

**ROBERTO TAMBINI  
CHIEF EXECUTIVE**

*Please reply to:*

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Our ref: GH/MCCC  
Date: 27 January 2014

**Notice of meeting:**

**Members' Code of Conduct Committee**

**Date: Tuesday 4 February 2014**

**Time: 7.30pm**

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

**To: Members of the Members' Code of Conduct Committee**

**Councillors:**

F. Ayers  
C.A. Bannister  
P.A. Broom  
R.D. Dunn  
A.E. Friday  
D. Gohil  
I.T.E. Harvey  
A.J. Mitchell

**Independent Members**

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



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**Minutes of the Members' Code of Conduct Committee  
2 July 2013**

**Present:**

**Councillors:**

F. Ayers

P.A. Broom

R.D. Dunn

A.E. Friday

**Independent Members:**

Mr Murray Litvak (Chairman)

Miss Sue Faulkner (Vice Chairman)

**Apologies:** Councillors C.A. Bannister, D. Gohil and M.J. Madams

**168/13 Minutes**

The minutes of the meeting held on 21 May 2013 were approved as a correct record.

The minutes of the Assessment Panel Hearing held on 4 June 2013 were noted. The Monitoring Officer provided an update following the resolution of the Assessment Panel and confirmed that Councillor H had made an apology to the complainant. He would now meet with Councillor H to give words of advice as to her future conduct in public meetings and write to the complainant informing him that the Committee considered the matter to be closed.

The Committee was satisfied that the apology was adequate and the requirements of the Assessment Panel fulfilled.

**169/13 Disclosures of Interest**

No disclosures were made.

**170/13 Review of new Arrangements**

The Monitoring Officer advised that this report provided a resumé of the Committee's activity and progress following its first year of operation. It had tested and refined the new arrangements and procedures for Assessment Panels and Final Hearings by considering some case work. The Committee also reviewed the Staff Code of Conduct and supplemented the Members' Code of Conduct.

The Committee considered the publicity for the Code and Arrangements and was satisfied with them.

## Members' Code of Conduct Committee, 2 July 2013 - continued

The Committee went on to consider whether the arrangements for dealing with allegations of misconduct were adequate in their current form. It discussed its aspirations for the timescales within which complaints were dealt with. It agreed to amend paragraph 33 of the arrangements, as attached at Appendix 1 to the report of the Monitoring Officer, to provide for 21 days following an investigation and hearing, for the matter to be concluded with decisions given and announcements made.

**RESOLVED:**

- (1) To note the current arrangements for publicity of the Code and Arrangements and
- (2) To approve the arrangements for dealing with allegations of misconduct subject to amendment (as shown in italics) of paragraph 33 to read:

*“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 and that the decision of the Hearings Panel will be given and announcements of such decision made within a further 21 days. All those involved in the complaint should do their utmost to ensure that this can happen.”*

**171/13 Independent Person Protocol**

The Monitoring Officer explained that a draft Independent Person Protocol had been drawn up to provide parameters for the work and conduct of an Independent Person. It was proposed to discuss this protocol with our partners.

Subject to the Committee's agreement of the Protocol, he would approach Guildford BC, Mole Valley DC and Waverley BC, to establish how many Code of Conduct hearings they had held, what they had learned from them and whether they had encountered any issues. He would report back to a future meeting of the Committee, with suggestions for the implementation of a protocol across the four authorities.

**RESOLVED** to note the draft Independent Person Protocol and the arrangements for discussions with other councils as submitted.

**172/13 Work Programme**

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

The Monitoring Officer recalled that the Committee had discussed the use of social media in relation to its impact on member and staff conduct at its last meeting. He demonstrated how Twitter and Facebook was used by the Council, their potential pitfalls for staff and councillors and how they differed from LinkedIn. He distributed copies of the Council's Corporate Information Security Policy (Use of Social Networking Sites) and the Legal Services department's Social Media Policy to the members present and asked them to

Members' Code of Conduct Committee, 2 July 2013 - continued

consider whether there was a need for further guidance and advice on the use of Social Media by staff and councillors.

The Committee was advised that of the two dates offered for the training on the hearings process, 5 September was preferred by most members.

**RESOLVED** that the work programme as submitted be approved subject to:

- (1) the training on the hearings process for members of the Committee be agreed for 5 September 2013.
- (2) the inclusion of further discussions on the use of Social Media at the October meeting.

**173/13      Urgent Business**

There was none.





