

## APPENDIX C

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

#### **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 Member of the Authority has failed to comply with the Members' Code of Conduct. The Arrangements will be followed and applied 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](mailto: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 at Appendix 3 (Part 3) 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.

#### **3. Notification to Member**

- 3.1. The Monitoring Officer shall provide the Member who is the subject of the allegation with written notification that a complaint has been made.

#### **4. Terms of Reference of Initial Filtering Panel and Governance and Audit and Standards Assessment Sub-Committee**

- 4.1. 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 an informal meeting to enable the Monitoring Officer to obtain the views of Members upon a complaint, shall comprise three members and shall in so far as practicable shall have no more than one member of each political group represented on it
- 4.3. 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 in Appendix 3 (Part 1). Having considered the complaint and taken into account the views of the Members and Independent Persons, the Monitoring Officer will:-

4.3.1. Arrange:

- 4.3.1.1. a formal investigation of the allegation, or
- 4.3.1.2. training or conciliation,
- 4.3.1.3. such other appropriate alternative steps; or

4.3.2. Decide that no action should be taken in respect of the allegation.

4.4. The Monitoring Officer will take reasonable steps to notify the person making the allegation, and the Member the subject of it, of that decision. Where the decision is that no action should be taken, reasons for the decision shall be given, and reference made to the right to request a review of that 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 Member concerned 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. 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.

The Monitoring Officer makes no findings of fact on the matter. 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 a Review**

5.1. Where a decision is made by the Monitoring Officer that no action should be taken in respect of the allegation, the person who made the allegation may make a request for that decision to be reviewed. The request shall be made in writing addressed to the Monitoring Officer. The request must be received within 30 days of notification being given under paragraph 4.4 above.

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

6.1. The Monitoring Officer shall appoint, and convene a meeting of, the Governance and Audit and Standards Review Sub-Committee, ("the Review 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 review, where practicable, and certainly within a maximum of three months from that date.

- 6.2. The Review Sub-Committee shall comprise three members and so far as is practicable have no more than one member from each political group represented on it.
- 6.3. The Review Sub-Committee shall not include any member who was a member of the Assessment Sub-Committee whose decision to take no action is subject to review. This is to minimise the risk of conflicts of interest and ensure fairness for all parties.

**7. Notification to Member**

- 7.1. The Monitoring Officer shall notify the Member who is the subject of the allegation that a request for review has been received.

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

- 8.1. The Governance and Audit and Standards Review Sub-Committee is established to review, upon the request of the person who has made an allegation that a Member of the Authority has failed or may have failed to comply with the Council's Code of Conduct, a decision of the Governance and Audit and Standards Assessment Sub-Committee that no action be taken in respect of that allegation.
- 8.2. Upon receipt of such request for a review and any accompanying report by the Monitoring Officer the Governance and Audit and Standards Review Sub-Committee shall, within 10 working days, review the decision of the Assessment Sub-Committee and shall then do one of the following:
  - 8.2.1. Refer the allegation to the Monitoring Officer with an instruction that he/she arrange a formal investigation of the allegation 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 allegation; 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 in Appendix 3 (Part 1).
- 8.4. The Sub-Committee shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation, and the Member concerned, of that 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 allegation. 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 Assessment Sub-Committee or Review 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 person making the allegation, and the Member the subject of it, 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 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. **Referral for Investigation**

- 10.1. Where the Initial Filtering Panel or Review Sub-Committee has referred the matter to the Monitoring Officer 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. Making inquiries of such persons as the Investigating Officer considers necessary or expedient;
  - 10.1.2. Requiring such persons to give such information or explanation as the Investigating Officer considers expedient;
  - 10.1.3. 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 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. Where the matter is referred back to a Sub-Committee they may decide not to proceed with the investigation.
- 10.3. 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. That there has been a failure to comply with the Code of Conduct; or
  - 10.3.2. That there has not been a failure to comply with the Code of Conduct
- 10.4. The Monitoring Officer shall send a copy of the Investigating Officer's report to the Member the subject of the allegation, and to the Governance and Audit and Standards Committee. The Governance and Audit and Standards Committee shall then arrange for the report to be considered at a hearing of the Governance and Audit and Standards Consideration Sub-Committee ("Consideration Sub-Committee").

## **11. Convening a meeting of the Consideration Sub-Committee**

- 11.1. In consultation with the Chair, the Monitoring Officer shall appoint, and convene a meeting of, the Consideration Sub-Committee, from amongst the Members of the Governance and Audit and Standards Committee, provided that at all times the investigation shall be carried out in accordance with any guidance issued by the Governance and Audit and Standards Committee and the composition of the Sub-Committee complies with Paragraph 11.2.
- 11.2. The Consideration 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.
- 11.3. This meeting shall not normally be open to the press and public, provided that the Sub-Committee decides that, in accordance with Part VA and Schedule 12A to the Local Government Act 1972, the report should be considered in private session.

