

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Committee:</b>	Conduct Advisory Panel
<b>Date:</b>	30 January 2024
<b>Title:</b>	Proposed Amendment to the County Council's Arrangements for Dealing with Complaints Against Members
<b>Report From:</b>	Director of People and Organisation

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### Purpose of this Report

1. The purpose of this report is to consider the County Council's request that the Conduct Advisory Panel consider amending the County Council's Arrangements for dealing with complaints against Members specifically in relation to a Member who has been found to have expressed racist or unlawfully discriminatory beliefs publicly.

### Recommendations

2. That the Conduct Advisory Panel note the County Council's request that it consider amending the County Council's Arrangements for dealing with complaints against Members to include reference to the Council's ability to invite a Member to resign as part of an action of censure determined by the Council in accordance with those arrangements when a Member is found to have expressed racist and or unlawfully discriminatory beliefs publicly.
3. That the Conduct Advisory Panel approve the revised wording of section 12 of the County Council's *Arrangements for dealing with the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Code of Conduct for Members* set out in Annex 2.

### Executive Summary

4. At its Annual General Meeting on 18 May 2023, the County Council received an exceptional All-Party Notice of Motion proposing a number of anti-racism actions to be taken by the County Council. The Notice of Motion is set out at Annex 1.

5. The County Council unanimously resolved to take the actions proposed in the All-Party Notice of Motion to help prevent future incidents of racism or unlawful discrimination by its councillors and to ensure that the County Council is fully equipped to deal suitably with any such incident that does occur.
6. The County Council's second resolution was as follows:

“To request that the County Council's Conduct Advisory Panel considers amending the County Council's Arrangements for dealing with complaints against Members to include reference to the Council's ability to invite a Member to resign as part of an action of censure determined by the Council in accordance with those arrangements when a Member is found to have expressed racist and or unlawfully discriminatory beliefs publicly.”
7. This report recommends that the Conduct Advisory Panel note the County Council's request and proposes a revision to the wording of the County Council's *Arrangements for dealing with the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Code of Conduct for Members* (“the County Council's Member Complaints Arrangements”) as described in the report.

### **Contextual information**

8. The All-Party Notice of Motion was made at the County Council's Annual General Meeting on 18 May 2023 in response to an incident in which a County Councillor, using a personal Twitter account with a picture of their face, posted a comment which generated a significant number of complaints that the comment was racist and caused the Member concerned to refer the matter to the Monitoring Officer.
9. The Member subsequently resigned from their political group, their appointments to all Council Committees and from all external appointments but remained a Member of the Council.
10. The premise of the All-Party Notice of Motion was that Members of the County Council should all be held to account, ensuring they promote equality and diversity in all that they do. Failing to do so has the potential to bring not only the individual, but the County Council and all Members into disrepute. The All-Party Notice of Motion considered that it is incongruent that Councillors should hold racist and or discriminatory views, whilst simultaneously considering themselves fit and able to represent all of Hampshire's residents, including every person from an ethnic minority and diverse background.
11. The County Council resolved to take all the actions proposed by the All-Party Notice of Motion which, aside from the request to the Conduct Advisory Panel set out in this report, comprised a request that the Leader of the Council write to

Government to request an amendment be made to the legislation governing local authorities' councillor codes of conduct, internal measures to ensure that Members are made aware of the conduct that is expected of them and the appointment of an Anti-Racism Champion.

12. Pursuant to Part 1, Chapter 9, paragraph 1.3.3 of the Constitution of Hampshire County Council, the Terms of Reference of the Conduct Advisory Panel include determining revised arrangements for the assessment, investigation and determination of allegations of breach of the Members' Code of Conduct. The current such arrangements are contained in the County Council's Member Complaints Arrangements.

## **Issues**

13. In accordance with the current legislative framework<sup>1</sup> governing Member conduct and the common law, where a Member has been found to have breached the Code of Conduct for Members, the sanctions available to the Hearing Panel are that it may:
  - Report its findings to the County Council for information;
  - Recommend to the County Council that the Member concerned be censured by resolution of the County Council;
  - Recommend to the Member's group leader that the Member be removed from the Executive and / or Committees of the County Council and / or Outside Bodies (as appropriate), such removal requiring a decision of the County Council;
  - Instruct the Monitoring Officer to arrange such training for the Member as the Hearing Panel considers appropriate.
14. A Hearing Panel has no power to suspend or disqualify a Member or withdraw a Member's allowances. Under previous standards legislation, standards committees did have the power to suspend a councillor for a fixed period of time following the finding of a breach, however this was not replicated in the current legislation.
15. The Committee on Standards in Public Life recommended in its report entitled *Local Government Ethical Standards A Review by the Committee on Standards in Public Life* (January 2019) that local authorities should be given the power to suspend councillors, without allowances, for up to six months but that:

“A local authority should only be able to suspend a councillor where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction”.

