



Governance and Audit and Standards Committee Arrangements for Assessment, Investigation and Determination of a Complaint that a MemberCouncillor has failed to Comply with the MemberCouncillors' 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 MemberCouncillor of the Authority has failed to comply with the MemberCouncillors' Code of Conduct. The Arrangements ~~will be followed and applied~~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 michael.lawther@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 must be received within 30 days of the alleged facts.

3. Notification to MemberCouncillor

- 3.1. The Monitoring Officer shall provide the ~~Subject-MemberCouncillor~~ with ~~written notification that a~~ copy of the complaint ~~has been made.~~

4. Terms of Reference of Initial Filtering Panel.

- 4.1. Within 10 working days of receipt of the complaint, the Monitoring Officer shall establish an Initial Filtering Panel to assist him in his consideration of the complaint. The Initial Filtering Panel is established to receive allegations that a Member of the Council has failed to comply with the Members' Code of Conduct.

- 4.2. The Initial Filtering Panel ~~shall be~~is an informal meeting to enable

the Monitoring Officer to obtain the views of MemberCouncillors upon a complaint. ~~It, shall comprise be made up of~~ three memberCouncillors and ~~shall~~ in so far as practicable shall have no more than one memberCouncillor of each political group represented on it. The Independent Person will also be invited to attend and express their view upon the complaint.

~~4.2.4.3. When it is a complaint by a Councillor of this authority against another Councillor, the Initial Filtering Panel shall comprise three independent persons who will be invited to attend and express their view on the complaint. No Councillors will be present.~~

~~4.3.4.4. The Monitoring Officer will, within 10 working days of receipt of the complaint, set up an Initial Filtering Panel to see if the complaint falls within the Local Assessment Criteria.~~ Having considered the complaint against the Assessment Criteria and taken into account the views of the Members Councillors and Independent Person, the Monitoring Officer will:-

4.3.1.4.4.1. Arrange:

- ~~4.3.1.1.4.4.1.1.~~ a formal investigation of the allegationcomplaint; or
- ~~4.3.1.2.~~ training or conciliation; or
- ~~4.3.1.3.4.4.1.2.~~ such other appropriate alternative steps; or

~~4.3.2.4.4.2.~~ decide that no action should be taken in respect of the allegationcomplaint.

4.5. The Monitoring Officer will take reasonable steps to notify the person making the allegationcomplaint ("the Complainant"), and the Subject-MemberCouncillor of the at decision.

~~4.4.4.6. Where the decision is that no action should be taken, The complainant will be advised of their right to reasons for the decision shall be given, and reference made to the right to request a reviewAssessment of that the decision, under paragraph 5 below. This notification shall normally be given within ten working days of the decision being made.~~

~~4.5. The notification to the Subject-Member shall include a copy of the complaint, unless the Monitoring Officer determines that to disclose the identity of the Complainant would be contrary to the public interest or would prejudice any person's ability to investigate the allegation.~~

~~4.6.4.7. When it is decided to investigate or take other action, it does not mean that the Monitoring Officer has made up his mind about the allegation.come to a conclusion about the complaint.~~

The Monitoring Officer makes no findings of fact on the mattercomplaint. 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 ReviewAssessment Sub-Committee**

5.1. Where a decision is made by the Monitoring Officer that no action should be taken in respect of the allegationcomplaint, the Complainant may make a request for the complaint to be considered by an Assessment Sub-Committee. that decision to be reviewed. The request shall be made in writing addressed to the Monitoring Officer. The request must be received within 30-10 days of notification being given under paragraph 4.4 above.

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

6.1. The Monitoring Officer shall appoint, and convene a meeting of, the Governance and Audit and Standards ReviewAssessment Sub-Committee, ("the ReviewAssessment Sub-Committee") ~~from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the composition of the Sub-Committee complies with paragraphs 6.2 and 6.3.~~ The meeting shall take place within 20 working days of the date of receipt of the request for an reviewAssessment Sub-Committee to meet, - where practicable, ~~and certainly within a maximum of three months from that date.~~

6.1.6.2. The ReviewAssessment Sub-Committee shall comprise three ~~member~~Councillors and so far as is practicable have no more than one ~~member~~Councillor from each political group represented on it. TheAn Independent Person will also be invited to attend and express their view upon the complaint.

6.2.6.3. The ReviewAssessment Sub-Committee shall not include any ~~member~~Councillor who was a member of the Initial Filtering Panel whose decision to take no action is subject to the reviewAssessment Sub-Committee's consideration. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.

6.3.6.4. The decision of the Assessment Sub-Committee is final and there is no further review.¹

7. **Notification to Subject-MemberCouncillor**

7.1. The Monitoring Officer shall notify the Subject-MemberCouncillor that a request for anreviewAssessment Sub-Committee to meet has been received.

