

CONSTITUTION AND ETHICS SUB-COMMITTEE

MONDAY 1 APRIL 2019
3.00 PM

Forli Room - Town Hall

AGENDA

Page No

- | | | |
|----|--|--------|
| 1. | Apologies for Absence | |
| 2. | Declarations of Interest | |
| 3. | Determination of Code of Conduct Hearing | 3 - 52 |

Emergency Evacuation Procedure – Outside Normal Office Hours

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Committee Members:

Councillors: Bashir, Iqbal and D Seaton

Further information about this meeting can be obtained from Dan Kalley on telephone 01733 296334 or by email – Daniel.kalley@peterborough.gov.uk

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| CONSTITUTION AND ETHICS COMMITTEE Hearing Panel Sub-Committee | AGENDA ITEM No. 3 |
| 1 APRIL 2019 | PUBLIC REPORT |

| | | |
|---------------------|---|-------------------|
| Report of: | Fiona McMillan, Director of Governance and Monitoring Officer | |
| Contact Officer(s): | Fiona McMillan, Director of Governance and Monitoring Officer | Tel. 01733 452361 |

| RECOMMENDATIONS | |
|--|---------------------------|
| FROM: Fiona McMillan, Director of Governance and Monitoring Officer | Deadline date: N/A |
| <p>It is recommended that Hearing Panel Sub-Committee of the Constitution and Ethics Committee:</p> <ol style="list-style-type: none"> 1. Hear and determine the complaints that have been referred to them by the Monitoring Officer; and 2. Subject to a finding that there has been a breach of the Code of Conduct, determine and issue any appropriate sanctions. | |

1. ORIGIN OF REPORT

1.1 This report is submitted to the Hearing Panel Sub-Committee of the Constitution and Ethics Committee (“the Hearing Panel”) following receipt of two complaints which, after investigation, has concluded that the Code of Conduct has been breached and alternative/informal resolution is not possible.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this Report is to meet the requirements of the Council’s Hearings Procedure (**Appendix A**) which requires the Monitoring Officer to convene a meeting of the Hearing Panel in the circumstances described at paragraph 1.1.

2.2 This report is for the Hearing Panel to consider under its Terms of Reference No. 2.7.3.3:

- Hearing and determining complaints that have been referred to them by the Monitoring Officer pursuant to the Complaints procedure;
- Issuing sanctions where considered appropriate against a member found to be in breach of the Code of Conduct.

3. TIMESCALES

| | | | |
|---|-----------|----------------------------------|-----|
| Is this a Major Policy Item/Statutory Plan? | NO | If yes, date for Cabinet meeting | N/A |
|---|-----------|----------------------------------|-----|

4. BACKGROUND AND KEY ISSUES

4.1 In March 2018 the Monitoring Officer received complaints from the Mayor, Councillor John Fox and the Council's Leader, Cllr John Holdich, concerning alleged breaches of the Code of Conduct (**Appendix B**) by Councillor Fower. The complaints both related to a campaign that Cllr Fower had launched in response to the closure of the council chamber's public gallery during full council

meetings following health and safety concerns having arisen following a council meeting in July 2017. Cllr Fower had publicised his campaign, which included a petition, through various social media channels and direct emails, within which he attributed the decision to close the gallery to Cllr Fox. Within the body of the email, which was also published in a letter from Cllr Fower on the Peterborough Telegraph's Letters Page on 1st March 2018, Cllr Fower stated:

"WE should not be barred and such fascist tendencies NEED to end NOW!"

Cllr Fox considered this remark to be personally insulting towards him and capable of bringing the Council into disrepute. Cllr Holdich considered the remark to be extremely offensive and disrespectful to Cllr Fox both as Mayor and personally. He also highlighted that Cllr Fower had been collecting signatures for the petition and had then gone on to use people's contact details without their knowledge or permission to generate emails to the Council's Chief Executive, the Leader and the Mayor in breach of data protection legislation.

- 4.2 In accordance with good governance and the Guidance for Complaining Against a Councillor (**Appendix C**) the Monitoring Officer notified Cllr Fower of the complaint and invited his comment with a view to assessing whether or not the matter was capable of an alternative resolution.
- 4.3 In view of an alternative resolution not having been achieved, the Monitoring Officer, in consultation with the Independent Person, determined that the complaints should be referred for investigation and Alex Oram ("the Investigating Officer") of CH&I Associates was appointed.
- 4.4 Following conclusion of the investigation, the Investigating Officer concluded that Cllr Fower had breached the Council's Code of Conduct by failing to promote and support high standards of conduct and leadership when serving in his public post. Further the Investigating Officer considered that the complaints could be resolved informally but that in his view, any resolution would have to involve Cllr Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this the Investigating Officer confirmed that his recommendation would be a referral to the Hearing Panel. As it has not been possible to reach an informal resolution Monitoring Officer has acted upon the recommendation to refer the matter for determination by the Hearing Panel as recommended. A copy of the report is attached at **Appendix D**.

5. CONSULTATION

- 5.1 There are no specific consultation requirements however, the Hearings Procedure requires that the Monitoring Officer contacts the Council's Independent Person advising them of the referral of the complaint to the Hearing Panel and inviting them to provide a written report on the complaint for referral to the Hearing Panel. The Monitoring Officer has fulfilled this requirement and the Independent Person has provided a report (**Appendix E**) which has been submitted for consideration by the Hearing Panel as part of the agenda pack.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 It is anticipated that members of the Hearing Panel will, after carefully considering information from the Investigating Officer, the Subject Member and the Independent Person, determine whether or not there has been a breach of the Code of Conduct and if so, determine what if any sanctions should be issued. In terms of the sanctions that may be imposed, these are limited to those which are set out on the final page of the Hearings Procedure.

7. REASON FOR THE RECOMMENDATION

- 7.1 The recommendations are made in compliance with the Monitoring Officer's legal obligations and in accordance with the Council's Hearings Procedure.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 In view of the outcome of the investigation, the Hearings Procedure requires that the Monitoring Officer decides, in consultation with the Independent Person, whether to send the matter for local hearing before the Hearing Panel, or seek an alternative resolution. It has not been possible to agree an alternative resolution meaning that the Monitoring Officer has no option other than to refer the matter to the Hearing Panel in order to comply with the Council's Hearing Procedure.

9. IMPLICATIONS

Financial Implications

- 9.1 None.

Legal Implications

- 9.2 The Hearing Panel must consider the complaint and determine what if any sanctions to apply in accordance with the Hearings Procedure both to ensure that the Subject Member has a fair hearing and that the sanctions do not go beyond legal constraints.

Equalities Implications

- 9.3 There are none.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 All documents relevant for consideration by the Hearing Panel are either appended to this Report or contained within the Agenda pack.

11. APPENDICES

- 11.1 Appendix A: Hearings Procedure
Appendix B: Code of Conduct
Appendix C: Guidance for Complaining Against a Councillor
Appendix D: Investigating Officers Report
Appendix E: Report of Peterborough City Council's Independent Person

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COMPLAINTS AGAINST MEMBERS

HEARINGS PROCEDURE

In accordance with the Protocol for dealing with complaints the Constitution and Ethics Committee will only meet where

- A request for dispensation has been made to vote on a matter in which a Councillor has a disclosable pecuniary interest
- The Constitution and Ethics Committee receives a referral from the Monitoring Officer for a decision as to whether a matter ought to be referred for investigation
- an investigation has been conducted following a complaint which has concluded that the Code of Conduct has been breached and alternative/informal resolution is not possible.

This is a guidance note setting out how a panel of three members of the Constitution and Ethics (Hearings Panel) will hear complaints that the Code of Conduct has been breached. The purpose of a hearing will be to determine if the panel agrees with the findings of the investigation.

1. Following receipt of the investigation report the Monitoring Officer will write to the complainant and the member complained of (the “subject member”) and advise them of the intention to refer the investigation report to the Hearings Panel for a decision.
2. The Monitoring Officer will contact the council’s Independent Person advising them of the referral of the complaint to the Hearings Panel and invite the Independent Person to provide written report on the complaint for referral to the Panel.
3. Once notified of the date of the hearing the complainant and the subject member must submit any further evidence and/or witness statements to the Monitoring Officer at least 14 days in advance of the hearing date.
4. All paperwork submitted to the Monitoring Officer will be collated into a report for the Hearings Panel and issued in accordance with the statutory requirements for access to information.
5. The hearing will usually be held in public. Should the complainant or subject member want the hearing to be held in private, they should provide reasons why the information is confidential at least 21 days prior to the hearing so that the Monitoring Officer can consider whether the report should be marked confidential.
6. The decision regarding confidentiality is at the discretion of the Monitoring Officer. If the Monitoring Officer decides that the papers are confidential that decision will be subject to review by the Panel before they go into private (exempt) session to decide the matter.

