

Governance and Audit and Standards Committee Arrangements for Assessment, Investigation and Determination of a Complaint that a Councillor has failed to Comply with the Councillors' Code of Conduct

Please note that the timescale for these arrangements is subject to delay during the purdah and election period.

1. Application of these Arrangements

- 1.1. These are the Arrangements to be followed by the Governance and Audit and Standards Committee of Portsmouth City Council ("the Council") in the assessment, investigation and determination of a complaint that any Councillor has failed to comply with the Councillors' Code of Conduct. The Arrangements are in accordance with the requirements of the Localism Act 2011.

2. Receipt of Complaint

- 2.1. A complaint shall be made by email to Peter.Baulf@portsmouthcc.gov.uk or by post addressed to the Monitoring Officer to Portsmouth City Council (Civic Offices, Guildhall Square, Portsmouth PO1 2AL). The Complaint Form shall be used for this purpose.
- 2.2. Anonymous complaints will not normally be considered unless the complaint is accompanied by documentary or photographic evidence indicating an exceptionally serious or significant matter. Any complaint should be received within 30 days of the alleged facts, although the Monitoring Officer will consider any late complaint, if there is a proper explanation for its late submission.

3. Notification to Councillor

- 3.1. The Monitoring Officer shall provide the Councillor with a copy of the complaint

4. Terms of Reference of Initial Filtering Panel.

- 4.1. As soon as practicable the Monitoring Officer shall establish an Initial Filtering Panel to assist in the consideration of the complaint.
- 4.2. The Initial Filtering Panel is an informal meeting to enable the Monitoring Officer to obtain the views of Councillors upon a complaint. It shall be made up of three Councillors drawn from members of the Governance and Audit and Standards committee including standing deputies which may include independents and those groups represented. An Independent Person will also be

invited to attend and express their view on the complaint.

4.3. When it is a complaint by a Councillor of this authority against another Councillor, the Initial Filtering Panel shall comprise at least two independent persons who will be invited to attend and express their view on the complaint. No Councillors will be present.

4.4. Having considered the complaint against the Assessment Criteria and taken into account the views of the Councillors and Independent Persons (as appropriate), the Monitoring Officer will:-

4.4.1. arrange:

4.4.1.1. a formal investigation of the complaint; or

4.4.1.2. training or conciliation; or such other appropriate alternative steps; or

4.4.2. decide that no action should be taken in respect of the complaint.

4.5. The Monitoring Officer will take reasonable steps to notify the person making the complaint ("the Complainant"), and the Councillor of the decision.

4.6. The complainant will be advised of their right to request an Assessment of the decision, under paragraph 5 below. This notification shall normally be given within ten working days of the decision being made.

4.7. When it is decided to investigate or take other action, it does not mean that the Monitoring Officer has come to a conclusion about the complaint.

The Monitoring Officer makes no findings of fact on the complaint. It simply means that the Monitoring Officer believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct, and that some action should be taken in response to the complaint.

5. Right to Request an Assessment Sub-Committee

5.1. Where a decision is made by the Monitoring Officer that no action should be taken in respect of the complaint, the Complainant may make a request for the complaint to be considered by an Assessment Sub-Committee.. The request shall be made in writing addressed to the Monitoring Officer. The request must be received within 10 days of notification being given under paragraph 4.5 above.

6. Convening of Meeting of the Governance and Audit and Standards Assessment Sub-Committee

6.1. The Monitoring Officer shall appoint, and convene a meeting of, the Governance and Audit and Standards Assessment Sub-Committee, ("the Assessment Sub-Committee"). The meeting shall take place within 20 working days of the date of receipt of the request for an Assessment Sub-

Committee to meet, where practicable.

- 6.2. The Assessment Sub-Committee shall comprise three Councillors drawn from members of the Governance and Audit and Standards committee including standing deputies which may include independents and those groups represented. An Independent Person will also be invited to attend and express their view upon the complaint.
- 6.3. The Assessment Sub-Committee shall not include any Councillor who was a member of the Initial Filtering Panel whose decision to take no action is subject to the Assessment Sub-Committee's consideration. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.
- 6.4. The decision of the Assessment Sub-Committee is final and there is no further review.¹

7. Notification to Councillor

- 7.1. The Monitoring Officer shall notify the Councillor that a request for an Assessment Sub-Committee to meet has been received.

