

**ROBERTO TAMBINI
CHIEF EXECUTIVE**

Please reply to:

Contact: Liz Phillis
Service: Corporate Governance
Direct line: 01784 446276
Fax: 01784 446333
E-mail: l.phillis@spelthorne.gov.uk
Our ref: LP/OSCTTEE
Date: 18 July 2012

Notice of meeting:

Members' Code of Conduct Committee

Date: Thursday 26 July 2012

Time: 7.30pm

Place: Goddard Room, Council Offices, Knowle Green, Staines

To: Members of the Members' Code of Conduct Committee

Councillors:

Mrs C.A. Bannister
S.E.W. Budd
Ms M. Bushnell
Mrs J.A. Dale
R.D. Dunn
A.E. Friday
Mrs M.J. Madams
A.J. Mitchell

Independent Members

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

AGENDA

1. Apologies

To receive apologies for non attendance. Apologies have been received from Councillors Mrs C. Bannister, R.D. Dunn and A.J. Mitchell

2. Minutes

To confirm the minutes of the Standards Committee meeting held on 10 May 2012. 1 - 2

3. Disclosure of Interests

To receive any disclosures of interest from members.

4. Committee Arrangements

To consider the report of the Monitoring Officer. 3 - 5

Appendix 1 - Article 10 of the Constitution 6 - 7

Appendix 2 - Terms of Reference 8

Appendix 3 - Code of Conduct for Employees 9 - 20

5. Independent Persons

To consider the report of the Monitoring Officer. 21 - 23

6. Hearings Procedures

To consider the report of the Monitoring Officer. 24 - 27

Appendix 1 - Assessment Criteria 28 - 34

Appendix 2 - Hearing Procedures - Assessment Hearings 35 - 37

Appendix 3 - Hearing Procedures - Final Hearings 38 - 40

7. Training Regime

The Monitoring Officer will report further at the meeting.

8. Urgent Business

To consider any business that the Chairman considers is urgent

MINUTES OF THE STANDARDS COMMITTEE

10 MAY 2012

Present:

Councillors:

Mrs M. Bushnell

Mrs J.A. Dale

R.D. Dunn

G.E. Forsbrey

Mrs M.J. Madams

S.D. Taylor

Independent Members:

Mr Murray Litvak (Chairman)

Mrs Sue Faulkner (Vice Chairman)

In Attendance

At the invitation of the Chairman, Councillor F. Ayer, the Leader of the Council, was in attendance and participated in the discussion on the Code of Conduct and Standards Committee.

126/12 MINUTES

The minutes of the meeting held on 5 December 2011 were approved as a correct record.

127/12 DISCLOSURES OF INTERESTS

No disclosures were made.

128/12 CODE OF CONDUCT AND STANDARDS COMMITTEE

The Committee considered the report of the Monitoring Officer providing an update on the implementation of the new ethical standards regime which had been introduced by the Localism Act 2011.

The Committee discussed with the Monitoring Officer a draft code of conduct which had included the statutory aspects as well as including references to 'failure to treat with respect' and 'bullying' both of which the committee supported being included in the new code. Although it was originally anticipated that the new code would come into force on 1 April 2012 the new regulations were still awaited, and the commencement date has been extended until 1 July 2012. The Code also needs to include provisions about Members' interests with the rest of the content being left to the Council to decide.

The Committee discussed the benefits of retaining a committee to deal with ethical matters and to deal with complaints against councillors including arrangements for investigation. The committee supported a stand-alone committee to deal with such matters but felt that the size of the committee be 8 councillors (subject to the proportionality rules) plus the retention of the current independent Chairman and Vice Chairman in an advisory role. The terms of reference for this committee to be similar to that of the current Standards Committee but to include keeping an overview and advising on the Employees Code of Conduct and references to 'advising on the Council's Anti

STANDARDS COMMITTEE, 10 May 2012- Continued

Fraud and Corruption Strategy and Confidential Reporting Code' being deleted as this was undertaken by the Audit Committee. The new committee to be called the Member Code of Conduct Committee.

In relation to registration of Interests the Committee noted that the Monitoring Officer would be required to keep and publish a register as before, but the details of the duty to notify were different and the registers had to be available on line. It was noted that the regulations about Disclosable Pecuniary Interests had yet to be published.

The Committee discussed the current £25 limit for disclosing receiving gifts and hospitality and felt that the amount should be increased to £35.

The Committee discussed with the Monitoring Officer proposed arrangements for considering, investigating and determination on allegations of breach of the code and the appointment of an 'Independent Person'.

Members expressed concern about the power of the Hearings Panel to make recommendations when there was no group leader to receive them. There was a possibility that a Hearings Panel would have less powers if they were considering the case of an Independent Member.

The Committee supported the overall objectives of the arrangements being:

- (a) To reassure residents and others that complaints would be dealt with swiftly, properly and transparently;
- (b) To be simple, clear and follow the rules of natural justice;
- (c) Not to be bureaucratic i.e. they should follow the law and not build in unnecessary additional measures;
- (d) To 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) To allow the Monitoring Officer to dismiss complaints from timewasters i.e complaints which are vexatious, frivolous or politically motivated;
- (f) To allow for the Monitoring Officer to be accountable for such decisions in (e) above,
- (g) To remove the requirement to have a Standards (Review) sub committee a feature of the present statutory requirements which it was felt unnecessary and wasteful, and
- (h) To ensure there is an element of outside scrutiny and objectivity by preserving the knowledge and experience of the Independent members of the standards committee.

RESOLVED:

1. To note the provisions of the Localism Act 2011 as it affects the ethical framework of the Council.
2. That the Monitoring Officer reports the committee's views on the changes to the Standards regime as identified at the meeting to Overview and Scrutiny Committee and Cabinet; and
3. Training for all members on the new requirements be given at the appropriate time.

COMMITTEE ARRANGEMENTS

Members Code of Conduct Committee: 26 July 2012

Resolution Required

Report of the Monitoring Officer

REPORT SUMMARY

How does the content of this report improve the quality of life of Borough Residents

Not applicable

Purpose of Report:

To advise members on the responsibilities of the new Committee and current business in terms of complaints against members.

Key Issues:

To decide priorities for the new Committee.

Financial Implications:

There are none

Corporate Priority

This is not a corporate priority

Officer Recommendations:

To advise the Monitoring Officer of any priorities for the forthcoming business of the Committee

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

MAIN REPORT

1. BACKGROUND

- 1.1 On 27 June 2012 the Council made a new Code of Conduct and enacted new arrangements for the Standards Committee which is now called the Members' Code of Conduct Committee. The Committee has a slightly altered remit and terms of reference. It also has an expanded membership to give it greater flexibility when dealing with complaints. Article 10 of the constitution and the Terms of reference for the Committee are attached herewith as **Appendix 1** and **Appendix 2** so that members can understand the responsibilities and powers of the Committee.