7. The hearing will be before a panel of 3 members drawn from the Constitution and Ethics Committee who have received hearings training.
8. One of the members present will be elected Chairman.
9. The Independent Person [IP] appointed under section 28 of the Localism Act 2011 will also be present to sit alongside the panel. Their opinion will be taken into account by the Panel, but by law the Independent Person may not vote.
10. The Monitoring Officer or Deputy Monitoring Officer will be present as advisor to the Panel.
11. The investigating officer will attend to present the investigation report and may invite the complainant to appear as a witness or call other witnesses.
12. The subject member will be invited to attend and may present their own case or they may be represented.
13. The subject member may bring witnesses (of a number the Panel considers is reasonable). "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.
14. The cost of any attendance/representation must be borne by the party concerned.
15. Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.
16. The Monitoring Officer can speak at any time to advise the Panel on technical matters or ask questions of any party.

A procedure note regarding the detailed hearing process is attached at appendix A

Hearing process note: Code of Conduct complaints

| HEARING PROCEDURE | |
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| PRELIMINARY MATTERS | |
| 1 | The Chairman of the Panel will introduce the members of the Panel, the Independent Person, officers, the councillor, the investigating officer and the complainant if present. |
| 2. | The Chairman will explain the reason for the meeting and outline the procedure to be followed. The Chairman may choose to vary this procedure if they are of the opinion that such a variation is necessary in the interests of fairness. |
| 3. | The Chairman will also explain that the hearing will normally be held in public unless the Panel exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972. |
| 4. | The Monitoring Officer will confirm whether there has been a request for the hearing, or any part of it to be held in private. |
| 5. | The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the Hearing begins |
| 6. | If any procedural issues are raised, the Panel will hear representations on them and determine them before beginning the hearing. |
| 7. | If the Councillor is not present at the start of the hearing, the Panel will consider any reasons given by them for their nonattendance. If the Panel is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the Councillor. |
| 8. | If the Panel is not satisfied that there is good reason for the Councillor's non-attendance, or if the Councillor failed to give any reason for his/her non-attendance, the Panel can decide: <ul style="list-style-type: none"> • whether to consider the matter and make a determination in the absence of the Councillor, or • to adjourn the Hearing to another date. |
| HEARING | |
| 9 | The Investigator will be invited to summarise his/her report and findings and make any representations about any pre-hearing submission of the |

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| | Councillor. The Investigator may call any witnesses, including the complainant. |
| 10. | The Councillor will then be invited to make representations in support of the facts concerned. The Councillor may call any witnesses in support of the facts. Character witnesses will not be permitted. |
| 11. | The Panel has the discretion to question any of the parties as they see fit. |
| 12. | The Independent Person or the Monitoring Officer may question any of the parties at the discretion of the Chair. |
| 12. | The councillor and the investigator/complainant will be given the opportunity to make closing statements if they wish to do so. |
| 13. | The Panel and the Independent Person will retire to consider the matter in private. The Monitoring Officer may be called to give legal advice or clarify any of the evidence as required. |
| THE DECISION | |
| 14. | The Chairman will then announce to all present at the Hearing the Panel's decision as to whether or not the Councillor has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached. |
| 15. | If the Panel decides that the Councillor has not failed to follow the Code of Conduct, the hearing will be concluded. |
| 16. | If the Panel decides that the Councillor has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer, and the Councillor as to: (a) whether or not the Panel should impose a sanction and/or recommend to Council that a sanction be imposed; and (b) what form of sanction(s) is/are appropriate. |
| 17. | The Panel may retire to consider these representations in private |
| 18. | The Panel will announce its decision in public at the conclusion of the hearing and will issue a full written decision including reasons within 10 working days of the hearing. |

SANCTIONS

Under the Protocol for dealing with complaints, the Council has decided that the Hearings Panel may issue the following sanctions:-

- a. Publish its findings in respect of the member's conduct;
- b. Report its findings to Council for information;
- c. Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Recommend to Council to remove the member from all outside appointments to which they have been appointed or nominated by the authority;
- f. Recommend to Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- g. Recommend to Council that it excludes the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

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Members' Code of Conduct

Peterborough City Council

The Members’ Code of Conduct is intended to promote high standards of behaviour amongst the elected and co-opted members of the council.

The Code is underpinned by the following principles of public life, which should be borne in mind, when interpreting the meaning of the Code:

- i. **Selflessness**
Holders of public office should act solely in terms of the public interest.
- ii. **Integrity**
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- iii. **Objectivity**
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- iv. **Accountability**
Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- v. **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.
- vi. **Honesty**
Holders of public office should be truthful.
- vii. **Leadership**
Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

PART 1 GENERAL PROVISIONS

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You are accountable for your decisions and actions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.

You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should give reasons for those decisions and actions and restrict information only where the wider public interest clearly demands.

You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the box below.

You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

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.

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, 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.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State.

Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a non-statutory pecuniary or non-pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

**PART 2
INTERESTS**

1. Disclosable Pecuniary Interests

1.1. 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 as follows:

| Subject | Prescribed description |
|---|--|
| 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 PCC) for any expenses incurred by you in carrying out your duties as a member, or towards your election expenses. 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 with PCC: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged. This includes a contract between PCC and any body in which you, or a person specified in paragraph 8.2(b) below, has a beneficial interest |
| Land | Any beneficial interest in land which is within PCC’s area |
| Licences | Any licence (alone or jointly with others) to occupy land in the PCC’s area for a month or longer. |
| Corporate Tenancies | Any tenancy where (to your knowledge): (a) the landlord is PCC; and (b) the tenant is a body in which you, or a person listed in paragraph 8.2(b) below, has a beneficial interest |

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| <p>Securities</p> | <p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to your knowledge) has a place of business or land in PCC’s area; and</p> <p>(b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) 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 person in paragraph 8.2 (below) has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |
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For this purpose –

“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 a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a 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;

- i) M’s spouse or civil partner,
- ii) A person with whom M is living as husband and wife, or
- iii) A person with whom M is living as if they were civil partners.

“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.

1.2. You must declare an interest if:

- (a) it is your interest, or
- (b) it is an interest of:
 - (i) your spouse or civil partner;
 - (ii) a person with whom you are living husband and wife, or
 - (iii) a person with whom you are living as if you were civil partners

and you are aware that that other person has the interest.

2. Other Disclosable Interests

2.1. You should not act or take decisions in order to gain financial or other material benefits for yourself, your family, or your friends. You must declare and resolve any interests and relationships as set out below, seeking the advice of the Monitoring Officer as necessary on what needs to be declared.

2.2. You have a “non-statutory disclosable interest” in an item of business of your authority where:

- i) A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you, or a member of your family, or a person or body with whom you have a close association; or
- ii) It relates to or is likely to affect any of the interests listed in 1.1 but is in respect of a member of your family (other than your spouse or common law partner) ; or
- iii) It relates to an outside body or organisation to which you have been appointed by the council

2.3. If you attend a meeting and are aware that you have a non-statutory disclosable interest in any matter to be considered, or being considered, at that meeting:

- (a) If the interest is not entered in your register of members' interests you must disclose to the meeting the fact that you have a non-statutory disclosable interest in that matter; and

- (b) If the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interests, you must not:
 - i) participate, or participate further, in any discussion of the matter at the meeting; or
 - ii) remain in the meeting room whilst the matter is being debated or participate in any vote taken on the matter at the meeting

apart from making representations, giving evidence or answering questions prior to the commencement of the debate on that matter.

- 2.4. You must declare the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £100.

3. Registration of Disclosable Pecuniary Interests and Other Interests

- 3.1. Subject to paragraph 5 below (sensitive interests), you must, within 28 days of:

- (a) this Code being adopted or applied by PCC; or
- (b) your election or appointment (where that is later)

notify the Monitoring Officer in writing of any disclosable pecuniary interests and other interests you have at that time.

- 3.2. Subject to paragraph 5 below (sensitive interests) you must, within 28 days of becoming aware of any new disclosable pecuniary or other interest or any change to any such interest, notify the Monitoring Officer in writing of that new pecuniary interest or change.

4. Disclosable Pecuniary Interests in Matters Considered at Meetings or by a Single Member

- 4.1. If you attend a meeting and are aware that you have a disclosable pecuniary interest in any matter to be considered at that meeting:

- (a) if the interest is not entered in the register of members' interests you must disclose to the meeting the fact that you have a disclosable pecuniary or other interest in that matter
- (b) if you have not already done so, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure, and
- (c) whether the interest is registered or not you must not, unless you have obtained a dispensation from the Monitoring Officer, participate, in any

discussion of the matter at the meeting and should leave the room until the consideration of the item has completed

- (d) whether the interest is registered or not you must not, unless you have obtained a dispensation from the Constitution and Ethics Committee, participate in any vote, or further vote, taken on the matter at the meeting and should leave the room until the consideration of the item has completed.

