

Supplementary Information

**HAVANT BOROUGH COUNCIL
GOVERNANCE & AUDIT COMMITTEE
2 December 2015**

Dear Councillor

I am now able to enclose, for consideration at the next meeting of the Governance & Audit Committee to be held on 2 December 2015, the following supplementary information that was unavailable when the agenda was printed.

Agenda No Item

11 Sub-Committee Hearings - The Process

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NON-EXEMPT

HAVANT BOROUGH COUNCIL

Governance & Audit Committee

02 December 2015

CHANGES TO THE PROCESS FOR GOVERNANCE & AUDIT SUB-COMMITTEE HEARINGS

Report By Monitoring Officer

FOR RECOMMENDATION TO COUNCIL

Cabinet Lead: Cllr Wilson

Key Decision: No

1.0 Purpose of Report

- 1.1 To make minor changes to the process to be followed by the Governance & Audit Sub-Committee at Hearings convened following an investigation into whether a Borough Councillor has breached the Council's Code of Conduct.

2.0 Recommendation

That: the Committee recommend to Council that the Council's Process for dealing with allegations be amended as follows:

- (i) reference to the "Governance Committee" be amended so as to read "Governance & Audit Committee"
- (ii) The procedure for hearings be amended to ensure that a separate process for hearings convened following an investigation be added as Appendix 3 to the process.

3.0 Summary

- 3.1 The making of minor amendments to the processes to be followed at a hearing of the Governance & Audit Sub-Committee is recommended in order to ensure any such hearings run efficiently and in the interests of justice.

4.0 Subject of Report

- 4.1 The current process for dealing with allegations that a Councillor has failed to comply with the Council's Code of Conduct was made

following significant changes to the law relating to the conduct of Councillors made by the Localism Act 2011.

4.2 The process sets out the procedures to be followed by the Council in the event that a complaint is made about the failure of a Councillor to comply with the Council's Code of Conduct. The proposed changes to the process gives more detail to the process to be followed in the event that the initial assessment team send a complaint for investigation. The purpose of the changes is to try to make sure that any hearing of a Sub-Committee convened following an investigation runs efficiently and is fair for all the parties.

4.3 The proposed process is attached as Appendix A

5.0 Implications

5.1 Resources: None

5.2 Legal: An improved process will improve the efficiency of any hearings convened following an investigation and is therefore considered to be in the interests of justice.

5.3 Strategy: The process assists hearings convened following an allegation that a Councillor has breached the Code of Conduct.

5.4 Risks: None

5.5 Communications: The changes will be advertised on the Council's website

5.6 For the Community: Upholding the good conduct of Councillors.

6.0 Consultation

Legal Services: 30 November 2015

Service Manager Finance: 30 November 2015

Cabinet Lead: 30 November 2015

Appendices: Appendix A attached

Background Papers: None

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CODE OF CONDUCT

PROCESS FOR DEALING WITH ALLEGATIONS

1. Making complaints

Any complaint that a Councillor has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

A form for making complaints is available. Its use is encouraged, but is not essential providing the complaint includes all the necessary information.

2. Initial action by Monitoring Officer (MO)

On receiving the complaint the MO may dismiss it without further action if:

- (a) The person complained about is no longer a Councillor of the relevant Council; or
- (b) The MO considers that the complaint does not relate to behaviour in the Councillor's official capacity as a Councillor; or
- (c) The matter being complained about happened more than 12 months before the complaint was received; or
- (d) The matter being complained about came to the complainant's notice more than 6 months before the complaint was received.

The MO will inform the complainant and the Councillor accordingly.

If the MO does not dismiss the complaint on one of the above grounds, he/she will acknowledge it and inform the complainant of the procedure to be followed. The MO may ask the complainant for further information or clarification.

The MO will (other than in exceptional circumstances where he/she considers that it is not in the public interest to do so) send the Councillor complained about a copy of the complaint, and invite the Councillor to submit initial written comments within 10 working days.

The MO will also:

Ask the Councillor any specific questions the MO considers will assist the initial assessment of the complaint.

As an alternative to the above action, the MO may, if he/she considers it appropriate, refer the complaint to the Police and take no further action under this procedure.

3. Initial assessment of the complaint

Initial assessment will, if practicable, take place within 15 working days of receipt of the Councillor's written comments under section 2 above.

The decision on the initial assessment will be made by the Monitoring Team. This will comprise the MO and the Independent Person (IP).

