

Corporate Governance & Standards Committee Report

Ward(s) affected: All

Report of the Monitoring Officer

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Annual Report of the Monitoring Officer regarding Misconduct Allegations

Executive Summary

This report is to inform and update members of the Committee about decisions taken on allegations of misconduct against borough and parish councillors for the 12-month period ending 31 December 2022.

The report also sets out details of the consideration by the Corporate Governance Task Group of a review of the extent to which outcomes of misconduct complaints against councillors should be published.

Recommendation to Committee:

- (1) To note the cases referred to in Appendix 1.
- (2) To advise the Monitoring Officer of any areas of concern upon which the Committee would like further information and/or further work carried out.
- (3) To consider the recommendations of the Corporate Governance Task Group set out in paragraphs 7.5 to 7.7 of this report, which are as follows:
 - (a) That no changes be made to the public disclosure arrangements for dealing with allegations of misconduct by councillors and co-opted members i.e. only to disclose the outcome after referrals to the Hearings Sub-Committee following formal investigation (para 7.5).
 - (b) That decision notices following determination of a complaint by the Hearings Sub-Committee be published on the Councillor Conduct webpages on the Council's website, together with a link to the relevant committee pages (para 7.6).
 - (c) That the table in Appendix 1 to this report showing details of complaints received, and decisions taken in relation to Allegations of Misconduct against Borough Councillors and Parish Councillors under the Arrangements, for the previous calendar year be posted on the Councillor Conduct webpages and updated as appropriate by the Monitoring Officer at least twice per year to show

decisions taken in respect of those complaints, and new complaints received (para 7.7).

- (d) That links to the latest Monitoring Officer Annual Report to the Corporate Governance and Standards Committee be included in the Councillor conduct webpages (para 7.8).

Reasons for Recommendation:

- To ensure members of the Committee and others to whom the report is circulated are updated as to complaints received and to enable them to consider learning points for the future.
- To seek to promote and maintain high standards of conduct amongst Members.
- To ensure as far as possible, the openness and transparency of the councillor complaints procedure
- To respond to recommendations of the Corporate Governance Task Group

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 The purpose of this report is to inform and update members of the Committee about decisions taken on allegations of misconduct against borough and parish councillors during the year ending 31 December 2022. The report also sets out details of the consideration by the Corporate Governance Task Group of a review of the extent to which outcomes of misconduct complaints against councillors should be published.

2. Statutory background

- 2.1 The statutory background can be found in the Localism Act 2011, Part 1 Chapters 6 and 7 (“the Act”) and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (“the Regulations”) made thereunder.

3. Strategic Priorities

- 3.1 The Committee’s discussion in public about decisions taken on ethical standards allegations against borough and parish councillors and consideration of any learning points for the future is an important element of good corporate governance and reinforces the Council’s commitment to be open and accountable to its residents.

4. Relevant Government Policy and Relevant Council Policy

- 4.1 The relevant government policies with regard to the ethical standards framework are contained in the Department for Communities and Local Government Guidance “[Openness and Transparency on Personal Interests: A guide for Councillors](#)”. The Council’s policy is contained in Part 5 of its

Constitution, in particular the Councillors' Code of Conduct and the Council's Arrangements for dealing with allegations of misconduct by councillors and co-opted members.

5. Background

5.1 The Act made fundamental changes to the system of regulation of standards of conduct for elected and co-opted councillors and came into force on 1 July 2012.

5.2 Section 27(2) of the Act required the authority to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. Section 28(6) and (7) of the Act required the Council to put in place Arrangements under which allegations that a councillor or co-opted member of the Council or of any of the 23 parish councils within the borough has failed to comply with the relevant code of conduct can be investigated and decisions made on such allegations.

5.3 Following the full council meetings on 8 May 2012 and 5 July 2012 the Council:

- Established this Committee with responsibility for a range of matters to include promoting and maintaining high standards of conduct by members and co-opted members of the authority;
- Adopted a new Councillors' Code of Conduct;
- Appointed an Independent Person;
- Adopted Arrangements and procedures for dealing with misconduct complaints in relation to both borough and parish councillors;
- Revised the Register of Members' Interests to reflect the new Disclosable Pecuniary Interests created under the Act and regulations made thereunder;
- Authorised the making of all necessary changes to the Constitution.

