussion or decision where two public authorities are in dispute and where litigation is threatened or has been commenced;
- c) Where the financial implications are so significant that one authority would have to reconsider its budget.

**DISCLOSABLE PECUNIARY INTERESTS**

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 **and** it is either the interest of yourself; **or** your partner (which means spouse or civil partner; a person with whom you are living as husband or wife; or a person with whom you are living as if you are civil partners) within the following descriptions:

(In the extracts from the Regulations below, 'M' means you and the 'relevant person' means you and your partner, as above)

| <b>Subject</b>                                    | <b>Prescribed description</b>  |
|---|--|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain  |
| Sponsorship                                       | Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992). |
| Contracts   | Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and Hart District Council - <ul style="list-style-type: none"><li>• under which goods or services are to be provided or works are to be executed; and</li><li>• which has not been fully discharged.</li></ul>   |
| Land  | Any beneficial interest in land that is within the area of Hart District Council.  |
| Licences  | Any licence (alone or jointly with others) to occupy land in the area of Hart District Council for a month or longer.  |
| Corporate tenancies                               | Any tenancy where (to M's knowledge) - <ul style="list-style-type: none"><li>• the landlord is Hart District Council; and</li><li>• the tenant is a body in which the relevant person has a beneficial interest.</li></ul>   |



## HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

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| Securities | <p>Any beneficial interest in securities of a body where -</p> <ul style="list-style-type: none"> <li>• that body (to M's knowledge) has a place of business or land in the area of Hart District Council; and</li> </ul> <p>either -</p> <ul style="list-style-type: none"> <li>• the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li> <li>• if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</li> </ul> |
|------------|--|

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of Hart District Council;

“member” includes a co-opted member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **ADVICE NOTE: Article 10 of the European Convention on Human Rights (ECHR)**

This Advice Note relates to the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression. It also suggests issues councillors should consider to ensure compliance with the provisions in the Codes of Conduct.

Article 10 is a qualified right and, as such, the right to freedom of expression may be limited by a restriction such as the imposition of a sanction for a breach of a Code of Conduct. However, any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued.

Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

Politicians, including councillors, have “enhanced protection as to what they say in the political arena” but by the same token are “expected and required to have thicker skins and have more tolerance to comment than ordinary citizens”.

A councillor’s Article 10 rights extend to “all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others” but do not extend to “gratuitous personal comments”<sup>7</sup>.

You should, therefore, consider both what you are expressing and the way you are expressing it. You should be able to undertake a scrutiny role, represent the public and any constituents, or make a political point in a respectful, courteous and appropriate manner without resorting to personal attacks, being offensive, abusive and/or unduly disruptive.

The following points below summarise some of the principles established by the Courts, in respect of the application of Article 10.

- (i) Enhanced protection of freedom of expression applies to all levels of politics including local.
- (ii) There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.
- (iii) Political expression is a broad concept. There is little distinction between political discussion and discussion of matters of public concern.
- (iv) In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
- (v) The right to freedom of expression is not, however, absolute. Restrictions may be imposed to ensure that the conduct of public life, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.
- (vi) It may be necessary, for example, to protect officers from offensive and abusive verbal attacks. It is in the public interest that officers are not subjected to unwarranted comments that prevented them from performing their duties in conditions free from disturbance.
- (vii) Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians.
- (viii) Public interest in particular information can sometimes be as strong as to override even a legally imposed duty of confidence. In determining whether a restriction is legitimate,

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<sup>7</sup> Done without good reason, unjustified

## HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

however, consideration should be given to whether or not there were sufficient other opportunities for the individual imparting the information to achieve his or her objective.

- (ix) Any restriction on freedom of expression needs, however, to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued (i.e. is there any other way of achieving the restriction's objective).
- (x) The less bad or shocking the conduct, the more difficult it is to justify any restriction on freedom of expression.
- (xi) Communications protected by Article 10 are not limited to speech. They include communications of any kind such as spoken or written words (including social media); pictures, dress, graffiti, acts of protest, even wearing a beard. They include opinion or speculation even if not objectively true. They must, however, be made in a public way.
- (xii) Hate speech is not protected. This includes any expressions of hatred toward someone on account of that person's colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

### ADVICE NOTE: Use of Social media

The continued rise of social media and blogging presents a new way for councillors to engage with their residents. These platforms can be useful for informing residents about local issues and the actions that their elected representatives are taking. It can raise profiles and potentially help to engage a wider audience in local politics. However, it brings additional risks for councillors around the way in which they express themselves.

Social media and blogging are much faster than traditional methods of communication, and users are often anonymous. This can create a tendency towards knee-jerk reactions and responses and intemperate exchanges. Whilst the protection of Article 10 of the European Convention on Human Rights remains, councillors must be particularly careful in the way they communicate where there is any suggestion that they are using these tools in an official rather than private capacity. Comments on blogs, forums or social media are more likely to be viewed as having been made in an official capacity where the author is explicitly identified themselves as councillors, where they impart information which is known to them only by virtue of their elected position, or where they comment directly on council business rather than on wider political issues. Use of disclaimers on blogs and social media does not necessarily mean that what is said falls outside the scope of the Code.

Care also needs to be taken with members of the public as they are able to make comments on what councillors have written since there may be a risk that these would become associated with the councillor if they are not removed.

## COUNCIL

**DATE OF MEETING:** 26 NOVEMBER 2020

**TITLE OF REPORT:** GUIDANCE ON THE CODE OF CONDUCT - PUBLIC INTEREST TEST

**Report of:** Monitoring Officer

### 1. PURPOSE OF THE REPORT

- 1.1 To consider the recommendation from Standards Committee (Minute No 5) that the public interest test, as set out in Appendix 1 for the assessment of allegations that there has been a Breach of the Code of Conduct, be adopted.