Before the Monitoring Team considers the complaint, the MO will send the IP:

- (a) A copy of the complaint;
- (b) A copy of the Councillor's comments in response to the complaint; and
- (c) Any other information in the MO's possession that he/she considers relevant.

The Monitoring Team's decision on the initial assessment, with reasons, will be given in writing to the Councillor and the complainant.

There will be no right of appeal.

The decision will be available for public inspection.

4. Decision options at initial assessment

The Monitoring Team may decide:

- (a) To take no action (see Appendix 1); or
- (b) To attempt to resolve the matter informally between the complainant and Councillor, either in writing or by face-to-face meeting or by any other method it considers appropriate. In this case there will be no formal decision as to whether or not there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved to the satisfaction of the Councillor and the complainant, options (a), (c) and (d) will remain open; or
- (c) To arrange a hearing before a Sub-Committee of three Councillors drawn from the Governance Committee and the IP, at which the Councillor and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Appendix

2. The hearing will reach a formal decision as to whether the Councillor breached the Code of Conduct; or.
- (d) If the complaint is potentially complex, to arrange for a formal investigation to be undertaken, including interview of appropriate witnesses, and to seek the view of the investigator as to whether there has been a breach of the Code of Conduct. If the investigator considers there has been a breach of the Code, a hearing will be arranged. Procedures are set out at Appendix 3. The hearing will reach a formal decision as to whether the Councillor breached the Code of Conduct. If the investigator considers that there has not been a breach of the Code, the MO will issue a formal finding to that effect.

APPENDIX 1

No action will be taken where any of the following apply:

- a. the Monitoring Team considers that there is no prima facie evidence that the Code has been breached;
- b. taking into account the nature of the allegation, the Monitoring Team considers that using public funds to examine the matter further would be disproportionate;
- c. the Monitoring Team considers that the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- d. the conduct complained about has already been the subject of investigation or enquiry by another public body;
- e. the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Team considers that there is nothing further to be gained from a further investigation;
- f. the Monitoring Team considers that there is not enough information to take the matter further;
- g. the complaint was made anonymously;
- h. the complainant has requested that their identity as complainant be withheld from the Councillor, and the Monitoring Team considers that the matter cannot reasonably be taken further in these circumstances;
- i. the Councillor has already apologised for the action that was the subject of the complaint, and the Monitoring Team considers that this is sufficient to dispose of the complaint; or
- j. the Monitoring Team considers that the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual Councillor.

PROCEDURE FOR HEARINGS

General:

Hearings will where possible be held within two months of the initial assessment decision where there is no prior investigation.

The Hearing will be before a Sub-Committee of three members drawn from the Governance & Audit Committee. One of the members will be elected Chairman.

The Independent Person (IP) appointed under section 28 of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Sub-Committee but by law he/she cannot vote.

The MO or Deputy MO will be present as legal adviser to the Sub-Committee.

Both the Councillor and complainant will be invited to appear. They may present their own case or they may be represented.

They may bring witnesses (of a number the Sub-Committee considers is reasonable), in which case written statements from the witnesses must be lodged with the MO at least eight working days before the Hearing. 'Character witnesses' who cannot provide evidence on the matter complained about will not be permitted.

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

All written evidence will be circulated to the Sub-Committee, the IP, the Councillor and the complainant at least five working days before the Hearing.

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

The legal adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

Proceedings:

The complainant can address the Sub-Committee and call witnesses (if any).

The Councillor can ask the complainant and witnesses questions.

The Sub-Committee and IP can ask the complainant and witnesses questions.

The Councillor can address the Sub-Committee and call witnesses (if any)

The complainant can ask the Councillor and witnesses questions.

The Sub-Committee and IP can ask the Councillor and witnesses questions.

The complainant can make a closing statement.

The Councillor can make a closing statement.

All those present except the Sub-Committee, the IP, the legal adviser and Clerk will leave the room while the Sub-Committee makes its decision.

The Sub-Committee's decision will be announced orally as soon as possible, including any specific advice sought and given from the IP.

A written report of the Hearing and decision, with reasons, will be prepared, usually within five working days. A copy will be sent to all those present at the hearing.

The written report will be available for public inspection.

