



19 June 2012

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To the Councillors of Spelthorne Borough Council

I hereby summon you to attend an Extraordinary meeting of the Council to be held in the **Council Chamber, Council Offices, Knowle Green, Staines** on **Wednesday 27 June 2012** commencing at **6.00pm** for the transaction of the following business.

Roberto Tambini
Chief Executive

Councillors are encouraged to wear their badge of past office at the Council meeting.

AGENDA

Description	Page Number
1. Apologies for absence	
To receive any apologies for non-attendance.	
2. Disclosures of Interest	
To receive any disclosures of interest from members in accordance with the Council's Code of Conduct for members.	
3. Announcements from the Mayor	
To receive any announcements from the Mayor.	
4. Announcements from the Leader	
To receive any announcements from the Leader.	
5. Announcements from the Chief Executive	
To receive any announcements from the Chief Executive.	
6. Recommendation from the Leader	
To consider the recommendation from the Leader on the work of the Cabinet at its meeting on 12 June 2012. (copy attached)	1 - 24
7. Review of Allocation of Seats	
Subject to the Council agreeing Item 6, to consider the report of the Monitoring Officer on a review of the allocation of seats. (copy attached)	25 - 26
8. Revised Calendar of meetings	
Subject to the Council agreeing Item 6, to consider and agree the revised calendar of meetings. (copy attached)	27
9. Urgent Business	
To consider any urgent business.	

Recommendations of the Leader on the work of the Cabinet - 12 June 2012

1. Members' Code of Conduct Committee

1.1 Cabinet considered a report from the Monitoring Officer (copy attached) on changes following the introduction of the Localism Act 2011 which require the Council to introduce a new Code of Conduct and to have arrangements for dealing with complaints under that Code.

1.2 The Leader recommends that Council agrees:

- 1) To substitute a Members' Code of Conduct Committee in place of the Standards Committee with the remit shown at Appendix 1 of the report and the Terms of Reference shown at Appendix 2 of the report of the Monitoring Officer;
- 2) To adopt a new Code of Conduct as shown at Appendix 3 of the report;
- 3) To adopt arrangements for dealing with complaints as shown at Appendix 4 of the report;
- 4) To delegate to the Head of Corporate Governance authority to make these and any consequential changes to the Constitution to give effect to these resolutions;
- 5) To agree the review of proportionality of seats on committees to take into account the addition of two new seats to the Members' Code of Conduct Committee;
- 6) For all such changes to take effect from 1 July 2012 or such other date as may be specified in regulations under the Localism Act 2011; and, and
- 7) To delegate to the Head of Corporate Governance, in consultation with the Leader, the authority to call an extraordinary meeting of Council to consider such recommendations once the detail of the regulations is known.

Councillor Frank Ayers
Leader of the Council

27 June 2012

Cabinet

12 June 2012



Title	Members' Code of Conduct Committee		
Purpose	Recommendation required		
Report of	Monitoring Officer	Confidential	No
Cabinet Member	Councillor Frank Ayers	Key Decision	No
Report Author	Michael Graham, Head of Corporate Governance		
Summary	<ul style="list-style-type: none"> • Changes following the introduction of the Localism Act 2011 require the Council to introduce a new Code of Conduct and to have arrangements for dealing with complaints under that Code. • Changes are required to the constitution to make alterations to the remit of the Standards Committee as it will no longer be a statutory committee. 		
Financial Implications	There are no direct financial implications arising from this report.		
Corporate Priority	This matter is not in the list of corporate priorities		
Recommendations	<p>The Leader to recommend to Council:</p> <ol style="list-style-type: none"> 1) To substitute a Members' Code of Conduct Committee in place of the Standards Committee with the remit shown at Appendix 1 of the report and the Terms of Reference shown at Appendix 2 of the report; 2) To adopt a new Code of Conduct as shown at Appendix 3 of the report; 3) To adopt arrangements for dealing with complaints as shown at Appendix 4 of the report; 4) To delegate to the Head of Corporate Governance authority to make these and any consequential changes to the Constitution to give effect to these resolutions; 5) To agree the review of proportionality of seats on committees to take into account the addition of two new seats to the Members' Code of Conduct Committee; 6) For all such changes to take effect from 1 July 2012 or such other date as may be specified in regulations under the Localism Act 2011; and, and 7) To delegate to the Head of Corporate Governance, in consultation with the Leader, the authority to call an extraordinary meeting of Council to consider such recommendations once the detail of the regulations is known. 		