5.4 After four years of operation, the Arrangements for dealing with allegations of misconduct by councillors and co-opted members ("the Arrangements") were reviewed by the Council with assistance from this Committee and a working group in light of local experiences of handling cases, to benchmark the Council's Arrangements against emerging best practice and to ensure greater efficiency in the process. The revised Arrangements were approved by this Committee and came into force on 24 November 2016 and were further reviewed in spring of 2018 and more recently in October 2020 where some minor amendments were made.

6. Details

6.1 Attached at Appendix 1 is a table showing the number of complaints received and decisions taken by the Monitoring Officer, or by the Hearings Sub-Committee, in relation to allegations made against borough councillors and parish councillors in accordance with the Council's adopted Arrangements for the year ending 31 December 2022.

Number of complaints received

6.2 Throughout this period, there have been a total of four complaints received -

two relating to borough councillors, and two relating to parish councillors. There were also three complaints which had started in 2021.

Decisions taken

- 6.3 The two complaints against borough councillors referred to in paragraph 6.2 above were rejected at stage 1 for not providing any substantiating information. Two complaints from 2021 proceeded to stage 6, Hearings Sub-Committee.

Ongoing complaints

- 6.4 As at the end of December 2022, there are three ongoing complaints (two against parish councillors referred to in paragraph 6.2 above, and one against a borough councillor).

Type of complainant

- 6.5 The origin of the complaints (whether from members of the public, officers, or elected members of the authority) is set out in Appendix 1.

Response times

- 6.6 The time taken for consideration and determination of a complaint is also set out in Appendix 1.

Comparisons with the previous three years

- 6.7 As requested by the Committee following consideration of last year's Annual Report, the table below lists for comparative purposes details of the number of complaints received over the previous three years.

Year	Total number of misconduct complaints received	Borough Councillors	Parish Councillors
2022	4	2	2
2021	14	14	0
2020	17	9	8
2019	8*	8	1

(* one complaint was against a borough councillor and a parish councillor)

- 6.8 Members are invited to consider whether there are any areas of concern upon which they would like further information and/or further work done.

7. Publishing Outcomes of Misconduct Complaints

- 7.1 The Council's current Arrangements provide that the identity of all councillors against whom a misconduct complaint has been made remains anonymous, except for those whose complaint is referred to the Hearings Sub-Committee for determination. A copy of the current Arrangements is attached, for information, at **Appendix 2**.

- 7.2 Following a request last year by the then Chairman of this Committee, Councillor George Potter, the Corporate Governance Task Group, at its meeting on 20 February 2023, considered a report on the extent to which outcomes of misconduct complaints against councillors should be published.
- 7.3 The Task Group noted the various stages of a misconduct complaint, as set out in the Arrangements, where there could be an “outcome”, which were as follows:
- The Monitoring Officer (MO) could discontinue a complaint or terminate an investigation in certain circumstances (see paras 5.1 and 5.2 of the Arrangements).
 - The complaint may fail the initial jurisdiction test (Stage 1) – section 6 of the Arrangements.
 - The complaint may, following initial assessment (Stage 2), be subject to an Informal Resolution (Stage 3) – sections 7 and 8 of the Arrangements.
 - The complaint may, following formal investigation, be terminated because the Investigating Officer finds no breach of the Code (Stages 4 and 5) - sections 9 and 10 of the Arrangements.
 - The Investigating Officer may, during formal investigation of the complaint, identify criminal conduct by the subject member (the councillor against whom the complaint was made) (see paras 19 and 20 of Appendix 2 to the Arrangements), in which case the MO would suspend the investigation pending the outcome of any separate Police investigation.
 - Following formal investigation and referral to the Hearings Sub-Committee (Stage 6), the outcome of the complaint may be that there has been no breach of the code and no further action taken, or that there has been a breach and appropriate sanction(s) have been determined.
- 7.4 The Task Group noted that the Arrangements for dealing with misconduct complaints published by the other Surrey councils, generally followed Guildford’s approach regarding publishing outcomes – i.e. that no specific information about the identity of the Subject Member or the nature of the complaint against them are published, except at the formal standards hearing stage.
- 7.5 The Task Group considered whether there was a case to publish the identity of a Subject Member and details of the complaint against them, at any stage in the process other than when it was referred to the Hearings Sub-Committee. The Task Group felt that any change to the Arrangements to provide for publication of details of Informal Resolutions might have the effect of deterring councillors from agreeing to them, and hence a greater number of complaints being referred for a formal investigation, which would be both time-consuming and costly. The Task Group therefore concluded that no changes should be made to the Arrangements to provide for public disclosure of outcomes of misconduct complaints against councillors, other than when they were referred to the Hearings Sub-Committee following formal investigation.