Decisions open to the Sub-Committee:

These are:

- (a) That the Councillor did not fail to comply with his/her Council's Code of Conduct;
- (b) That the Councillor failed to comply with his/her Council's Code of Conduct, and that:
 - (i) No action need be taken; or
 - (ii) The Councillor be censured; and/or
 - (iii) Whatever publicity the Sub-Committee considers appropriate be given to their findings; and/or
 - (iv) It be recommended to the Council (or to the Councillor's political group where Committee appointments are made by political groups) that the Councillor be removed from a specific Committee(s), or from any other position to which the Council has appointed him/her.

The Sub-Committee may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist Councillors generally to follow the Code of Conduct.

PROCEDURE FOR HEARINGS FOLLOWING AN INVESTIGATION

Hearings will where possible be held within two months of receipt by the Monitoring Officer (MO) of the investigator's report.

The Hearing will be before a Sub-Committee of three members drawn from the Governance & Audit Committee. One of the members will be elected Chairman.

The MO or Deputy MO will be present as legal adviser to the Sub-Committee. The legal adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

The Independent Person appointed under section 28 of the Localism Act 2011 will also be present.

The Subject Councillor and Complainant will be invited to appear. They may present their own case or they may be represented. The cost of any attendance/representation must be borne by the party concerned.

1. Procedure at the Hearing

(a) Attendance of the Councillor

- (i) If the Subject Councillor is not present at the start of the meeting, the Sub-Committee shall adjourn to enable the Subject Councillor to attend, unless they are satisfied that there is sufficient reason for the failure of the Subject Councillor to attend, in which case the Committee may resolve to proceed in the absence of the Subject Councillor; and
- (ii) Where the Sub-Committee proceeds in the absence of the Subject Councillor, the procedure for the meeting shall be adapted as necessary, giving any representatives of the Councillor who is present such rights as would otherwise be accorded to the Subject Councillor.

(b) Order of Business

The order of business at the meeting shall be as follows:

- (i) Any representations from the Investigator, Monitoring Officer or Deputy Monitoring Officer, the Subject Councillor and/or the Complainant as to reasons why the Sub-Committee should exclude the press and public and determination as to whether to exclude the press and

public (where the Sub-Committee decides that it will not exclude the press and public, the Committee Services Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present);

- (ii) Declarations of Interest;
- (iii) Consideration as to whether to adjourn or to proceed in the absence of the Subject Councillor, if the Subject Councillor is not present;
- (iv) Introduction of the Sub-Committee, Committee Services Officer, the Legal Adviser to the Sub-Committee, Investigator, the Monitoring Officer or Deputy Monitoring Officer, the Subject Councillor and any representative of the Subject Councillor and the Complainant and any representative of the Complainant. The Independent Person appointed under sub-section 28(7) of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Sub-Committee but by law he/she cannot vote;
- (v) Presentation by the Investigator, Monitoring Officer or Deputy Monitoring Officer of the Investigation Report. The Investigator, Monitoring Officer or Deputy Monitoring Officer shall at this stage address only the issue of whether the Subject Councillor has acted in breach of the Code of Conduct. The Investigator, Monitoring Officer or Deputy Monitoring Officer may introduce witnesses required to substantiate any matter contained in that report which the Subject Councillor has disputed in his/her written statement in response. Members of the Sub-Committee may question the Investigator, Monitoring Officer or Deputy Monitoring Officer and any witness on any matter within their competence. There shall be no cross-examination by the Subject Councillor or the Complainant, but the Subject Councillor or the Complainant may request the Chairman of the Meeting to direct appropriate questions to the Investigator, Monitoring Officer or Deputy Monitoring Officer or to any witness who he/she has introduced.
- (vi) Presentation by the Complainant. The Complainant or his/her representative shall at this stage address only the issue of whether the Subject Councillor has acted in breach of the Code of Conduct. The Complainant or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Sub-Committee

may question the Complainant and any witness on their evidence. There shall be no cross-examination by the Subject Councillor, Investigator, Monitoring Officer or Deputy Monitoring Officer, but the Subject Councillor, Investigator, Monitoring Officer or Deputy Monitoring Officer, may request the Chairman of the Meeting to direct appropriate questions to the Complainant or to any witness who he/she has introduced.

