

Terms of Reference for a Review of Guildford Borough Council's Future Arrangements for Dealing with Misconduct Complaints against Councillors

A. Objectives of the Review

1. The objective of this Review is to consider Guildford Borough Council's ("GBC") current "Arrangements Dealing with Allegations of Misconduct by Councillors and Co-Opted Members" ("the Arrangements") and to propose amendments and improvements (if any) that might be necessary:-
 - a. In the light of current best practice
 - b. In the light of the professional & practical experience of those conducting the review
 - c. To ensure that GBC has effective, efficient and fair Arrangements and investigative procedures in relation to future complaints about the conduct of members
2. A copy of the current Arrangements is attached.

B. The Process of the Review

1. The Review should primarily be a desktop exercise, but should include Interviews with key Officers and Members: Satish Mistry (Executive Head of Governance and Monitoring Officer), Martyn Brake (Executive Head of Organisational Development and Deputy Monitoring Officer), Sandra Herbert (Legal Services Manager) and Sue Surgeon (Managing Director). The Review should also interview the Chair of the Corporate Governance & Standards, the Lead Member for Governance and Group Leaders.
2. The Review is to be forward looking and seek to improve the current processes contained in the existing arrangements.
3. It is envisaged that the Review should not take more than 3 days and result in a report, which recommends changes, which will be considered by the Corporate Governance & Standards Committee in the first instance.
4. Chris Guy (Interim Governance Lawyer) is the primary contact for the Review (and in his absence 15th - 28th July inclusive: Sandra Herbert 01483 444135 sandra.herbert@guildford.gov.uk)

GUILDFORD BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS AND CO-OPTED MEMBERS

1 Context

These Arrangements set out:

- (a) how you may make a complaint that a councillor or co-opted member of Guildford Borough Council ("the Council") or of any parish council within the borough has failed to comply with the code of conduct adopted by the Council or relevant parish council, and
- (b) how the Council will deal with allegations of a failure to comply with the relevant code of conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a councillor or co-opted member of the Council or of any parish council within the borough has failed to comply with the relevant code of conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person¹, 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 authority at any other stage, or by a councillor or co-opted member against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a code of conduct for councillors and co-opted members, which is available for inspection on the Council's website and on request from the Monitoring Officer. The various codes of conduct adopted by the 23 parish councils within the borough are available for inspection by arrangement with the relevant parish clerk, whose contact details may be viewed by visiting the Council's website:

www.guildford.gov.uk/parishcouncils

3 Making a complaint

All complaints must be made in writing. If you wish to make a complaint, please write or email to the Council's Monitoring Officer, Mr Satish Mistry, whose contact details are:

Guildford Borough Council
Millmead House
Millmead
GUILDFORD
Surrey GU2 4BB

Email: satish.mistry@guildford.gov.uk

Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance.

¹ The Council has appointed Vivienne Cameron, Roger Pett and Bernard Quoroll as its independent persons

PART 5 – ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Council's Register of Interests and the register of interests for each of the parish councils within the borough. The Monitoring Officer is also responsible for administering the system in respect of misconduct complaints.

Please do 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 say and we will not disclose your name and address to the councillor or co-opted member against whom you make the complaint without your prior consent. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

The Monitoring Officer may reject your complaint if, following consultation with the Independent Person, it is considered by the Monitoring Officer to be vexatious, frivolous or politically motivated.

4. Notification of complaint to Subject Member

The Monitoring Officer will normally notify the Subject Member that a complaint has been made.

5. Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the councillor or co-opted member against whom your complaint is directed. Where your complaint relates to a parish councillor, the Monitoring Officer may also inform the relevant parish council of your complaint and seek the views of one of the co-opted parish members on the Corporate Governance and Standards Committee before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the councillor or co-opted member accepting that their conduct was unacceptable and offering an apology or other remedial action. Where a reasonable offer of local resolution is made, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct by the councillor or co-opted member, the Monitoring Officer will refer the matter to the Police.

6. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another council or an external investigator. The Investigating Officer will decide whether

PART 5 – ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the councillor or co-opted member against whom you have complained and provide them with a copy of your complaint, and ask them to provide their explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or where disclosure of details of the complaint to the councillor or co-opted member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the councillor/co-opted member, or delay notifying them until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the councillor/co-opted member concerned, to give you both an opportunity to identify any matter in that draft report with which you disagree or which you consider requires more consideration.

Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

7. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the councillor/co-opted member concerned and to the relevant parish council, where your complaint relates to a parish councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

8. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub-Committee or, after consulting the Independent Person, seek local resolution.