## **Minutes of the Members' Code of Conduct Committee**

### **Assessment Panel Hearing**

**24 September 2013**

**Present:**

**Councillors:**

P.A. Broom

R. Dunn

A.E. Friday

**Independent Members:**

Mr Murray Litvak (Chairman)

**259/13 Disclosures of Interest**

No disclosures were made.

**260/13 Exclusion of Press and Public**

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

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

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

**261/13 Complaint Assessment against Councillor J**

The Panel considered the report of the Deputy Monitoring Officer concerning a complaint from Councillor I about the conduct of the Chairman of the Planning Committee, Councillor J, at the meeting held on 31 July 2013.

She complained that at this meeting and on other occasions, the Chairman had ignored her when selecting a member to second motions or speak on items, choosing other members of the Committee first. She believed Councillor J's behaviour was likely to have breached Paragraphs 7, 9 and 10 of the Members' Code of Conduct.

The Planning Committee meeting of 31 July 2013 was recorded and therefore the Panel listened to the recording of the exchange between Councillors I and J.

Members' Code of Conduct Committee Assessment Panel Hearing, 24  
September 2013 - continued

The Panel considered the current complaint having regard to the Assessment Criteria. It considered whether there had been a breach of the Members' Code of Conduct under paragraphs 7, 9 and 10, which state:

Paragraph 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”

Paragraph 9 – “You must treat others with respect. This means treating people fairly 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”.

Paragraph 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”

The Panel concluded unanimously that although it understood Councillor I's frustration with the incident, there did not appear to be a breach of the Members' Code of Conduct under any of the three Paragraphs considered.

In considering the matter the Panel were grateful to have listened to the recording of the meeting which illustrated that there had been some confusion about the motion being proposed and that the Chairman appeared to be trying to move the process along in a difficult situation.

It also took into account the comments of officers who were present at the meeting on 31 July, and who stated that they saw three hands went up together and there did not appear to be any malice intended by the Chairman's selection of another member over Councillor I.

The Panel acknowledged that during the normal 'rough and tumble' of council meetings, it can be difficult for a Chairman to spot all the hands being raised particularly with members arranged around the horseshoe. This can be frustrating for those wishing to contribute to the debate but it does not indicate a deliberate intent to side-line a particular member.

The Panel found that there was no evidence of a pattern of similar behaviour by Councillor J as no other specific occasions were raised by Councillor I. It therefore only considered the incident on 31 July 2013.

The Panel also had regard to advice from the Independent Person, that it would not be appropriate to take this to more formal proceedings for the reasons stated in paragraph 3.14 of the report.

Having found that a breach of the Members' Code of Conduct had not occurred, the Panel

**RESOLVED to take no further action against Councillor J.**

## Members Code of Conduct Committee – 4 February 2014

### Members' Code of Conduct Training 2013

#### Report of the Monitoring Officer

1. At its meetings in 2013 the Members' Code of Conduct Committee made revisions to the Code to include provisions in relation to membership of outside bodies and disclosure of non-pecuniary interests. Other guidance was also developed to assist members to meet the aspirations of the Code, in the form of a Policy of Gifts, Hospitality and Sponsorship and a Conflicts of Interest Policy.
2. The revised Code of Conduct was adopted by the Council at its meeting on 25 July 2013.
3. Officers organised three training sessions on the new provisions contained within the Code and other guidance, to enable all members to carry out their role in accordance with the required standards.
4. The Monitoring Officer, Michael Graham facilitated these sessions on 23 September 2013, 14 October 2013 and 19 November 2013.
5. A record of member's attendance at the three sessions is attached at **Appendix 1**. You will note that a number of councillors have still not attended a session.
6. The feedback from the sessions has been good. Councillors feel confident about the arrangements once they have been explained to them in straightforward terms. My aim is that everyone knows what the framework is and that they can declare interests when they need to do so to keep themselves "safe" and to avoid complaints from the public.
7. I wrote to the Group Leaders at the end of last year for their views on how the remaining councillors should be trained but have not received any comments back.
8. It was my intention to circulate the new disclosure of interest form (at **Appendix 2**), which includes non-pecuniary interests once everyone had been trained and was comfortable with their responsibilities.
9. The Members' Code of Conduct Committee is asked to consider whether:
  - a. they feel members have been offered sufficient training to now be able to fulfil their new obligations?
  - b. The new disclosure of interest form should be circulated to all members for completion without further delay?