- (vii) Presentation by the Subject Councillor. The Subject Councillor or his/her representative shall at this stage address only the issue of whether he/she has acted in breach of the Code of Conduct. The Subject Councillor or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Sub-Committee may question the Subject Councillor and any witness on their evidence. There shall be no cross-examination by the Complainant, Investigator, Monitoring Officer or Deputy Monitoring Officer, but the Complainant, Investigator, Monitoring Officer or Deputy Monitoring Officer, may request the Chairman of the Meeting to direct appropriate questions to the Subject Councillor or to any witness who he/she has introduced.
- (viii) Where the Subject Councillor seeks to dispute any matter in the Investigation Report which he/she has not given notice of intention to dispute in his/her written statement in response, the Investigator, Monitoring Officer or Deputy Monitoring Officer shall draw this to the attention of the Sub-Committee. The Sub-Committee may decide:
 - (a) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
 - (b) to admit the dispute, but invite the Investigator, Monitoring Officer or Deputy Monitoring Officer to respond thereto, recalling any witness as necessary; or
 - (c) to adjourn the meeting to enable the Investigator, Monitoring Officer or Deputy Monitoring Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (ix) At the conclusion of the presentation by the Subject Councillor, the Chairman shall ask the Investigator, Monitoring Officer or Deputy Monitoring Officer whether

there was any matter raised during the course of that presentation which was not raised in the Subject Councillor's written statement in response. The Investigator, Monitoring Officer or Deputy Monitoring Officer may then respond to any such new matter, or may request the Sub-Committee to adjourn to enable him/her to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;

- (x) The Sub-Committee is required to come to a decision as to whether the Subject Councillor acted in breach of the Code of Conduct. Accordingly, they have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigator, Monitoring Officer or Deputy Monitoring Officer, the Subject Councillor, the Complainant and any witness in order to obtain sufficient information to enable the Sub-Committee to come to a decision on this issue;
- (xi) The Sub-Committee will adjourn into another room with the Committee Services Officer and the Legal Adviser where they will consider in private session whether the Subject Councillor has acted in breach of the Code of Conduct. At any stage in their consideration they may return to ask any further questions of the Investigator, Monitoring Officer or Deputy Monitoring Officer or the Subject Councillor;
- (xii) The Committee may at any time seek legal advice from its Legal Adviser.
- (xiii) The Independent Person's views will be requested and taken into account by the Sub-Committee but by law he/she cannot vote.
- (xiv) At the conclusion of their consideration, the Sub-Committee will return and the Chairman will advise the Investigator, Monitoring Officer or Deputy Monitoring Officer and the Subject Councillor of their decision as to whether the Subject Councillor has acted in breach of the Code of Conduct and the reasons for that decision;
- (xv) If the Sub-Committee concludes that the Subject Councillor has acted in breach of the Code of Conduct, the Sub-Committee will then hear representations (if any) from the Investigator, Monitoring Officer or Deputy Monitoring Officer and then the Subject Councillor as to whether the Sub-Committee should take any action against the Subject Councillor and what form any action should take. Members of the Sub-Committee may ask

questions of the Investigator, Monitoring Officer or Deputy Monitoring Officer and the Subject Councillor and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision;

(xvi) The Sub-Committee will then adjourn into another room together with the Committee Services Officer and the Legal Adviser where they will consider in private session whether to take any action in respect of the Subject Councillor and what form any such action should take. The actions available to the Sub-Committee are as follows:

- (i) No action need be taken; or
- (ii) The Councillor be censured; and/or
- (iii) Whatever publicity the Sub-Committee considers appropriate be given to their findings; and/or
- (iv) It be recommended to the Council (or to the Councillor's political group where Committee appointments are made by political groups) that the Councillor be removed from a specific Committee(s), or from any other position to which the Council has appointed him/her.

The Sub-Committee may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist Councillors generally to follow the Code of Conduct.

2. Confidentiality

- (a) No member or Officer of the Council shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out in Paragraph 2(b) below;
- (b) The circumstances referred to above shall be as follows:
 - (i) the disclosure is made for the purposes of enabling the Monitoring Officer to carry out his/her functions or the Governance & Audit Committee to carry out its function in relation to the matter;
 - (ii) the person to whom the information relates has consented to the disclosure;
 - (iii) the disclosure is made in pursuance of a statutory requirement for disclosure;

- (iv) the information has previously been disclosed to the public with lawful authority;
- (v) the disclosure is made to the Audit Commission or District Auditor for the purposes of any function of the Audit Commission under the Audit Commission Act 1998; and
- (vi) the disclosure is for the purpose of criminal proceedings and the information in question and not obtained as a result of personal enquires of the person subject to the criminal proceedings.