8.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the councillor/co-opted member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the councillor/co-opted member complies with the suggested resolution, the Monitoring Officer will report the matter to the Corporate Governance and Standards Committee (and the relevant parish council where the complaint refers to a parish councillor) for information, but will take no further action.

PART 5 – ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the councillor/co-opted member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Sub-Committee which will conduct a local hearing before deciding whether the councillor/co-opted member has failed to comply with the code of conduct and, if so, whether to take any action in respect of the councillor/co-opted member.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the councillor/co-opted member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the councillor/co-opted member has failed to comply with the code of conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Sub-Committee. The councillor/co-opted member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub-Committee as to why they consider that they did not fail to comply with the code of conduct.

The Hearings Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the councillor/co-opted member did not fail to comply with the code of conduct, and so dismiss the complaint. If, however, the Sub-Committee concludes that the councillor/co-opted member did fail to comply with the code of conduct, the councillor/co-opted member will be informed of this finding and the Sub-Committee will then consider what action, if any, should be taken as a result of the councillor/co-opted member's failure to comply with the code of conduct. In doing this, the councillor/co-opted member will be given an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

9. What action can the Hearings Sub-Committee take where a councillor/co-opted member has failed to comply with the code of conduct?

The Council has delegated to the Hearings Sub-Committee such of its powers to take action in respect of individual councillors/co-opted members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Sub-Committee may:

- 9.1 Publish and report its findings in respect of the councillor's/co-opted member's conduct to a meeting of the full Council (or to the relevant parish council) for information and recommending that the councillor makes a public apology at that meeting.
- 9.2 Recommend to the councillor's political group leader (or in the case of un-grouped councillors or co-opted members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period.

PART 5 – ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

- 9.3 Recommend to the Leader of the Council, in the case of a lead councillor who is found to have failed to comply with the code of conduct, that the councillor be removed from the Executive, or removed from particular portfolio responsibilities.
- 9.4 Recommend appropriate training for the councillor/co-opted member.
- 9.5 Remove the councillor/co-opted member or recommend to the relevant parish council that the member be removed from all outside appointments to which they have been appointed or nominated by the Council or by the parish council for a specified period.
- 9.6 Withdraw or recommend to the relevant parish council that it withdraws facilities provided to the councillor/co-opted member by the Council, such as a computer, website and/or email and internet access for a specified period.
- 9.7 Exclude or recommend that the relevant parish council excludes the councillor/co-opted member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

10. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Sub-Committee as to whether the councillor/co-opted member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the councillor/co-opted member and (if applicable) to the relevant parish council. The Monitoring Officer will make that decision notice available for public inspection and report the decision to the next convenient meeting of the Corporate Governance and Standards Committee.

11. Who are the Hearings Sub-Committee?

The Hearings Sub-Committee is a sub-committee of the Council's Corporate Governance and Standards Committee. The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and his/her views are sought and taken into consideration before the Sub-Committee takes any decision on whether the councillor's/co-opted member's conduct constitutes a failure to comply with the code of conduct and as to any action to be taken following a finding of failure to comply with the code of conduct.

12. Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 12.1 is, or has been within the past five years, a member, co-opted member or officer of the Council; or

PART 5 – ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

- 12.2 is, or has been within the past five years, a member, co-opted member or officer of a parish council within the borough; or
- 12.3 is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means:
- 12.3.1 Spouse or civil partner;
 - 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 12.3.3 Grandparent of the other person;
 - 12.3.4 A lineal descendent of a grandparent of the other person;
 - 12.3.5 A parent, sibling or child of a person within sub-paragraphs 12.3.1 or 12.3.2;
 - 12.3.6 A spouse or civil partner of a person within sub-paragraphs 12.3.3, 12.3.4 or 12.3.5; or
 - 12.3.7 Living with a person within sub-paragraphs 12.3.3, 12.3.4 or 12.3.5 as husband and wife or as if they were civil partners.

The functions of the Independent Person are as follows:

- They must be consulted by the Council before it makes a decision on an allegation of misconduct by a councillor/co-opted member that it has decided to investigate or before it decides on action to be taken in respect of that councillor/co-opted member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a councillor or co-opted member of the Council or of a parish council against whom a complaint has been made.

13. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Hearings Sub-Committee the right to depart from these arrangements where the Sub-Committee considers it expedient to do so in order to secure the effective and fair consideration of any matter.

14. Appeals

There is no right of appeal for you as complainant or for the councillor/co-opted member against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

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