

**ROBERTO TAMBINI
CHIEF EXECUTIVE**

Please reply to:

Contact: Gillian Hobbs
Service: Corporate Governance
Direct line: 01784 444243
E-mail: g.hobbs@spelthorne.gov.uk
Our ref: GH/MCCC
Date: 24 June 2013

Notice of meeting:

Members' Code of Conduct Committee

Date: Tuesday 2 July 2013

Time: 7.30pm

Place: Goddard Room, Council Offices, Knowle Green, Staines-upon-Thames

To: Members of the Members' Code of Conduct Committee

Councillors:

F. Ayers
C.A. Bannister
P.A. Broom
R.D. Dunn
A.E. Friday
D. Gohil
M.J. Madams
A.J. Mitchell

Independent Members

Mr. M. Litvak (Chairman)
Miss S. Faulkner (Vice-Chairman)

Index

Description	Page Number
1. Apologies	
To receive apologies for non attendance.	
2. Minutes	
To receive the minutes of the meeting held on 21 May 2013 (copy attached)	1 - 3
To receive the minutes of the Assessment Panel hearing held on 4 June 2013 (copy attached)	4 - 6
3. Disclosure of Interests	
To receive any disclosures of interest from members in accordance with the Council's Code of Conduct	
4. Review of new Arrangements	
To consider the report of the Monitoring Officer. (copy attached)	7 - 16
5. Independent Person Protocol	
To consider an Independent Person Protocol. (copy attached)	17 - 20
6. Work Programme	
To receive the Work Programme for 2013-2014. (copy attached)	21 - 22
7. Urgent Business	
To consider any urgent business.	

**Minutes of the Members' Code of Conduct Committee
21 May 2013**

Present:

Councillors:

C.A. Bannister

J.A. Dale

A.E. Friday

A.J. Mitchell

Independent Members:

Mr Murray Litvak (Chairman)

Miss Sue Faulkner (Vice Chairman)

Apologies: Councillors R.D. Dunn, A.C. Harman and M.J. Madams

125/13 Minutes

The minutes of the meeting held on 27 February 2013 were approved as a correct record.

126/13 Disclosures of Interest

No disclosures were made.

127/13 Hearing Procedures

The Monitoring Officer reminded the Committee that at its last meeting it had discussed the arrangements for dealing with allegations of misconduct under section 28 of the Localism Act 2011. The Committee had given discretion to himself and the Chairman to propose alternative wording for the clause at paragraph 53e regarding the powers of the Hearings Panel, in relation to publishing the outcome of the complaint.

The Committee discussed the sanctions available to the Hearings Panel and agreed the suggested wording at paragraphs 53e and f subject to substitution of the word "full" for "comprehensive" at 53f and inclusion of an additional paragraph to state, "and the panel may set the time frame on the actions that are required to be taken." The Committee also agreed to move the order of the sentences within paragraph 48, so that the last sentence became the first.

RESOLVED that the proposed amendments to the arrangements for dealing with allegations of misconduct be agreed subject to:

- (1) substitution of the word "full" for "comprehensive" at paragraph 53f
- (2) inclusion of an additional paragraph at 53 to state, "and the panel may set the time frame on the actions that are required to be taken."
- (3) amendment of the order of the sentences within paragraph 48, so that the last sentence becomes the first.

Members' Code of Conduct Committee, 21 May 2013 - continued

128/13 Staff Code of Conduct

The Monitoring Officer gave verbal feedback to the Committee following consultation on the draft Staff Code of Conduct with Management Team, Heads of Service and Unison.

The Committee was disappointed not to have received a response from Unison, but as Unison had been given an opportunity to comment the Committee was minded to proceed. Members considered and discussed the feedback from Heads of Service and Management Team and agreed the draft Staff Code of Conduct as set out at Appendix 2 to the Monitoring Officer's report, subject to the following:

1. to drop the requirement for staff to declare their membership of secret societies in order to bring the staff code into line with the member code.
2. to give more detailed consideration to the involvement of staff and councillors in social media and whether further guidance and advice on its use is required for staff and councillors.
3. amendment of the terminology at paragraph 10.3 to refer to 'payment for personal use of facilities' in relation to the honesty box scheme.