8. Terms of Reference of Governance and Audit and Standards Assessment Sub-Committee

- 8.1. The Governance and Audit and Standards Assessment Sub-Committee is established to consider the complaint "afresh".
- 8.2. Upon receipt of such request for an Assessment Sub-Committee to consider the complaint, by the Complainant the Governance and Audit and Standards Assessment Sub-Committee shall, within 20 working days where practicable, consider the complaint and do one of the following:
 - 8.2.1. refer the complaint to the Monitoring Officer with an instruction that he/she arrange a formal investigation of the complaint or directing that he/she arrange training, conciliation or other appropriate alternative steps; or
 - 8.2.2. decide that no action should be taken in respect of the complaint
- 8.3. In reaching its decision, the Sub-Committee shall have regard to the Local Assessment Criteria and the views of the Independent Person
- 8.4. The Sub-Committee shall instruct the Monitoring Officer to take reasonable steps to notify the Complainant, and the Councillor concerned, of their decision. Where the decision is that no action should be taken, reasons for the decision shall be given. This notification shall normally be given within ten working days of the decision being made.

¹ Any subsequent challenge to the Council's process must be made through the Local Government Ombudsman judicial review

- 8.5. When a matter is referred for investigation or other action, it does not mean that the Sub-Committee has made up its mind about the complaint. The Sub-Committee makes no findings of fact on the matter. It simply means that the Sub-Committee believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct, and that some action should be taken in response to the complaint.

9. **Referral for Investigation**

- 9.1. Where there has been a decision to refer the complaint for investigation, the Monitoring Officer shall arrange for such investigation to be carried out by the Deputy Monitoring Officer, or other person the Monitoring Officer considers to be suitably qualified and experienced to undertake the task ("the Investigating Officer"). This may include:

- 9.1.1. making inquiries of such persons as the Investigating Officer considers necessary or expedient;
- 9.1.2. requiring such persons to give such information or explanation as the Investigating Officer considers expedient;
- 9.1.3. inspection of such documents as the Investigating Officer considers expedient.

The Monitoring Officer may set up a Sub-Committee to consider its further progress if the Councillor is unable to attend due to illness and is of the opinion that it is no longer appropriate to continue with an investigation.

- 9.2. Where the matter is referred back to a Sub-Committee they may decide not to proceed with the investigation.
- 9.3. On completion of an investigation, the Investigating Officer shall prepare a written report of the investigation making one of the following findings:
- 9.3.1. that there has been a failure to comply with the Code of Conduct; or
 - 9.3.2. that there has not been a failure to comply with the Code of Conduct.
- 9.4. The Monitoring Officer shall send a copy of the Investigating Officer's report to the Councillor.

10. **Investigating Officer's finding of no failure to observe the Code of Conduct**

- 10.1. In the event that the Investigating Officer finds that there is no failure to observe the Code of Conduct, the Monitoring Officer shall consult with the Initial Filtering Panel or Assessment Sub Committee as appropriate and if the Initial Filtering Panel or Assessment Sub Committee, accepts the Investigating Officer's findings, the Investigating Officer shall give written notice of this to the Complainant and the Councillor.

10.2. In the event that the finding is not accepted, the Initial Filtering Panel or Assessment Sub Committee may give further directions to the Monitoring Officer as appropriate.

11. **A finding of a breach of the Code of Conduct**

Where the Investigating Officer finds that there has been a breach of the Code the matter will be referred for consideration at a hearing of the Governance and Audit and Standards Hearings Sub- Committee

12. **Convening a meeting of the Governance and Audit and Standards Hearings Sub-Committee ("the Hearings Sub-Committee")**

12.1. The Sub-Committee shall be appointed from amongst the Members of the Governance and Audit and Standards Committee including Standing Deputies, provided that at all times the composition of the Sub-Committee complies with paragraph 12.2.