4.2. Single Member Action

If you are empowered to discharge functions acting alone, and are aware that you have a disclosable pecuniary interest or other interest in any matter being dealt with, you must not take any steps, or any further steps, in relation to the matter (except for the purposes of enabling the matter to be dealt with otherwise than by you).

If the Disclosable Pecuniary Interest is not entered in the Register and is not subject to a Pending Notification, you must notify the Monitoring Officer of the Disclosable Pecuniary Interest before the end of 28 days, beginning with the date of when you became aware of the matter

5. Sensitive Interests

- 5.1. Where you consider (and the Monitoring Officer agrees) that the nature of a disclosable pecuniary or other interest is such that disclosure of the details of the interest could lead to you, or a person connected with you, being subject to intimidation or violence, it is a “sensitive interest” for the purposes of the Code and the details of the sensitive interest do not need to be disclosed to a meeting, although the fact that you have a sensitive interest must be disclosed.

PART 3 RELATED DOCUMENTS

The following documents also provide guidance on the standards of conduct expected of members and can assist in the interpretation of this Code of Conduct. These documents can be found in the Council’s Constitution.

1. The Constitution & Ethics Committee Rules of Procedure set out the arrangements for dealing with an alleged breach of this Code
2. PCC’s Planning Code of Conduct deals specifically with the Code of Conduct within the remit of the Planning and Environmental Protection Committee
3. PCC’s Social Media Code for members sets out appropriate behaviour when using social media and acting, or appearing to act, in your capacity as a councillor
4. PCC’s Member/Officer Protocol sets out how members and officers should work together

5. PCC's Gifts and Hospitality Policy which sets out the procedures under which registration and declaration of interests, gifts and hospitality are to be made.

COMPLAINTS AGAINST MEMBERS

CODE OF CONDUCT

This is a protocol setting out how to complain about a member of the Council and explaining the arrangements for dealing with such complaints

1. The Code of Conduct

The Council has adopted a Code of Conduct for members. The Code can be found on the website as part of the Council's constitution.

2. Making a complaint

If you wish to make a complaint, please contact –

The Monitoring Officer
Town Hall, Bridge
Street, Peterborough
PE1 1HG

fiona.mcmillan@peterborough.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering complaints of member misconduct.

To process a complaint, a complaint form must be completed. The form is available from the Council's website or on request from the Monitoring Officer. Complaints can be made in writing without completing the form, but using the form will help ensure that all the available information is available.

The person making the complaint must provide the Monitoring Officer with their name and a contact address or email address, so that the Monitoring Officer can acknowledge receipt of the complaint and update on progress of the complaint.

3. Anonymous complaints

The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

Any person making a complaint who would like to keep their name and address confidential can indicate this on the complaint form. Where a person has asked for confidentiality the Monitoring Officer will not disclose their name and address to the member complained about without prior consent.

The Monitoring Officer has to balance the rights of the member to understand who is making a complaint against them, against the rights of the person making the complaint. The person making the complaint will have to provide reasons why their name ought to remain confidential. If the Monitoring Officer does not consider those reasons justify anonymity, the person making the complaint will be given the opportunity to withdraw the complaint if they do not wish to proceed without anonymity.

Even where anonymity is agreed at the outset of the complaint it may not always be possible to bring the matter to hearing without the person making the complaint agreeing to give evidence at the hearing.

4. Initial Assessment of Complaints Received

The Monitoring Officer will acknowledge the complaint within 5 working days of receiving it.

The Member against whom the complaint is made will also be informed of the complaint at this stage.

The Monitoring Officer will undertake an initial assessment of the complaint to determine firstly, whether the complaint is admissible and if so to decide whether:-

- a) it warrants investigation or,
- b) it may be suitable for alternative resolution without investigation or,
- c) it does not warrant any further action.

For the complaint to be admissible it must be in a legible format, relate to an existing member of the authority and contain sufficient supporting information.

In determining whether or not the complaint should be referred for investigation the Monitoring Officer may decide to consult the Independent Person. The Independent Person is appointed by the Council to provide an impartial and independent opinion regarding the conduct of the member. The Independent Person is not an elected member of the Council.

When deciding whether to refer a matter for investigation the Monitoring Officer will have regard to a range of factors including the following:-

- i) Whether there is sufficient information upon which to base a decision
- ii) How serious the alleged action is
- iii) Is the complaint politically motivated, vexatious or tit for tat;
- iv) Has there been any delay between the action complained of and the complaint ;
- v) Do the allegations relate to actions occurring whilst the subject member was acting in their official capacity;

- vi) The opinion of the elected member regarding the complaint

The initial assessment of the complaint will normally be completed within 28 days of receiving the complaint and the person making the complaint and the member will be informed, in writing, of the outcome.

Unless exceptional circumstances exist, the Monitoring Officer will always inform the member of the receipt and nature of the complaint and invite their comments.

Where the Monitoring Officer requires additional information to come to a decision, they may refer back to the person making the complaint or ask the member against whom the complaint is directed.

5. Referral to Constitution and Ethics Committee

In all cases it is expected that the Monitoring Officer will assess the complaint and make the decision regarding investigation. In exceptional cases the Monitoring Officer may refer the complaint to the Constitution and Ethics (Hearings Panel) to decide whether the complaint warrants further investigation. This referral can only be made at the request of the person complaining or the subject member where the Monitoring Officer is satisfied that the complaint is exceptional.

This referral will be made in a written confidential report by the Monitoring Officer to the Constitution and Ethics Committee (Hearings Panel). The decision of whether to investigate will be made by the Committee based upon the contents of the report. As this is not a public hearing there will be no opportunity for the person complaining or the member to attend the Committee to make representations regarding the complaint.

6 Alternative Resolution

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that their conduct was unacceptable and offering an apology. Where the member or the authority makes a reasonable offer of local resolution, but the person complaining is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint warrants formal investigation or no further action.

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer is authorised to refer the complaint to the Police and other regulatory agencies.

7 If the complaint is referred for investigation how is the investigation conducted?

If the Monitoring Officer and Independent Person decide that a complaint merits formal investigation, they will appoint an Investigating Officer. This could be another officer of the authority, or of another authority or an external investigator. The decision regarding the appointment will depend upon a variety of factors including staff capacity and nature of the complaint.

The investigating officer will decide to whom they need to speak. It is likely that they will begin the investigation by speaking to the person making the complaint and to gather any documents the investigating officer needs to see. This will also help the investigating officer to decide whom they need to interview.

The investigating officer would normally

- write to the member complained of
- provide them with a copy of the complaint,
- ask the member to provide their explanation of events,
- identify what documents they need to see and
- make a list of interviewees

In exceptional cases, where disclosure of the details of the complaint to the member might prejudice the investigation, the investigating officer may delay notifying the member until the investigation has progressed sufficiently.

At the end of the investigation, the investigating officer will produce a draft report which makes a finding on whether the code of conduct has been breached or not. The investigating officer will send copies of that draft report, in confidence, to the person making the complaint and to the member concerned, giving both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more investigation.

Having received and taken account of any comments which may be made on the draft report, the investigating officer will send the final report to the Monitoring Officer. The Council aims to conclude the investigation stage within 3 months of a complaint being received.

8. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will, in consultation with the independent person, review the investigating officer's report and, if they are satisfied that the investigating officer's report is sufficient, the Monitoring Officer will write to the person making the complaint and to the member concerned, notifying both persons that no further action is required.

9. What happens if the investigating officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution.

10. What is Local Resolution?

The Monitoring Officer and Independent Person may consider that the matter can be

resolved without the need for a hearing. Such resolution may include the member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the authority's Constitution and Ethics Committee for information, but will take no further action.

11. What is a local hearing?

If the Monitoring Officer and Independent Person consider that local resolution is not appropriate or is impossible to achieve, the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of the authority's Constitution and Ethics Committee, which will conduct a local hearing to decide whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Monitoring Officer will conduct a "pre-hearing process", asking the member to give their response to the Investigating Officer's report. This will identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chairman of the Hearings Panel may decide, in consultation with the Monitoring Officer to give instructions about the way in which the hearing will be conducted.

At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary, and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the person making the complaint to attend and give evidence to the Hearings Panel.

The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint.

Alternatively, if the Hearings Panel finds that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person.

12. What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:-

- a. Publish its findings in respect of the member's conduct;
- b. Report its findings to Council for information;

- c. Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Recommend to Council to remove the member from all outside appointments to which they have been appointed or nominated by the authority;
- f. Recommend to Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- g. Recommend to Council that it excludes the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances.

13. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and set out any actions which the Hearings Panel resolves to take.

The Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Hearings Panel, and send a copy to the person making the complaint, to the member, and make the decision notice available for public inspection. If appropriate the Monitoring Officer will report the outcome of the hearing to the next Council meeting

14. Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Constitution & Ethics Committee. The Constitution & Ethics Committee comprises 7 members of the Council appointed annually in proportion to the political balance of the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and determines any action to be taken following a finding of failure to comply with the Code of Conduct.

15. Who is the Independent Person?

The Council is required under the Localism Act 2011 to appoint at least one "independent person" whose views have to be sought, and taken into account, before the Council decides what action should be taken against a member or co-opted member who has been found to be in breach of the Code of Conduct. They must be appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if they –

- a. are, or have been within the past 5 years, a member, co-opted member or officer of the City Council or any parish council within the City Council area;
- b. are a relative or close friend, of a person within paragraph a above. For this purpose, “relative” means –
 - i. Spouse or civil partner;
 - ii. Living with the other person as husband and wife or as if they were civil partners;
 - iii. Grandparent of the other person;
 - iv. A lineal descendent of a grandparent of the other person;
 - v. A parent, sibling or child of a person within paragraphs i or ii;
 - vi. A spouse or civil partner of a person within paragraphs iii, iv or v; or
 - vii. Living with a person within paragraphs iii, iv or v as husband and wife or as if they were civil partners.

16. Revision of these arrangements

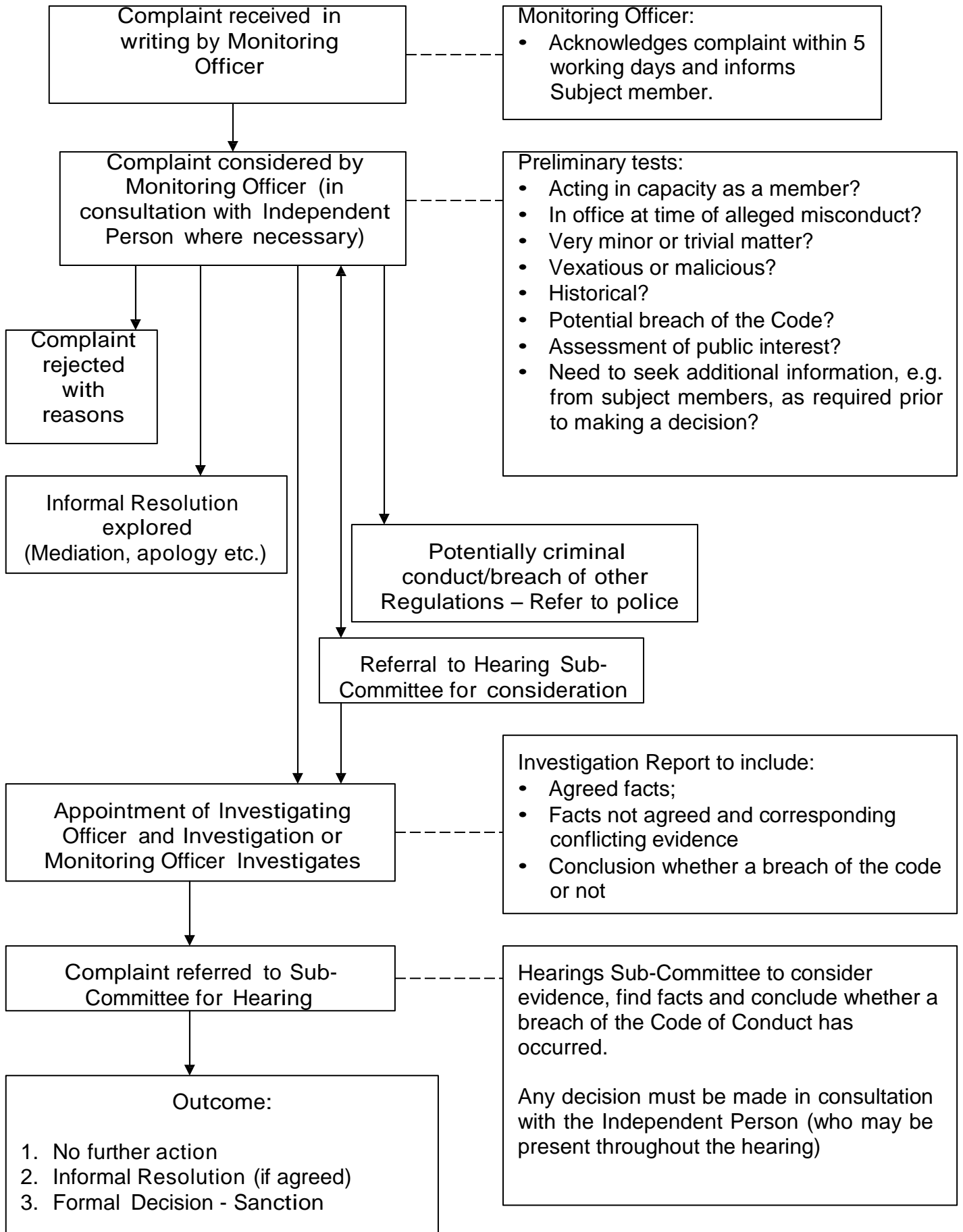
The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where they consider it is expedient to do so to secure the effective and fair consideration of any matter.

17. Appeals

There is no right of appeal for either the complainant or for the subject member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Members' Ethics Complaints Procedure Flowchart



**Investigation into a complaint against
Councillor Darren Fower,
Peterborough City Council**

A report for the Monitoring Officer of
Peterborough City Council

24 September 2018

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1 Executive Summary

- 1.1 ch&i associates was appointed by the Monitoring Officer at Peterborough City Council (the Council) to investigate two complaints about the conduct of Councillor Darren Fower, a member of the Council. The complaints were submitted by Councillor John Holdich OBE¹ and Councillor John Fox².

Scope and focus of the investigation

- 1.2 On **1 March 2018**, the Peterborough Telegraph published a letter from Councillor Darren Fower in which he criticised Councillor Fox's decision to close the public gallery in the Council chamber during Council meetings. Councillor Holdich and Councillor Fox both alleged that the letter, in which Councillor Fower stated '*WE should not be barred and such facists tendencies NEED to end NOW!*', was disrespectful to Councillor Fox and unfairly damaged the reputation of the Council
- 1.3 Councillors Holdich and Fox also alleged that Councillor Fower improperly used personal information provided by those who signed up to support an online petition that called for the re-opening of the public gallery. It was alleged that Councillor Fower used the names and addresses gathered to generate emails to the Council's Chief Executive, the Leader and the Mayor without the signatories' knowledge or permission.

Recommendation

- 1.4 My approach in this case has been to equip the Council to determine the allegations through any of the routes open to it, namely:
- i. The member *was not* acting in councillor capacity therefore the code was not engaged and the member did not breach it;
 - ii. The member *was* acting in member capacity, but did not through their conduct breach any Code paragraph;
 - iii. The member *was* acting in member capacity and breached the Code.
- 1.5 The investigation has established that Councillor Fower did act as alleged and in my view did so in his councillor capacity; as such the Code of Conduct was engaged.
- 1.6 Councillor Fower is clearly a committed and hardworking member of the Council who is passionate about representing his local community. I consider though that on this occasion Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in to attack the reputation of Councillor Fox individually and the Council more generally.

¹ At the time of the alleged conduct, Councillor Holdich was Leader of the Council

² At the time of the alleged conduct, Councillor Fox was Mayor and Chair of the Council.

- 1.7 I also consider that while Councillor Fower's on-line petitions may have been well-intentioned, he failed to ensure that the information he obtained from those who supported them was handled appropriately. Councillors must make their constituents aware of how they will use any information they provide and ensure that they are in agreement.
- 1.8 Accordingly, it is my view that Councillor Fower breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post.
- 1.9 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I consider that this is a matter that could be resolved informally, it is my view that any resolution would have to involve Councillor Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this my recommendation would be that this matter be referred to the Hearings Panel of the Council's Constitution and Ethics Committee.

2 Official details of Councillor Darren Fower

- 2.1 Councillor Fower has served as a member of the Council continuously since 3 June 2004; he was also a councillor between 4 May 2000 – 3 May 2001. Councillor Fower is currently an Independent councillor representing Gunthorpe Ward. His current term of office is due to end on 7 May 2020.

3 The relevant legislation & protocols

Localism Act 2011

- 3.1 By section 27(1) of the Localism Act 2011 (the Act) a "relevant authority" is placed under a statutory duty to "promote and maintain high standards of conduct by members and co-opted members of the authority".
- 3.2 By section 27(2) of the Act a relevant authority "must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity".
- 3.3 Under section 28(1) of the Act a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with prescribed principles of standards in public life – the so called "Nolan principles".
- 3.4 The intention of the legislation is to ensure that the conduct of public life in local government does not fall below a minimum level which engenders public confidence in democracy, as was recognised by Beatson J, as he then was, in R

(Calver) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin) when he held that there was a clear public interest in maintaining confidence in local government while at the same time bearing in mind the importance of freedom of political expression or speech in the political sphere.