2. KEY ISSUES

- 2.1 The Committee has to undertake a number of key tasks in the forthcoming months and this paper is to introduce these topics and seek advice from members about the way forward and to prioritise the work that needs to be done.
- 2.2 **Current cases.** There are two current complaints which by virtue of the transitional regulations under the Localism Act 2011 are transferred into the Council's new arrangements.
- 2.3 Complaint A involves a complaint of the Monitoring Officer following comments made by a councillor at a public meeting. This complaint was sent for investigation by the Standards Committee and that investigation continues.
- 2.4 Complaint B involves a complaint from five councillors about remarks made at a recent Planning Committee. It was not possible to send that complaint to an Assessment Committee prior to 1 July and so that complaint transfers to the new Arrangements at the very earliest stage. The Monitoring Officer will consult with an Independent Person when one has been appointed.
- 2.5 These cases will proceed according to the Arrangements. In order to ensure that proper procedures are in place for the complaints, there are papers on the agenda tonight to adopt policies for Assessment of complaints and procedures for dealing with Assessment panels and Final Hearings Panels.
- 2.6 **Disclosable Pecuniary Interests.** I will update members at the Committee about the current status of councillors and the numbers who have made the disclosures required by law.
- 2.7 The Committee also needs to consider whether other interests need to be notified and recorded. Councillors previously serving on the Standards Committee may recall discussion about gifts and hospitality which have not been included in the regulations. It seems appropriate to make provision for such matters. This would involve some modification to the Code of Conduct.
- 2.8 Under the Localism Act 2011 the Council can make its own rules about how interests need to be declared at meetings and also to make standing orders about the declaration of these Disclosable Pecuniary Interests and any other non-statutory interests that we decide to implement.
- 2.9 **Employee Code of Conduct.** When the Cabinet and Council considered the changes to the Code of Conduct, it was mentioned that the Employee Code of Conduct should be reviewed as it is some time since that document was

updated. That matter is now within the remit of this Committee. The Code is attached at Appendix 3 for background information. Whilst there is no intention to review the Code at this meeting, any thoughts from members as to the review are welcome at this early stage.

3. OPTIONS ANALYSIS

- 3.1 There are a number of matters to be progressed and the Committee has freedom within its delegations to tackle the issues which are mentioned in this report. Any changes to the Code of Conduct would have to be approved by Council (in relation to declaration of interests).

4. PROPOSALS

- 4.1 I propose dealing with other possible interests and gifts and hospitality at your meeting on 26 September 2012.

5. BENEFITS AND SUSTAINABILITY

- 5.1 Not applicable.

6. FINANCIAL IMPLICATIONS

- 6.1 Not applicable.

7. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS

- 7.1 Not applicable.

8. RISKS AND HOW THEY WILL BE MITIGATED

- 8.1 None apparent.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 Regulations on Disclosable Pecuniary Interests took effect on 1 July 2012. The Council can make other arrangements as regards other changes to the Code at any time subject to the normal Council calendar etc.

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

**Background Papers:
There are none**

Article 10 – The Members’ Code of Conduct Committee

10.1 Appointment

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

10.2 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.

10.3 Chairing the Committee

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

10.4 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.

TERMS OF REFERENCE

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:

- (a) 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;
- (b) 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;
- (c) to consult with the Independent Person on any matters which have broad implications for the promotion of high standards by the Council;
- (d) to make recommendations to Council on standing orders for the registration and declaration of Disclosable Pecuniary Interests and other interests; and,
- (e) 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:

- (a) require the Member to apologise either privately or in public;
- (b) require the Member to attend training;
- (c) censure the Member;
- (d) send a report to Council to censure the Member;
- (e) require the Monitoring Officer to publish a report in the newspaper or on the Council's website about the Member's conduct;
- (f) withdraw privileges provided by the Council such as computer equipment, internet or email access;
- (g) 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,
- (h) a combination of any of the above.

INTRODUCTION TO THE CODE OF CONDUCT FOR EMPLOYEES

1. INTRODUCTION

- 1.1 The Council has approved the introduction of a Code of Conduct for Employees to apply to all members of Staff with effect from 1st November 1994. The Code of Conduct is intended primarily as help to give staff more detailed advice and guidance in what can sometimes be a difficult area for those of us working in the public service. The Code of Conduct is issued to all new starters.

2. PURPOSE OF CODE

THE CODE OF CONDUCT COVERS ALL STAFF ALTHOUGH MANY ASPECTS WILL APPLY ONLY TO STAFF AT A SENIOR LEVEL.

- 2.1 The Code has been designed to protect and safeguard the position of individual members of staff as much as those of the Council, and to avoid situations where members of staff might be accused of having some potentially conflicting interest in anything they might be involved in through their work with the Council. Its aim is to encourage staff to inform Chief Officers confidentially on certain personal matters that could affect duties at the Council. Failure to follow the Code could lead to embarrassing and/or difficult situations and ultimately to an investigation under the Council's disciplinary procedure.

3. EXTENT OF CODE

- 3.1 The Code gives detailed advice and guidance in the following specific areas:

SECTION	SUBJECT
1.	Introduction and Background
2.	Other Rules Applicable to Employees
3.	Standards
4.	Disclosure of Information
5.	Political Neutrality
6.	Relationships *
7.	Appointments and other Employment Matters *
8.	Outside Commitments *
9.	Personal Interests *
10.	Equality Issues
11.	Separation of Roles during Tendering *
12.	Gifts and Hospitality *
13.	Use of Financial Resources
14.	Sponsorship - Giving and Receiving

- 3.2 Those marked with an asterisk (*) will require some form of declaration from Chief Officers, if applicable and may also involve staff completing a form recording declaration.
- 3.3 This Code consolidates into one document information and registers maintained on subjects such as outside commitments and gifts and hospitalities.

4. RESPONSIBILITY OF STAFF

- 4.1. Staff are now required to report to Chief Officers and record on the appropriate form, full details of:
- (a) personal relationships with Councillors, Contractors or potential Contractors (i.e. Contractors who could bid for Council work) [Section 6 of the Code];
 - (b) personal friendships with potential recruits *staff could become involved within the recruiting process or with existing employees if involved in appointments, disciplinary or grading matters relating to them [Section 7 of the Code];
 - (c) personal and/or financial interests which could be perceived as being in conflict with the Council's interests, and membership of any external organisation requiring formal membership and commitment of allegiance and with secrecy about its rules or conduct [Section 9 of the Code].
- 4.2. In this particular instance, staff need to notify Chief Officers rather than record the friendship.
- 4.3. A simple pro forma for recording details of any of these relationships is **attached** to the Code and should be completed by all members of staff affected and forwarded to the appropriate Chief Officer, in confidence, as soon as possible. Previous declarations need to be resubmitted on the new form. It is important that information is updated as and when circumstances change. If there are any problems (e.g. about the extent of details required) staff should consult their Chief Officer.
- 4.4. As part of the Code of Conduct, each Chief Officer would maintain a Register of Employees Interests in relation to their Department. Any information given about interests etc. will be maintained in strict confidence in that Register. It will be available for inspection only by the Council's Monitoring Officer (Michael Graham), Assistant Chief Executive, the Chief Executive and the Chief Finance Officer, or his representative, in the case of suspected financial irregularity.
- 4.5. Advice or clarification on any matters covered by the Code of Conduct is available from Human Resources, Assistant Chief Executive or Chief Officers.

N.B For the purposes of this Code, Chief Officer means the Head of Department i.e. Chief Executive, Chief Finance Officer, Deputy Chief Executive, Head of Direct Services.

