

GOSPORT BOROUGH COUNCIL STANDARDS AND GOVERNANCE COMMITTEE

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF BREACHES OF THE CODE OF CONDUCT FOR MEMBERS

1 CONTEXT

- 1.1 These arrangements set out how you may make a complaint that an elected or co-opted Member of Gosport Borough Council (“the Council”) has failed to comply with the Council’s Code of Conduct, and set out how the Council will deal with allegations of a failure to comply with the Council’s Code of Conduct as required by Sections 29(6) and (7) of the Localism Act 2011.
- 1.2 Such arrangements must provide for the Council to appoint at least one Independent Person (‘IP’), whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member or Co-opted Member against whom an allegation has been made.

2 CODE OF CONDUCT

- 2.1 The Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 to these arrangements and which is available for inspection on the Council’s website and at the Town Hall.

3. MAKING A COMPLAINT

- 3.1 If you wish to make a complaint, please write or email to –

The Monitoring Officer
Gosport Borough Council
Town Hall
High Street
Gosport
Hampshire
PO12 1EB
Monitoringofficer@gosport.gov.uk

- 3.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of Members’

interests and who is responsible for administering the system in respect of complaints of Member misconduct.

- 3.3 In order to ensure that we have all the information which we need to be able to process a complaint, please complete and send us the model complaint form, which can be downloaded from the Council's website, www.gosport.gov.uk, and is available on request from Reception at the Town Hall.
- 3.4 Please provide us with your name and a contact address or email address so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Council does not investigate anonymous complaints.
- 3.5 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.6 The Monitoring Officer will advise the Member that is the subject of the complaint of the complaint within 5 working days of receiving it.

4. WILL YOUR COMPLAINT BE INVESTIGATED?

- 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 and/or Independent Persons upon a complaint. It shall be made up of three Councillors drawn from members of the Standards and Governance committee including standing deputies and would normally include the Chairman or Deputy Chairman of the Committee. 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 Local Assessment Criteria at Appendix 2 and taking into account the views of the Councillors and Independent Person(s) (as appropriate), the Monitoring Officer will:-
- 4.4.1 arrange a formal investigation of the complaint; or
- 4.4.2 require that the Councillor undertake training or seek conciliation with the Complainant; or such other appropriate alternative steps; or

- 4.4.3 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 within 20 days of receipt.
- 4.6 The complainant will be advised of their right to request a Standards and Governance Assessment sub committee to consider 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.
- 4.8 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer or any other Officer will refer the complaint to the Police or other regulatory agencies. If you consider there has been criminal conduct then you may go directly to the Police or other regulatory agency.
- 4.9 Complaints will only be considered within 6 months of the date of the incident which the complaint concerns.

5. RIGHT TO REQUEST A STANDARDS AND GOVERNANCE 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 a Standards and Governance 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 STANDARDS AND GOVERNANCE ASSESSMENT SUB-COMMITTEE

- 6.1 If the Complainant requests a Standards and Governance Assessment Committee of the decision under paragraph 4.6 above, the Monitoring Officer shall appoint, and convene a meeting of the Standards and Governance 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 Standards and Governance Committee. An Independent Person will also be invited to attend and express their view upon the complaint.

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. PROCEDURE FOR HEARINGS OF STANDARDS AND GOVERNANCE ASSESSMENT SUB-COMMITTEE

8.1 The Standards and Governance 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 Standards and Governance 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:

a. arrange a formal investigation of the complaint; or

b. require that the Councillor should undertake training or seek conciliation with the Complainant; or such 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. The decision of the Assessment Sub-Committee is final and there is no further review.

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 10 working days of the decision being made.

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 complaint. 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.

9.2 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 the investigation. Where the matter is referred back to the 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 that:-

9.3.1 there has been a failure to comply with the Code of Conduct; or

9.3.2 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 FINDINGS OF NO FAILURE TO COMPLY WITH THE CODE OF CONDUCT

10.1 In the event that the Investigating Officer finds that there is no failure to comply with 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

- 11.1 Where the Investigating Officer finds that there has been a failure to comply with the Code of Conduct the matter will be referred for consideration at a hearing of the Standards and Governance Committee.

12. PROCEDURE FOR HEARINGS

- 12.1 Hearings will where possible be held within two months of receipt by the Monitoring Officer of the Investigating Officer's final report.
- 12.2 The hearing will be before the Standards and Governance Committee.
- 12.3 The Independent Person (IP) appointed under Section 28 of the Localism Act 2011 will also be present. Their views will be requested and taken into account by the Standards and Governance Committee, but by law they cannot vote.
- 12.4 The Monitoring Officer or Deputy Monitoring Officer will be present as legal advisor to the Standards and Governance Committee.
- 12.5 The Investigating Officer's report should normally provide the Standards and Governance Committee with all the available information, but they may call such witnesses as they consider necessary. Both the Member and complainant will be invited to attend.
- 12.6 The Member may present their own case or be represented.
- 12.7 Written statements from all witnesses called by the Investigating Officer or the Member must be lodged with the Monitoring Officer no later than 10 working days before the hearing. Character witnesses who cannot provide evidence on the matter complained about will not be permitted.
- 12.8 The cost of any attendance or representation must be borne by the party concerned.
- 12.9 All written evidence will be circulated to the Members of the

Standards and Governance Committee, the IP, the Member and the complainant at least five working days before the hearing.

- 12.10 Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.
- 12.11 The legal advisor can speak at any time to advise the Standards and Governance Committee on technical matters, or ask questions of any party.
- 12.12 Order of proceedings:
- (a) The Investigating Officer presents their case and calls witnesses (if any)
 - (b) The Member can ask the Investigating Officer and any witnesses' questions.
 - (c) The Committee and IP can ask questions of the Investigating Officer and any witnesses'.
 - (d) The Member can address the Committee and call witnesses (if any).
 - (e) The Investigating Officer can ask questions of the Member and witnesses.
 - (f) The Committee and IP can ask the Member and witnesses questions.
 - (g) The Investigating Officer can make a closing statement.
 - (h) The IP will be invited to give their advice on the matter.
 - (i) The Member can make a closing statement.
 - (j) All those present except the Standards and Governance Committee and the Clerk will leave the room while the Standards and Governance Committee makes its decision. The Committee may ask the legal advisor to attend to give advice.
 - (k) The Standards and Governance Committee will announce its decision as to whether there has been a breach of the Code of Conduct taking in open session.
 - (l) The Member will be invited to make representation on what action should be taken.
 - (m) The Standards and Governance Committee may retire to

consider what action should be taken and will announce its decision in open session.

12.13 A written report of the hearing and decision, with reasons, will be prepared, usually within 7 working days. A copy will be sent to the Member and Complainant.

12.14 The written report will be available for public inspection.

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.

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. Term 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 request to the Councillor's Group Leader (where applicable) removal 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 Standards and Governance 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.

There is no right of appeal for the complainant or for the Member against a decision of the Initial Filtering Panel, Standards and Governance Assessment Sub-Committee or the Standards and Governance Committee.

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