RESOLVED to recommend to Council that the draft Staff Code of Conduct as set out at Appendix 2 to the report of the Monitoring Officer to the meeting held on 27 February 2013, be agreed subject to the following:

- (1) the removal of paragraph 11.4 requiring staff to declare membership of secret societies and
- (2) amendment of the terminology at paragraph 10.3 to refer to 'payment for personal use of facilities' in relation to the honesty box scheme

129/13 Gifts and Hospitality

The Committee discussed the report of the Monitoring Officer suggesting provisions to be added to the new Members' Code of Conduct covering gaps identified by members at previous meetings in relation to: gifts and hospitality; membership of outside bodies and organisations; and dealing with conflicts of interest other than those which are prescribed as "Disclosable Pecuniary Interests".

RESOLVED to recommend Council that:

- (1) The Policy of Gifts, Hospitality and Sponsorship, as set out at Appendix 1 to the Monitoring Officer's report, be approved;
- (2) The revised Code of Conduct for members, as set out at Appendix 2 to the report of the Monitoring Officer, be approved;
- (3) The Conflicts of Interest Policy, as set out at Appendix 3 to the report of the Monitoring Officer, be approved and

Members' Code of Conduct Committee, 21 May 2013 - continued

- (4) Amendments to Standing Order 10. relating to Declarations of Interest at meetings, as set out at Appendix 4 to the report of the Monitoring Officer, be agreed.

130/13 Work Programme

The Committee received a copy of its work programme for the Municipal Year 2013–2014.

The Committee had discussed the use of social media in relation to its impact on member and staff conduct earlier on the agenda. It agreed to look at the Council's Social Media Policy at its July meeting in relation to the potential pitfalls in the use of social media and whether further guidance and advice on its use was required for staff and councillors.

The Committee was mindful that the training on the hearings process was an important topic and with a desire to keep the workload for the July meeting manageable, agreed to postpone the training to a separate date in September to be agreed.

RESOLVED that the work programme as submitted be amended to include:

- (1) consideration of the Council's Social Media Policy at the meeting on 2 July 2013 and
- (2) postponement of the training for Committee members on the hearings process to a date to be confirmed in September 2013.

131/13 Urgent Business

There was none.

Members' Code of Conduct Committee
Minutes of the Assessment Panel Hearing

4 June 2013

Present:

Councillors:

Mrs C.A. Bannister

A.E. Friday

A.J. Mitchell

Independent Member:

Mr Murray Litvak (Chairman)

152/13 Disclosures of Interest

There were none.

153/13 Exclusion of Press and Public

The Panel considered whether the press and public should be excluded from the meeting during consideration of the following matter on the grounds that it was likely to involve the disclosure of exempt information as defined in Paragraph 2 of Part 1 of Schedule 12A of the Local Government Act.

The Panel in making its decision had regard to all circumstances and was satisfied that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

RESOLVED that in the interest of having a frank and open discussion about the matter, the press and public are excluded from the meeting.

154/13 Complaint Assessment against Councillor H

The Panel considered the report of the Monitoring Officer setting out an allegation by way of a complaint received from a member of the public about an inappropriate remark made by Councillor H at a Police Crime Commissioner's public meeting held on 22 May 2012 in Stanwell.

The Monitoring Officer detailed the history of personal disagreements between the complainant and Councillor H by way of background to the current complaint.

The Panel considered the complainant's request that a previous incident in January 2012, which had been dismissed with no further action by a previous Assessment Sub-Committee, be re-examined. The Panel agreed that the previous incident had been dealt with and

RESOLVED that no further review of the incident which occurred between the parties in January 2012 was necessary or appropriate.