THE CODE OF CONDUCT FOR EMPLOYEES

1. INTRODUCTION AND BACKGROUND

- 1.2 Following discussions with Staff Side representatives, the Council has adopted a Code of Conduct for Employees with effect from 1st November 1994. It is based on a code proposed by the Local Government Management Board. The purpose of the code is to assist the Council and its employees in their day-to-day work, in the light of the challenges they face in the new and more commercially oriented environment. These include the introduction and extension of compulsory competitive tendering (CCT), market testing, changes in the management of the housing service, care in the community, management buyouts etc. The code sets out the minimum standards that should apply. The aim of the code is to lay down guidelines for you, which will help maintain and improve standards and protect you from misunderstanding or criticism.

Who The Code Is Aimed At? - The Code Applies To All Council Employees.

- 1.3 Inevitably some of the issues covered by the code will affect senior, managerial and professional employees more than others, but the code covers all employees under a contract of employment with the Borough of Spelthorne. Activities carried out by employees acting as members of Companies or voluntary organisations in their official capacity as employees of the Council, are also subject to the code.

2. OTHER RULES APPLICABLE TO EMPLOYEES

- 2.1 The main rules relating to the Council are included within the Council's Constitution including those relating to contracts. These are supplemented by Financial Regulations and various staffing policies and procedures. These are available to your Manager and you must ensure you are aware of the rules applicable to you and your job.
- 2.2 The specific requirements of the Council's Code of Conduct for Employees are set out in the following pages.

3. CODE OF CONDUCT - STANDARDS

- 3.1 Local Government employees are expected to give the highest possible standards of service to the public, and where it is part of their duties, to provide appropriate advice to other employees and Councillors with impartiality. You may, without fear of recrimination, bring to the attention of your Chief Officer, any major deficiency in the provision of service or any impropriety or serious breach of procedure. In exceptional cases, you may approach the Chief Executive or the Council's Monitoring Officer (Michael Graham) if you so wish.

4. DISCLOSURE OF INFORMATION

- 4.1 It is generally accepted that open Government is best. The law requires that certain types of information must be available to Councillors, auditors, government departments, service users and the public. The Authority itself may decide to make public other types of information. You must be aware of

the types of information, which in Spelthorne Borough Council are open and those which are not, and act accordingly. The Council's policy is to make as much information available to the public as possible. In preparing committee reports, for example, items should not be made 'exempt', even though this might be technically possible, unless disclosure would prejudice the position of the Council or the individual or Company concerned. Whenever possible, reports should be written so that they can be made public. Generally, therefore, you may release factual information unless:

- (a) it is (or is likely to be) the subject of an exempt report;
- (b) it relates to the personal circumstances of an employee, a Councillor or Charge payer or user of Council services; or
- (c) it is covered by restrictions under the Data Protection Act.

4.2 Guidance can be obtained from Committee Services or the Head of Corporate Governance in respect of reports to committee.

4.3 You should not use any information obtained in the course of your employment for personal gain or benefit, nor should you pass it on to others who might use it in such a way. Any particular information received by you from a Councillor or a fellow employee which is personal to that person and does not belong to the Council, should not be divulged by you without the prior approval of that person.

4.4 There are particular rules governing the disclosure of information to Councillors. Where you are unsure of the Council's rules and conventions, please consult your Manager.

5. POLITICAL NEUTRALITY

5.1 You service the Council as a whole. It follows you must serve all Councillors and not just members of any controlling group of Councillors, and must ensure that the individual rights of all Councillors are respected.

5.2 You may also be required to advise political groups. You must do so in a way that does not compromise your political neutrality.

5.3 Whether or not your post is politically restricted, you must follow every lawful expressed policy of the Council and must not allow your personal or political opinions to interfere with your work. Information on politically restricted posts can be obtained from Michael Graham, Head of Corporate Governance or Jan Hunt in Human Resources.

6. RELATIONSHIPS

6.1 Councillors

You are responsible to the Council through its Senior Managers. For some, your job is to give advice to Councillors and the Council. Mutual respect between employees and Councillors is essential to good Local Government. Close personal familiarity with individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided. Any close personal friendships with Councillors should be declared to your Chief Officer and recorded on the appropriate form.

6.2 **The Local Community and Service Users**

You should always remember your responsibilities to the community you serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council, including Customer Care.

6.3 **Contractors**

All personal relationships with contractors or potential contractors (i.e. contractors who could bid for Council work) should be declared to your Chief Officer and recorded on the appropriate form. In certain cases not to divulge such information, could contravene the law.

Orders and contracts must be awarded on merit, by fair competition against other tenders, and no favouritism should be shown to businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.

Your Chief Officer may require you to review your position and update information recorded at regular intervals depending on the circumstances.

If you engage or supervise contractors or have an official relationship with contractors and have previously had or currently have a relationship (i.e. working or friendship) in a private or domestic capacity with a contractor or potential contractor, you should declare that relationship to your Chief Officer and record it on the appropriate form.

7. **APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

7.1 If you are involved in appointments you should ensure that these are made on the basis of merit. It would be unlawful to make an appointment which was based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a personal relationship (including friendship) outside work with him or her. You should declare any such relationship to your Chief Officer in advance.

7.2 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close friend. You should declare it to your Chief Officer and record it on the appropriate form.

8. **OUTSIDE COMMITMENTS**

8.1 You are required to obtain written consent from your Chief Officer to take any other paid employment or occupation in addition to the post held with the Council. This includes directorships, consultancies and sponsorships by any company, organisation or individual. You should be clear about your contractual obligations to the Council and should not take outside employment which conflicts or might conflict in the future with the Council's interests.

8.2 You may not carry out work arising from additional employment in office time nor use Council resources or facilities (including typing) for those purposes.

8.3 Private use of Council facilities other than set out in 8.2 (above), e.g. making telephone calls, using fax or photocopiers, should be dealt with through the Council's Honesty Box scheme.

- 8.4 You should follow the Council's policies on the ownership of intellectual property or copyright created during your employment i.e:-
- (a) all creative designs, writings and drawings produced by you in the course of your duties, belong to the Council;
 - (b) all inventions made by you are the property of the Council if made during the course of your normal duties (which include those described in your notice of terms of employment, and any other duties arising from your Manager or other authorised Officer of the Council).
- 8.5 You must declare to your Chief Officer and record on the appropriate form, any membership of a Local Authority.

9. PERSONAL INTERESTS

- 9.1 You must declare to your Chief Officer and record it on the appropriate form; non-financial interests which you consider could bring about conflict with the Council's interests or activities. Examples might be membership of the committee of an organisation seeking or receiving grant aid from the Council, membership of a National Health Service Trust Board operating in Spelthorne or involvement with an organisation or pressure group which may seek to influence the Council's policies. Ordinary membership of organisations whether local or national will not usually be relevant.
- 9.2 You must declare to your Chief Officer and record it on the appropriate form, any financial interests which could conflict with the Council's interests e.g. any pecuniary interest in a business or company within Spelthorne or with which the Council might do business.
- 9.3 You must declare to your Chief Officer and record it on the appropriate form, membership of any organisation not open to the public without formal membership and commitment of allegiance, and which has secrecy about its rules or conduct, for example a Masonic lodge.
- 9.4 You must declare to your Chief Officer and record it on the appropriate form, any interest you have as freeholder, lessee, licensee or tenant in any land or property in Spelthorne except your main residence as recorded in your personnel records.
- 9.5 You must never become involved in dealing with or determining any application or request you or a member of your family or personal friend make to the Council, for example an application for planning permission or for council tax or housing benefit.

