

<b>CONSTITUTION AND ETHICS COMMITTEE Hearing Panel Sub-Committee</b>	AGENDA ITEM No. 3
<b>1 APRIL 2019</b>	<b>PUBLIC REPORT</b>

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

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

**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?	<b>NO</b>	If yes, date for Cabinet meeting	N/A
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**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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