### 2 RECOMMENDATION

Standards Committee recommends to Council that:

- A. the public interest test as set out in Appendix 1 be used in the consideration of allegations that a member has broken the Code of Conduct; and
- B. The Hart Code of Conduct Arrangements for Dealing with Allegations be amended to include:
  - a) **Public interest** – Any decision whether to investigate allegations that the Code of Conduct has been broken will be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and follow the public interest tests as set out in Appendix 1).
  - b) **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.

### 3 CONTEXT

- 3.1 The role of Standards Committees is to help councillors achieve the standards of conduct that meet public expectations. It must aim to support proper decision making and the proper use of public resources and to preserve public confidence in local government and in the democratic process itself. Investigations that do not support these wider benefits is not in the public interest.

- 3.2 Because the limited resources available, and the absence of any meaningful sanctions, the Council needs to quickly filter out those complaints that are trivial or which have little or no impact on the public. It also needs to avoid engaging or carrying out investigations that are disproportionate to any outcome that can be achieved or sanction imposed.
- 3.3 It is important that everyone focuses attention on investigating matters that are serious such as corruption, bullying and misuse of power in public office. The complaint must have substance<sup>1</sup> and raise a matter of public interest. Vexatious, malicious, frivolous, or trivial complaints<sup>2</sup> should have no place in these arrangements.

## 4 THE PUBLIC INTEREST TEST

- 4.1 The Parliamentary Committee of Standards in Public Life<sup>3</sup> (PC SPL) recommends that Councils should publish a clear and straightforward public interest test against which allegations are filtered<sup>4</sup>. It highlights the standards bodies in Scotland, Wales and Northern Ireland all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not need to be detailed.

## 5 THE PROPOSAL

- 5.1 Standards Committee recommends the Public Interest Test attached at Appendix 1 is adopted. It follows closely the approach promoted by the PC SPL and reflects the Northern Ireland and Welsh example.
- 5.2 It is also recommended that the Hart Code of Conduct Arrangements for Dealing with Allegations<sup>5</sup> be amended to include:
- c) **Public interest** – Any decision whether to investigate allegations that the Code of Conduct has been broken will be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and follow the public interest tests as set out in Appendix 1).

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<sup>1</sup> The complaint must have something in it and be of meaningful quality.

<sup>2</sup> There is no place for complaints that are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

<sup>3</sup> See CSPL website for further details [www.gov.uk/government/news/theprinciples-of-public-life-25-year](http://www.gov.uk/government/news/theprinciples-of-public-life-25-year)

<sup>4</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>5</sup>

[https://www.hart.gov.uk/sites/default/files/4\\_The\\_Council/Councillors/Help\\_and\\_advice/Arrangements%20for%20dealing%20with%20Allegations%20draft%20February%202020%20versG.pdf](https://www.hart.gov.uk/sites/default/files/4_The_Council/Councillors/Help_and_advice/Arrangements%20for%20dealing%20with%20Allegations%20draft%20February%202020%20versG.pdf)

- d) **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.

**Contact Details: Daryl Phillips [daryl.phillips@hart.gov.uk](mailto:daryl.phillips@hart.gov.uk)**

Appendix 1 – PUBLIC INTEREST CONSIDERATIONS

## PUBLIC INTEREST CONSIDERATIONS

The purpose of the Codes of Conduct is to help councillors achieve the standard of conduct which meets public expectations. The aim is to support proper decision making and the proper use of public resources. Undertaking investigations that do not support these wider benefits is not in the public interest.

The resources should not be used to investigate matters which are trivial, or which have little or no impact on the public. Any decision whether to investigate allegations that the Code of Conduct has been broken will be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation.

Complaints will be investigated where the allegations have substance<sup>6</sup> and are reasonably considered to be serious matters such as corruption, bullying and misuse of power in public office for example<sup>7</sup>. Allegations are unlikely to be investigated where the matter complained about does not raise a significant matter of public interest.

There is no widely accepted definition of the public interest, but this has been described as “*something which is of serious concern and benefit to the public*”. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the whole of Hart District. It may refer to a distinct section of the public such as a small community or interest group.

### 1. Seriousness

The more serious the alleged breach, the more likely it is that it will be investigated.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor was at responsible for or was to blame for the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person.

#### **a) To what extent was the councillor responsible for or to blame for the conduct complained of?**

Questions of responsibility or blame are likely to be determined by the councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned<sup>8</sup>; whether they have previously been investigated for a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has

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<sup>6</sup> The complaint must have something in it and be of meaningful quality

<sup>7</sup> The application of the investigations not limited to these matters

<sup>8</sup> There must also be some evidence of deliberate fault. If a councillor has made a genuine mistake despite taking reasonable care, then it is unlikely that it will be in the public interest to investigate a complaint simply because it so happened that a breach of the Code of Conduct may have occurred.

escalated; the councillor's length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

**b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?**

In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and must be taken into consideration<sup>9</sup>.

Particular regard will be taken of whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor showed hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, the views expressed by the complainant, about the impact the alleged breach has had on them will be considered.

## **2. Proportionality**

Account must always be taken of the resource implications any investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be taken based on resource alone, but it is a relevant consideration when making an overall assessment.

These considerations will help in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Cod, and that it has caused a personal injustice.

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<sup>9</sup> Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the Councillor complained about.