10. EQUALITY ISSUES

- 10.1 You have an obligation to ensure that policies relating to equality issues as agreed by the Council are complied with, as well, of course, as the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

11. SEPARATION OF ROLES DURING TENDERING

- 11.1 You must be clear on the separation of client and contractor roles within the Council. If you are a senior employee with both a client and contractor responsibility, you must be aware of the need for accountability and openness. Regulations for compulsory competitive tendering have particular

requirements for ensuring that contractor units are not involved in tender evaluation. If in doubt, please consult Legal Services.

- 11.2 If you are in a contractor or client unit you must exercise fairness and impartiality when dealing with all customers, suppliers, contractors and sub-contractors.
- 11.3 If you are privy to confidential information on tenders or costs for either internal or external contractors, you should not disclose that information to any unauthorised party or organisation.
- 11.4 If you are contemplating a management buyout, you should inform your Chief Officer as soon as you have formed a definite intent and withdraw from the contract awarding process.
- 11.5 You should ensure that no special favour is shown to work colleagues or former employees of the Council or their partners, close relatives or associates, in awarding contracts.

12. GIFTS AND HOSPITALITY

- 12.1 It is a criminal offence for you corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in your official capacity. It is for you to demonstrate that any such rewards have not been corruptly obtained.
- 12.2 The Council has adopted the following guidelines;
 - (a) One of the most difficult questions on which advice is sought, is the giving and receiving of hospitality and gifts;
 - (b) This note is intended to act as guidance only. It is impossible to prepare guidance to cover all situations, and you should always consult your Chief Officer whenever complex or potentially contentious situations occur;
 - (c) One test to apply in this situation is "What would the man or woman in the street think"? Ask yourself whether if they knew the circumstances, they would think that you might be influenced in your future conduct by the gift or hospitality offered. Would they think that your past conduct might have been influenced by the hope of, or designed to encourage, such a gift of hospitality? If the answer to either of these questions is "yes", you should refuse the offer;
 - (d) Bear in mind that it is not enough to avoid actual impropriety. It is important for your reputation and that of the Council to avoid any occasions for suspicion and any appearance of improper behaviour.

Gifts

- 12.3 A gift offered to you may be accepted if:-
 - (a) it is of nominal value e.g. calendars, diaries, pens etc., and
 - (b) no ulterior motive is apparent nor is there any danger of misinterpretation by the public (for example, because the offer comes from a person or Company tendering for work).
- 12.4 Gifts outside the scope of the above guidelines, should normally be refused, unless refusal would give offence. In such a case, the gift could be accepted

and donated to charity e.g. the Mayor's Charity Appeal, with a suitable explanation to the person or Company concerned. Receipt of gifts in these circumstances should be reported to your Chief Officer in accordance with paragraphs relating to Register for Gifts and Hospitality below. They should always be refused if an ulterior motive is apparent.

- 12.5 Gifts offered by grateful members of the public can similarly be accepted where the value is nominal and a refusal might otherwise give offence. Some members of staff, however, regularly come into contact with the public and a frequent recurrence of small gifts might give the impression that they are expected or a reward for favourable treatment. In these circumstances, gifts should normally be refused. Alternatively, if refusal would give serious offence, they could be accepted and the rules mentioned above applied.
- 12.6 In any event, you should refuse an offer or try to avoid situations where you are likely to be offered a gift from a person or Company engaged in negotiating a contract or other matter with the Council, or who has negotiated such a matter and where you are directly responsible for formulating recommendations to the Council or for monitoring the service received from the person or Company concerned. If the contract or other matter has been completed, and there is no obvious likelihood of a renewal, then the previous paragraphs apply.

Hospitality

- 12.7 You should only accept offers of hospitality if there is a genuine need to impart information, represent or promote the interests of the Council in the Community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Council should be seen to be represented. Any hospitality accepted, should be properly authorised and recorded. (see paragraphs relating to Register for Gift and Hospitality below)
- 12.8 When hospitality has to be declined, those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council.
- 12.9 You should not accept gifts from contractors and outside suppliers other than as set out in 12.3 above.
- 12.10 When receiving authorised hospitality you should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality.
- 12.11 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where your Chief Officer gives consent in advance and where the Council is satisfied that any purchasing decisions are not compromised.

Register for Gifts and Hospitality

- 12.12 You must record all gifts and hospitality received, and any offered but rejected, in the Register maintained in your Department. This must include all gifts and hospitality other than those described in 12.3 above. Each entry in the Register must be authorised by your Chief Officer and in the case of

hospitality accepted, it must be authorised in advance of attendance of the particular event.

- 12.13 In all cases, it is better to err on the side of caution. If you have doubts, seek advice. What matters above all else, are the reputations of yourself, the Council and Local Government generally.

13. USE OF FINANCIAL RESOURCES

- 13.1 You must ensure that you use public funds entrusted to you in a responsible manner, ensuring value for money to the local community and avoiding legal challenge to the Authority. If you are in doubt about your obligations, you must seek advice.

14. SPONSORSHIP - GIVING AND RECEIVING

- 14.1 Where an outside organisation wishes to sponsor or is asked to sponsor a Local Government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors (i.e. contractors who could bid for Council work).
- 14.2 Where the Council wishes to sponsor an event or service neither you nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to your Chief Officer of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, you should ensure that impartial advice is given and that there is no conflict of interest involved.

15. COMPUTER SOFTWARE

- 15.1 If your job involves use of computers, you must make sure that you use only properly licensed computer software in accordance with the Council's I.T. policy.

REGISTER OF INTEREST(S)

Please use this form to register with your CHIEF OFFICER* details of any interest(s) you may have under Sections 6, 7, 8 and 9 of the Code of Conduct for Employees. If you are in any doubt, advice may be sought from your Chief Officer.

Name: _____

Service: _____

DATE	SECTION OF CODE/DETAILS OF INTEREST

Your Chief Officer is the head of your Department/Directorate i.e. Chief Executive, Chief Finance Officer, Deputy Chief Executive, or Head of Direct Services.

LOCAL GOVERNMENT AND HOUSING ACT - POLITICAL RESTRICTION OF CERTAIN STAFF

1. INTRODUCTION

- 1.1 The Local Government and Housing Act 1989 contains a number of provisions to ensure the political impartiality of local government employees, and introduces the general principle of the 'politically restricted' post and of restricting political activity.
- 1.2 The purpose of this guidance is to highlight the implications of the Act including the implications for terms and conditions of service with the Council.

2. WHO IS AFFECTED?

- 2.1 The Act's operation and many of its provisions flow from the definition of a 'politically restricted' post. A post is designated as such if it is either:
 - (a) a 'specified' post (broadly, the Authority's top management) together with any officer to whom the Council or a committee has delegated any of its power to make decisions, and officers who report directly to a 'specified' post;
 - (b) a post whose remuneration level is, or exceeds, spinal column point 44 excluding any regional allowance (or an equivalent rate for part-time staff), and the post holder does not seek, or is not successful in seeking exemption from the Independent Adjudicator (see paragraph below);
 - (c) a 'sensitive' post, i.e. a post whose duties include giving advice on a regular basis to the Council or committee (including sub-committee or joint committee) or speaking on behalf of the Authority on a regular basis to journalists or broadcasters.