## **12. Terms of Reference of the Consideration Sub-Committee**

- 12.1. The Consideration Sub-Committee shall be responsible for determining whether:
  - 12.1.1. It accepts the Monitoring Officer's finding of no failure to observe the Code of Conduct; or
  - 12.1.2. The matter should be referred to consideration at a hearing before the Governance and Audit and Standards Hearings Sub-Committee

## **13. Finding of No Failure**

- 13.1. Where a finding of no failure is made, the Monitoring Officer shall give written notification of this to the person who made the allegation, and the Member the subject of it.
- 13.2. The Monitoring Officer shall also arrange for a notice to be published on the Council's website, within 10 working days stating that there has been no failure to comply with the Code of Conduct, unless the Member the subject of the allegation requests that no such notice be published.

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

- 14.1. Where the Assessment Sub-Committee decides that the matter should be referred for consideration at a hearing before the Hearings Sub-Committee, then, in consultation with the Chair, the Monitoring Officer shall appoint, and convene a meeting of, the Hearings Sub-Committee for this purpose. 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 4.2.
- 14.2. 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 or Governance and Audit and Standards Consideration Sub-Committee at an earlier stage.
- 14.3. The meeting shall be held within three 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 member the subject of the allegation, (unless the member agrees to it being held earlier).
- 14.4. This meeting shall normally be open to the press and public, unless the Sub-Committee decides that, in accordance with Part VA and Schedule 12A to the Local Government Act 1972, the report should be considered in private session.
- 14.5. The meeting of the Hearings Sub-Committee may consider the report in the subject member's absence if the subject member does not attend the hearing. If the Sub-Committee is satisfied with the subject member's reasons for not being able to attend the meeting, it may arrange for the hearing to take place on another date.

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

- 15.1. The Hearings Sub-Committee is established to hold a hearing and make one of the following findings:
  - 15.1.1. That the Member did not fail to comply with the Code of Conduct; or

- 15.1.2. That the Member 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. That the Member 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. Censure of the Member:
  - 15.1.3.2. Restriction for a period not exceeding six months of that Member's access to the premises of the Authority or that Member's use of the 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's ability to perform the functions of a Member;
  - 15.1.3.3. Recommending to the Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Authority;
  - 15.1.3.4. Reports its findings to the Authority and/or the relevant authority responsible for appointing the Member to the Authority.
- 15.2. 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. **Pre-Hearing Procedure**

- 16.1. In consultation with the Chair of the Governance and Audit and Standards Committee, the Monitoring Officer shall write to the Subject Member proposing a date for the hearing. The letter shall outline the hearing procedure, and the member's rights, asking for a response within a set time. The letter shall enquire whether the subject member:
  - 16.1.1. Wants to be represented at the hearing by a solicitor, barrister or other person;
  - 16.1.2. Disagrees with any of the findings in the investigation report, including reasons for any disagreements;
  - 16.1.3. Wants to give evidence at the hearing, either verbally or in writing;
  - 16.1.4. Wants to call relevant witnesses to give evidence and, if so to provide outlines or statements of the evidence those witnesses intend to give;
  - 16.1.5. Wants any part of the hearing to be held in private:

- 16.1.6. Wants to have any part of the investigation report or other documents withheld from the public, and
- 16.1.7. Can attend the hearing.
- 16.2. The Monitoring Officer shall send a copy of the Subject Member's response to the Investigating Officer, inviting them to say by a set date whether they wish to:
  - 16.2.1. Be represented at the hearing;
  - 16.2.2. Call relevant witnesses to give evidence;
  - 16.2.3. Have any part of the hearing held in private; and
  - 16.2.4. Have any part of the investigation report or other documents withheld from the public.
- 16.3. The Monitoring Officer shall advise the Hearings Sub-Committee as necessary on any matter arising out of the Subject Member's response. At least two weeks before the hearing, the Monitoring Officer shall send a 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.

## 17. **Hearing Procedure**

- 17.1. The hearing is a formal meeting of the Authority 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 members of the Authority have confidence in the Council's procedures and findings.
- 17.2. The procedure followed at the hearing will be confirmed in the pre-hearing process summary referred to in Paragraph 16.3.

## 18. **Notification of Findings**

- 18.1. 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-Member and the person who made the allegation. A summary of the finding and reasons for it shall be placed on the Council's website.
- 18.2. Where the finding is that there was no failure to comply with the Code of Conduct, a summary of the finding and reasons for it shall not be placed

on the Council's website if the Subject-Member the subject of the finding so requests.