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SOUTH HAMS OVERVIEW AND SCRUTINY PANEL - THURSDAY, 20TH NOVEMBER, 2014

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Agenda Letter - Corporate Performance & Resources Panel** (Pages 1 - 4)

2. **Reports**

Reports to CP&R:

a) Item 8 - Request to grant a General Dispensation (Pages 5 - 10)

b) Item 9 - Decision Notice arising from Scrutiny Code of Conduct Hearing Panel (Pages 11 - 14)

3. **Minutes** (Pages 15 - 18)

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Agenda Item 1

Please reply to: Kathryn Trant
Service: Corporate Services
Direct Telephone: 01803 861185
E-Mail: Kathryn.trant@southhams.gov.uk

To: Chairman & Members of the Corporate Performance
and Resources Scrutiny Panel

Our Ref: CS/KT

(Cllrs Baldry, Baverstock, Bramble, Bruce-Spencer,
Foss, Hawkins, Hitchins, Squire and Westacott MBE)

cc: Remainder of the Council for information
Usual press and officer circulation

12 November 2014

Dear Councillor

A meeting of the **Corporate Performance and Resources Scrutiny Panel** will be held in the **Cary Room**, Follaton House, Plymouth Road, Totnes, on **Thursday, 20 November 2014 at 10.00am** when your attendance is requested.

Yours sincerely

Kathryn Trant
Member Services Manager

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| <p>FOR ANY QUERIES ON THIS AGENDA PLEASE CONTACT KATHY TRANT, MEMBER SERVICES MANAGER ON DIRECT LINE 01803 861185</p> |
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A G E N D A

1. **Apologies for Absence**
2. **Minutes** - to approve as a correct record and authorise the Chairman to sign the minutes of the meeting of the Corporate Performance and Resources Scrutiny Panel held on 2 Oct 2014 (pages 1 to 5);

3. **Urgent Business** - brought forward at the discretion of the Chairman;
4. **Division of Agenda** - to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;
5. **Declarations of Interest** - Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests they may have in any items to be considered at this meeting;
6. **Public Forum** – a period of up to 15 minutes is available to deal with issues raised by the public (page 6 only);
7. **Executive Forward Plan (as published on 12 November 2014)** (pages 7 to 10);
Note: If any Member seeks further clarity, or wishes to raise issues regarding any future Executive agenda item, please contact Member Services before **12 noon on Monday 17 November 2014** to ensure that the lead Executive Member(s) and lead officer(s) are aware of this request in advance of the meeting;
8. **Request to grant a General Dispensation** – to consider a report from the Monitoring Officer that recommends a general dispensation be granted to all dual-hatted Members in receipt of an allowance from another local authority (pages 11 to 15);
9. **Decision Notice arising from Scrutiny Code of Conduct Hearing Panel** – to receive the decision notice from the hearing held on 29 October 2014 (pages 16 to 18);
10. **Future Agenda Items** - to consider items for programming on to the annual work programme of the Panel, whilst having regard to the resources available, time constraints of Members and the interests of the local community (page 19 only).

Members of the public may wish to note that the Council's meeting rooms are accessible by wheelchairs and have a loop induction hearing system

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N.B. Legal and financial officers will not, as a general rule, be present throughout all meetings, but will be on standby if required. Members are requested to advise the Member Support Service in advance of the meeting if they require any information of a legal or financial nature.

* * * * *

**MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER
THIS AGENDA HAS BEEN PRINTED ON ENVIRONMENTALLY FRIENDLY PAPER**

If you or someone you know would like this publication in a different format, such as large print or a language other than English, please call Darryl White on 01803 861247 or by email at: darryl.white@southhams.gov.uk

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AGENDA
ITEM

8

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

8

| | |
|--------------------------|---|
| NAME OF COMMITTEE | Corporate Performance & Resources Scrutiny Panel |
| DATE | 20 November 2014 |
| REPORT TITLE | Request to grant a General Dispensation |
| Report of | Monitoring Officer |
| WARDS AFFECTED | All |

Summary of report:

To recommend that a General Dispensation be granted to all dual-hatted Members in receipt of an allowance from another local authority.

Financial implications:

There are no financial implications to this report.

RECOMMENDATION:

That a General Dispensation is granted to all dual-hatted Members of South Hams District Council to speak and vote on matters where they are a member of another local authority and in receipt of a Members' Allowance, from the date of this decision until May 2015

Officer contact:

Catherine Bowen (Principal Solicitor and Monitoring Officer)

Email: cbowen@westdevon.gov.uk

1. BACKGROUND

1.1 The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and new rules on dispensations as part of the new standards arrangements.