3. WHAT RESTRICTIONS ARE IMPOSED ON 'POLITICALLY RESTRICTED' POSTS

- 3.1 "Politically restricted" employees are:
 - (a) Automatically disqualified from holding elected office and are, therefore, precluded from becoming a member of a local authority (other than a Parish or a Community Council), member of Parliament or a member of the European Parliament;
 - (b) Prohibited from canvassing at elections for a candidate for election to the bodies mentioned at (a);
 - (c) Prohibited from acting as an election agent or sub agent for a candidate for election to the bodies mentioned at (a);
 - (d) Prohibited from holding office in a political party;
 - (e) Prohibited from speaking or writing publicly (other than in an official capacity) on party political matters.
- 3.2 The Act also prevents any local government employee from being appointed to the employers' side of any body responsible for negotiating terms and conditions of local government staff. Limits are also introduced on the amount of time-off which may be granted to employees fulfilling their duties as a member of a local authority.

4. THE INDEPENDENT ADJUDICATOR

- 4.1 Under the Act, an Independent Adjudicator has been created to consider amongst other matters:
- (a) applications from employees designated 'politically restricted' solely on remuneration grounds, (i.e. Spinal Column Point 44 and above) for exemption from such restriction.
 - (b) appeals from staff, that a local authority has not properly applied the 'sensitive post' criteria.

5. IMPLICATIONS FOR TERMS AND CONDITIONS OF SERVICE

- 5.1 The Act provides that the restrictions on political activity will be incorporated as a term of the Contract of Employment of those designated as holders of politically restricted posts.

6. ADMINISTRATION

- 6.1 The Council has a statutory duty to maintain a list of postholders who are politically restricted solely because their posts are considered politically sensitive. This list is maintained and will change from time to time.
- 6.2 Employees affected by this legislation are notified on appointment or on reaching the relevant point on the salary scale. They are also advised how to apply for exemption from the restriction.
- 6.3 Advice on the application of can be obtained from Human Resources or the Monitoring Officer

Issued 1996

INDEPENDENT PERSONS

Members Code of Conduct Committee: 26 July 2012

For information

Report of the Monitoring Officer

REPORT SUMMARY

How does the content of this report improve the quality of life of Borough Residents

Not applicable

Purpose of Report:

To advise the Committee of the process to appoint and induct the Independent Persons

Key Issues:

Independent Person
Localism Act 2011

Financial Implications:

There are none

Corporate Priority

This is not a corporate priority

Officer Recommendations:

To note the contents of the report.

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

MAIN REPORT

1. BACKGROUND

- 1.1 The role of Independent Person is a consultative position required under the Localism Act 2011. They are involved in complaints against members under the Code of Conduct. At various points in the new arrangements the Independent Person is required to be consulted. They do not have any decision making powers.
- 1.2 On 26 April 2012, the Council delegated authority to the Head of Corporate Governance in consultation with the Leader to establish an appointments panel with other Surrey councils for the appointment of an Independent Person to fulfil the statutory role.
- 1.3 Subsequently the appointment was advertised by four councils wishing to appoint together: Guildford BC, Mole Valley DC, Spelthorne BC and Waverley BC.

2. KEY ISSUES

- 2.1 Three persons applied for the position and were interviewed by the Monitoring Officers of Mole Valley DC, Spelthorne BC and Waverly BC. All four councils now propose that the three persons form a suitable panel of Independent Persons who can be appointed for all four councils to provide the skills and resilience required. (There is an exception in the case of Roger Pett and Waverley BC as there is a conflict of interest).

Roger Pett

- 2.2 Roger lives in Woking. He is a chartered accountant who has held a number of senior roles in the financial services industry. He is currently Director of Risk and Compliance for a firm of private equity partners. He has held similar senior roles in the financial services industry in London and abroad for over 30 years. This is his first public appointment.

Tony Allenby

- 2.3 Tony Lives in Guildford. He is a former RAF and British Airways pilot who has in the past been a member and mayor of Woking Borough Council and a member of Guildford Borough Council. (These were some time ago, and he is not currently politically active.) He has also had numerous voluntary appointments including, Chairman of the Surrey Valuation Tribunal; Scout Commissioner; RAFA welfare officer and a member of Guildford BC's Independent Remuneration Panel.

Vivienne Cameron

- 2.4 Vivienne lives in Guildford. She is currently a Probation Officer but used to work in a family business. She came into probation work after volunteering as an Appropriate Adult. She has run a local scout group in Guildford and is also a member of Guildford BC's Independent Remuneration Panel.
- 2.5 All three are strong candidates who bring different backgrounds, skills and life experiences. Between them they offer Spelthorne Borough Council the resilience that there would always be an Independent Person available to consult on any Members Code of Conduct Committee complaint.

2.6 On 19 July 2012 I presented a report to Council with a recommendation for Council to appoint Roger Pett, Tony Allenby and Vivienne Cameron as Independent Persons for Spelthorne Borough Council under the Localism Act 2011 and under a panel arrangement with Guildford BC, Mole Valley DC and Waverley BC.

2.7 I will report the decision of Council at your meeting on 26 July 2012.

3. OPTIONS ANALYSIS

3.1 The Council must have an Independent Person.

4. PROPOSALS

4.1 Subject to the decision of Council, there is likely to be a need for some protocol as to how the Independent Persons are used between the four councils and how they are allocated to cases.

4.2 Again subject to the decision of Council, I have tentatively arranged an induction session for the Independent Persons at Guildford BC on Monday 6 August 2012 and in advance of that date I will supply them with the relevant Code, Arrangements and such policies and procedures the Committee instigates tonight.

5. BENEFITS AND SUSTAINABILITY

5.1 Not applicable.

6. FINANCIAL IMPLICATIONS

6.1 There are none. Members should note that the Independent Persons were offered the posts as a purely voluntary position with only expenses being paid for any travel and out of pocket expenses being incurred.

7. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS

7.1 Nothing further to add.

8. RISKS AND HOW THEY WILL BE MITIGATED

8.1 None apparent.

9. TIMETABLE FOR IMPLEMENTATION

9.1 Mentioned in this report. Subject to the decision of Council the Independent Persons will take up their posts from 19 July 2012. Formal induction is on 6 August 2012.

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

**Background Papers:
There are none**

HEARINGS PROCEDURES

Members Code of Conduct Committee: 26 July 2012

Resolution Required

Report of the Monitoring Officer

REPORT SUMMARY

How does the content of this report improve the quality of life of Borough Residents

Not applicable

Purpose of Report:

To implement Hearing Procedures for any future hearings of the Members Code of Conduct Hearings Panel

Key Issues:

The Committee is free to set its own procedures following the abolition of the Standards regime.

Financial Implications:

None.

Corporate Priority

This is not a corporate priority

Officer Recommendations:

The Members Code of Conduct Committee is asked to adopt the Hearings Procedures as outlined in this report:

- a. Assessment Criteria – as shown at Appendix 1**
- b. Hearings Procedures – Assessment Panels – as shown at Appendix 2**
- c. Hearings Procedures – Final Hearings Panels – as shown at Appendix 3**

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

MAIN REPORT

1. BACKGROUND

- 1.1 The previous statutory regime for Standards Committees in determining complaints under the Local Government Act 2000 required the Council to follow the Standards Committee (England) Regulations 2008 and guidance issued by the Standards Board for England. The Council is no longer required to have regard to such rules, though the general advice offered in the guidance is useful to note as background information in preparing our own procedures.

