

Schedule 17 - Appendix 1

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. In practice the Council requires two IPs in order to form an Initial Filtering Panel for the consideration of complaints made by one Member against another.

2 CODE OF CONDUCT

- 2.1 The Council has adopted a Code of Conduct for Members, which is Schedule 17 to the Constitution and which is available for inspection on the Council’s website and at the Town Hall.

3. MAKING A COMPLAINT

- 3.1 Complaints must be submitted in writing and addressed to the Monitoring Officer, as set out below. This includes submission by email. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let the Monitoring Officer know as soon as possible.

The Monitoring Officer
Gosport Borough Council
Town Hall
High Street

Gosport
Hampshire
PO12 1EB
Monitoringofficer@gosport.gov.uk

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- 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. At the outset of the consideration of any complaint the Monitoring Officer will consider whether any conflict of interest prevents them from dealing with the matter and whether the Deputy Monitoring Officer or another Officer – or the Monitoring Officer of another Council - should be appointed to act instead of the Monitoring Officer in the consideration of the complaint in accordance with the rules in this Appendix 1 to Schedule 17 of the Constitution.
- 3.3 Ideally 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. If you do not provide us with information that enables us to process a complaint the Monitoring Officer may write to you to request further information before the matter can proceed.
- 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.
- 3.5 The Council does not routinely investigate anonymous complaints and there will need to be a justification for doing so. The considerations that the Monitoring Officer will make for agreeing to a request of the Complainant in remaining anonymous are considered at Appendix 3 to this schedule.
- 3.6 Once we have all of the information that we need to proceed, the Monitoring Officer will confirm the start date of your complaint within 5 working days of receiving such information, and will keep you informed of the progress of your complaint.

3.7 The Monitoring Officer will advise the Member that is the subject of the complaint of the complaint within 5 working days of the start date referred to in 3.6 above.

4. WILL YOUR COMPLAINT BE INVESTIGATED?

4.1 On receiving your complaint the Monitoring Officer will need to consider whether the Council can take the matter further. The Monitoring Officer will first consider with an Independent Person whether your complaint can be looked into and if it meets the following tests:

- Is the person you are complaining about a Councillor who was in office at the time of the alleged conduct?
- Did the conduct occur within the last twelve months, or are there exceptional circumstances why the complaint should be considered despite the conduct occurring more than twelve months previous to the complaint?
- Is the conduct something that is covered by the Code of Conduct?

If the answers to any of these questions is 'no' then the matter cannot proceed as a complaint under the Code of Conduct and the Monitoring Officer will inform you within 10 working days of the start date of that conclusion.

4.2 If the Monitoring Officer concludes that the complaint can proceed then as soon as practicable, the Monitoring Officer shall establish an Initial Filtering Panel to assist in the consideration of the complaint and will inform you within 10 working days of the start date that the Initial Filtering Panel will be convened.

4.3 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.

4.4 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.

4.5 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:-

4.5.1 arrange a formal investigation of the complaint; or

4.5.2 require that the Councillor undertake training or seek conciliation with the Complainant; or such other

appropriate alternative steps; or

- 4.5.3 decide that no action should be taken in respect of the complaint.
- 4.6 The Monitoring Officer will take reasonable steps to notify the person making the complaint (“the Complainant”) and the Councillor of the decision within 25 working days of the start date.
- 4.7 When the conclusion is that no action should be taken, 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.
- 4.8 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.

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 working days of notification being given under paragraph 4.6 above.

6. CONVENING OF MEETING OF STANDARDS AND GOVERNANCE ASSESSMENT SUB-COMMITTEE

- 6.1 If the Complainant requests a Standards and Governance Assessment Sub-Committee in accordance with paragraph 5.1 above, the Monitoring Officer shall notify the Councillor that such a request has been received.
- 6.2 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.

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

- 7.1 The Standards and Governance Assessment Sub-Committee is established to consider the complaint “afresh”.

- 7.2 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:-

- 7.2.1 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

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

- 7.3 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.

- 7.4 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.

7.5 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.

8. REFERRAL FOR INVESTIGATION

8.1 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:-

8.1.1 making inquiries of such persons as the Investigating Officer considers necessary or expedient;

8.1.2 requiring such persons to give such information or explanation as the Investigating Officer considers expedient;

8.1.3 inspection of such documents as the Investigating Officer considers expedient.

8.2 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.

8.3 On completion of an investigation, the Investigating Officer shall prepare a written report of the investigation making one of the following findings that:-

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

8.3.2 there has not been a failure to comply with the Code of Conduct.

8.4 The Monitoring Officer shall send a copy of the Investigating Officer’s report to the Councillor.

8.5 The Investigation shall be conducted in a timely manner and compliance with the investigation is expected from Members and Officers so as to enable a final report to be issued within 2 months of confirming to the complainant that an Investigation shall take place. If the Investigating Officer is unable to keep to this timeframe the Monitoring Officer will inform the complainant of a revised deadline.

9. INVESTIGATING OFFICER'S FINDINGS OF NO FAILURE TO COMPLY WITH THE CODE OF CONDUCT

9.1 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 within 10 working days of receipt of the Investigation Report. A summary of the investigation report will be published on the Council's website within 15 working days of receipt of the investigation report.

9.2 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 and the Monitoring Officer will update the Councillor and Complainant as appropriate.

10. A FINDING OF A BREACH OF THE CODE OF CONDUCT

10.1 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 as detailed further in paragraphs 11-15 below.

11. HEARING OF THE STANDARDS AND GOVERNANCE COMMITTEE

11.1 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 way, so that members of the public and Councillors have confidence in the Council's procedures and findings.