Contact: Michael Graham, Monitoring Officer 01784 446227

Report Author: Gillian Hobbs, Committee Manager 01784 444243

24/01/14

## Record of Attendance at Members' Code of Conduct Training 2013

| <b>Councillor<br/>(Conservatives)</b> | <b>Attendance of Members<br/>Training on Code of<br/>Conduct</b> | <b>Date of Attendance</b> |
|---------------------------------------|--|---------------------------|
| Ayub                                  | Y  | 23/09/13                  |
| Broom                                 | N  | N/A                       |
| Dale                                  | N  | N/A                       |
| Davis                                 | N  | N/A                       |
| Evans                                 | Y  | 19/11/13                  |
| Forbes-Forsyth                        | N  | N/A                       |
| Francis                               | Y  | 14/10/13                  |
| IFrazer                               | Y  | 23/09/13                  |
| Friday                                | Y  | 19/11/13                  |
| Gething                               | N  | N/A                       |
| Gohil                                 | N  | N/A                       |
| Harman                                | Y  | 19/11/13                  |
| Harvey                                | Y  | 23/09/13                  |
| Leighton                              | Y  | 14/10/13                  |
| Madams                                | N  | N/A                       |
| Mitchell                              | N  | N/A                       |
| Patel                                 | Y  | 14/10/13                  |
| Pinkerton                             | Y  | 19/11/13                  |
| Rough                                 | Y  | 19/11/13                  |
| Saliagopoulos                         | N  | N/A                       |
| Sexton                                | Y  | 23/09/13                  |
| Sider                                 | Y  | 23/09/13                  |
| Smith-Ainsley                         | Y  | 23/09/13                  |
| Taylor                                | N  | N/A                       |
| Watts                                 | Y  | 14/10/13                  |
| Webb                                  | Y  | 14/10/13                  |

| <b>Councillor (Spelthorne<br/>Independent Party)</b> | <b>Attendance of Members<br/>Training on Code of<br/>Conduct</b> | <b>Date of Attendance</b> |
|--|--|---------------------------|
| Ayers  | Y  | 23/09/13                  |
| Bannister  | N  | N/A                       |
| Budd   | N  | N/A                       |
| Bushnell   | Y  | 23/09/13                  |
| Forsbrey   | Y  | 23/09/13                  |
| Grant  | Y  | 23/09/13                  |
| Patterson  | Y  | 14/10/13                  |

## Appendix 1

| <b>Councillor (Liberal Democrats)</b> | <b>Attendance of Members Training on Code of Conduct</b> | <b>Date of Attendance</b> |
|---------------------------------------|--|---------------------------|
| Beardsmore                            | N  | N/A                       |
| R. Dunn                               | Y  | 23/09/13                  |
| S. Dunn                               | Y  | 23/09/13                  |
| Spoor                                 | N  | N/A                       |

| <b>Councillor (Independents)</b> | <b>Attendance of Members Training on Code of Conduct</b> | <b>Date of Attendance</b> |
|----------------------------------|--|---------------------------|
| Spencer (Elected Independent)    | N  | N/A                       |
| Strong (Independent)             | Y  | 14/10/13                  |



**Localism Act 2011  
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012**

**Notification of Disclosable Pecuniary and Non-Pecuniary Interests**

**1. Notification of Disclosable Pecuniary Interests**

**Name** of councillor or co-opted member (delete as appropriate): .....(the “Member”)

Note that councillors and co-opted members are required to notify the Council of the Disclosable Pecuniary Interests of spouses, civil partners and those with whom they live as spouse or civil partner. In this form such a person is referred to as the “Partner” and a “Relevant Person” is a reference to either the Member or the Partner. The Member is required to disclose the interests of the Partner, of which the Member is aware. The Partner is not required to be identified. The notification is the Member’s, not the Partner’s.