2. KEY ISSUES

- 2.1 The Council is now free to determine its own procedures in relation to the assessment, investigation and determination of complaints. The Council has adopted its Arrangements document which is published on the Council's website and was approved at the Extraordinary Council on 27 June 2012 for implementation from 1 July 2012.

- 2.2 The Code of Conduct is a matter which can only be altered by the Council, but Council has delegated responsibility for the Arrangements and other policies and procedures relating to complaints to this Committee. The terms of reference for the Committee provide:

- 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;

- 2.3 In order to deal effectively with complaints when they are received the Committee will have to develop some detailed policies and guidance for itself in order to make sure that its decisions are consistent, fair and proportionate. In doing so the Committee should have regard to the general principles which are set out within the Arrangements for dealing with complaints, amongst other things these provide (in regard to the Arrangements):

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

3. OPTIONS ANALYSIS

- 3.1 In order to deal with future cases it is appropriate that the Committee now considers the following procedures to deal with the various stages of a complaint that may arise in future cases:
- 3.2 Assessment Criteria – these will guide the Monitoring Officer in rejecting any frivolous or vexatious complaints etc. They will also provide an indication to the Independent Person on the approach to complaints by the Committee. It should be noted that the Independent Person is not required to have regard to any criteria when giving advice as they are a “free agent”. Nonetheless it may be useful overall for the Independent Person to have some guidance in this new role, but only time will tell. The criteria will also provide guidance to the Assessment panel when it comes to make a decision about what should happen to a complaint and if it is worthy of investigation.
- 3.3 Hearings Panel Procedures – Assessment Panels – these are to guide the process of hearing a case at assessment. Previously such Sub-Committees were subject to legislation and guidance on who could be present and whether or not they should be in public. The Committee now has to consider its own procedures for such matters.
- 3.4 Hearings Panel Procedures – Final Hearings – these are to guide the process if a final hearing is required. They are based upon the procedure which was already adopted by the Standards Committee.

4. PROPOSALS

- 4.1 The attached procedures be considered and if adopted subject to any views of the Committee on suitable alterations, additions, omissions etc.
- 4.2 It may be that future procedures may be required to deal with local resolutions and directions in advance of a final hearing. I would suggest that the Committee gives consideration to these matters with a view to dealing with them later in the year.

5. BENEFITS AND SUSTAINABILITY

- 5.1 Having simple and clear criteria and guidance should avoid wasted resources and poor decision making in future cases. The purpose of devising policy guidance and protocols like this is to ensure overall fairness in the process and to allow transparency of the process for those making complaints and for those on the receiving end of them.

6. FINANCIAL IMPLICATIONS

- 6.1 There are none.

7. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS

- 7.1 The Arrangements for dealing with complaints already stipulate that the Arrangements themselves should follow the rules of natural justice. These policies and procedures should do likewise. The two rules of natural justice are:
- (a) Everyone has the right to a fair hearing
 - (b) The rule against bias - nobody should be a judge in their own cause.

8. RISKS AND HOW THEY WILL BE MITIGATED

- 8.1 There are none apparent.

9. TIMETABLE FOR IMPLEMENTATION

- 9.1 These procedures will be implemented immediately. They can be reviewed again at the discretion of the Committee.

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

Background Papers:

There are none

Appendices:

- 1. Assessment Criteria**
- 2. Hearings Procedures – Assessment Panels**
- 3. Hearings Procedures – Final Hearings Panels**

Spelthorne Borough Council

Members' Code of Conduct Committee

Initial Assessment of Complaints

Assessment Criteria

1 Introduction

- 1.1** This paper sets out the criteria which the Assessment Panel will apply in conducting the initial assessment, of allegations of failure by members to observe the Code of Conduct.
- 1.2** The Council takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether the complaint should be subject to a formal investigation, whether the Council's Monitoring Officer should be directed to take appropriate actions, in respect of the complaint, or whether no action should be taken in respect of the complaint.

2 Local resolution of complaints

- 2.1** The Members' Code of Conduct Committee is aware that the formal investigation of complaints is both costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.
- 2.2** The Members' Code of Conduct Committee has instructed the Monitoring Officer, where a complaint has been received, to consider and, if appropriate, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. Any informal attempt at local resolution at this stage does not take away the complainant's right to have the complaint of member misconduct considered by the Assessment Panel.
- 2.3** In dealing with a complaint and whether it should be investigated or in considering a local resolution, the Monitoring officer has to consult with the Independent Person. The Independent Person is not a member of the Members' Code of Conduct Committee and is not a councillor on Spelthorne Borough Council. The role is one required by the Localism Act 2011 which states that before a decision is taken on an investigation the Independent Person has to be consulted.
- 2.4** The Council has appointed a panel of three Independent Persons in conjunction with Guildford BC, Mole Valley DC and Waverley BC. One of

these persons is allocated to a complaint and the member who is subject of a complaint can also consult the independent Person if they wish to do so.

3 Which complaints can be considered?

3.1 The Assessment Panel must consider every complaint that a member of the Council has failed to comply with the Code of Conduct which the Council has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- a) persons who are not members of the Council;
- b) conduct which occurred at a time when the person against whom a complaint was made was not a member of the Council ;
- c) conduct which occurred before the Council adopted a Code of Conduct.
- d) conduct which occurred in the member's private life, as the current Code of Conduct applies only to a member's conduct in his or her office as a member of the Council;
- e) conduct which occurred when the member was acting as member of another authority. In such a case, the complaint should be addressed directly to that authority;
- f) complaints which do not clearly relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or request provision of a service by the Council, or are a complaint about an officer of the Council.

3.2 Such complaints will not be referred to the Hearings Panel but will instead be dealt with by the Monitoring Officer who will advise you as to the most appropriate avenue for proper consideration of your complaint or request. This may involve the Monitoring officer deciding the complaint personally under the Council's corporate complaints procedure.

3.3 In considering a complaint against a member and referring it to the Independent Person the Monitoring Officer will take into account the factors above in paragraph 3.1

4 Does the complaint appear to show a breach of the code of conduct?

4.1 The first assessment which will be undertaken by the Assessment Panel will be to determine whether the complaint appears to show that a breach of the code of conduct appears to show that a breach of the Code of Conduct may have occurred.

4.2 For this purpose, the Assessment Panel will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of a complainant to set out clearly:

- a) who the complaint is against;
- b) what they understand that the relevant member did; and
- c) why they consider that the Member's conduct amounted to a breach of the Code of Conduct.

It is also helpful to provide copies of any documents which they want the Assessment Panel to consider.

- 4.3** Following receipt of a complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Assessment Panel in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Assessment Panel with copies of the agenda, reports and minutes of a meeting of the Council at which the alleged misconduct occurred, or providing copies of the Member's entry in the Notification of Members' interests.
- 4.4** The Assessment Panel will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.
- 4.5** If the Assessment Panel concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter.
- 4.6** The Monitoring Officer has power under the Council's Arrangements for Determining complaints to dismiss complaints which are vexatious, frivolous or politically motivated. In doing so the Monitoring Officer will consider the guidance in Appendix A.
- 4.7** The Arrangements also allow for the Monitoring Officer to be accountable for such decisions in 4.6 above and where such a decision is made (after consulting with the Independent Person and the complainant), the Monitoring Officer will report his decision to the next available meeting of the Members' Code of Conduct Committee. If the Committee is unhappy with the Monitoring Officer's decision they may ask him to re-open the case or take such other action which is necessary to ensure overall fairness.