MAIN REPORT

1. Background

- 1.1 Following the introduction of the Localism Act 2011, the Council retains a duty to promote high standards. A Code of Conduct must be prepared which is broadly compliant with the Seven Principles of Public Life. The Seven Principles are:

Selflessness: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holder of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office should promote and support these principles by leadership and example.

- 1.2 The provisions of the Localism Act relating to standards will come into force on a day to be appointed (expected to be 1 July 2012 but still not finalised) and in the meantime the existing code of conduct and arrangements for complaints through the existing Standards Committee will continue to apply. Notwithstanding the vagueness of the implementation arrangements made by central government, the Council must proceed to make appropriate preparations for these changes.

2. Key issues

Standards Committee

- 2.1 We will not be required to maintain a Standards Committee as we have at present but will have to establish “arrangements” to deal with complaints against members, including arrangements for investigations. It is practical for such non-executive powers of the Council to be delegated to a Committee. To all intents and purposes we need to have a committee which deals with standards whether we call that the Standards Committee or not.
- 2.2 The advantage of the present Standards Committee is that it is a distinct committee with a specialised remit which has done a good job over the years. Cabinet might consider here the low level of complaints received and the low

number of Sub-Committees called to consider investigations. Cabinet may also wish to note that Spelthorne had a Standards Committee before it was required by law. The present system also lends itself to having an independent Chairman and Vice Chairman who can lead on standards matters and visibly report to Council on such matters. This gives a high degree of transparency and reassurance to residents that complaints against councillors are “in safe hands”. It also means that where the Council is attacked for not investigating a complaint (perhaps from a vexatious complainant) it can categorically state that there has been fair dealing because of this outside supervision of the Committee.

- 2.3 The Act will not require us to have Independent Members on any revised Standards Committee. However there is no provision which stops us from keeping the Independent Members on a revised committee. The roles of the Independent Members would change slightly because at present (with the Standards Committee formed under the Local Government Act 2000) the Independent Members are full voting members. In any revised committee (which would be an ordinary committee of the Council under the Local Government Act 1972) the Independent Members would be advisory and non-voting.
- 2.4 Following consultation with the Standards Committee on 10 May and Overview and Scrutiny Committee on 16 May it is now proposed to keep a stand-alone committee to be called the Members’ Code of Conduct Committee. This committee will be an ordinary committee of the Council with the present arrangements for independent chairman and vice chairman retained but in an advisory capacity as non-voting members. In order to allow extra flexibility for this committee it is proposed that there are two additional seats on the committee which will be part of the Council’s normal arrangements for allocation on a proportional basis.
- 2.5 The proposed remit and terms of the Members’ Code of Conduct Committee are provided as **Appendix 1 and 2**.

Code of Conduct

- 2.6 The statutory requirements of the code are:
- (a) The Council must adopt a Code of Conduct to apply to members and co-opted members when they are acting in that capacity;
 - (b) The Code must be consistent with the 7 principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
 - (c) The Code must include provisions that the Council considers appropriate in relation to registration and disclosure of pecuniary and other interests; and,
 - (d) The Code must be adopted by Council and publicised locally.
- 2.7 Following discussion with the Standards Committee on 10 May 2012 and the Overview and Scrutiny Committee on 16 May 2012, a proposed code is shown at **Appendix 3**. Note that for reasons explained below, the detailed provisions in relation to pecuniary interests are not shown in this draft code. This code is based upon a model which has been suggested by the Department for Communities and Local Government.