1.2 It is a criminal offence for Members to fail to register a Disclosable Pecuniary Interest or to speak and/or vote where they have a Disclosable Pecuniary Interest unless they have obtained a dispensation. The rules on dispensations are set out under section 33 of the Localism Act 2011.

1.3 The Council has delegated powers to the CP&R Scrutiny Panel and (in specified circumstances) to the Monitoring Officer to grant dispensations for a specified period of up to a maximum of four years, on the following grounds:

1.3.1 That so many members of the Council have disclosable pecuniary interests in a matter that it would impede the transaction of the business (i.e. it would otherwise be inquorate).

1.3.2 That without the dispensation, the representation of different political groups on the Council would be so upset as to alter the outcome of any vote on the matter.

1.3.3 That the Council considers that the dispensation is in the interests of persons living in the Council's area.

1.3.4 That without a dispensation no member of the Executive would be able to participate on the matter

1.3.5 That the Council considers that it is otherwise appropriate to grant a dispensation.

1.4 In October 2012 this Committee granted a general dispensation to all members until May 2015 to speak and vote where they would otherwise have a Disclosable Pecuniary Interest in the following matters:

1.4.1 Housing: where the Councillor (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not relate to the Councillor's particular tenancy or lease

1.4.2 Statutory sick pay: if a Councillor receives this or is entitled to receive it

1.4.3 An Allowance, travelling expense, payment or indemnity for Councillors

1.4.4 Any ceremonial honour given to Members

1.4.5 Setting the Council Tax or a Precept

2. DUAL- HATTED MEMBERS IN RECEIPT OF ALLOWANCES FROM OTHER AUTHORITIES

2.1 Under the 2012 Regulations, one of the definitions of a Disclosable Pecuniary Interest is one which includes 'any employment, office, trade, profession or vocation carried on for profit or gain'. This definition includes situations where councillors are members of outside bodies and receive payment for that role, and it can also include councillors who are also members of another authority and receive an allowance for that role, for example the County Council.

2.2 It was clearly not the intention to prevent members from participating in different levels of local government. In order to protect Members and allow participation in matters in which they have a potential Disclosable Pecuniary Interest by reason of their membership of another local authority and for which they receive an allowance, it is recommended that a General Dispensation is granted to such Members to speak and vote on matters relating to the other authority on the grounds that it is in the public interest and appropriate to grant such a dispensation.

2.3 It is recommended that the dispensation be granted until May 2015. The reason for this is that it is appropriate that the dispensation relates to the term of a council and the general dispensation referred to paragraph 1.4 above will need to be reconsidered before the new Council term starts in May 2015.

2.4 Clearly the dispensation will not cover circumstances where Members have an interest for other reasons, and Members will still need to declare specific interests where they arise. Members will also need to be mindful of the rules of bias/perceived bias and predetermination in relation to specific matters and advice should always be sought from the Monitoring Officer.

3. LEGAL IMPLICATIONS

3.1 The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced Disclosable Pecuniary Interests and the new rules on dispensations.

3.2 The Council has delegated powers to the CP&R Scrutiny Committee and (in specific circumstances) to the Monitoring Officer to grant dispensations.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications to this report.

5. RISK MANAGEMENT

5.1 The Risk Management implications are shown at the end of this report in the Strategic Risks Template.

6. OTHER CONSIDERATIONS

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|--------------------------------------|--|
| Corporate priorities engaged: | Community Life |
| Statutory powers: | The Localism Act 2011 Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 |
| Considerations of equality | Not applicable |

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| and human rights: | |
| Biodiversity considerations: | Not applicable |
| Sustainability considerations: | Not applicable |
| Crime and disorder implications: | Not applicable |
| Background papers: | CP&R Scrutiny Committee 4 October 2012 |

STRATEGIC RISKS TEMPLATE

| No | Risk Title | Risk/Opportunity Description | Inherent risk status | | | | Mitigating & Management actions | Ownership |
|----|---|--|----------------------------|----------------------------|------------------------------------|---|---|--------------------|
| | | | Impact of negative outcome | Chance of negative outcome | Risk score and direction of travel | | | |
| 1 | Failure to grant a general dispensation | Members would need to declare Disclosable Pecuniary Interests and not partake in business of the Council | 4 | 2 | 8 | ↔ | Recommendations for a General Dispensation have been made for adoption by the Council | Monitoring Officer |