- 3.5 Under 28(6) of the Act, Local Authorities must have in place (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made. By section 27(7), arrangements put in place under subsection (6)(b) must include provision by the appointment of the authority of at least one “independent person” whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.
- 3.6 Section 28(11) of the Act provides that if a relevant authority finds that a member or a co-opted member of the authority has failed to comply with its code of conduct it may have regard to the failure in deciding (a) whether to take action in relation to the member or co-opted member and (b) what action to take.
- 3.7 The Council’s arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer’s report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I am of the view that this is a matter that could be resolved informally, it is my view that this would have to involve an acknowledgement from Councillor Fower that his conduct ‘crossed the line’; without this my recommendation would be that this matter is referred to the Hearing Panel of the Council’s Audit Committee.

Peterborough City Council’s Code of Conduct

- 3.8 Under Section 27(2) of the Act, the Council established a Code of Conduct for members (the Code).
- 3.9 The Code adopted by the Council includes the following paragraphs:

PART 1 GENERAL PROVISIONS

You are a member or co-opted member of Peterborough City Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a member or co-opted member -

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

- 3.10 Further to the above, the Council’s website states:

What is expected of councillors

Councillors come into contact with a very wide range of people and are asked to make decisions about many different local issues. It is important that they follow high standards of behaviour and integrity, acting as they do on the public's behalf. The council Members' Code of Conduct sets clear guidance for councillors, the key points are:

- councillors must treat others with respect
- councillors must not bring the council into disrepute

4 The investigation

- 4.1 This investigation was conducted by Alex Oram and Mark Hedges on behalf of the Council's Monitoring Officer. Alex is a director of ch&i associates³, a company with a successful track record of conducting complex investigations, assessments and case reviews within the regulatory, charity, NHS and local government sectors. Alex has been conducting member conduct investigations since 2003. He was previously employed by Standards for England as a principal investigator responsible for conducting many of their most complex, politically sensitive and high-profile investigations into member conduct. Mark is a former Police Detective with twenty years' experience of investigation work.
- 4.2 During the course of this investigation we have interviewed Councillor Fower and Councillor Holdich; we have considered evidence provided by the Council and Councillor Fower; and we have also obtained the necessary documentary evidence from the Council website and various other internet sites.

5 The evidence

Background

- 5.1 Meetings of the full Council are routinely held in the Council Chamber at Peterborough City Hall. The public gallery is located on a balcony, approximately six metres above the Chamber.
- 5.2 On **19 July 2017**, immediately prior to that evening's Council meeting, approximately thirty people conducted a peaceful protest outside City Hall. The protestors called for the resignation of Councillor Andy Coles. Councillor Coles had been featured in a Channel 4 programme that centred on an investigation into the activities of undercover police officers in the 1990s. The programme alleged that Councillor Coles, who was a Police Officer at the time and not a

³ Alex is not a lawyer and therefore nothing in this report should be interpreted as legal advice. Any opinions offered are based on his experience of having been involved in over 300 standards investigations.

member of the Council, had infiltrated a group of animal rights activists and become involved in a sexual relationship with a young female activist under false pretences.

- 5.3 At the start of the Council meeting those involved with the protest moved into the public gallery above the Council Chamber. When, towards the beginning of the meeting, the Mayor announced that no public questions had been received there was a minor disruption in the public gallery; I understand that this was because the female activist referred to above (who had been featured in the documentary) had submitted a question pertaining to the appropriateness of Councillor Coles sitting on the Council⁴. When a member of the public tried to draw the Council's attention to her question, others in the gallery joined in either with questions of their own or with shouts such as "*Shame on you, Andy Coles*". In addition, a large banner was draped over the front of the gallery which read: '*Human Rights Abuser Andy Coles*'. There were repeated demands for his resignation or suspension.
- 5.4 At this point the Mayor (who is also Chair of the Council), Councillor John Fox, took the decision to adjourn the meeting temporarily because the protest made it impossible for councillors to properly consider the matters on the agenda. The two Police officers present, along with Council officers, asked the protestors to allow the Council to conduct its scheduled business either by remaining quiet or by leaving. The protestors refused to do either and therefore Councillor Fox took the decision to adjourn the meeting until **26 July 2017**.
- 5.5 A Council spokesperson subsequently stated: "*The decision to postpone the meeting of Full Council until next Wednesday (July 26) was not one that we took lightly. It was imperative that we balanced the rights of people to protest with our obligation to make sure all members of the public, councillors and staff are safe, to ensure that the democratic procedures of the council can continue. This is what we must achieve for next week's meeting and we are in the process of exploring ways that this can happen, in consultation with the police. We will provide residents with an update as soon as we have a clear way forward.*"
- 5.6 On **25 July 2017**, the Council announced that the public gallery would not be opened for the rearranged meeting. Councillor Fox made the following public announcement: "*It is with the greatest reluctance that I have taken the decision, under my inherent powers as chairman, to exclude the public from the council chamber and public gallery at the reconvened council meeting. I have come to this view after very carefully weighing up the needs to secure the safety of the public and members, and the need to ensure that the legitimate democratic processes of the council are not further frustrated. In forming this view I have taken the advice of officers, the police and the council's legal officer. I am mindful that this is a very unusual step. In order to ensure that the public have access to the proceedings as they occur I have given instructions that arrangements for a live stream of the meeting to take place in the Bourges-Viersen Room for the*

⁴ The question had been rejected on the basis that it was potentially defamatory and related to a confidential and ongoing inquiry.

public to view. Accredited members of the press and councillors' guests will be permitted into the chamber as usual."

- 5.7 The Council meeting of **26 July 2017** took place with the public gallery closed and a private security firm in place in case of disturbance. As the 'Sack Andy Coles' campaign group continued to protest outside of meetings, the decision was taken to keep the public gallery closed until the safety of those attending Council meetings in the raised gallery could be ensured. The Council's Head of Constitutional Services told me that this decision was taken after the Police voiced concerns about the safety of the public gallery; specifically, that if any further disturbances were to take place the design of the gallery made it unsafe to clear it using usual Police tactics. What had been verbal advice from the Police at the time has since been confirmed in writing by the Police Officer who had been present at the Council meeting on **19 July 2017**.

Councillor Fower's campaign

- 5.8 In **February 2018**, Councillor Darren Fower launched a campaign to get the public gallery reopened. As part of these efforts Councillor Fower started an e-petition on the Council's website⁵ which stated:

We the undersigned petition the council to Get the Mayor of Peterborough to repeal his decision to not allow members of the public to sit in the gallery in the chamber, during meetings of Full Council.

FACT: The decision to close the gallery to members of the public, during meetings of Full Council was finalised by the Mayor Cllr JOHN FOX. This has meant for the last 4 meetings, local tax payers have been unable to take a seat in their allocated and designated area!

Worth Noting:

** During this time, PCC have spent thousands and thousands of pounds on a security firm.*

** Police Officer time has been wasted, by their attendance.*

** The protesters offer no threat to councillors, unless you consider perhaps having to talk to a local citizen as a threat?*

- 5.9 In addition to the above, Councillor Fower set up at least two private online petitions, one using an online link management platform called 'bitly' (found at <http://bit.ly/Council-Gallery>) and one using an online form builder called JotForm (found at <http://form.jotforme.com/DarrenFower/publicgallery>.⁶)

⁵ This ePetition ran from 22/02/2018 to 07/03/2018 and garnered 35 signatures.

⁶ The actual petition pages are no longer active and I have not been provided with a screen shot of anything from that page other than the form that users were invited to fill in

- 5.10 Councillor Fower publicised the campaign on his own website (darrenfower.com), his Facebook account and on Twitter. Councillor Fower also sent out emails⁷ which included a link to at least one of the petitions. As an example, the investigation has been provided with the following email that was sent to Mr Vince Moon⁸ on **23 February 2018**:

*Did you know the term **DEMOCRACY** comes from the Greek demokratia “democracy” from demacronmos “people, the masses” and -kratia “rule, government,” from kratos “strength, power, authority”?*

Basically it’s PEOPLE power!

Q: Did you know the ex-Tory councillor and now Mayor of the Council, Cllr John Fox, has decreed that members of the Peterborough public, SHOULD NOT be allowed to sit, in the public gallery.... In the Council Chamber!?

Local citizens / taxpayers / voters have been barred from their rightful place for the past four meetings!!!!

(That’s the past eight months)

*With that in mind..... I really **NEED** you to be a star and add YOUR support to our campaign via this LINK: <http://bit.ly/Council-Gallery>⁹*

It only takes five seconds!