**Date** of original notification:.....

Note additional notifications are dated subsequently in the document below as they are notified so that this form is a continuous record.

| Interest  | Member | Partner |
|---|--------|---------|
| <p><b>1. Employment, office, trade, profession or vocation.</b></p> <p>Any employment, office, trade, profession or vocation carried on for profit or gain.</p> |        |         |

| Interest   | Member | Partner |
|--|--------|---------|
| <p><b>2. Sponsorship.</b><br/>           Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.<br/><br/>           This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> |        | N/A     |
| <p><b>3. Contracts.</b><br/>           Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—<br/>           (a) under which goods or services are to be provided or works are to be executed; and<br/>           (b) which has not been fully discharged.</p>  |        |         |

| Interest  | Member | Partner |
|---|--------|---------|
| <p><b>4. Land.</b><br/>Any beneficial interest in land which is within the area of the relevant authority.</p>  |        |         |
| <p><b>5. Licences.</b><br/>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</p>   |        |         |
| <p><b>6. Corporate tenancies.</b><br/>Any tenancy where (to the Member's knowledge)—<br/>(a) the landlord is the relevant authority; and<br/>(b) the tenant is a body in which the Relevant Person has a beneficial interest.</p> |        |         |



| Interest   | Member | Partner |
|--|--------|---------|
| <p><b>7. Securities.</b><br/>                     Any beneficial interest in securities of a body where—<br/>                     (a) that body (to the Member’s knowledge) has a place of business or land in the area of the relevant authority; and<br/>                     (b) either—<br/>                     (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or<br/>                     (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |        |         |

**Warning** [in relation to 1-7 above] - A person commits an offence under section 30 (1) of the Localism Act 2011 if they provide information in this notification which is false or misleading and (a) the person knows that it is false or misleading, or (b) is reckless as to whether the information is true and not misleading.

## 2. Non-Pecuniary Interests

The Council adopted a revised Members' Code of Conduct on 25 July 2013 which included a requirement to register and disclose Non-Pecuniary Interests that arise from a councillor's membership of, or occupation of a position of general control or management in, the following bodies:

- (a) bodies to which you have been appointed or nominated by the Council;
- (b) bodies exercising functions of a public nature;
- (c) bodies directed to charitable purposes;
- (d) bodies one of whose principal purposes includes the influence of public opinion or policy.

**Please indicate any such bodies to which this applies in the box below:**

| Type of body  | Name of body of which I am a member, or occupy a position of general control or management in: |
|---|--|
| (a) bodies to which you have been appointed or nominated by the Council                       |  |
| (b) bodies exercising functions of a public nature  |  |
| (c) bodies directed to charitable purposes  |  |
| (d) bodies one of whose principal purposes includes the influence of public opinion or policy |  |

**Signed:** .....

Note: An electronic version of this form will be placed on the Council's website and the original is available for inspection at the Council Offices.

## **Members Code of Conduct Committee – 4 February 2014**

### **Amendments to Arrangements for dealing with complaints**

#### **Report of the Monitoring Officer**

1. The Arrangements for dealing with complaints (attached as **Appendix 1**) sets out the roles of the Monitoring Officer, Independent Person, Investigating Officer and Assessment and Hearings Panels in the complaints process and the procedure and powers at each stage.
2. These Arrangements are intended to reassure the public that the Council has measures in place to ensure a high standard of Conduct by councillors in public life.
3. It is inevitable that disputes will arise between councillors. However, changes brought in by the Localism Act were designed to remove the potential for tit for tat and minor political arguments, from the scope of formal complaint procedures.
4. Therefore, it is suggested that responsibility for disputes between councillors be given to the Group Leaders to resolve matters amicably between themselves in a spirit of co-operation and mutual respect. This will leave the formal arrangements as a way to deal with serious complaints received from residents or partner agencies etc.
5. Members of the Code of Conduct Committee are asked to consider the suggested amendment shown on the attached Appendix.

Contact: Michael Graham, Monitoring Officer 01784 446227

Report Author: Gill Hobbs, Committee Manager 01784 444243

## **Spelthorne Borough Council**

### **Members' Code of Conduct Committee**

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

##### **Context**

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

##### **Principles of these arrangements**

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

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

### The Code of Conduct

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

### Making a complaint

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

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

Email: [m.graham@spelthorne.gov.uk](mailto: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.
- 9-10. Where a complaint concerns an issue between two Spelthorne Borough Councillors, the Monitoring Officer will refer the matter to the appropriate Group Leader(s) to resolve amongst themselves.

### Role of the Monitoring Officer

- 40-11. 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.
- 44-12. The Monitoring Officer is accountable to the Members' Code of Conduct Committee for the operation of these functions.

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~~42.13.~~ 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 interests, then the Deputy Monitoring Officer will undertake functions of the Monitoring Officer as set out in these arrangements.

### **Independent Person**

~~43.14.~~ The Council has appointed three Independent Persons in conjunction with Guildford BC, Mole Valley DC and Waverley BC.