Registration of interests

- 2.8 The previous regime in the Local Government Act 2000 and our Code of Conduct for personal and prejudicial interests will be abolished. In its place councillors must now become familiar with the new term “Disclosable Pecuniary Interests”.
- 2.9 Whereas before failing to register or declare a personal or prejudicial interest was taken to be a possible breach of the Code of Conduct, now a failure to register or declare a “Disclosable Pecuniary Interest” is taken to be a criminal offence. This can be punished with a maximum fine of £5000 at the Magistrates’ Court and the councillor could also be disqualified by the magistrates for a period not exceeding 5 years.
- 2.10 This new regime is much harsher and stringent, and potentially has more serious consequences for councillors than the previous regime and therefore it is arguable that councillors will require greater training, guidance and support than hitherto was considered appropriate.
- 2.11 In addition to the “Disclosable Pecuniary Interests” – which will be set out in regulations, the Council can also specify other interests which it thinks should be declared in the register of interest. It is impossible to say for certain what could be included under this heading until the regulations on “Disclosable Pecuniary Interests” are known. It may be that rules on gifts and hospitality come under this heading.
- 2.12 The register has to be maintained by the Monitoring Officer and a copy has to be made available for inspection to the public at all reasonable hours; a copy also has to be placed on the Council’s website.

Obligations on councillors as regards interests

- 2.13 Below is a summary of the obligations on councillors and (voting) co-opted members.
- (a) Notify the Monitoring Officer of Disclosable Pecuniary Interests and the Disclosable Pecuniary Interests of:
- i) A spouse or civil partner
 - ii) A person with whom they are living as husband and wife
 - iii) A person with whom they are living as if they were civil partners

It is an offence not to make such a disclosure within 28 days and it also an offence to provide false or misleading information when making the disclosure. Note that councillors only have to declare the interests of spouses etc if they are aware that the other person has an interest, but they cannot be reckless as to whether their disclosures are true and not misleading. This is potentially quite a minefield.

This obligation is therefore far more stringent and intrusive than the existing obligation which is to declare in a meeting any personal or prejudicial interests arising from family and friend relationships where the councillor “ought reasonably to be aware of the existence of the personal interest”. Family and friend relationships and interests arising from those relationships do not have to be declared in the register at the present time.

- (b) When a Disclosable Pecuniary Interest arises at a meeting, the councillor must disclose the interest to the meeting. It is an offence not to do so.
- (c) If a Disclosable Pecuniary Interest arises at a meeting then the councillor must notify the Monitoring Officer within 28 days of the date of disclosure. It is an offence not to do so.
- (d) If a Disclosable Pecuniary Interest arises at a meeting then the councillor may not participate in the discussion of the matter at the meeting or participate in any vote taken at the meeting. It is an offence not to do so. The Council's own standing orders may make provision for the councillor to leave the room when such a situation arises.

The present scheme, whereby a councillor with a prejudicial interest can speak in a meeting if there is a public right to speak, will disappear. If there is a Disclosable Pecuniary Interest then participation and voting are prohibited and it is submitted that it would be safest all round in such circumstances for the councillor concerned to leave the room for his or her own protection and that the Council's Standing Orders should reflect this.

- (e) Where in relation to executive matters, any councillor acting alone is exercising a function and a Disclosable Pecuniary Interest arises, then that councillor cannot take any further steps in relation to that matter and must take steps to enable the matter to be dealt with in other ways. It is an offence not to do so.
- (f) Where a Disclosable Pecuniary Interest arises as in (e) above then the councillor has to disclose it to the Monitoring Officer within 28 days. It is an offence not to do so.

- 2.14 One peculiar feature of the new regime is that where councillors make a declaration of a Disclosable Pecuniary Interest and then notify the Monitoring Officer, he then has to make that interest known in the register, and this applies even if the interest declared is not a Disclosable Pecuniary Interest. It remains to be seen if this is problematic but the prevailing culture at Spelthorne has always been that councillors err on the side of caution and often leave the room when strictly speaking they do not have a personal and prejudicial interest. In such cases the minutes of the meeting would show that the councillor had made a declaration and left the room, but the register of interests may not be altered. It may be that in the future the register becomes more significant because of the requirement to notify spouses' etc interests and notifications which aren't in fact interests under the regulations.
- 2.15 Regulations are awaited which will specify the extent of the Disclosable Pecuniary Interests. Once these are known the Council will need to come to a view on whether other interests should be added and registered.
- 2.16 The Act also provides for non-disclosure of 'sensitive interests' (where violence or intimidation may arise from disclosure). Such circumstances are rare but similar provision is made in the existing Code of Conduct.

Arrangements for dealing with complaints

- 2.17 There will be an on-going duty on the Council to promote and maintain high standards of conduct by members.