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<sup>1</sup> Localism Act 2011, Chapter 7

16. However, in its response to the CoSPL's report (in March 2022), the Government did not accept this recommendation saying that it was a deliberate policy of the 2010 coalition government at the time of the Localism Act 2011 to differentiate from the previous failed Standards Board regime, which had allowed politically motivated and vexatious complaints which had a chilling effect on free speech within local government. The Government took the view that all councillors are ultimately held to account via the ballot box and that political parties are unlikely to reselect councillors who have brought their group or party into disrepute.
17. The County Council has requested the Conduct Advisory Panel to consider amending the County Council's Arrangements for dealing with complaints against Members to include reference to the Council's ability to invite a Member to resign as part of an action of censure determined by the Council in accordance with those arrangements when a Member is found to have expressed racist and or unlawfully discriminatory beliefs publicly.
18. If, when resolving to censure a Member, the County Council were also to resolve to invite that Member to resign from office, such a resolution may foreseeably give rise to confusion by Members of the County Council, the Member being censured and/or members of the public regarding the extent of the County Council's lawful powers to impose sanctions upon Members who have been found to have failed to comply with the Code of Conduct for Members. It may be that the Member being censured might not fully recognise that the County Council does not have the power to require the Member to resign or might feel inappropriately pressured to resign from an office to which they have been elected.
19. However, it is proposed instead that the Hearing Panel, having heard all the relevant evidence and having made findings of fact, might reasonably decide to express its view that the circumstances of the misconduct are such that the Member concerned ought to consider resigning from office. It is further proposed that, before reaching such a decision, the Hearing Panel will take into account the views of the Independent Person as well as any representations made by the Member concerned. Any such view of the Hearing Panel would then be reported to the County Council alongside the recommendation that the Member concerned be censured by resolution of the County Council.
20. In this way, the seriousness of the misconduct would be underscored for the benefit of Members of the County Council when deciding whether to resolve to censure the Member concerned as well as for the benefit of Hampshire's residents but the risk of confusion arising concerning the lawful powers of the County Council would be lower.
21. It is therefore proposed that an amendment be made to the County Council's Member Complaints Arrangements in circumstances where a Hearing Panel has determined that a Member has failed to comply with the Code of Conduct for Members by reason of having expressed what the Hearing Panel considers

to be racist and/or unlawfully discriminatory beliefs publicly and has determined to recommend to the County Council that the Member be censured by resolution of the County Council, to provide that the Hearing Panel may additionally decide that the circumstances of the misconduct are such that, in its view, the Member ought to consider resigning from office. A copy of section 12 of the County Council's Member Complaints Arrangements showing the amended wording with tracked changes is set out in Annex 2.

## **Finance**

22. There are no financial implication arising from this report.

## **Performance**

23. If agreed, the amended provision in the County Council's Member Complaints Arrangements will enable a Hearing Panel in dealing with such conduct to give its view that the Member concerned ought to consider resigning from office. This would help to underscore the seriousness of the misconduct for the benefit of Members of the County Council when deciding whether to resolve to censure the Member concerned as well as for the benefit of Hampshire's residents.

## **Consultation and Equalities**

24. There are no adverse equality impacts deriving from the Recommendations set out in this Report.

## **Climate Change Impact Assessment**

25. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

26. The carbon mitigation tool and/or climate change adaptation tool were not applicable because the decision is administrative in nature.

**REQUIRED CORPORATE AND LEGAL INFORMATION:**

**Links to the Strategic Plan**

**This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:**

**It relates to the good governance of the County Council**

**Other Significant Links**

**Links to previous Member decisions:**

<u>Title</u>	<u>Date</u>
Hampshire County Council Resolution on Motion 12(b)	18 May 2023

**Direct links to specific legislation or Government Directives**

<u>Title</u>	<u>Date</u>
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**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
None	

## **EQUALITIES IMPACT ASSESSMENT:**

### **27. Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

### **28. Equalities Impact Assessment:**

- a. There are no adverse equality impacts deriving from the Recommendations set out in this Report.

Notice of Motion (as amended) submitted to Hampshire County Council at its  
Annual General Meeting on 18 May 2023

**Item 12(b) - All Party Notice of Motion – Anti-Racism**

**Proposers:**

Councillor Prad Bains (Independent), Councillor Arun Mummalaneni (Conservative), Councillor Keith House (Liberal Democrat) and Councillor Kim Taylor (Labour).

**Seconders:**

Councillor Louise Parker-Jones (Independent), Councillor Juliet Henderson (Conservative), Councillor Adrian Collett (Liberal Democrat) and Councillor Jacky Tustain (Labour).

Racist and discriminatory views should have no place in society, but unfortunately, we continue to see incidents of abuse occurring.