Members' Code of Conduct Committee Assessment Panel Hearing, 4 June
2013 - continued

The Panel went on to consider the current complaint having regard to the Assessment Criteria. It identified that there appeared to be a breach of the Members' Code of Conduct under paragraphs 7,

"You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example."

and 9,

"You must treat others with respect. This means treating people fairly and equitably and with courtesy, compassion and sensitivity. You should treat other people equally as you yourself would expect to be treated. You must never use behaviour which a reasonable person would consider as offensive, overbearing, intimidating, malicious, insulting or humiliating."

The Panel then went on to consider the options open to it:

- (a) the Panel is able to ask the Monitoring Officer to direct that the complaint is investigated;
- (b) to direct the Monitoring Officer to take other appropriate action short of a formal investigation, for instance trying to secure an apology;
- (c) alternatively the Panel can decide to take no action in respect of the complaint; this may be where the complaint appears to be trivial, vexatious, malicious, politically motivated or tit-for-tat.

In considering the matter the Panel noted that the Councillor concerned had apologised to the Police Crime Commissioner's Office the following day but not the complainant.

The Panel also had regard to advice from the Independent Person, that "the councillor's behaviour was ill-advised, probably meriting a gentle slap on the wrist but that on balance he was inclined to advise that the matter be taken forward openly."

The Panel considered option (c), to take no action, but decided this was not appropriate bearing in mind the incident had occurred in a public forum. It agreed that further action was necessary.

In considering option (a), to direct that the complaint is investigated, the Panel was satisfied that the facts of the matter were sufficiently clear that they did not warrant a full investigation.

The Panel considered option (b), to direct the Monitoring Officer to take other appropriate action, and agreed that in view of the circumstances surrounding the breach, the matter should be resolved informally. The Panel agreed on the following appropriate action:

1. That the Monitoring Officer should try to secure an apology from Councillor H to the complainant.
2. If an apology was not forthcoming, then the matter should be referred for a full investigation.

Members' Code of Conduct Committee Assessment Panel Hearing, 4 June
2013 - continued

3. If an apology was forthcoming, then the Monitoring Officer would further arrange that Councillor H receive words of advice as to her future conduct in public meetings.
4. The complainant to be advised of the action taken.

RESOLVED that the Panel directs the Monitoring Officer to try to secure an apology from Councillor H to the complainant by way of an informal resolution and:

1. If an apology is not forthcoming, to refer the matter for a full investigation.

or

2. If an apology is forthcoming, that Councillor H receive words of advice as to her future conduct in public meetings.

and

3. The complainant be advised of the action taken.

REVIEW of NEW ARRANGEMENTS

Members Code of Conduct Committee: 2 July 2013

For Resolution

Report of the Monitoring Officer

Purpose of Report:

To review the arrangements for the Members' Code of Conduct after the first year of operation and update members on current business in terms of complaints against members.

- 1.1 The Members' Code of Conduct Committee first met on 26 July 2012 following adoption by the Council of a new Code of Conduct. The terms of reference and remit of this committee had been revised to reflect the new statutory framework, which included a streamlined process for dealing with alleged breaches of the Code of Conduct.
- 1.2 The Committee has met on three further occasions and undertaken the following work:
 - (a) supplemented the Code of Conduct as regards the declaration of Disclosable Pecuniary Interests and other non-pecuniary interests and conflicts. It has also made provision for rules around gifts and hospitality, as permitted under the Localism Act 2011.
 - (b) reviewed the Staff Code of Conduct.
 - (c) agreed to recommend the revised Members' Code of Conduct and Staff Code of Conduct to Council for adoption at its meeting on 25 July 2013.
 - (d) adopted policies for the assessment of complaints, and procedures for dealing with Assessment Panels and Final Hearing Panels.

Publicity of Code of Conduct and Arrangements

- 1.3 The Members' Code of Conduct forms part of the Council's Constitution and is available on the Council's website within that document. It is also advertised separately under the Members' Code of Conduct Committee pages, together with the 'Arrangements for Making a Complaint' which gives the public information about how to go about making a complaint against a councillor under the Code.
- 1.4 Although we have received very few complaints from members of the public, I am not aware that there is any problem with people obtaining the information they require if they wish to make a complaint.
- 1.5 Members of the Committee are asked to consider the publicity for the Code and Arrangements and whether these are sufficient as they currently stand.