- 2.18 We will be required to make arrangements for the consideration, investigation and deciding on allegations of breach of the Code and also appoint at least one “Independent Person” whose views must be sought before any decision is made on an allegation. This Independent Person acts as a touchstone to guide those concerned on the application of the Code and is meant to bring an element of outside objectivity to the proceedings. The role of the Independent person is entirely separate to the role of independent members on the Standards Committee or the new Members’ Code of Conduct Committee.
- 2.19 The Independent Person’s views must be taken into account by the Council before it makes a decision on a matter that has been investigated.
- 2.20 The Independent Person’s view may be sought:
- (a) By the Council in circumstances other than where it has decided to investigate (when consultation is mandatory).
 - (b) By a member if that person’s behaviour is the subject of an allegation.
 - (c) Where the Council decides there is a breach and if so, what action to take against the member.
- 2.21 The Independent Person cannot be a member, co opted member or officer of the authority, a member, or a relative or close friend of any of those people, nor can the Independent Person have been a member, co opted member or officer of the authority at any time in the last five years. This means that the Independent Person may not be one of the current Independent Members of the Standards Committee.
- 2.22 Note that the DCLG has recently announced transitional measures which would allow Independent Members to serve as the Independent Person.
- 2.23 The Act provides for the appointment of the Independent Person, following public advertisement and a vote at a Council meeting and permits the payment of allowances and expenses.
- 2.24 It is proposed that Spelthorne BC appoints an Independent Person (and a reserve/deputy) jointly with other Surrey councils and seeks to pay expenses only as incurred. This should save costs. Discussions are under way about this proposal. It may be advantageous for the Independent Person not to have any connection with the Borough, including residency. This will be considered further as the appointment progresses.
- 2.25 Draft arrangements for dealing with complaints are attached as **Appendix 4** to this report, but Members will note that there is further work to be done in relation to supporting documents, procedures etc. It is proposed that the detailed work about the proceedings of the new Members Code of Conduct Committee be delegated to that committee to resolve.
- 2.26 It is proposed to make arrangements with the following overall objectives:
- (a) They should reassure residents and others 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 from timewasters i.e. complaints which are vexatious, frivolous or politically motivated;
- (f) They should allow for the Monitoring Officer to be accountable for such decisions in (e);
- (g) They should remove the requirement to have a Standards (Review) Sub-Committee – a feature of the present statutory requirements- which is unnecessary and wasteful; and,
- (h) They should ensure there is an element of outside scrutiny and objectivity by preserving the knowledge and experience of the Independent Members of the Standards Committee.

2.27 A flowchart is shown at **Appendix 5** which summarise the position which is proposed under the new arrangements.

2.28 In conclusion, the significant differences between the provisions under the Localism Act 2011 and the current arrangements are:

- (a) the discretion given to councils under the new legislation as to the details of the arrangements including the content of the Code and the procedures for dealing with allegations of breach of the Code;
- (b) the absence in the new Act of any specific powers to sanction members who have breached the Code, and,
- (c) the introduction in the Localism Act 2011 of criminal sanctions relating to breaches of the rules on “Disclosable Pecuniary Interests”.

3. Options analysis and proposal

3.1 There is no option but to develop new arrangements for ethical standards. The Council has choice in how to implement them. The proposals in this report have been subject to consultation at the Standards Committee and the Overview and Scrutiny Committee.

3.2 The proposals are to recommend to Council:

- (a) To substitute a Members’ Code of Conduct Committee in place of the Standards Committee with the remit shown at Appendix 1 of the report and the Terms of Reference shown at Appendix 2 of the report;
- (b) To adopt a new Code of Conduct as shown at Appendix 3 of the report;
- (c) To adopt arrangements for dealing with complaints as shown at Appendix 4 of the report;
- (d) To delegate to the Head of Corporate Governance authority to make these and any consequential changes to the Constitution to give effect to these resolutions;
- (e) To agree the review of proportionality of seats on committees to take into account the addition of two new seats to the Members’ Code of Conduct Committee;

- (f) For all such changes to take effect from 1 July 2012 or such other date as may be specified in regulations under the Localism Act 2011; and,
- (g) To delegate to the Head of Corporate Governance, in consultation with the Leader, the authority to call an extraordinary meeting of Council to consider such recommendations once the detail of the regulations is known.