12. PRE HEARING PROCEDURE

12.1 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:

12.1.1 can attend the hearing;

12.1.2 wants to be represented at the hearing;

- 12.1.3 disagrees with any of the findings in the investigation report, including reasons for any disagreements;
 - 12.1.4 wants to give evidence at the hearing, either verbally or in writing;
 - 12.1.5 wants to call relevant witnesses to give evidence and. If so, to provide outlines or statements of the evidence those witnesses intend to give;
 - 12.1.6 wants any part of the hearing to be held in exempt session;
 - 12.1.7 wants to have any part of the investigation report or other documents withheld from the public.
- 12.2 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:-
- 12.2.1 be represented at the hearing;
 - 12.2.2 call relevant witnesses to give evidence;
 - 12.2.3 have any part of the hearing held in exempt session; and
 - 12.2.4 have any part of the investigation report or other documents withheld from the public.
- 12.3 The Monitoring Officer shall advise the Hearing 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.
- 13. TERM OF REFERENCE OF HEARINGS OF THE STANDARDS AND GOVERNANCE COMMITTEE (“THE HEARING”)**
- 13.1 The hearing is established and held to make one of the following findings:-
- 13.1.1 that the Councillor did not fail to comply with the Code of Conduct; or
 - 13.1.2 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
 - 13.1.3 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:-
 - 13.1.3.1 censure of the Councillor
 - 13.1.3.2 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
 - 13.1.3.3 Any other sanction that the Council considers to be appropriate bearing in mind the circumstances of the case and is entitled to apply in accordance with the law prevailing at the time;
 - 13.1.3.4 reports its findings to the Council.

13.2 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.

14. HEARING PROCEDURE

14.1 Hearings will where possible be held within two months of receipt by the Monitoring Officer of the Investigating Officer's final report.

14.2 The Hearing will be before the Standards and Governance Committee.

14.3 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 Hearing, but by law they cannot vote.

14.4 The Monitoring Officer or Deputy Monitoring Officer will be present as legal advisor to the Hearing.

14.5 The Investigating Officer's report should normally provide the Hearing with all the available information, but they may call such witnesses as they consider necessary. Both the Councillor and complainant will be invited to attend.

14.6 The Councillor may present their own case or be represented.

14.7 Written statements from all witnesses called by the Investigating Officer or the Councillor 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.

14.8 The cost of any attendance or representation must be borne by the party concerned.

14.9 All written evidence will be circulated to the Members of the Standards and Governance Committee, as they will form the Hearing panel, unless they have an interest in the complaint that precludes their involvement as part of the Hearing panel, the IP, the Councillor and the complainant at least five working days before the hearing.

14.10 Written statements will not be read out at the hearing, as it will be assumed all those present are already familiar with their contents.

14.11 The legal advisor can speak at any time to advise the Hearing on technical matters, or ask questions of any party.

14.12 Order of proceedings:

(a) The Investigating Officer presents their case and calls

witnesses (if any)

(b) The Councillor can ask the Investigating Officer and any witnesses' questions.

(c) The Hearing and IP can ask questions of the Investigating Officer and any witnesses'.

(d) The Councillor can address the Hearing and call witnesses (if any).

(e) The Investigating Officer can ask questions of the Councillor and witnesses.

(f) The Hearing and IP can ask the Councillor 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 Councillor can make a closing statement.

(j) All those present except the Hearing panel and the democratic services officer assisting the panel will leave the room while the Hearing makes its decision. The Hearing may ask the legal advisor to attend to give advice.

(k) The Hearing of 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 Councillor will be invited to make representation on what action should be taken.

(m) The Hearing may retire to consider what action should be taken and will announce its decision in open session.

14.13 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 Councillor and Complainant.

14.14 The written report will be available for public inspection and published on the Council's website within 10 working days of the decision.

15. NOTIFICATION OF FINDINGS

As soon as reasonably practicable after the Hearing of 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.

Schedule 17 - Appendix 2

LOCAL ASSESSMENT CRITERIA For Consideration of Complaints

The following criteria shall be applied to the Initial Filtering Panel, and the Standards and Governance Assessment Sub-Committee when considering allegations that a Councillor has failed to comply with the Councillor Code of Conduct.

1. Is the complaint within the jurisdiction of the Committee? Does it relate to the conduct of a Councillor in their capacity as a Councillor, or is it conduct relating to their private life?
2. Is there evidence, in support of the allegation, of a breach of the Code?
3. Is it serious enough to warrant a sanction?
4. Is this part of a continuing pattern of conduct which taken as a whole might constitute a breach of the Code?
5. Would an investigation serve a useful purpose?
6. Is the case suitable for local investigation?
7. Does it appear that the complaint is really about dissatisfaction with a Council decision?
8. Is there enough information currently available to justify a decision to refer the matter for investigation?
9. Is the complaint trivial, malicious, vexatious, politically motivated, tit-for-tat or made by a persistent complainant?

Schedule 17 - Appendix 3

Factors to consider when deciding whether the identity of the complainant and/or written summary of the allegation should be disclosed to the Councillor the subject of the allegation.

1. Are there reasonable grounds for believing that the complainant will be at risk of physical harm if their identity is disclosed?
2. Is the complainant an officer who works closely with the Councillor and afraid of the consequences to their employment if their identity is disclosed?
3. Is there evidence of any medical risks associated with the complainant's identity being disclosed?
4. Is it feasible for the complaint to be investigated without the complainant's identity being disclosed (e.g. where the allegation is bullying of the complainant)?
5. Are there reasonable grounds for believing that disclosure of the complainant's identity and/or the provision of a written summary of allegation, may lead to intimidation of witnesses or the destruction of evidence?