~~44.15.~~ The Independent Persons are not (and have not within the last five years been) a Member or an Officer of the Council.

~~45.16.~~ The role of the Independent Person is to advise the Monitoring Officer on action to take under these arrangements at the points stated.

~~46.17.~~ 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.

~~47.18.~~ The Independent Person receives expenses for undertaking this role but no other remuneration.

### **The Hearings Panel - Assessments**

~~48.19.~~ The Assessment Panel drawn from the membership of the Members' Code of Conduct Committee.

~~49.20.~~ The role of the Assessment Panel is to review complaints for investigation which are sufficiently serious to warrant such formal action.

~~20.21.~~ 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**

~~21.22.~~ The Monitoring Officer will review every complaint received and, consult with the Independent Person.

~~22.23.~~ 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.

~~23.24.~~ Following discussions with the subject Member and the Independent Person the Monitoring Officer will refer the matter to the Assessment

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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.

- | 24-25. 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.
- | 25-26. 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.
- | 26-27. 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.
- | 27-28. 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.
- | 28-29. The Members' Code of Conduct Committee will adopt a policy for the assessment and investigation of misconduct complaints. The Assessment Panel will refer to these guidelines when making a decision to refer a matter to investigation. The Assessment Panel will take advice from the Monitoring Officer when reaching its decision.
- | 29-30. 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

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officer of the Council, an officer of another Council or an external investigator.

30-31. If the Assessment Panel decides not to investigate the complaint the Monitoring Officer will write to the complainant outlining the reasons of the Assessment Panel. The decision of the Assessment Panel is final and will be reported to the next Members' Code of Conduct Committee.

31-32. 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**

32-33. The Investigating Officer will complete the investigation in accordance with any policy or guidelines that the Members' Code of Conduct Committee shall specify.

33-34. 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 and that the decision of the Hearings Panel will be given and announcements of such decision made within a further 21 days. All those involved in the complaint should do their utmost to ensure that this can happen.

34-35. 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.

35-36. 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.

36-37. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.

37-38. 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.

38-39. 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"**



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~~39.40.~~ If the Investigating Officer finds that there has been no breach of the Code of Conduct then the Monitoring Officer will write to the complainant and the subject Member and dismiss the complaint. The Monitoring Officer will report the outcome of the case to the next Members' Code of Conduct Committee. The decision is final and there is no appeal.

### **Findings of "Breach"**

~~40.41.~~ 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**

~~41.42.~~ 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.

~~42.43.~~ 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.

~~43.44.~~ 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**

~~44.45.~~ 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.

~~45.46.~~ 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

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Member is invited to Chair the Hearings Panel but legally cannot vote on the decision.

- | 46.47. The Members' Code of Conduct Committee may agree a procedure for Hearings Panels.
- | 47.48. 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 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.
- | 48.49. In order to give confidence to the public it is expected that the Hearings Panel will take place in public unless there are exceptional circumstances which dictate otherwise. The Monitoring Officer will advise the Chairman whether the hearing should be in public or private. The Access to Information Rules will apply to this hearing as it would apply to any other meeting of the Council.
- | 49.50. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the subject Member has or has not failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The subject Member will then have an opportunity to give his/her evidence, to call witnesses, to cross-examine and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
- | 50.51. The Independent Person may attend the hearing but is not required to attend.
- | 51.52. 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.
- | 52.53. 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**

- | 53.54. 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:

## Appendix 1

- a. To require the Member to apologise either privately or in public.
- b. To require the Member to attend training.
- c. To censure the Member.
- d. To send a report to Council to censure the Member.
- e. To require the Monitoring Officer to publish a press release about the complaint and its outcome.
- f. To require the Monitoring Officer to publish a full report in the newspaper and/or on the Council's website about the Member's conduct.
- g. To withdraw privileges provided by the Council such as computer equipment, internet or email access.
- h. To recommend to the Member's Council Leader/Group Leader that the Member be removed from a Committee, a Cabinet responsibility or an Outside Body (as appropriate).
- i. Or a combination of any of the above.

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

54-55. 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

55-56. 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.

56-57. 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

57-58. 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.

58-59. 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.

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**Revision of these arrangements**

| ~~59-60~~. 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.