4. Financial implications

- 4.1 There are no direct financial considerations arising from this report.

5. Other considerations

- 5.1 There are no other relevant matters to report.

6. Risks and how they will be mitigated

- 6.1 There are no major risks to the implementation of these changes.

7. Timetable for implementation

- 7.1 It is envisaged that the changes are required to be made by 1 July 2012. This is the indication given by the Department for Communities and Local Government; however there is still no official word on this. If the Cabinet approves these recommendations to Council then sufficient preparatory work will have been done to enable the Council to react quickly when regulations are made. In the absence of such regulations it is proposed that a council meeting will be called only when the detail of such regulations is known. A delegation has been included to cover this eventuality.

Background papers:

Appendices:

1. Article 10 of the Constitution providing for a Members Code of Conduct Committee.
2. Terms of Reference for a Members Code of Conduct Committee.
3. Revised Members' Code of Conduct.
4. Arrangements for dealing with allegations of misconduct.
5. Flowchart showing the position under the proposed system.

Appendix 1

Article 10 – The Members’ Code of Conduct Committee

9.1 Appointment

The Council will appoint a Members’ Code of Conduct Committee at its Annual Meeting.

9.2 Membership

The Standards Committee will be composed of:

- eight members who shall be representative of all political groups and shall include only one member of Cabinet and shall not include the Mayor or the Leader; and
- two persons who are not a Member or an officer of the Council (an Independent Member);

The Independent Members are advisory and will not be entitled to vote at meetings.

9.3 Chairing the Committee.

The Chairman and Vice Chairman of the committee shall both be Independent Members.

9.4 Role and Functions

The Members’ Code of Conduct Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors and any co-opted members (Members);
- (b) the establishment of a hearings panel (comprising three councillors and one independent member drawn from the membership of the Members’ Code of Conduct Committee) to assess and determine complaints against Members under the Code of Conduct;
- (c) to support the Monitoring Officer in exercising his delegated authority, in consultation with the Chairman of the Members Code of Conduct Committee, to select members to serve on the hearings panels above on a case by case basis;
- (d) assisting the councillors and any co-opted members to observe the Members’ Code of Conduct;
- (e) assisting the councillors in carrying out their civic duties effectively;
- (f) advising the Council on the adoption or revision of the Members’ Code of Conduct;
- (g) monitoring the operation of the Members’ Code of Conduct;

- (h) advising or training Members on matters relating to the Members' Code of Conduct;
- (i) granting dispensations to Members from the requirements relating to interests set out in the Members' Code of Conduct;
- (j) keeping an overview of and advising the Council on its Planning Code;
- (k) keeping an overview of and advising the Council on its Member and Officer Protocol;
- (l) keeping an overview on the operation of and advising the Council on any changes to its Constitution;
- (m) keeping an overview on the operation of and advising the Council on the Employee Code of Conduct; and,
- (n) any other responsibilities which may be delegated to it by the Council.

Appendix 2**MEMBERS' CODE OF CONDUCT COMMITTEE**

(8 Members + 2 Independent Members)

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.

Hearings Panels of the Members' Code of Conduct Committee (established under the Council's published arrangements for dealing with complaints) may:

- require the Member to apologise either privately or in public;
- require the Member to attend training;
- censure the Member;
- send a report to Council to censure the Member;
- require the Monitoring Officer to publish a report in the newspaper or on the Council's website about the Member's conduct;
- withdraw privileges provided by the Council such as computer equipment, internet or email access;
- recommend to the Member's group leader that the Member be removed from a Committee, a Cabinet responsibility or an outside body (as appropriate); or,
- a combination of any of the above.

Appendix 3**Spelthorne Borough Council****Code of conduct for councillors and co-opted members****General Obligations**

You are a councillor or co-opted member of Spelthorne Borough Council and hence you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Accordingly, when acting in your capacity as a councillor or co-opted member -

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
4. You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
6. You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out below.
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.
8. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
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.
10. You must discharge your duties and conduct yourself in such a way that assists the Council to comply with its duties under the Equality Act 2010.