5 Possible actions where an apparent breach of the code has occurred?

- 5.1** Where the Assessment Panel has concluded that there appears to have been a breach of the Code, it has four options open to it. These are as follows:-

- a) to direct the Monitoring Officer to secure that the complaint is investigated.**

An investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member.

However, given that a formal investigation is an expensive and time-consuming process and can only address the immediate subject matter of the complaint, the Assessment Panel can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(b) below.

In addition, particularly where the conduct complained of is neither sufficiently serious to merit any action nor of recent occurrence, or where, for whatever reason, the public interest would not be best served by pursuing the matter further, the Assessment Panel may determine that no action should be taken in respect of it – see paragraph 5(c) below.

b) direct the Monitoring Officer to take other appropriate action short of a formal investigation.

The Assessment Panel cannot impose a sanction on the Member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for Members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict. This is not an exhaustive list.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where –

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct
- (ii) the conduct complained of is apparently common to a number of members of the Council, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
- (iii) the conduct complained of is not so serious that it requires a substantive formal sanction
- (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making
- (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate.

c) decide to take no action in respect of the complaint

The following factors may lead the Assessment Panel to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat;
- (ii) the complaint is anonymous. The Assessment Panel can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However, where this is not an obvious risk, the fact that the complainant has not disclosed his/her identity can indicate that the complaint is less serious, is malicious or is politically motivated.
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. Where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly. The passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence;
- (iv) the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter.

6 Confidentiality

- 6.1** As a matter of fairness and natural justice, a Member will usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant wishes his or her identity to be withheld or where there is cause not to disclose the existence of a complaint. Information will be withheld from the complainant only in circumstances that the Assessment Panel considers to provide exceptional justification.

7 Withdrawing complaints

- 7.1** Where the complainant seeks to withdraw the complaint before the Assessment Panel has had the opportunity to take a decision on it, the Assessment Panel will usually defer to such a request without any further investigation.
- 7.2** The Committee may however consider, without prejudice to the individual case, if there are wider issues which need to be considered by the Members Code of Conduct Committee on a general basis and whether to ask the Monitoring Officer to take any other actions to uphold high standards of behaviour across the Council as a result. If that is the case then the Hearings Panel can ask the Monitoring Officer to prepare a report for the Committee.

26 July 2012

Spelthorne Borough Council

Members' Code of Conduct Committee

Assessment Criteria

1 Unreasonable and unreasonably persistent complainants (

1.1 A small number of people, known as unreasonable and unreasonably persistent complainants, might abuse the opportunity to complain against members by, for example:

- a) Making repeated complaints about broadly the same matter;
- b) Making frequent complaints which have very little substance;
- c) Refusing to let a matter rest when it has been substantially dealt with;
- d) Being aggressive, offensive or obsessive;
- e) Having a clear and inappropriate ulterior motive; or,
- f) Otherwise causing a response where the public cost and time involved is disproportionate to the matters raised.

1.2 The Monitoring Officer will assess whether a person should be declared unreasonable and unreasonably persistent and how that person should be dealt with in the future. This cannot effect the person's legal entitlements but might include, among any other appropriate response:

- a) Creating a single named point of contact for the person to communicate with the Council.
- b) Refusing to accept emails, telephone calls or any other form of contact, provided one means of contact is maintained.
- c) Notifying all relevant Members and officers that any attempted communication should be referred to the single point of contact.
- d) Giving a summary response to multiple complaints, rather than dealing with them point by point.
- e) Refusing to respond further to matters substantially dealt with unless there is significant new evidence.
- f) Rejecting complaints as vexatious, frivolous or politically motivated.

- 1.3 Responses will make appropriate allowance for any equality and diversity related issues such as cultural barriers, language barriers, disability barriers (including learning disabilities), etc.
- 1.4 Reasonable adjustments for equality and diversity issues will be fully taken into account and there will be no reason to believe that cultural, language, or disability (including learning disability) barriers still exist which excuse the behaviour of the complainant or still require allowance to be made for the complainant.
- 1.5 If the complainant has special needs (e.g. language needs, learning disability, etc.), an interpreter (including British Sign Language) and/or advocate might be helpful to both parties; and an offer to help the complainant find someone independent will be considered.
- 1.6 Unreasonable and unreasonably persistent complainants may make a complaint against a Member for alleged breach of the Code of Conduct, and where this happens:
 - a) The single point of contact will be the Monitoring Officer
 - b) Multiple or related complaints may be considered by an Assessment Panel at the same time through a single report and recommendation.
 - c) If the Member's Code of Conduct Committee has already dealt with the same complaint, with no significant new evidence, the complaint may not be further considered.
 - d) Vexatious, frivolous or politically motivated complaints, or those which otherwise abuse the procedure, may not be considered further unless they also raise a serious matter which ought to be considered in the public interest.
 - e) Individual complainants will be given a warning about their behaviour and an opportunity to modify this before any restrictions are applied.
 - f) Individual complainants will be informed of the decision to invoke the policy, the implications this will have for that individual, how long the restrictions will last for, when the matter will be reviewed by the Members' Code of Conduct Committee.
 - g) Any restrictions do not prevent the individual complainant from requesting/assessing day to day services or assessing their local councillor(s). Ensuring (where applicable) that designated contact arrangements are kept up to date.

26 July 2012

Spelthorne Borough Council
Members' Code of Conduct Committee
Hearing Procedures - Assessment Hearings

To encourage the confidence of members and the public the following procedures have been adopted by the Members' Code of Conduct Committee to ensure a consistent approach is taken to assessing complaints against councillors locally.

The 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 Panel but legally cannot vote on the decision.

The Assessment Panel shall meet promptly, with the expectation that all assessments, investigations, resolutions and hearings will be completed within a maximum period of three months arising from the time of the complaint. All those involved in the complaint should do their utmost to ensure that this can happen.

INTERPRETATION

Member - means the councillor or co-opted member of the authority who is the subject of the allegation being considered by the Members' Code of Conduct Committee, unless otherwise stated.

Investigator - means the Monitoring Officer, an independent investigator appointed by the Monitoring Officer or a senior officer of Spelthorne Borough Council or another local authority who has agreed to assist the Committee. (ESO) and includes his or her nominated representative.

Committee - also refers to an Assessment Panel of the Members Code of Conduct Committee;

Legal Advisor - means the officer responsible for providing legal advice to the Members Code of Conduct Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation - the Member is not expected to be present, represented or accompanied during the initial assessment stages of a complaint. Any exception to this rule will only be made by the Chairman in exceptional circumstances following advice from the Monitoring Officer.

Legal Advice – the Committee may take legal advice, in private if necessary, from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with other persons present if the meeting is taking place in public.

Local Resolution – an informal means of resolving a complaint to the mutual satisfaction of the complainant and the Member concerned. Usually this involves an apology of some description.