Why? We need to remind the Council that they are there to serve us, WE should not be barred and such facists tendencies NEED to end NOW!

Your support is greatly appreciated!

Darren

Peterboough City Councillor

Gunthorpe ward [sic – all emphasis as in the original]

- 5.11 The web addresses shown in paragraph 5.9 and included in the above email linked to an online form that invited those who chose to do so to provide their name, postal address¹⁰ and email address. Under the form there was a red button with ‘ADD YOUR SUPPORT’ written on it.

⁷ Councillor Fower’s circulation list is not fully known; it is evident though that it includes officers of the Council

⁸ Mr Moon, like Councillor John Fox, is a member of Werrington First

⁹ The form was hosted by an online link management platform called ‘bitly’:

¹⁰ It was noted that you must live in Peterborough

- 5.12 Having received the above email from Councillor Fower, Mr Moon completed the online form and clicked to add his support. The investigation understands that numerous people did the same; as examples I have been provided with evidence that on **25 February 2018**, Samantha Milburn filled in the form and on **27 February 2018** Mr Christian Hogg did the same.
- 5.13 Anyone who clicked the 'add your support' button all generated the following email; the example shown was automatically sent to the Council's Chief Executive, Ms Gillian Beasley:

"Dear Gillian

*I just wanted to say that, as a local resident I am completely against the Mayor's decision to ban members of the **Peterborough Public** from the **Council Chamber Gallery**.*

I realise that you are apolitical, but the diminishing of local democracy is a travesty!

*I call on you as the **CEO** to request that the Mayor withdraw his decision **ASAP!***

I'd appreciate a response to this email, too!

[sic]

Councillor Fox (as Mayor) and Councillor Holdich (as Leader) both received similar emails whenever anyone filled in the relevant form and added their support to one of Councillor Fower's online petitions. While all the emails were shown as having been sent by 'noreply@formresponse.com', each email was signed off with the name and postal address of the person who had filled in the form.

- 5.14 On **28 February 2018**, Gillian Beasley responded via email to Ms Milburn and Mr Hogg¹¹ respectively to confirm that she had received several emails similar to that received from them and as such the Council had prepared a statement, which she attached, to clarify its position on the matter. The statement, which was also published on the Council's website, stated:

The decision to close the public gallery was made following a council meeting on 19 July 2017 because of a significant disturbance which made it impossible for the council to conduct important business, including the approval of a plan to tackle crime and disorder in the city. Before the meeting was adjourned, an attempt to clear the public gallery was made by council officers, assisted by the police. This was unsuccessful due to the disturbances taking place. Following the adjournment, the police voiced concerns about the safety of the public

¹¹ Mr Hogg is the Local Party Chairman of the Liberal Democrats and therefore Ms Beasley knew his email address

gallery. Specifically, that if any further disturbances were to take place, the current layout and design of the public gallery made it unsafe to attempt to clear the area. Having received this advice, the public gallery was temporarily closed. Since then, a full survey has been undertaken and we have commissioned a structural engineer to make improvements. It is expected that the public gallery will reopen in the next few months. Public attendance is welcomed at council meetings, whether to support, protest or simply to observe proceedings. However, when a protest of other actions leads to the disturbance of a meeting to the extent where business cannot be conducted, our rules of procedure require us to remove any individual(s) causing that disturbance. It is vital that this can be done, while ensuring the safety of all. In the meantime, we have made arrangements for the public to view the proceedings live via a video link to the Bourges Room in the Town Hall or to [view the discussions and debate via Facebook Live](#). This has proved incredibly popular and has made Full Council accessible to a far greater number of residents who would otherwise be unable to attend each meeting and each video is available to watch again and again, rather than just at a set time and day. The average number of views for each meeting is over 5,000, far more than we could actually fit in the public gallery. Due to the success of the live recordings we will be proposing to keep this service once the public gallery is open again.

- 5.15 Ms Milburn emailed Ms Beasley to thank her for the update; she stated though: *“I just want to point out that I did not send that email they are not my own words! I would not address an email like that. I will be investigating that! I signed a petition circulated by Darren Fower as I thought I would be helping to contribute to an investigation of opening up the public gallery so I am unsure as to why you received an ‘automated’ email as if addressed by me.”*
- 5.16 Mr Hogg also responded to Ms Beasley via email to confirm that although he supported the re-opening of the public gallery at the earliest opportunity, the Council’s position seemed perfectly reasonable. Mr Hogg added that he was disconcerted that his support of an online petition had generated an individual email to her without any warning. Mr Hogg asked whether the Council’s legal officer should review Councillor Fower’s petition or whether he would be better served taking his concerns to the Information Commissioner. Ms Beasley confirmed that she would arrange for the matter to be looked into.
- 5.17 On **1 March 2018**, the Council’s Information Governance Compliance Officer reassured the Chief Executive that although Councillor Fower was clearly capturing and sharing personal data via his online petition, the fact that he was not doing so privately meant that the Council bore no legal responsibility for the security of the data collected. The Officer commented *“I can see that it could come as something of a shock to someone who thinks they are signing a petition to then get an email from the Chief Executive... he [Councillor Fower] is clearly not explaining to people what is happening with their data because it seems like you are adding your support, not agreeing to having PCC [the Council] know all about you”*. The Officer acknowledged that while the form on the petition site gave no indication as to how the data collected might be used, he had not filled

in the form and therefore did not know what information was provided once users had clicked to add their support. The Officer recommended that anyone who raised the matter with the Council, like Ms Milburn and Mr Hogg, be advised to take the matter up with the Information Commissioner if they wished.

Councillor Fower's letter

5.18 On **28 February 2018**, Councillor Fox, who had been sent a copy of the email shown in paragraph 5.10 of this report by Mr Moon, emailed the Council's Head of Constitutional Services to ask what the Council were going to do about it. Specifically, Councillor Fox complained that Councillor Fower's reference to '*facists tendencies*' was a personal insult. On the advice of the Monitoring Officer, Councillor Fox was informed that he could make a code of conduct complaint if he wished.

5.19 On **1 March 2018**, the following was published in the Peterborough Telegraph:

Did you know the term DEMOCRACY comes from the Greek demokratia "democracy" from demacronmos "people, the masses" and -kratia "rule, government," from kratos "strength, power, authority"? Basically it's PEOPLE power!

Question: Did you know the ex-Tory councillor and now Mayor of the Council, Cllr John Fox, has decreed that members of the Peterborough public, SHOULD NOT be allowed to sit, in the public gallery.... In the Council Chamber!?

Local citizens / taxpayers / voters have been barred from their rightful place for the past four meetings! (That's the past eight months)

With that in mind..... I'd like to invite readers to add their support to our campaign, calling on the Council to change it's mind, via this LINK: <http://bit.ly/Council-Gallery>¹²

It only takes five seconds! Why? We need to remind the Council that they are there to serve us, WE should not be barred and such facists tendencies NEED to end NOW! Your support is greatly appreciated!

*Cllr Darren Fower
Gunthorpe ward [sic]*

5.20 On **5 March 2018**, Councillor Fox emailed the Council's Monitoring Officer to point out that Councillor Fower had made the same '*facists tendencies*' remark in the local paper; Councillor Fox informed her that he had been approached in the pub and asked if it was true. Councillor Fox stated "*When I receive the complaint form I will complete it but I truly believe that as a Council we should be contacting the Peterborough Telegraph with a message to counter this vile*

¹² The form was hosted by an online link management platform called 'bitly':

comment. I am proud to be the Mayor but I am prouder to be a Veteran and I see this as a total insult that also brings the Council into disrepute.”