Appendix 3

11. You must respect the distinct but complementary roles that councillors and officers have in their work for the Council and abide by the advice in the Member Officer Protocol.
12. You must recognise that the staff working for, or on behalf of, the Council are required to be impartial and you must not do anything which compromises that impartiality.
13. If a complaint is made under this Code of Conduct then you must not interfere with the administration or investigation of the complaint and you must not intimidate any complainant, witness or likely witness or engage with them in any way which undermines the investigation.

Registering and declaring pecuniary and non-pecuniary interests

14. You must, within 28 days of taking office as a councillor or co-opted member, notify the Monitoring Officer of any "Disclosable Pecuniary Interest" as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
15. In addition, you must, within 28 days of taking office as a councillor or co-opted member, notify the Monitoring Officer of any Disclosable Pecuniary Interest or other non-pecuniary interest which the Council has decided should be included in the register.
16. If an interest has not been entered onto the Council's register, then the councillor or co-opted member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹
17. Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
18. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 where the councillor or person connected with the councillor could be subject to violence or intimidation.

Appendix 4

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 as been made.

Principles of these arrangements

4. At its meeting on x 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 4

- g. They should ensure there is an element of outside scrutiny and objectivity by recruiting Independent Members to the Audit and Standards 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

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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 an Independent Person in conjunction with x council.
14. The Independent Person is not (and has 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.

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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 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

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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 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.

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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

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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. 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. 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.
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 or has 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 to advise the Panel 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.

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- e. To require the Monitoring Officer to publish a report in the newspaper or on the Council's website about the Member's conduct.
 - f. To withdraw privileges provided by the Council such as computer equipment, internet or email access.
 - g. 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).
 - h. Or a combination of any of the above.
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

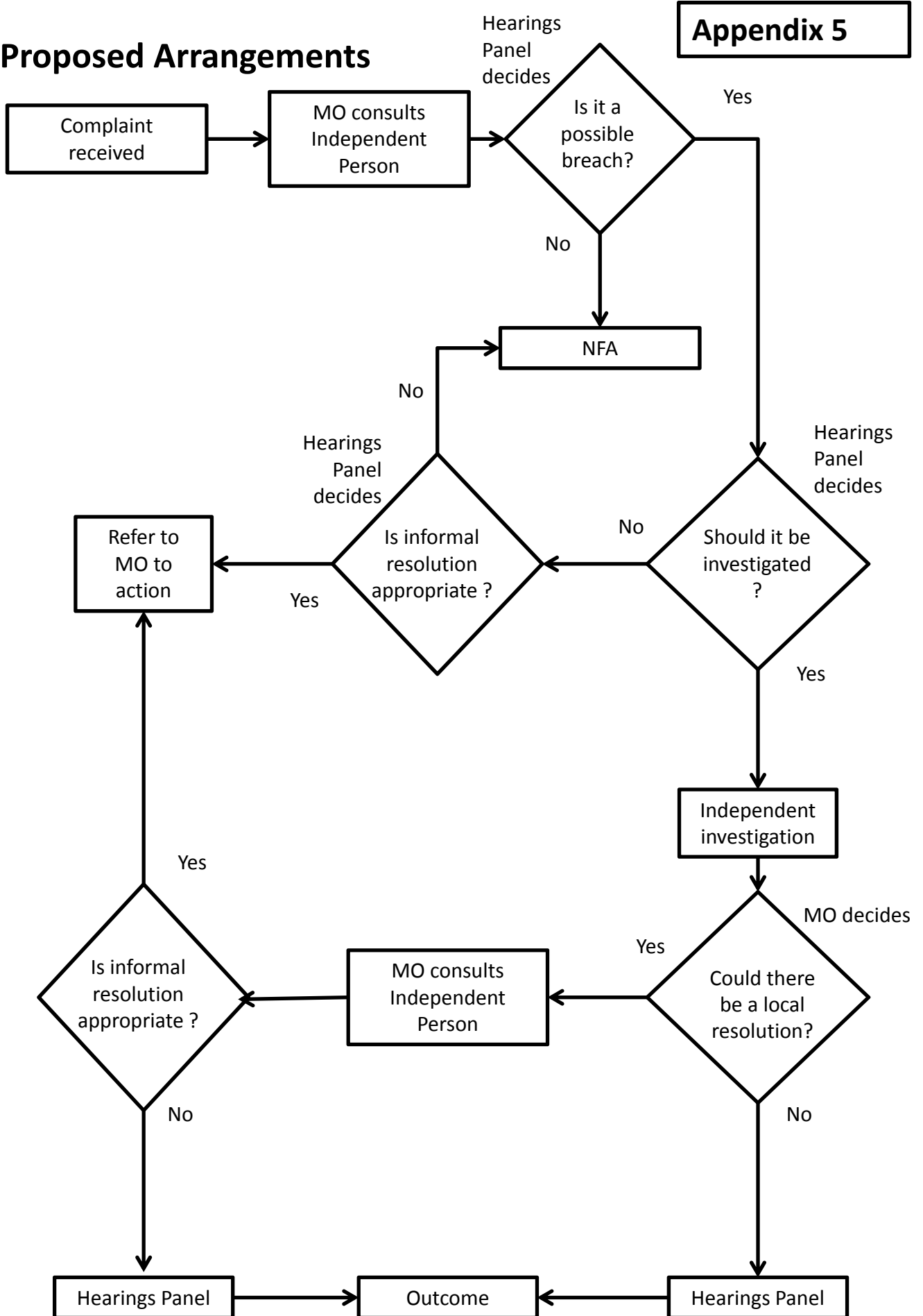
59. The Members Code of Conduct Committee is delegated to amend these arrangements where necessary, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration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