Direction of travel symbols ↓ ↑ ↔

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South Hams District Council

Code of Conduct Scrutiny Hearing Panel

Decision Notice relating to allegations of breach of the Code of Conduct

| | |
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| Complaint reference: | SH02 010414 |
| Councillor: | Cllr B. Carson |
| Complainant: | Mr T. Dale |
| Authority: | South Hams District Council |
| Panel Members | Cllr J. Baverstock (Chairman) Cllr I. Bramble Cllr J. Westacott |
| Independent Person | Mr M. Fowkes |
| Monitoring Officer | Mrs C. Bowen |
| Summary of the complaint: | The Complainant alleged that the Councillor had broken the Code of Conduct because, as a board member of Devon & Cornwall Housing Group (DCH), the Councillor should have declared a Disclosable Pecuniary Interest (DPI) and should not have taken part and voted on the question raised by the Complainant at the Community, Life & Housing Scrutiny Panel (Scrutiny) meeting on 27 March 2014. |
| The Investigating Officer's findings: | The Monitoring Officer referred the matter for investigation, and in her Final Report the Investigating Officer found that the Councillor had broken the Code of Conduct because he should have declared a DPI at the Scrutiny meeting on 27 March 2014 and should not have participated in the debate or voted. |
| Procedure – Paper Hearing | The Councillor, Chairman, Independent Person and Monitoring Officer were consulted and considered it appropriate for the matter to be dealt with by way of a Paper Hearing because the Councillor accepted the Investigating Officer's findings and did not wish to make any further representations (save for written representations on possible sanctions). |
| Purpose of Paper Hearing | In accordance with the Council's Policy, on 29 October 2014, the Panel considered: <ul style="list-style-type: none"> • whether or not it agreed with the Investigating Officer's findings, and reasons for a breach of the Code of Conduct |

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| | <ul style="list-style-type: none"> • what sanctions (if any) were appropriate |
| Localism Act 2011 | <p>The Panel noted that, whilst the Council has a discretion as to whether to refer the matter to the Police in accordance with the Localism Act 2011, the matter had already been reported to the Police by the Complainant.</p> <p>The formal decision of the Police is not to proceed with an investigation and potential prosecution because it is not in the public interest to do so.</p> |
| Documentation considered by the Panel | <ul style="list-style-type: none"> • Briefing Paper • Code of Conduct • The Investigating Officer's Final Report and Appendices • Adopted Policy documents on dealing with standards complaints and hearings • Representation on sanctions from the Councillor • Representations on sanctions from the Independent Person • Representations from the Complainant |
| The Panel's Decision | <p>Having regard to the Council's adopted policy, and having carefully considered the documentation set out above and the representations made, the Panel made the following decisions:</p> <ul style="list-style-type: none"> • that it agreed with the Investigating Officer's findings that Cllr Carson had broken the Members' Code of Conduct, because, as a board member of DCH in receipt of a monetary payment, the Councillor should have declared a DPI and should not have taken part and voted on the question raised by the Complainant at the Scrutiny meeting on 27 March 2014, and • that it was appropriate to apply sanctions |
| Sanctions imposed by the Panel | <p>In considering sanctions, the Panel considered the overarching aim of the Code in upholding the standards of conduct expected of councillors, and had regard to the criteria set out in the adopted policy, and to the representations received on sanctions.</p> <p>The Panel considered:</p> <ul style="list-style-type: none"> • that the failure to declare the DPI was an honest mistake • the Councillor's previous record of good service • the Councillor's acknowledgment that he had broken the Code and his offer of apology and willingness to undergo any specified training <p>and decided that the following sanctions were appropriate:</p> <ul style="list-style-type: none"> • that the Councillor give a written apology (addressed to the |

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| | <p>Complainant and Chairman of the CP&R Scrutiny Panel) by the end of November</p> <ul style="list-style-type: none"> • the Monitoring Officer to provide training to Cllr Carson on the provisions of the Code of Conduct by December 31 2014 • to report the Panel's findings to the next ordinary meeting of the CP&R Scrutiny Panel. |
| Recommendations | <ul style="list-style-type: none"> • The Panel wished to thank both the Complainant for his constructive representations, together with the considerations from the Independent Person which it found valuable • That a briefing note to be sent to all Members on the implications of remuneration for outside bodies • That all District Councillors be invited to attend training on standards and code of conduct within the next six months |
| Copies of the Decision Notice have been sent to: | <ul style="list-style-type: none"> • The Members of the Panel • The Councillor • The Complainant • The Independent Person • The Investigating Officer |