Adequacy of the Arrangements

- 1.6 The Arrangements document (attached as **appendix 1**) sets out the roles of the Monitoring Officer, Independent Person, Investigating Officer and Assessment and Hearings Panels in the complaints process and the procedure and powers at each stage.

- 1.7 These arrangements have been followed when considering three complaints during the past year.
- 1.8 Members of the Committee are asked to consider whether the Arrangements are adequate in their current form.

Complaint cases.

- 1.9 There have been three complaints dealt with under the new arrangements during the past year.
- 1.10 The first complaint involved a complaint from five councillors about remarks made at a Planning Committee by Councillor A.
- 1.11 The Assessment Panel identified that there appeared to be a possible breach of the Members' Code of Conduct. However, in view of the fact that the councillor concerned had given prompt and public apologies on the matter and having regard to advice from the Independent Person, the Panel agreed that no further action was warranted.
- 1.12 The second complaint was made by two members of staff and a number of members of the public about offensive remarks made by Councillor B at a public meeting.
- 1.13 An Assessment Panel found that Councillor B had breached the Code of Conduct bringing his office into disrepute and the matter went to a final hearing panel for a decision.
- 1.14 The hearing panel censured Councillor B for his behaviour and imposed a number of sanctions including training on the control of Councillor B's diabetes; training on conduct in public meetings; a factual press statement of the findings and a private letter of apology to Mr Graham.
- 1.15 The third complaint was made by a member of the public following comments made by Councillor C at a public meeting. The complaint was considered by an Assessment Panel which identified a breach of the Code of Conduct and directed the Monitoring Officer to try to secure an apology. If this was forthcoming, the Panel further advised the Monitoring Officer to offer words of advice as to the councillor's future conduct. However, if it were to transpire that the apology was not forthcoming, the Panel asked the Monitoring Officer to direct that the complaint is investigated.
- 1.16 From such a small number of cases it is difficult to draw out any conclusions at this moment in time. The Committee, at its meeting held on 27 February 2013, made some comments about the delays in the process for Councillor B's complaint and officers have taken these comments on board. However, some of the delays were out of their control.
- 1.17 Further reviews will be undertaken on an annual basis.

Report Author: Michael Graham, Head of Corporate Governance 01784 446227

Appendix A – Arrangements for dealing with allegations of misconduct under section 28 Localism Act 2011

Spelthorne Borough Council

Members' Code of Conduct Committee

Arrangements for dealing with allegations of misconduct under section 28 Localism Act 2011

Context

1. These arrangements describe how the public can make a complaint that a Member of Spelthorne Borough Council “the Council” has failed to comply with the Council’s Member Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council’s Code of Conduct.
2. Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member of the authority (i.e. a councillor or a co-opted member) has failed to comply with that Council’s Code of Conduct can be investigated and decisions made on such allegations.
3. The arrangements under the Localism Act must provide for the Council to appoint at least one Independent Person, 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 against whom an allegation has been made.

Principles of these arrangements

4. At its meeting on 27 June 2012, the Council agreed that these arrangements or any revisions to them, should abide by the following principles:
 - a. They should reassure the public that complaints will be dealt with swiftly, properly and transparently;
 - b. They should be simple, clear and follow the rules of natural justice;
 - c. They should not be bureaucratic i.e. they should follow the law and not build in unnecessary additional measures;
 - d. They should allow councillors to take decisions on whether a fellow councillor should be investigated, and following investigation, whether that councillor should be held in breach of the Code;
 - e. They should allow the Monitoring Officer to dismiss complaints which are vexatious, frivolous or politically motivated;
 - f. They should allow for the Monitoring Officer to be accountable for such decisions in (e);

Appendix A

- g. They should ensure there is an element of outside scrutiny and objectivity by recruiting Independent Members to the Members' Code of Conduct Committee.

The Code of Conduct

5. The Council has adopted a Member Code of Conduct, which is available for inspection on the Council's website. The Council has tasked the Members' Code of Conduct Committee to keep the Code of Conduct and the operation of these arrangements under review.