- 5.21 On **6 March 2018**, Councillor John Holdich (Leader of the Council) submitted a formal complaint about Councillor Fower’s conduct. Councillor Holdich stated: *“He [Councillor Fower] referred to the Mayor using the words “facist tendencies” which is extremely offensive and disrespectful to him both as Mayor and personally, given his Service background...On the same issue Councillor Fower has been collecting “signatures” for a petition regarding the closure of the public balcony. In doing so, he has used people’s contact details without their knowledge or permission, to generate emails to the Council’s Chief Executive, the Leader and the Mayor. I understand that this is in breach of legislation regarding how he can act as a Data controller as he misused people’s data.”*

Councillor Fower’s response to the complaint

- 5.22 Councillor Fower told us at interview that in the first instance he considered that the decision to close the public gallery had been an over-reaction to what was a fairly minor protest: *“I believe that even if you do get difficult members of the public, you should be able to handle it in such a way that either allows them to leave without affecting anyone else or be able to remain composed. We have had people shouting from the public gallery before and from my perspective, the group who were protesting didn’t pose a threat at those meetings“*. Councillor Fower said that members were initially led to believe that it would be a one-off and that he did not start his campaign until the gallery had been closed for several months with no information as to when it might be re-opened. Councillor Fower questioned whether the Police had even formally recommended that it was a safety concern, adding that even if they had Councillor Fox had not been duty bound to follow that advice.
- 5.23 Councillor Fower stressed at interview that he fundamentally disagreed with the decision to bar the public from the Chamber. Councillor Fower argued that while the design of the public gallery is far from ideal, it has coped with all types of protests and heated debates since 1933 without any safety concerns leading to its closure. Councillor Fower told me that prior to the closure of the gallery he had long argued for the Council to do more to encourage public participation at meetings, pointing out that the public gallery has no signage for people who might want to attend and provides no access to wheelchair users¹³. Councillor Fower felt that this demonstrated that in truth the public were generally not welcomed.
- 5.24 In terms of specifically targeting Councillor Fox; Councillor Fower pointed out that the decision to close the public gallery had been made using the powers granted to Councillor Fox as Chair and Mayor of the Council. While Councillor Fower was of the belief that the decision had in fact been made by the Conservative administration, Councillor Fox’s actions meant that they were been able to bar the public from meetings without a debate or the agreement of the Council. Councillor Fower said that as a result, opposition councillors were not allowed to

¹³ In his comments on the draft report Councillor Fox stated: *“The statement that there is no access for wheelchair users is a total fabrication as myself and the Disability forum manager Bryan Tyler organised with PCC an area within the chamber that is for exactly for that purpose”*

raise any concerns about the decision in the Chamber or even register an objection to it.¹⁴

- 5.25 Councillor Fower acknowledged that the letter published in the local press (which was almost identical to one circulated via email) was emotive, however he refused to apologise for that fact. Councillor Fower said that he wanted to draw people's attention to a legitimate campaign that was clearly in the public interest. Councillor Fower invited me to look up the definition of fascist, where he said I would find its meaning as '*forcible suppression of the opposition*'. Councillor Fower said that for him that is effectively what the closure of the public gallery felt like: "*It is my role as the opposition to challenge and I strongly believe that members of the public as tax paying citizens should be able to walk into the public gallery and allowed the right to protest.*"
- 5.26 Councillor Fower was keen to stress that it had not been his intention to unfairly malign Councillor Fox or attack him personally: "*but rather to address the action taken as a whole and my belief that it had been neither fair nor democratic. I stand by the things written in my letter as absolute fact.*" Councillor Fower maintained that at no time did his letter state that Councillor Fox was a fascist, though he acknowledged that he maybe had not expressed himself as clearly as he perhaps could have. Councillor Fower still believed though that his meaning was clear; the Council, through Councillor Fox, had barred the public from meetings and in his view, this was an example of a fascistic tendency that had to be stopped.
- 5.27 Councillor Fower confirmed at interview that the petitions referred to above were created so that when an individual added their support automatic emails were sent in their name to relevant parties within the Council. Councillor Fower acknowledged that this was not made explicitly clear when people were filling them in; his belief though is that on completion an email was also automatically generated and sent to the petitioner explaining how their data had been used; this included confirmation that emails had been sent in their name. Councillor Fower pointed out that two of the only three people who had expressed any concern about this matter (Mr Moon and Mr Hogg) also had political reasons for doing so.
- 5.28 Councillor Fower told me that he would be able to provide the investigation with evidence of the email that was sent to petitioners after they have clicked to add their support. To date though this has not been forthcoming and until that time I must provisionally conclude as a fact that those who signed the petition did so not knowing that emails would be sent to senior figures within the Council in their name and including their personal details. Councillor Fower did make the point as well though that he did not believe he had misled anyone; they had all willingly

¹⁴ In his comments on the draft report Councillor Fox stated: "*When I adjourned the meeting to the Mayors parlour on advice from the legal officer, I asked for all group leaders to join me in the Mayor's parlour to discuss the situation along with the Police. After a long discussion the group leaders, of which Cllr. Fower's Leader was there, decided that we had no choice but to suspend the meeting. This was not my decision alone and I was most definitely not dictated to by the Conservative administration in any way.*"

decided to provide their names and contact details to support his campaign and their details had only been used for that purpose.

6 Have there been failures to comply with the Code?

Official Capacity

- 6.1 Before I make a recommendation as to whether Councillor Fower's conduct amounts to a failure to comply with the Code of Conduct, I need to decide whether he was acting as a councillor (i.e. acting in his official capacity). Section 27(2) of the Localism Act 2011 requires all relevant authorities to adopt a code of conduct "*dealing with the conduct that is expected of members ... when they are acting in that capacity.*" The Council has reflected this wording in their own Code.
- 6.2 It is clear then that the Code does not seek to regulate what members do in their purely private and personal lives; the Code only applies to members when carrying out Council business. When considering this matter, I am mindful that Councillor Fower's campaign used various means of communication that did not require him to be a councillor and which could have easily been utilised by any member of the public (on-line petitions / emails / Facebook / Twitter etc). Indeed, in response to the concern that the Council might be held accountable for potential data breaches caused by Councillor Fower's petition, the Council's Information Governance Compliance Officer reported that this could not be the case because Councillor Fower "*is clearly not acting in his capacity as a member of the Council i.e. he is not working on our behalf therefore he is operating as his own data controller.*"
- 6.3 The fact that Councillor Fower was not acting on behalf of the Council does not mean though that he was not acting in his capacity as a councillor. Councillor Fower himself stated that part of his role as an opposition councillor is to challenge the administration and represent the rights of his constituents. In this instance Councillor Fower's petition and associated emails / letters directly concerned Council business; he was in effect trying to use his position as a councillor to garner support and put pressure on the Mayor to overturn the decision to close the public gallery. It is relevant that a review of Councillor Fower's use of social media shows that it is intrinsically linked to his position as a councillor; he is titled as such on both Facebook and Twitter and the majority of his posts are related to Council business. Further, throughout this campaign, Councillor Fower has referred to himself as 'Councillor Darren Fower' in all correspondence, including his letter to the press. In my view there can be no doubt that Councillor Fower was acting in his official capacity throughout and therefore this complaint does fall within the jurisdiction of the standards framework.

Has Councillor Fower breached the Code of Conduct?

- 6.4 The intention of the Code is to ensure that the conduct of public life at the local government level does not fall below a minimum level which engenders public confidence in democracy. In adhering to the principles set out in the Code there

is an expectation that members will treat their fellow councillors, Council officers and members of the public with respect. This is not to say that councillors should not be encouraged to engage in vigorous public debate on matters pertaining to the Council, however the impact of such debate is diminished, rather than accentuated, when it is cast in abusive or offensive terms.

- 6.5 In addition, while Code of Conduct complaints should not be allowed to substitute for complaints that would be better considered by the Information Commissioner, councillors do regularly get access to information of a confidential or sensitive nature. In order to comply with the Code, councillors must not only ensure that they handle this information carefully; they must make their constituents aware of how they will use any of the information provided and ensure that they are in agreement.

Freedom of expression

- 6.6 Any consideration as to whether Councillor Fower failed to comply with the Code must also take into account his right to free speech, in particularly the higher level of protection offered to political speech.
- 6.7 In *Heesom v Public Service Ombudsman for Wales* Mr Justice Hickinbottom considered a councillor's right to free speech in some detail.¹⁵ His considerations drew attention to a number of earlier cases in which the following propositions could be derived:
- a. While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
 - b. The enhanced protection applies to all levels of politics, including local.
 - c. 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
 - d. Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
 - e. The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.

¹⁵ Full judgment <http://www.landmarkchambers.co.uk/userfiles/Heesom.pdf>

- f. Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- g. As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond a “pressing social need”.
- h. Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

6.8 In considering whether a breach finding would amount to a disproportionate restriction on Councillor Fower’s right to freedom of expression I am firstly mindful that under the Localism Act the range of sanctions is very limited; as such, any interference of his rights is likely to be minimal. Having said that, I must give weight to the fact that his comments were directed towards an elected councillor; politicians are required to have a thick skin and be tolerant of criticism and other adverse comments. In addition, in a political context councillors are able to be slightly more exaggerated and offensive in their language than what might be considered acceptable outside that context.

Councillor Fower’s conduct

- 6.9 In his letter to the local paper Councillor Fower strongly advocated for the re-opening of the public gallery. When doing so it is maybe not surprising that he focused not the reasons why the decision was taken and instead took a more emotive approach. It is not part of my role though to consider the rights and wrongs of his argument; my focus is only on whether Councillor Fower unfairly maligned Councillor Fox and brought his authority into disrepute when making it.
- 6.10 In order to do this I have to recognise both Councillor Fower’s right to free speech and the reality of political life. Politicking involves the use of carefully chosen facts to create an impression that supports an overall goal. The public generally accepts that politicians will be selective in the information they deploy in support

of their political positions. The question as to whether this information is fair and balanced should be, in the first instance, the stuff of political debate and journalistic analysis. In my view, the presumption should be that censure through the regulatory approach of the Code should be reserved for cases where impropriety (for example the procurement of unfair advantage), mischief or abusive ends are being pursued under the mask of promoting debate. Politicking, even if it involves unbalanced and misleading information, is not necessarily a form of deception, provided that the core assertions are correct. It is when members cross the line and either deliberately deceive or abuse others that public trust plummets and the member risks breaching the Code.

