

# HAMPSHIRE COUNTY COUNCIL

## Decision Report

<b>Decision Maker:</b>	Conduct Advisory Panel
<b>Date:</b>	1 December 2017
<b>Title:</b>	Amendment of the Localism Act 2011 requiring a change to the Arrangements for the Assessment, Investigation and Determination of Complaints of Breach of the Code of Conduct for Members of the County Council
<b>Report From:</b>	Director of Transformation & Governance

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### 1. Executive Summary

- 1.1. This report seeks approval of a change to the County Council's arrangements for the assessment, investigation and determination of complaints of breach of the Code of Conduct for Members and Co-opted Members of the County Council (the Arrangements) in consequence of an amendment to the Localism Act 2011, requiring that specific provision is made concerning the handling of complaints against the Police and Crime Commissioner for Hampshire (the Commissioner) in his capacity as a Co-opted Member of the Hampshire Health and Wellbeing Board.

### 2. Contextual Information

- 2.1. Section 28(6) of the Localism Act 2011 requires the County Council to put in place arrangements in respect of the assessment, investigation and determination of complaints of breach of the Code of Conduct for Members. Delegated authority to determine such arrangements was given to the Conduct Advisory Panel by the County Council at its meeting on 17 May 2012, and the Panel approved the Arrangements at its meeting on 30 October 2012.
- 2.2. The Policing and Crime Act 2017 recently inserted provisions into section 28 of the Localism Act 2011 requiring any complaint received by a relevant authority against a police and crime commissioner who is a Member or Co-opted Member of the Authority in his/her capacity as such to be referred to the relevant Police and Crime Panel. In addition, any report or recommendation by that Panel in respect of the complaint must be taken into account in the Authority's determination of whether its Members' Code of Conduct has been breached.

- 2.3. As Members will be aware, it is possible for some Councils themselves to be Fire and Rescue Authorities and, following the implementation of certain other provisions of the Policing and Crime Act 2017, Police and Crime Commissioners may be represented on Fire and Rescue Authorities. Addressing this change may be the purpose behind the amendments made to section 28 of the Localism Act 2011.
- 2.4. However the amendments are widely drawn and consequently capture the County Council in respect of the Police and Crime Commissioner's membership of the Hampshire Health and Wellbeing Board. Accordingly, the Arrangements require revision to comply with the legislation.

### **3. Proposed Amendments to the Arrangements**

- 3.1. The Arrangements incorporating the proposed amendments are contained at Appendix 1, the amendments being highlighted in italics in the text for ease of reference only.
- 3.2. The proposed amendments take into account both the requirements of the legislation and the procedural implications of the changes, and are explained further below:-

#### **a) Referral of Complaints**

- Any complaint against the Commissioner received by the County Council shall be referred to the Hampshire Police and Crime Panel. The County Council will inform the complainant of the referral at the same time as acknowledging receipt of the complaint and will explain the process. It is proposed that the County Council also notify the Commissioner of the receipt and referral of the complaint.

#### **b) Considering Complaints and Suspending the Complaint Process**

- It is anticipated that it will only be in limited circumstances that a complaint against the Commissioner might relate to his conduct as a Co-opted Member of the Health and Wellbeing Board. However in such circumstances, the Commissioner will be subject to both his own code of conduct (overseen by the Hampshire Police and Crime Panel) and the County Council's Code of Conduct for Members.
- In handling a complaint against the Commissioner in his capacity as a Co-opted Member, the County Council must take into account any report or recommendation made by the Police and Crime Panel before determining whether the Commissioner has failed to comply with the Code of Conduct for Members, whether to take action in relation to the Commissioner and what action to take. It is not normally in the public interest for two organisations to be considering the same complaint separately and these provisions promote a more joined up response.
- In order to comply with this requirement, it is suggested that the Monitoring Officer suspend handling the complaint under the Arrangements until the Police and Crime Panel has considered the complaint. It is proposed therefore that, following receipt of a

complaint against the Commissioner, the Monitoring Officer consider it at the initial validation stage of the Arrangements and if she determines that the first two initial validation tests are satisfied, she suspend handling the complaint under the Arrangements until the Police and Crime Panel has either provided a report or recommendation for the County Council to consider, or has decided not to provide such a report or recommendation.

- If the complaint relates to an alleged criminal matter, the Police and Crime Panel must refer the complaint to the Independent Police Complaints Commission. In such circumstances, before deciding how to proceed, the Monitoring Officer will need to establish whether the matter will be referred back to the Police and Crime Panel for consideration.
- If the Monitoring Officer determines that either of the first two initial validation tests are not satisfied, the complaint will not be validated and the County Council's involvement with handling the complaint will end. The relevant parties will be notified accordingly.

c) Obtaining the Panel Report / Recommendation or Confirmation that the Panel does not intend to make a Report/Recommendation

- The Police and Crime Panel has discretion whether to make a report or recommendation to the County Council about a complaint, and there is no express obligation upon that Panel to notify the County Council that it intends not to do so. That being the case, the onus will fall upon the Monitoring Officer to seek timely confirmation from the Police and Crime Panel concerning its intentions via the Panel's scrutiny officer, and a simple process for this will be adopted. This should avoid unnecessary delays in the County Council's handling of the complaint against the Commissioner.

d) Resuming the Complaint Process

- The Monitoring Officer will resume handling the complaint upon receipt of the Police and Crime Panel's report / recommendation or confirmation of the Panel's intention not to make a report / recommendation. It is then expected that the normal timescales provided in the County Council's Arrangements will apply.
- The Monitoring Officer will be required to ensure that, at each stage of the Arrangements, the contents of any report / recommendation received by the Police and Crime Panel are taken into account as appropriate.

#### **4. Recommendation**

4.1. It is recommended that the Conduct Advisory Panel approve the revised arrangements in respect of the assessment, investigation and determination of complaints of breach of the Code of Conduct for Members contained at Appendix 1 to this report.

**CORPORATE OR LEGAL INFORMATION:****Links to the Strategic Plan**

**This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because of the requirements of the Localism Act 2011, and for the good governance of the County Council.**

**Other Significant Links**

<b>Links to previous Member decisions:</b>	
<u>Title</u>	<u>Date</u>
Localism Act 2011 - Standards Update	2 March 2012
Localism Act 2011 - Revised Standards Arrangements	30 April 2012
Localism Act 2011 – Interim Standards Arrangements	17 May 2012
Localism Act 2011 - Revised Standards Arrangements – Interim Code of Conduct for Members of the County Council and related Matters	15 June 2012
Localism Act 2011 – Revised Standards Arrangements – new Code of Conduct for Members of the County Council	19 July 2012
Revised Arrangements for the Assessment, Investigation and Determination of Complaints of breach of the new Code of Conduct for Members of the County Council	4 September 2012
<b>Direct links to specific legislation or Government Directives</b>	<b>Date</b>
<u>Title</u>	
Localism Act	2011
Localism Act 2011 (Commencement No. 6 and Transitional Savings and Transitory Provisions Order)	2012
Policing and Crime Act	2017

**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.)**

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equality Duty**

1.1. 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 under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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

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

#### **1.2. Equalities Impact Assessment:**

Equalities have been considered and there are no identified impacts.

### **2. Impact on Crime and Disorder:**

2.1. No identified impact.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

No identified impact.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

No identified impact.