Signed by the Chairman of the Scrutiny Hearing Panel



Dated: ^{1st} 4 November 2014

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**MINUTES OF THE MEETING OF THE
CORPORATE PERFORMANCE AND RESOURCES
SCRUTINY PANEL
HELD AT FOLLATON HOUSE, TOTNES ON
THURSDAY, 20 NOVEMBER 2014**

| Panel Members in attendance | | | |
|------------------------------------|---------------------------------|-------------------------------|------------------------|
| * Denotes attendance | | ∅ Denotes apology for absence | |
| * | Cllr K J Baldry (Vice Chairman) | * | Cllr J D Hawkins |
| * | Cllr J H Baverstock | * | Cllr P W Hitchins |
| * | Cllr I Bramble | * | Cllr J W Squire |
| * | Cllr C G Bruce-Spencer | * | Cllr J A Westacott MBE |
| * | Cllr R J Foss (Chairman) | | |

| Members in attendance and participating |
|--|
| Cllrs A D Barber, B C Carson, T R Holway, J T Pennington and M F Saltern |

| Members also in attendance and not participating |
|---|
| Cllrs H D Bastone, M J Hicks, R J Tucker, L A H Ward and S A E Wright |

| Item No | Minute Ref No below refers | Officers in attendance and participating |
|----------------|---------------------------------------|---|
| All | | Executive Director (TW), Monitoring Officer and Member Services Manager |

CP&R.22/14 MINUTES

The minutes of the meeting of the Corporate Performance and Resources Scrutiny Panel held on 2 October 2014 were confirmed as a correct record and signed by the Chairman.

CP&R.23/14 URGENT BUSINESS

The Vice Chairman raised a concern that the Performance Indicator report for Q2 had not been available for the meeting and had been deferred to the next meeting in February 2015. A number of Members agreed that this was too long a gap between the end of the quarter which therefore made any scrutiny of these indicators meaningless. The Member Services Manager advised that there had been a misunderstanding over the scheduled meeting dates.

The Executive Director (TW) confirmed that the Q2 and Q3 Performance Indicators would be reported to the next meeting in February 2015.

CP&R.24/14 DECLARATIONS OF INTEREST

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting but none were made.

CP&R.25/14 PUBLIC FORUM

No items were raised.

CP&R.26/14 EXECUTIVE FORWARD PLAN

There were no issues raised on the Executive Forward Plan.

CP&R.27/14 REQUEST TO GRANT A GENERAL DISPENSATION

The Monitoring Officer introduced a report that recommended a General Dispensation be granted to dual hatted Members in receipt of an allowance from another local authority. She outlined the background to the report and how the dispensation would cover all Members across three tiers of local government. The timescale had been set to fall in line with other dispensations that were already in place.

A number of Members raised concerns over dual hatted Members taking part in discussions on matters where the district council may be negotiating with the county council. In making this point, it was felt that there must be occasions when loyalties would be torn and some Members questioned whether Members should in fact be part of more than one decision making body.

One Member stated that the dispensation should also apply to outside bodies. Some Members agreed as currently a Member who was nominated by the Council to be a representative on an Outside Body and received remuneration was not able to fulfil the role by updating the wider Council membership and taking part in appropriate discussions. Other Members disagreed and stated that any Member could apply to the Monitoring Officer for a dispensation if it was required.

Following further discussion, it was agreed that the issue related to local authorities and the Monitoring Officer would present a report to the next meeting of the Corporate Performance and Resources Scrutiny Panel that would recommend guidance in respect of Members serving on Outside Bodies.

It was then:

RESOLVED

1. That a General Dispensation be granted to all dual hatted Members of South Hams District Council to speak and vote on matters where they were a Member of another local authority and in receipt of a Members' Allowance, until May 2015; and
2. That the Monitoring Officer produce a report for consideration at the next Panel meeting in respect of serving on Outside Bodies.

CP&R.28/14 **DECISION NOTICE ARISING FROM SCRUTINY CODE OF CONDUCT HEARING PANEL**

[Cllr Carson left the room before the start of this item]

The Panel had received the Decision Notice from the recent Code of Conduct Hearing. Whilst the decision was not for discussion, Members could comment on the process.

The Chairman of the Code of Conduct Panel explained the process to Members. He also stated that it was important to ensure that the Code of Conduct Hearing took place as near to a Scrutiny Panel meeting as possible to ensure issues were dealt with in a timely manner.

One Member felt that the wording of one particular section of the Notice should be amended as there could be a perception that the Councillor could be influencing the process. Alternative wording for this section was suggested.

There was a further suggestion that paper hearings should not take place and all matters should be referred to a full hearing. The Chairman stated that the process was new and the Council was learning. The Monitoring Officer concluded that the policy could be reviewed at any time.

It was then:

RESOLVED

That the Decision Notice be noted.

CP&R.29/14 **FUTURE AGENDA ITEMS**

It was confirmed that the Performance Indicators report for both Q2 and Q3 would be presented to the next meeting of the Panel, along with a report from the Monitoring Officer on Member dispensations in relation to Outside Bodies.

(Meeting started at 10.00 am and concluded at 11.00 am).

Chairman

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