- 6.11 The aspect of the letter that most upset the complainants concerned Councillor Fower's decision to include the line "*WE should not be barred and such facists tendencies NEED to end NOW*". Both Councillor Fox and Councillor Holdich were clear that they interpreted this as a personal attack on Councillor Fox; Councillor Fox said that as a Veteran he was particularly upset at being described as a fascist. Councillor Fower on the other hand was adamant that he was not attacking Councillor Fox personally, just the decision that was taken. Councillor Fower acknowledged that he used emotive and possibly inflammatory language; he argued though that the decision to close the public gallery was such as to merit the comparison.
- 6.12 Councillor Fower invited me to consider his definition of the word 'facist' (*'forcible suppression of the opposition'*) against Councillor Fox's decision to close the public gallery. Councillor Fox, on the advice of officers, took the decision to close the public gallery after genuine safety concerns were raised by the Police. Protestors continued to be allowed to protest on and around Council premises. Councillor Fower was not barred from attending Council meetings; indeed, members of the public were still able to enter the Chamber to ask questions or when invited and anyone could view the proceedings from an adjoining room / on the internet. Meanwhile, Council officers sought to make structural changes to the public gallery so that the safety concerns could be addressed and the public gallery reopened. While I have no doubt that Councillor Fower did have genuine concerns about the closure of the gallery and can understand his frustration at the time taken to ensure full public participation again, given the facts as set out above I find his comparison between the Council's closure of the public gallery with the *'forcible suppression of the opposition'* of little merit, verging on the offensive.
- 6.13 In considering whether Councillor Fower has breached the Code I am also mindful that the definition of 'facist' is not limited to the definition offered by Councillor Fower. Defining facism is a notoriously difficult scholarly task and therefore not one I will attempt here. Within the context of political language though its value appears more rhetorical than analytical; being most commonly used as a pejorative term for supporters of the extreme far right or a derogatory insult flung at those in power. It is my view Councillor Fower was deliberately trying to use inflammatory language to raise the profile of his campaign. Further, while I note that Councillor Fower claimed to be attacking the decision rather than the person making it, the earlier part of his letter firmly and critically places sole responsibility with Councillor Fox. The phrase 'such facists tendencies NEED to

end Now' appears to personalise the accusation, as if he is referring to Councillor Fox's individual characteristics.

- 6.14 On balance it is my view that Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in order to attack the reputation of Councillor Fox individually and the Council more generally. While I recognise that Councillor Fox, as a councillor, should be expected to have a thick skin and be prepared to accept a certain level of public criticism, he should not have to face such public abuse. In my view Councillor Fower's conduct demonstrates a failure to promote and support high standards of conduct and leadership when serving in his public post. As such, I am of the view that he breached the Council's Code.
- 6.15 Further to the above, as part of his campaign Councillor Fower started at least two online petitions which, when completed, generated automatic emails from the petitioner to senior figures within the Council. The evidence I have seen suggests that those completing the petition did so not knowing either the content of these emails or that they would be circulated in their name; at least two actively expressed their concern that this had occurred.
- 6.16 While I accept that those who signed the petition must have done so with the understanding that that their details would be used in order to put pressure on the Council to re-open the public gallery, it is my view that their reasonable expectation would have been that their name would simply appear on a list or petitioners that would in turn be presented to the relevant individual / body. In my view Councillor Fower should have sought specific consent from those signing up to the petition before sending emails out in their name; this should have involved their being shown what had been drafted (in their name) and the details of who it would be sent to. In my view Councillor Fower's failure to do this was reckless and amounts to a failure to comply with the Code.

7 Recommendation

- 7.1 The investigation has established that Councillor Fower did act as alleged and in my view did so in his councillor capacity; as such the Code of Conduct was engaged.
- 7.2 Councillor Fower is clearly a committed and hardworking member of the Council who is passionate about representing his local community. I consider though that on this occasion Councillor Fower's conduct went beyond "rough and tumble" politicking, which is aimed squarely at the competence of political opponents, and instead used overly exaggerated language and gratuitous insults in to attack the reputation of Councillor Fox individually and the Council more generally
- 7.3 I also consider that while Councillor Fower's on-line petitions may have been well-intentioned, he failed to ensure that the information he obtained from those who supported them was handled appropriately. Councillors must make their constituents aware of how they will use any information they provide and ensure that they are in agreement.

- 7.4 Accordingly, it is my view that Councillor Fower breached the Council's Code by failing to promote and support high standards of conduct and leadership when serving in his public post.
- 7.5 The Council's arrangements for dealing with standards complaints states that when the investigator considers that there has been a breach of the Code the Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution. While I consider that this is a matter that could be resolved informally, it is my view that any resolution would have to involve Councillor Fower acknowledging that his conduct 'crossed the line' and making a commitment not to act in such a manner again; without this my recommendation would be that this matter be referred to the Hearings Panel of the Council's Constitution and Ethics Committee.

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| CONSTITUTION AND ETHICS SUB-COMMITTEE | AGENDA ITEM No. 3(e) |
| 1 APRIL 2019 | PUBLIC REPORT |

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| Report of: | Gillian Holmes, Peterborough City Council Independent person |
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| REPORT OF INDEPENDENT PERSON |
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1. ORIGIN OF REPORT

1.1 This is the report of Peterborough City Council's Independent Person on the investigation carried out in relation to the purported breach of the Council's Code of Conduct by Councillor Darren Fower.

2. PURPOSE AND REASON FOR REPORT

2.1 To set out the views of the Independent Person in relation to a complaint against Councillor Darren Fower.

3. VIEWS

3.1 I am the Independent Person appointed by Peterborough City Council under Section 28 of the Localism Act 2011. In that capacity I have been asked to give my view in relation to a complaint made by Councillors Holdich OBE & Fox in March 2018 against Councillor Darren Fower.

In giving my view I have had sight of both the original complaint and the report submitted to the Monitoring Officer by ch&i associates.

Having read the report produced by ch&i associates I consider it to be full, fair and balanced.

The facts of the complaint and Councillor Fower's response to it are set out in the report and I do not propose to repeat them here.

3.2 I firstly have to consider whether Councillor Fower was acting in his official capacity at the time of the alleged complaint. I concur with the Investigating Officer's conclusion at para 6.3 of the report. Councillor Fower's petition and other correspondence relate directly to council business and throughout he has referred to himself as 'Councillor Darren Fower'. In my view Councillor Fower was acting in his official capacity and so the Code of Conduct is engaged.

3.3 In relation to the first aspect of the complaint, the language used by Councillor Fower, I have considered carefully the comments set out in the report about the right to free speech, the rough and tumble of political life, the need for politicians to have 'thick skins' and the discussion around the meaning of the word 'facist'.

I acknowledge that this is a matter about which Councillor Fower holds strong views. I note that he stated in interview that it had not been his intention to unfairly malign Councillor Fox or to attack him personally and the comments of the report author that Councillor Fower is clearly a committed and hardworking member of the council who is passionate about representing his local community.

I have considered the matter objectively as a member of the public and have looked at both the structure of the correspondence and the language used.

- 3.4 The wording of the correspondence which states that Councillor Fox has 'decreed that members of the Peterborough public should not be allowed to sit in the public gallery' does suggest to me that Councillor Fox is personally responsible for the closure. On an ordinary reading of the document the later phrase 'such facists tendencies need to end now' would lead me to the view that these words were being directed at Councillor Fox and his personal characteristics. It is my view that they go beyond reference to the competence of a political opponent and the rough and tumble of political life. On balance they do appear to me as a personal attack on the reputation of Councillor Fox and, indirectly, the Council.
- 3.5 Turning to the second limb of the complaint, the on line petitions. If, as the evidence seen suggests, those completing the petitions did so not knowing that e-mails would be circulated in their name and not having penned/knowing the content of those e-mails, I must concur with the views of the report author as set out in para 6.16 of the report. My view, as a member of the public, is that Councillor Fower should have ensured that those signing the petition were fully aware of how the information he obtained was to be used and that specific consent to that use should have been obtained.
- 3.6 In conclusion it is therefore my view that Councillor Fower has breached the Council's Code of Conduct by failing to promote and support high standards of conduct and leadership when serving in his public post.

SIGNED: Gillian Holmes

DATE: 8th March, 2019