12.2. The Hearings Sub-Committee shall comprise three members. Membership may include any member who has participated in consideration of the allegation at a meeting of the Governance and Audit and Standards Review Sub-Committee at an earlier stage.

12.3. The meeting shall be held within one month of the date of completion of the Investigating Officer's report (or as soon as reasonably practicable thereafter) and at least fourteen days after the date on which the Monitoring Officer sent the Investigating Officer's report to the Councillor (unless the Councillor agrees to it being held earlier).

12.4. This meeting shall normally be open to the press and public, unless the Hearing Sub- Committee decides that the report should be considered in exempt session.

12.5. The meeting of the Hearings Sub-Committee may consider the report in the Councillor's absence if the Councillor does not attend the hearing. If the Sub-Committee is satisfied with the Councillor's reasons for not being able to attend the meeting, it may arrange for the hearing to take place on another date.

13. **Pre-Hearing Procedure**

13.1. The Monitoring Officer shall write to the Councillor proposing a date for the hearing. The letter shall outline the hearing procedure, and the Councillor's rights, asking for a response within a set time. In the event that the Councillor does not respond within the timescale given, the Monitoring Officer may proceed to establish the hearing without further reference to the Councillor and if necessary in the absence of the Councillor. The letter shall enquire whether the Councillor:

- 13.1.1. can attend the hearing;
 - 13.1.2. wants to be represented at the hearing;
 - 13.1.3. disagrees with any of the findings in the investigation report, including reasons for any disagreements;
 - 13.1.4. wants to give evidence at the hearing, either verbally or in writing;
 - 13.1.5. wants to call relevant witnesses to give evidence and, if so to provide outlines or statements of the evidence those witnesses intend to give;
 - 13.1.6. wants any part of the hearing to be held in exempt session;
 - 13.1.7. wants to have any part of the investigation report or other documents withheld from the public; and
- 13.2. The Monitoring Officer shall send a copy of the Councillor's response to the Investigating Officer, inviting him/her to say by a set date whether they wish to:
- 13.2.1. be represented at the hearing;
 - 13.2.2. call relevant witnesses to give evidence;
 - 13.2.3. have any part of the hearing held in exempt session; and
 - 13.2.4. have any part of the investigation report or other documents withheld from the public.
- 13.3. The Monitoring Officer shall advise the Hearings Sub-Committee as necessary on any matter arising out of the responses received. At least two weeks before the hearing, the Monitoring Officer shall write to the parties and advise them of the procedure which is to be followed at the hearing

14. **Terms of Reference of Hearings Sub-Committee**

- 14.1. The Hearings Sub-Committee is established to hold a hearing and make one of the following findings:
- 14.1.1. that the Councillor did not fail to comply with the Code of Conduct; or
 - 14.1.2. that the Councillor did fail to comply with the Code of Conduct, but that no action needs to be taken in respect of the matters considered at the hearing; or
 - 14.1.3. that the Councillor did fail to comply with the Code of Conduct and that one of, or any combination of, the following sanctions should be

imposed:

- 14.1.3.1. censure of the Councillor;
 - 14.1.3.2. restriction for a period not exceeding six months of the Councillor's access to Council premises or Councillor's use of Council resources, provided that those restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the Councillor's ability to perform the functions of a Councillor;
 - 14.1.3.3. recommending to the Councillor's Group Leader (where applicable) that he/she be removed from any position on the Council or an outside body to which they have been appointed;
 - 14.1.3.4. reports its findings to the Council.
- 14.2. Any sanction imposed shall take effect immediately, except where the Sub-Committee directs that it shall take effect on a later date within the following six months.

15. **Hearing Procedure**

- 15.1. The hearing is a formal meeting of the Council and is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The hearing will be conducted in a demonstrably fair, independent and politically impartial way, so that members of the public and Councillors have confidence in the Council's procedures and findings.

16. **Notification of Findings**

- 16.1. As soon as reasonably practicable after the Hearings Sub-Committee makes its finding, the Monitoring Officer shall give written notice of the finding and the reasons for it to the Councillor and the Complainant.