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

8.1. The Governance and Audit and Standards ReviewAssessment Sub-Committee is established to consider the complaint "afresh". review, upon the request of the Complainant that a Member of the Authority has failed

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

~~or may have failed to comply with the Council's Code of Conduct, a decision of the Initial Filtering Panel that no action be taken in respect of that allegation.~~

- 8.2. Upon receipt of such request for an reviewAssessment Sub-Committee to consider the complaint, by the Complainant and any accompanying report by the Monitoring Officer the Governance and Audit and Standards ReviewAssessment Sub- Committee shall, within 20 working days, ~~review the decision of the Initial Filtering Panel and shall then do one of the following,~~ consider the complaint and do one of the following:
- 8.2.1. refer the allegationcomplaint to the Monitoring Officer with an instruction that he/she arrange a formal investigation of the allegationcomplaint or ~~(after consultation with the Deputy Monitoring Officer where appropriate)~~ directing that he/she arrange training, conciliation or ~~such~~ other appropriate alternative steps; or
- 8.2.2. decide that no action should be taken in respect of the allegationcomplaint; ~~or~~
- ~~8.2.3. where the allegation is in respect of a person who is no longer a Member of the Authority but is a Member of another relevant authority (as defined in Section 27(6) of the Localism Act 2011) refer the allegation to the Monitoring Officer of that other Authority.~~
- 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 Subject-MemberCouncillor concerned, of the final 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.
- 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 allegationcomplaint. 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 Steps other than Investigation~~

- ~~9.1. Where the Initial Filtering Panel or ReviewAssessment Sub-Committee has consulted the Monitoring Officer with a view to making a direction to take steps other than investigation that involve conciliation, the Monitoring Officer shall contact the Complainant, and the Subject-Member seeking confirmation that they would co-operate with the action proposed if such a direction were made. It must be made clear that the decision to take other action, if pursued, will close the opportunity for the complaint to be fully investigated. The Monitoring Officer shall inform the Sub-Committee of the responses~~

~~received from the Complainant and Subject Member.~~

~~9.2. Where a direction is then made to take steps other than investigation, the Monitoring Officer shall report this as part of his annual report to Governance and Audit and Standards Committee. This meeting shall normally be open to the press and public, unless the Committee decides that, in accordance with Part VA of and Schedule 12A to the Local Government Act 1972, the report should be considered in private session.~~

10.9. Referral for Investigation

~~10.1.9.1. Where the Initial Filtering Panel or Review Sub-Committee has referred the matter to the Monitoring Officer for~~ 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:

~~10.1.1.9.1.1.~~ 10.1.1.9.1.1. making inquiries of such persons as the Investigating Officer considers necessary or expedient;

~~10.1.2.9.1.2.~~ 10.1.2.9.1.2. requiring such persons to give such information or explanation as the Investigating Officer considers expedient;

~~10.1.3.9.1.3.~~ 10.1.3.9.1.3. 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 ~~Subject Member Councillor has become has died, resigned, or is~~ seriously ill, and he is of the opinion that it is no longer appropriate to continue with an investigation.

~~10.2.9.2.~~ 10.2.9.2. Where the matter is referred back to a Sub-Committee they may decide not to proceed with the investigation.

~~10.3.9.3.~~ 10.3.9.3. On completion of an investigation, the Investigating Officer shall prepare a written report of the investigation making one of the following findings:

~~10.3.1.9.3.1.~~ 10.3.1.9.3.1. that there has been a failure to comply with the Code of Conduct; or

~~10.3.2.9.3.2.~~ 10.3.2.9.3.2. that there has not been a failure to comply with the Code of Conduct.

~~10.4.9.4.~~ 10.4.9.4. The Monitoring Officer shall send a copy of the Investigating Officer's report to the ~~Subject Member Councillor~~.

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

~~11.1.10.1.~~ 11.1. 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 ReviewAssessment Panel-Sub Committee as appropriate and if the Initial Filtering Panel or ReviewAssessment Sub CommitteePanel, ~~as appropriate,~~ accepts the Investigating Officer's findings, the Investigating Officer shall give written notice of this to the Complainant and the Subject-MemberCouncillor.

~~11.2.10.2.~~ 11.2. In the event that the finding is not accepted, the Initial Filtering Panel or ReviewAssessment Panel-Sub Committee may give further directions to the Monitoring Officer as appropriate.

~~12.11.~~ **A fFinding of a breach of the Code of Conduct**

~~12.1.11.1.~~ 12.1. 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 before~~ the Governance and Audit and Standards Hearings Sub- Committee

~~13.12.~~ **Convening a meeting of the Governance and Audit and Standards Hearings Sub-Committee ("the Hearings Sub-Committee")**

~~13.1.12.1.~~ 13.1. The Sub-Committee shall be appointed from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the composition of the Sub-Committee complies with Paragraph 13.212.2.

~~13.2.12.2.~~ 13.2. 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.

~~13.3.12.3.~~ 13.3. The meeting shall be held within ~~three-one~~ months 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 Subject-MemberCouncillor (unless the memberCouncillor agrees to it being held earlier).

~~13.4.~~ This meeting shall normally be open to the press and public, unless the Hearing Sub- Committee decides that, ~~in accordance with Part VA and Schedule 12A to~~

~~13.5.12.4.~~ 13.5. ~~the Local Government Act 1972,~~ the report should be considered in private-exempt session.