Version 1.0

May 2012

Appendix 5

Proposed Arrangements



Review of Allocation of Seats
Report of the Monitoring Officer
Extraordinary Council – 27 June 2012

Resolution Required

1. Following the Cabinet decision on 12 June 2012 on the new Members Code of Conduct Committee, and subject to agreement of the Council to the recommendation of the Leader considered at item 6 on this agenda, the new Members Code of Conduct Committee will have 8 seats as opposed to the 6 seats currently on Standards.
2. This prompts a review of the allocation of seats as it means that there are 65 seats across all committees to be allocated on a proportional basis (as opposed to the previous 63).
3. In considering this review I have also taken notice of the fact that Cllr Colison-Crawford has resigned from the Liberal Democrat group.
4. I have reviewed the number of seats for each group as follows:

	Previous	Proposed
Conservative	52	54
Liberal Democrat	10	9
Independent A	1	1
Independent B	-	1
Total	63	65

- a) Pursuant to Section 15 of the Local Government and Housing Act 1989 the Council is asked to agree the representation of the different political groups on Committees.

The Council is advised that the following allocation of seats would meet the requirements of Section 15(4) of the Act:

	Conservative	Lib. Democrat	Independent
Audit	6	1	
Licensing	13	2	
Planning	12	2	1
Overview and Scrutiny	12	2	1
Members' Code of Conduct	7	1	
Staffing and Appeals	4	1	
Total	54	9	2

b) In accordance with the Council Constitution, to appoint the members to serve on the above-mentioned committees, including Mr. M. Litvak and Miss S. Faulkner to be co-opted as the non-elected Chairman and Vice-Chairman respectively of the Members Code of Conduct Committee.

[The nominations to Committees [Appendix A] will be circulated, under separate cover, as soon as they have been finalised by the Group Leaders.]

CALENDAR OF MEETINGS 12 JUNE 2012 TO 23 MAY 2013

Meeting	2012 June	July	Aug	Sept	Oct	Nov	Dec	2013 Jan	Feb	Mar	Apr	May
Council	Ex 27	19			25		13		21			2, ACM 23
Cabinet Briefing		2, Sp. 2		10	Sp. 22	5 Sp.26	3	14, Sp. 24, 28			15	
Cabinet	12	Ex 2, 17		25		20	Sp. 11 18	29	12		30	
O&S		24		11			4		5			
Crime & Disorder					2							
Audit				20			6			21		
Planning	21, 27	25	22	19	17	14	12	16	13	13	10	8
Licensing	13	11		5	10	7	19	9	6	6	17	15
Members' C of C		26		26		21			27		24	
SCC Local		9 (formal)			8 (formal)	12 (informal)		21 (formal)	18 (informal)	18 (formal)		
Groups		10		17		13	Sp. 5 10	22	4	25	22	
Seminars	25			3	1	26			11	11	16	13
Bank Holidays	4, 5		27				25, 26	1		29	1	6, 27
Spelthorne in Bloom	2, 3, 10	9 - 20										

27 June 2012