Pre-hearing Process

1. The Monitoring Officer will receive a complaint regarding a member and ensure that the complaint is in writing. Where a complaint has been properly made, and appears to be related to the Code of Conduct then the Monitoring Officer will inform the Member and seek his or her initial views on the complaint. If there is any opportunity

- to divert the complaint with a local resolution at an early stage the monitoring officer will pursue this with the complainant and the Member.
2. The Monitoring Officer will consider the complaint and the Members response to it and then take into account the Assessment Criteria of the Members Code of Conduct Committee.
 3. The Monitoring Officer will select an Independent Person from the Panel and consult with the Independent Person.
 4. After receiving the advice of the Independent Person the Monitoring Officer will inform the Member of the advice and advise the Member of his or her right to consult with the Independent Person.
 5. Again, If there is any opportunity to divert the complaint with a local resolution at an early stage the Monitoring Officer will pursue this with the complainant and the Member.
 6. The Monitoring Officer will take into account any advice offered by the Independent Person. If a local resolution can be achieved then the Monitoring Officer will facilitate this and report the outcome to the next available meeting of the Members' Code of Conduct Committee.
 7. If a local resolution cannot be achieved (either because the Member concerned is not willing to co-operate with the suggested resolution, or the complainant is unwilling to accept it) then the Monitoring Officer will convene a Hearings Panel of the Members Code of Conduct Committee to consider the next steps.
 8. The Monitoring Officer will advise all parties of the date and time for the Assessment Panel and provide an opportunity to provide any written representations in advance of the date of the hearing. No parties will be invited to the Assessment Panel at this stage. This is to ensure that the early assessment of complaints is undertaken swiftly in accordance with the criteria published by the Members Code of Conduct Committee. It is not expected that all the facts of the case need to be aired in full at this preliminary stage.
 9. The Monitoring Officer will prepare a factual report including the following matters:
 - a. Details of the complaint;
 - b. Details of the Member's response to the complaint;
 - c. Any evidence which is available and to hand without the need for investigation;
 - d. Details of the advice offered by the Independent Person;
 - e. Details of any attempts to negotiate a local resolution; and
 - f. Written representations from any party in accordance with paragraph 8 above.

Hearings Procedure

10. At the start of the hearing the Chairman will:
 - Introduce members of the Committee and others in attendance
 - Explain the purpose of the meeting and how it will proceed
11. The Legal Advisor 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 have an effective airing of matters which are still at a preliminary stage it is not expected that the Panel will take place in public unless there are exceptional circumstances which dictate otherwise.
12. The Committee will then consider the report of the Monitoring Officer and take into account the Assessment Criteria of the Members Code of Conduct Committee.

13. The Committee will then consider whether a complaint should be:
 - a. Rejected as not disclosing a possible breach of the Code of Conduct
 - b. Referred to the Monitoring Officer to try any further attempts at local resolution following advice from the Assessment Panel. The Hearings Panel may also indicate that should any party fail to comply with its advice on a local resolution then the complaint may be:
 - i. Terminated, or
 - ii. Referred for Investigation with a view to a full hearing.
 - c. Investigated with a view to a full hearing.
14. The Monitoring Officer will write to all parties within 7 days to advise them of the outcome of the Assessment Panel.

26 July 2012

Spelthorne Borough Council

Members' Code of Conduct Committee

Hearing Procedures - Final Hearings

To encourage the confidence of members and the public the following procedures have been adopted by the Members' Code of Conduct Committee to ensure a consistent approach is taken to determining matters locally.

The 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 Panel but legally cannot vote on the decision.

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.

INTERPRETATION

Member - means the councillor or co-opted member of the authority who is the subject of the allegation being considered by the Members' Code of Conduct Committee, unless otherwise stated.

Investigator - means the Monitoring Officer, an independent investigator appointed by the Monitoring Officer or a senior officer of Spelthorne Borough Council or another local authority who has agreed to assist the Committee. (ESO) and includes his or her nominated representative.

Committee - also refers to a Hearings Panel of the Members Code of Conduct Committee;

Legal Advisor - means the officer responsible for providing legal advice to the Members Code of Conduct Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation - the member may be represented or accompanied during the meeting by a fellow councillor, a solicitor or counsel, or with the permission of the committee another person.

Legal Advice – the Committee may take legal advice, in private if necessary, from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the Member and the Investigator if they are present.

Pre-hearing Process

1. The Monitoring Officer or the Hearings Panel may conduct a pre-hearing process in order to narrow the issues between the parties and make appropriate provision for the smooth running of the Hearing. Where this happens the Monitoring Officer will provide a letter to all parties outlining the issues to be determined for and the arrangements for making decisions about all such matters.
2. In complex cases it may be appropriate for the Hearings Panel to meet in advance to deal with all such procedural issues but the Monitoring Officer will provide an agenda for such meeting outlining the matters to be resolved.
3. The Legal Advisor 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 air procedural matters properly

in advance of a hearing it is normally expected that the Panel will take place in private unless there are exceptional circumstances which dictate otherwise.

Hearings Procedure

4. At the start of the hearing the Chairman will:
 - Introduce members of the committee and others in attendance
 - Explain the purpose of the meeting and how it will proceed
5. The Legal Advisor 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 Panel will take place in public unless there are exceptional circumstances which dictate otherwise.
6. The Committee will then resolve any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre hearing process.
7. If there are disagreements about the facts the Investigator, if present, will be invited to make representations to support the findings of their report and with the Committee's permission to call supporting witnesses. The committee will give the Member an opportunity to challenge any evidence put forward by a witness but any direct questions are put through the Chairman.
8. The Member will then have the opportunity to make representations to support his or her version of the facts and with the Committee's permission to call supporting witnesses. The Committee will give the Investigator an opportunity to challenge any evidence put forward by a witness.
9. At any time the Committee may question the investigator, the Member or their witnesses.
10. The Committee will not allow the member to raise a disagreement with the facts, which was not raised prior to the hearing, unless the Member satisfies the Committee there were good reasons for not raising the disagreement before. If the Investigator is not present the committee will consider whether or not it would be in the public interest to continue in the Investigator's absence. After considering the position and the Member's explanation for not raising the disagreement at an earlier stage the committee may:
 - (a) Continue the hearing, relying on the information in the Investigator's report;
 - (b) Allow the Member to make representations about the issue and invite the Investigator to respond and call any witnesses necessary; or
 - (c) Postpone the hearing to arrange for the Investigator to be present if he or she is not already or for appropriate witnesses to be present.
11. The Investigator and Member will normally be given the opportunity to make short closing statements before the Committee retires to reach its decision. The Member will speak last to have the final say.
12. The Committee will then consider its decision based on the facts presented in private.
13. If any clarification or legal advice is needed this will be undertaken with all parties present.
14. On their return to the hearing, the Chairman will announce the Committee's findings of fact and whether the Member has failed to follow the Code of Conduct.
15. If the Committee decides that the Member has failed to follow the Code of Conduct, the chairman will inform the Member of this finding.

16. The Investigator and the Member will be invited to make any final relevant points as regards the sanction which should be imposed.
17. The Committee will then consider the representations and make its decision in private and will consider any representations from the Investigator and the Member as to:
 - (a) Whether or not the committee should set a penalty; and
 - (b) What form any penalty should take.
18. The Committee will then consider in private whether or not to impose a penalty on the Member and, if so, what the penalty should be.
19. The Chairman will then announce the committee's decision.
20. The Committee will then consider whether it will make any recommendations to the Council on any future preventative measures or tightening up procedures, with a view to promoting high standards of conduct among members. In doing so they will consider any verbal or written representations from the investigator.
21. The Committee will announce its decision on the day and provide a short written decision on that day. It will issue a full written decision as soon as practicable and send it to all concerned with the hearing.

26 July 2012