Making a complaint

6. Any person may make a complaint, in writing, to-

Michael Graham
Monitoring Officer
Spelthorne Borough Council
Council Offices
Knowle Green
Staines-upon-Thames
Middlesex TW18 1XB

Email: m.graham@spelthorne.gov.uk

7. The Council will only process complaints which are in writing. The name and address of the complainant must be given and only in very exceptional circumstances will the Council investigate anonymous complaints.
8. The Council expects complaints about councillors to be made without delay so that matters can be investigated promptly. Unless there are exceptional circumstances, complaints should be made within 28 days of the incident giving rise to concern.
9. The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint at appropriate junctures.

Role of the Monitoring Officer

10. The Monitoring Officer's job is to oversee the complaints process and refer complaints to the Independent Person, the Hearings Panel and where appropriate to an Investigator.
11. The Monitoring Officer is accountable to the Members' Code of Conduct Committee for the operation of these functions.
12. In extraordinary circumstances, where the Monitoring Officer makes a complaint to the Members' Code of Conduct Committee, or in other circumstances where the Monitoring Officer may have a conflict of

Appendix A

interests, then the Deputy Monitoring Officer will undertake functions of the Monitoring Officer as set out in these arrangements.

Independent Person

13. The Council has appointed three Independent Persons in conjunction with Guildford BC, Mole Valley DC and Waverley BC.
14. The Independent Persons are not (and have not within the last five years been) a Member or an Officer of the Council.
15. The role of the Independent Person is to advise the Monitoring Officer on action to take under these arrangements at the points stated.
16. A Member who is the subject of a complaint is also entitled to refer to the Independent Person for advice during the course of a complaint.
17. The Independent Person receives expenses for undertaking this role but no other remuneration.

The Hearings Panel - Assessments

18. The Assessment Panel drawn from the membership of the Members' Code of Conduct Committee.
19. The role of the Assessment Panel is to review complaints for investigation which are sufficiently serious to warrant such formal action.
20. The Assessment Panel will comprise of three voting members of the Members Code of Conduct Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Members Code of Conduct Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Assessment Panel but legally cannot vote on the decision.

Assessment of complaints

21. The Monitoring Officer will review every complaint received and, consult with the Independent Person.
22. The Monitoring Officer will inform the subject Member about the complaint and inform the Member that advice can be taken from the Independent Person. The Monitoring Officer will inform the subject Member of any advice offered by the Independent Person.
23. Following discussions with the subject Member and the Independent Person the Monitoring Officer will refer the matter to the Assessment Panel with a recommendation as to whether it merits formal investigation. This Assessment Panel will normally meet within 14 days of receipt of a complaint.

Appendix A

24. The Monitoring Officer has power to reject complaints which are vexatious, frivolous or malicious or which are politically motivated or in some other way an abuse of process. Where the Monitoring Officer has taken a decision that a complaint falls into one of these categories, he will inform the complainant of his decision and the reasons for that decision. There is no appeal from this decision, but the Monitoring Officer will report all such decisions to the next meeting of the Members' Code of Conduct Committee who are entitled to refer the matter for investigation if they feel that the Monitoring Officer has acted incorrectly.
25. Where the Monitoring Officer requires additional information in order to come to a decision (about a vexatious etc complaint) or a recommendation (about any complaint) he may seek such information from the complainant and the subject Member, but he will not conduct an investigation prior to an Assessment Panel.
26. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer will consult with the Independent Person and the subject Member where this outcome seems appropriate. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where the Member makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether to recommend that the complaint merits formal investigation.
27. If the Monitoring Officer decides that the complaint concerns a service, policy or decision of the Council then he may refer it to the normal complaints procedure. This may entail the Monitoring Officer dealing with the matter personally under the Council's complaints procedure.
28. The Members' Code of Conduct Committee will adopt a policy for the assessment and investigation of misconduct complaints. The Assessment Panel will refer to these guidelines when making a decision to refer a matter to investigation. The Assessment Panel will take advice from the Monitoring Officer when reaching its decision.
29. If the Assessment Panel decides that a complaint merits formal investigation, the Monitoring Officer will, in consultation with the Chairman, appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator.
30. If the Assessment Panel decides not to investigate the complaint the Monitoring Officer will write to the complainant outlining the reasons of

Appendix A

the Assessment Panel. The decision of the Assessment Panel is final and will be reported to the next Members' Code of Conduct Committee.