Individuals who post or comment racist and or unlawfully discriminatory views need to be held to account, and as Members, we too should all be held to account, ensuring we also promote equality and diversity in all that we do. Failing to do so has the potential to bring not only the individual, but our Authority and all of us into disrepute. We are proud to live in and represent a diverse, inclusive and multi-cultural Hampshire and we stand proudly against discrimination and racism, in any form.

All our Groups remain appalled that the County Council is powerless to address such behaviour from its Members, when not acting in their official capacity as a Member of the County Council.

In any other walk of life, an expression of racism towards another person would undoubtedly be addressed appropriately. Unfortunately, the County Council finds itself in a position whereby it cannot address racist and or unlawfully discriminatory posts by Members when not acting in their official capacity as a Member of the Council, and as it stands, remains unable to address them again in the future.

It is incongruent that Councillors should hold racist and or discriminatory views, whilst simultaneously considering themselves fit and able to represent all of Hampshire's residents, including every person from an ethnic minority and diverse background.

This motion is written to help prevent any future incidents of racism and or unlawful discrimination from occurring from Hampshire County Councillors and importantly, to also ensure that the County Council is fully equipped to suitably deal with any such incident from this point onwards.



Martin Luther-King once said, "Our lives begin to end the day we become silent about things that matter." This is our chance to stand up and speak up, to show Hampshire's residents that we take the issue of racism seriously and to seek to ensure that we are able to address racism and discrimination by Members in all forms, from this point onwards.

We propose that the County Council resolves:

(a) To request that the Leader of the Council writes to Government to request that the code of conduct legislation is amended, so that when racist and discriminatory remarks are made by a Councillor, in a public forum, their actions should fall within the scope of the Council's Code of Conduct.

(b) To request that the County Council's Conduct Advisory Panel considers amending the County Council's Arrangements for dealing with complaints against Members to include reference to the Council's ability to invite a Member to resign as part of an action of censure determined by the Council in accordance with those arrangements when a Member is found to have expressed racist and or unlawfully discriminatory beliefs publicly.

(c) To request that the Leader of the Council creates the position of an Anti-Racism Champion for Hampshire County Council and to appoint a Member to this role prior to the next Council meeting.

(d) To request that the Executive Member for the portfolio inclusive of inclusion & diversity, ensures that equality, diversity and inclusion training is available for all Members annually.

Extract from Hampshire County Council's Arrangements for dealing with the Assessment, Investigation and Determination of Complaints that a Member or Co-opted Member of the County Council has failed to comply with the Code of Conduct for Members with proposed amendments

**“12 Action following Hearing**

12.1 The Hearing Panel will reach one of two conclusions:

- 12.1.1 That the Subject Member failed to comply with the Code of Conduct for Members; or
- 12.1.2 That there was no failure by the Subject Member to comply with the Code of Conduct for Members.

12.2 Where the Hearing Panel has reached a conclusion in accordance with para 12.1, the Monitoring Officer shall prepare a decision notice in consultation with the Chair of the Hearing Panel and shall send it to the Complainant and the Subject Member. The Monitoring Officer shall make arrangements for the publication of the decision notice or, where appropriate, a summary of the decision notice on the County Council's website.

12.3 Where the Hearing Panel's decision is that there was a failure by the Subject Member to comply with the Code of Conduct for Members, the Hearing Panel may:

- 12.3.1 Report its findings to the County Council for information
- 12.3.2 Recommend to the County Council that the Subject Member be censured by resolution of the County Council
- 12.3.3 Recommend to the Subject Member's group leader that the Subject Member be removed from the Executive and / or Committees of the County Council and / or Outside Bodies (as appropriate).
- 12.3.4 Instruct the Monitoring Officer to arrange such training for the Subject Member as the Panel considers appropriate.

NB: A Hearing Panel has no power to suspend or disqualify a Member or to withdraw a Member's allowances. Removal of a Member from a Committee or Outside Body will require a formal decision of the County Council.

12.4 Where the Hearing Panel has determined:

12.4.1 that a Subject Member has failed to comply with the Code of Conduct for Members by reason of having expressed what the Hearing Panel considers to be racist and/or unlawfully discriminatory beliefs publicly; and

12.4.2 to recommend to the County Council that the Subject Member be censured by resolution of the County Council pursuant to subparagraph 12.3.2 above.

the Hearing Panel may additionally decide that the circumstances of the misconduct are such that it is the view of the Hearing Panel that the Subject Member ought to consider resigning from office. Before reaching such a decision, the Hearing Panel will take into account the views of the Independent Person as well as any representations made by the Subject Member. Any such view of the Hearing Panel will be reported to the County Council alongside the recommendation that the Subject Member be censured by resolution of the County Council.

12.5 Where the decision of the Hearing Panel is that there has been no breach of the Members' Code of Conduct, then that is the end of the procedure.”