## Members Code of Conduct Committee – 4 February 2014

### Planning applications by Councillors

#### Report of the Monitoring Officer

1. The Planning Code in Part 5 of the Council's Constitution sets out how applications involving officers and members will be dealt with at paragraphs 27 and 28, which is reproduced below:

#### **“Applications Involving Members, Officers or the Council**

27. Any planning application made by a Member or Officer or the Council itself should be determined by the Planning Committee and not by the Head of Planning and Housing Strategy under his/her delegated powers. Members of the Planning Committee and Officers should not normally act as agents for another person or body pursuing a planning matter with the Council and if they do, any planning decision must be made by the Planning Committee and not under delegated powers.
28. Whenever possible a Member making a planning application should appoint an agent to act on their behalf. The Member must take no part in making a decision on the application.”
2. Terms of reference in Part 3 of the Constitution set out the responsibilities of the Planning Committee. (Attached at **Appendix 1**). Everything not covered by the Committee's terms of reference are dealt with under delegated powers.
3. Under recently amended planning regulations a new procedure has been introduced whereby a developer must notify the planning authority of certain proposals before he or she can exercise permitted development rights. This is called ‘prior notification’.
4. The new prior notification procedure must be followed where householders wish to build single-storey rear extensions under permitted development. (For a period of three years, between 30 May 2013 and 30 May 2016, the size limits for extensions under permitted development rights will double from 4 metres to 8 metres for detached houses, and from 3 metres to 6 metres for all other houses.)
5. The Local Planning Authority (LPA) will then consult with neighbours (occupiers or owners of adjoining premises) for a period of 21 days. If an objection is received then the LPA will assess the impact of the proposed extension on the amenity of the neighbours.
6. This procedure will not result in an “approval”. The end result will be a determination that “prior approval” is or is not required. If the decision is that approval **is** required, further information may be requested by the LPA in order for it to determine whether approval should be given.

7. If no objections are received, or if the Council fail to issue a decision within 6 weeks, then there will be a deemed approval.
8. As this is a new procedure and not a planning application as such, it is not covered by the definitions set out in the Council's Constitution under Terms of Reference or Delegations to Officers. However, the default position is that everything is delegated to the Head of Planning and Housing Strategy, where it is not reserved to the Committee.
9. The Members' Code of Conduct Committee is asked for their view on this situation:

**Can a prior notification application by a councillor be dealt with under delegated powers or should it be referred to the Planning Committee?**

**Contact: Michael Graham, Monitoring Officer 01784 446227**

**Report Author: Gill Hobbs, Committee Manager, 01784 444243**

## Terms of Reference, Part 3 of the Constitution

### PLANNING COMMITTEE

(15 Members)

Subject to officer delegations, any applications for planning permission under Part III of the Town and Country Planning Act 1990 to which any of the following below apply AND subject to no decisions being issued within 21 days of the application's appearance on the Publicity Schedule;

1. Where Member representations are received in writing within the specified "call in" period within the approved scheme.
2. Where the Head of Planning and Housing Strategy decides, after consultation with the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern or where it is very contentious.
3. Where the application is submitted by the Council or by the Council with another person (individual or corporate).
4. Where the application is submitted by an officer of the Council (which shall also include applications for lawful development under Part VI of the 1990 Act).
5. Where an application is submitted by a Councillor (which shall also include applications for lawful development under Part VI of the 1990 Act).
6. Approval of over **5 (five)** net additional residential units whether by change of use or new build (minor application).
7. Approval of over 1,000m<sup>2</sup> net additional floor space whether by change of use or new build (major application).
8. Recommendation of no objection for over 1,000m<sup>2</sup> net additional floor space or land area in connection with Surrey County Council minerals and waste applications (gravel extraction/restoration).
9. Recommendation of no objection for extension of time limits for Surrey County Council minerals and waste applications.

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10. The confirmation of Tree Preservation Orders (TPO's)
11. Planning enforcement action which relates to potential loss of a home (Human Rights Act)
12. Powers under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as revised or amended)
13. For the local listing of any building



## Members' Code of Conduct Committee – 4 February 2014

### Work Programme 2013 - 2014

#### Resolution Required

#### 1. Work Programme

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

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

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

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

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

#### 2. Current Work Programme

2.1 One further meeting has been scheduled in the Council's Diary for the remainder of the 2013-14 municipal year and the dates for these are:

➤ 8 April 2014

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

| Date of meeting                   | Lead           | Purpose  |
|-----------------------------------|----------------|--|
| 8 April 2014                      |                |  |
| Independent Person Protocol       | Michael Graham | Review following comments from partner authorities |
| Update on current complaint cases | Michael Graham |  |

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

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

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