31. During the Assessment phase the Monitoring Officer will keep all parties informed of the progress of the case. It is expected that the complaint will be confidential during the Assessment phase.

The investigation

32. The Investigating Officer will complete the investigation in accordance with any policy or guidelines that the Members' Code of Conduct Committee shall specify.
33. The investigation shall be carried out promptly, with the expectation that all investigations, resolutions and hearings will be completed within a maximum period of three months. All those involved in the complaint should do their utmost to ensure that this can happen.
34. At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the subject Member, to give both an opportunity to identify any factual matter in that draft report which is disputed or requires further investigation.
35. Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
36. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.
37. If following consultation, the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.
38. The Monitoring Officer will review the Investigating Officer's report in light of the Independent Person's advice and, if he is satisfied that the Investigating Officer's report is sufficient and that no further investigations are required, the Monitoring Officer will write to the complainant and to the subject Member concerned with a copy of the final report.

Findings of "No-breach"

39. If the Investigating Officer finds that there has been no breach of the Code of Conduct then the Monitoring Officer will write to the complainant and the subject Member and dismiss the complaint. The Monitoring Officer will report the outcome of the case to the next Members' Code of Conduct Committee. The decision is final and there is no appeal.

Findings of “Breach”

40. If the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct then the Monitoring Officer will consult with the Independent Person, the subject Member and the complainant to see if any form of local resolution is possible.

Local Resolution

41. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he will consult with all the parties and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the subject Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action.
42. If the subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Members’ Code of Conduct Committee for information, but will take no further action. Such report should be open to public scrutiny.
43. If following consultation with the parties it seems likely that any suggested resolution would not be possible or would not be suitable in all the circumstances, the Monitoring Officer will refer the matter to the Hearings Panel.

Final Hearing

44. If the Monitoring Officer considers that local resolution is not appropriate, or the 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 Panel which will conduct a local hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
45. The Hearings Panel will comprise of three voting members of the Members’ Code of Conduct Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Members’ Code of Conduct Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Hearings Panel but legally cannot vote on the decision.
46. The Members’ Code of Conduct Committee may agree a procedure for Hearings Panels.
47. The Monitoring Officer may conduct a “pre-hearing process”, requiring the subject Member to give his/her response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what

Appendix A

is likely to be in contention at the hearing, and the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

48. In order to give confidence to the public it is expected that the Hearings Panel will take place in public unless there are exceptional circumstances which dictate otherwise. The Monitoring Officer will advise the Chairman whether the hearing should be in public or private. The Access to Information Rules will apply to this hearing as it would apply to any other meeting of the Council.
49. 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 subject Member has or has not failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The subject Member will then have an opportunity to give his/her evidence, to call witnesses, to cross-examine and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
50. The Independent Person may attend the hearing but is not required to attend.
51. If the Hearings Panel concludes that the subject Member did not fail to comply with the Code of Conduct, then they will dismiss the complaint.
52. If the Hearings Panel concludes that the subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the Member's failure to comply with the Code of Conduct.

Powers of the Hearings Panel

53. In considering its response the Hearings Panel will give the Member an opportunity to make representations to the Panel, but will then decide what action, if any, to take in respect of the matter. The powers of the Hearings Panel are:
 - a. To require the Member to apologise either privately or in public.
 - b. To require the Member to attend training.
 - c. To censure the Member.
 - d. To send a report to Council to censure the Member.
 - e. To require the Monitoring Officer to publish a press release about the complaint and its outcome.