12.5. The meeting of the Hearings Sub-Committee may consider the report in the Subject-MemberCouncillor's absence if the Subject-MemberCouncillor does not attend the hearing. If the Sub-Committee is satisfied with the Subject-MemberCouncillor's reasons for not being able to attend the meeting, it may

arrange for the hearing to take place on another date.

14.13. Pre-Hearing Procedure

14.1.13.1. The Monitoring Officer shall write to the ~~Subject Member~~Councillor proposing a date for the hearing. The letter shall outline the hearing procedure, and the ~~member~~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 ~~Subject-Member~~Councillor:

14.1.1. ~~_____~~ wants to be represented at the hearing ~~by a solicitor, barrister or other~~
14.1.2.13.1.1. ~~_____~~ person;

14.1.3.13.1.2. ~~_____~~ disagrees with any of the findings in the investigation report, including reasons for any disagreements;

14.1.4.13.1.3. ~~_____~~ wants to give evidence at the hearing, either verbally or in writing;

14.1.5.13.1.4. ~~_____~~ wants to call relevant witnesses to give evidence and, if so to provide outlines or statements of the evidence those witnesses intend to give;

14.1.6.13.1.5. ~~_____~~ wants any part of the hearing to be held in private exempt session;

14.1.7.13.1.6. ~~_____~~ wants to have any part of the investigation report or other documents withheld from the public; and

14.1.8.13.1.7. ~~_____~~ can attend the hearing.

14.2.13.2. The Monitoring Officer shall send a copy of the ~~Subject-Member~~Councillor's response to the Investigating Officer, inviting him/her/them to say by a set date whether they wish to:

14.2.1.13.2.1. ~~_____~~ be represented at the hearing;

14.2.2.13.2.2. ~~_____~~ call relevant witnesses to give evidence;

14.2.3.13.2.3. ~~_____~~ have any part of the hearing held in private exempt session; and

14.2.4.13.2.4. ~~_____~~ have any part of the investigation report or other documents withheld from the public.

14.3.13.3. The Monitoring Officer shall advise the Hearings Sub-Committee as necessary on any matter arising out of the ~~Subject Member's~~ responses received. At least two weeks before the hearing, the Monitoring Officer shall send/write to the parties and advise them of the procedure which is to be

~~followed at the hearing pre-hearing process summary to everyone involved in the complaint. This should set the date, time and place for the hearing, summarise the allegation, outline the main facts that are agreed and those which are not agreed, note whether the Subject Member will attend and be represented, list the witnesses who intend to give evidence, and outline the procedure to be followed at the hearing.~~

~~15.14.~~ **Terms of Reference of Hearings Sub-Committee**

~~15.1.14.1.~~ The Hearings Sub-Committee is established to hold a hearing and make one of the following findings:

~~15.1.1.14.1.1.~~ that the ~~Member~~Councillor did not fail to comply with the Code of Conduct; or

~~15.1.2.14.1.2.~~ that the ~~Member~~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

~~15.1.3.14.1.3.~~ that the ~~Member~~Councillor did fail to comply with the Code of Conduct and that one of, or any combination of, the following sanctions should be imposed:

~~15.1.3.1.14.1.3.1.~~ censure of the ~~Member~~Councillor;

~~15.1.3.2.14.1.3.2.~~ restriction for a period not exceeding six months of ~~the~~ ~~at~~ ~~Member~~Councillor's access to ~~the~~ ~~Council~~ premises ~~of~~ ~~the~~ ~~Authority~~ or ~~that~~ ~~Member~~Councillor's use of ~~the~~ ~~Council~~ resources ~~of~~ ~~the~~ ~~Authority~~, provided that those restrictions are reasonable and proportionate to the nature of the breach, and do not unduly restrict the ~~Member~~Councillor's ability to perform the functions of a ~~Member~~Councillor;

~~15.1.3.3.14.1.3.3.~~ recommending to the ~~Member~~Councillor's Group Leader that he/she be removed from any ~~or all Committees or Sub-Committees of the Authority~~ position on the Council or an outside body to which they have been appointed;

~~15.1.3.4.14.1.3.4.~~ reports its findings to the ~~Authority and/or the relevant authority responsible for appointing the Member to the Authority~~Council.

~~15.2.14.2.~~ 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.

~~16.15.~~ **Hearing Procedure**

~~16.1.15.1.~~ The hearing is a formal meeting of the ~~Authority~~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 ~~memberCouncillors of the Authority~~ have confidence in the Council's procedures and findings.

~~16.2. The procedure followed at the hearing will be confirmed in the pre-hearing process summary referred to in Paragraph 15.3.~~

17.16. **Notification of Findings**

~~17.1.16.1.~~ As soon as reasonably practicable after the Hearings Sub- Committee makes its finding ~~on the matter~~, the Monitoring Officer shall give written notice of the finding and the reasons for it to the ~~Subject-MemberCouncillor~~ and the Complainant.