- 7.6 The Task Group was content with the existing arrangements for publication on the website of a decision notice setting out the findings at a Hearings Sub-Committee with full disclosure of the identity of the Subject Member, and the details of the complaint. It was noted, however, that decision notices were currently published with the Hearings Sub-Committee papers. It was suggested, for added transparency, that such decision notices, along with a link to the relevant committee papers should also be published on the specific webpages dealing with Councillor Conduct: [Councillor conduct - Guildford Borough Council](#).
- 7.7 It was also suggested that the table in **Appendix 1** to this report showing details of complaints received, and decisions taken in relation to Allegations of Misconduct against Borough Councillors and Parish Councillors under the Arrangements, for the previous calendar year should also be posted on the Councillor Conduct webpages referred to above, and updated at least twice yearly as appropriate by the Monitoring Officer showing decisions taken in respect of those complaints, and new complaints received.
- 7.8 The task group also requested the Councillor conduct webpages to include links to the latest Monitoring Officer Annual Report to the Corporate Governance and Standards Committee.
- 7.9 The Task Group has suggested minor amendments to add clarity to two paragraphs within Appendix 1 to the Arrangements (Communications Policy in relation to Member Complaints):
- (a) Para 5:
“Where, following assessment, no action is to be taken on a case, public attention should not be drawn to an allegation which is not being pursued. However, where a public statement is necessary, ~~and subject to paragraph 4.8 of the Arrangements~~, reasons should be given as to **why** further action is **not** being pursued.”
- (b) Para 7:
“Where some other resolution has been reached, this may be **made available published** with the consent of the Subject Member”.
- 7.10 The Task Group has decided that, at its next meeting on 27 March 2023, it would like to review the wording of the Arrangements as a whole and make recommendations for any changes to this Committee and to full Council, noting that any such recommendations would be considered following the Borough Council elections in May. The suggested amendments to the Arrangements referred to in paragraph 7.9 above will be picked up in this review process.

8. Next steps

- 8.1 The Committee is asked to note the matters contained in this report and advise the Monitoring Officer of any areas of concern or further information/action required.

9. Other courses of action considered but rejected

- 9.1 It is good practice to provide an annual update report of this nature. The requirement forms part of the Work Programme for the Committee. Failure to keep Members up to date could lead to a diminution of ethical standards amongst Members.

10. Equality and Diversity Implications

- 10.1 There is a general obligation in the Councillors' Code of Conduct in which Members undertake "Not to do anything which may cause your authority to breach any of the equality enactments".

11. Financial Implications

- 11.1 There is a financial cost to the Council if complaints are passed to external consultants for investigation/report. During the period referred to there have been three investigations commissioned by the Monitoring Officer.

12. Legal Implications

- 12.1 As contained in the main body of this report.

13. Human Resource Implications

- 13.1 There are resource implications in terms of Monitoring Officer and Deputy Monitoring Officer time spent on managing these complaints.

14. Conclusion

- 14.1 The Committee is asked to note the cases referred to in Appendix 1 and advise the Monitoring Officer of any areas of concern upon which they would like further information and/or further work done.

15. Background Papers

As referred to in this Report and Appendices.

Case files referred to are exempt under the Local Government Act 1972 Part 1 of Schedule 12A paragraphs 1 and 2.

16. Appendices

Appendix 1: Complaints received, and Decisions taken in relation to Allegations of Misconduct against Borough Councillors & Parish Councillors under the Arrangements for dealing with Allegations of Misconduct (1 January to 31 December 2022)

Appendix 2: Arrangements for dealing with allegations of misconduct by councillors and co-opted members (as set out in Part 5 of the Council's Constitution).