Appendix A

- f. To require the Monitoring Officer to publish a full report in the newspaper and/or on the Council's website about the Member's conduct.
- g. To withdraw privileges provided by the Council such as computer equipment, internet or email access.
- h. To recommend to the Member's Council Leader/Group Leader that the Member be removed from a Committee, a Cabinet responsibility or an Outside Body (as appropriate).
- i. Or a combination of any of the above.

and the Panel may set the time frame for the actions that are required to be taken.

- 54. As a matter of law, the Hearings Panel does not have the power to suspend or disqualify the Member or to withdraw allowances to which members are entitled.

Appeals

- 55. Where a Hearings Panel makes any recommendations to a Council Leader/Group Leader about a penalty then that member may make representations in advance of that decision being taken.
- 56. Where a Hearings Panel makes any recommendations to Council about a penalty then that member may make representations in advance of that decision being taken.

Post hearing

- 57. At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.
- 58. As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Hearings Panel, and send a copy to all the parties, and if required by the Hearings Panel, make that decision notice available for public inspection. The decision will be reported to the next meeting of the Members' Code of Conduct Committee.

Revision of these arrangements

- 59. The Members' Code of Conduct Committee is delegated to amend these arrangements where necessary, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

INDEPENDENT PERSON PROTOCOL

Spelthorne Borough Council in conjunction with 3 other County authorities, namely Guildford Borough Council, Mole Valley District Council and Waverley Borough Council has appointed a pool of Independent Persons to be drawn from when required.

This Protocol sets out the expected conduct of an Independent Person (IP) when they are carrying out their function in relation to the assessment of an allegation that a Member of Spelthorne Borough Council has failed to comply with the Council's Code of Conduct for Members.

Principles

Role

1. The role of the IP is a consultative position required under section 28 of the Localism Act 2011.
2. The purpose of the IP role is to enable the public to have confidence in how the Borough Council deals with allegations of misconduct and to promote and maintain high ethical standards of conduct for members, ensuring they are adequately trained and understand the Code of Conduct.
3. The views of an IP must be sought by the Council before it takes a decision on whether an allegation may be investigated, and may be sought by the Council at any other stage (e.g. before a final hearing is listed or where a local resolution may be appropriate), or by a Member against whom an allegation has been made.

Allocation of Independent Person

4. This Protocol covers all three IPs appointed by the four authorities and any reference in this Protocol to an IP covers reference to all three IPs.
5. The four authorities will endeavour to choose IPs from the pool on an even and fair basis, as far as possible. In order to assist this, each authority will inform the others at the time an IP first becomes involved in a complaint.
6. Before approaching an IP, Spelthorne Borough Council will consider the number of complaint cases each IP has been allocated by all the authorities using the pool.
7. An IP is not obliged to accept a request to be involved in a complaint, should they either have other commitments or have recently been involved in a complaint at one of the other authorities.

Independent Person's Conduct

8. In carrying out the role, the IP will ensure that he/ she -
 - a. acts in accordance with -
 - i. any relevant legislation or guidance and the Council's Code of Conduct in force at the time; and
 - ii. the agreed processes/ procedures approved by the Borough Council's Members' Code of Conduct (MCC) Committee and the Council's Constitution; and
 - b. acts impartially at all times, without political bias or prejudice and in accordance with the rules of natural justice; and
 - c. maintains confidentiality at all times.

Members' Code of Conduct Committee

9. The Monitoring Officer's (MO) role is to give advice to the MCC Committee.
10. The IP is not a member of the Council's MCC Committee but is welcome to attend all meetings and can be asked to give their views to the Committee.
11. The IP does not have any voting rights when attending a meeting of the MCC Committee.

Involvement in hearings

12. The MO will consult the Independent Person for advice on action to take under the Council's hearing arrangements at the following stages:
 - Upon receipt of a complaint.
 - When the Monitoring Officer feels it is appropriate to resolve the complaint informally, without the need for a formal investigation.
 - Following a formal independent investigation, on the outcomes or recommendations of the Investigating Officer.
 - Where an Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, on whether any form of local resolution is possible.
13. When deciding on how to progress with a complaint, the MO/IP should consider the following –
 - a. Was the Member/ co-optee acting in their official capacity at the time of the alleged misconduct?
 - b. Was the Member/ co-optee in office at the time of the alleged misconduct?
 - c. Can the complaint be considered as being of a very minor or trivial nature; or vexatious, frivolous or politically motivated?
 - d. Has the complaint been made within the appropriate time scales?
 - e. Is there a potential breach of the Council's Code of Conduct?
 - f. Is there public interest in the matter?
 - g. Is there sufficient information to enable him/her to make a decision? If not, what information is required?

Conflicts of Interest and Confidentiality

14. The IP should inform the MO if they feel there are circumstances which would suggest that they had a conflict of interest e.g. being a friend of either the complainant or Member concerned; or have previously been involved in the matter.
15. If any one IP has a conflict of interest e.g. through prior involvement with the issue, another IP will be consulted.
16. All contact with the IP should be made through the MO and should the IP be contacted directly by a complainant, he/she should inform the MO immediately. Where the subject Member wishes to speak to the IP then the MO will try to facilitate this in a planned way between the IP and the Member.
17. In terms of confidentiality, the IP must not discuss any matters about a complaint, either past or present, with the media or any other third party without appropriate advice having been taken from the MO.

Contact

18. The IP must provide the MO with appropriate methods of contact e.g. email and telephone numbers, and must make themselves available at all reasonable times.
19. On those occasions when the IP knows that they will not be contactable, he/she must inform the MO with as much reasonable notice as possible so that one of the other IPs can be advised that he/she would be required to stand-in as necessary during this period.

Members' Code of Conduct Committee - 2 July 2013

Work Programme 2013-2014

Resolution Required

1. Work Programme

1.1 This report covers the Work Programme for 2013 - 2014.

1.2 The Committee's terms of reference are set out in Part 3(b) of the Council's Constitution and are as follows:

'Promoting the maintenance of high standards of conduct by councillors and any co-opted members of the Council.

In addition to the broad functions of the Committee set out in Article 10 it is also delegated to undertake the following work on behalf of the Council:

- to keep an overview on the arrangements for dealing with complaints under the code of conduct, making alterations and publishing them where it considers necessary;
- to devise such further protocols and procedures as are necessary for the efficient management of complaints which have to be considered by a hearings panel;
- to consult with the Independent Person on any matters which have broad implications for the promotion of high standards by the Council;
- to make recommendations to Council on standing orders for the registration and declaration of Disclosable Pecuniary Interests and other interests; and,
- to make recommendations to Council on any revisions to the Members' Code of Conduct and the registration of interests.'

2. Current Work Programme

2.1 Three further meetings have been scheduled in the Council's Diary for the remainder of the 2013-14 municipal year and the dates for these are:

- 8 October 2013
- 4 February 2014
- 8 April 2014

We are also setting up two training events for:

- Thursday 5th or 12th September – Code of Conduct hearing procedures for members of this Committee.
- Monday 23rd September - The revised Members' Code of Conduct for all councillors.

- 2.2 Details of items currently identified for inclusion in the Work Programme are as follows:

2 July 2013		
Issue	Officer responsible	Objective
Review of new arrangements after one year.	Michael Graham	Report
Independent Person protocol	Michael Graham	Report for approval
Committee's work programme	Michael Graham	Report
5 or 12 September 2013		
Training on hearings process	Michael Graham and Victoria Statham	Presentation
23 September 2013		
Training on the interests regime	Michael Graham	Seminar for all councillors on the new interests regime
8 October 2013		
Independent Person protocol	Michael Graham	Review
Committee's work programme	Michael Graham	Report

- 2.3 Any topics identified during consideration of the business at this meeting, will need to be included in the Work Programme.
- 2.4 Other issues Members wish to raise for consideration at the next or any future meeting and agreed by the Committee may be included in the Work Programme.
- 3. Resolution**
The Members' Code of Conduct Committee is asked to consider and approve the Work Programme as submitted and/or amended at the meeting.

Contact: Michael Graham, Head of Corporate Governance (01784) 446227

Report Author: Gillian Hobbs, Committee Manager (01784) 444243