

**Roberto Tambini  
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Our Ref:  
Date:- 1 May 2012

**Notice of meeting:**

**Standards Committee**

**Date: Thursday 10 May 2012**

**Time: 7.30pm**

**PLACE: Goddard Room, Council Offices, Knowle Green, Staines**

**TO: Members of the Standards Committee**

***Councillors:***

Mrs M. Bushnell  
Mrs J.A. Dale  
R.D. Dunn  
G.E. Forsbrey  
Mrs M.J. Madams  
S.D. Taylor

***Independent Members:***

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

**EMERGENCY PROCEDURE [THE LIFT MUST NOT BE USED]**

**In the event of an emergency the building must be evacuated. All Members and Officers should assemble on the green adjacent to Broome Lodge. Members of the public present should accompany the Officers to this point and remain there until the Senior Officer present has accounted for all persons known to be on the premises.**



# AGENDA

## **1. Apologies**

To receive any apologies for non-attendance.

## **2. Minutes**

To confirm the minutes of the meeting held on 5 December 2011 (copy attached) 1 - 2

## **3. Disclosures of Interest**

To receive any disclosures of interest from members in accordance with the Council's Code of Conduct for members.

## **4. Code of Conduct and Standards Committee**

To consider the report of the Monitoring Officer on the new ethical regime. 3 - 10

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## **5. Any Other Business**

To consider any other business



**MINUTES OF THE STANDARDS COMMITTEE**  
**5 DECEMBER 2011**

**Present:**

**Councillors:**

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**

Councillor C.A. Davis Cabinet member for Economic Development

**Apologies:** Councillors Ms P.C. Forbes-Forsyth and Mrs J.A. Dale

**297/11 MINUTES**

The minutes of the meeting held on 17 March 2011 were approved as a correct record.

**298/11 DISCLOSURES OF INTERESTS**

No disclosures were made

**299/11 ETHICAL STANDARDS AND THE LOCALISM ACT 2011**

To assist the Committee Councillor C. A. Davis, the Portfolio Holder for this matter attended the meeting and took part in the discussion.

The Committee considered the report of the Monitoring Officer outlining the key measures contained in the Localism Act 2011 and the proposed timetable to meet the requirements. It was noted that the Government legislation would likely take effect in April 2012.

The Committee discussed the revised pre determination rules which enabled councillors to have a preliminary view and could freely discuss and publicise their views and concerns as they see fit. This was subject to councillors being prepared to listen to all of the arguments and evidence before making their decision.

Although there was no longer a requirement to have a Standards Committee to monitor conduct, there would be a duty on an authority to promote and maintain high standards of conduct by members. The Committee discussed whether this function could be incorporated into the work of either the Overview and Scrutiny Committee or the Audit Committee or to retain a Standards Committee.

The Committee discussed the requirements to adopt a code of conduct and noted that the code must be consistent with the new set of 7 general principles and the new legislation. The Code also needed to include provisions about members' interests with the rest of the content being left to the Council to decide.

STANDARDS COMMITTEE, 5 DECEMBER 2011- Continued

In relation to register 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 considered how councillors would be required to make an oral disclosure at meetings if their interest had not been registered.

The Committee discussed with the Monitoring Officer what types of arrangements needed to be put in place to deal with allegations of breach of the code and how these would be investigated. It was noted that an independent person would need to be appointed. The Monitoring Officer would be obliged to consult with this Independent Person before making a decision on the complaint. The Committee expressed reservations that there were few sanctions that could be imposed other than naming and shaming and possibly the withdrawal of facilities.

**RESOLVED** that members of the Committee to submit their views on what should be contained in the new code of conduct to the Chairman of the Committee to enable a collective view to be presented to the Cabinet Member responsible.

# **CODE OF CONDUCT AND STANDARDS COMMITTEE**

**Recommendation 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 consider changes to the standards regime in light of the Localism Act 2011.

### **Key Issues**

- The adoption of a new Code of Conduct
- Register of pecuniary and other interests
- Offences under the Localism Act 2011
- Arrangements for dealing with allegations of a breach of the Code of Conduct
- The appointment of an Independent Person
- Committee arrangements

### **Financial Implications**

There are no direct financial implications arising from this report.

### **Corporate Priority**

Not applicable.

### **Officer Recommendations**

**Standards Committee is requested to:**

- 1. Note the provisions of the Localism Act 2011 as it affects the ethical framework of the Council;**
- 2. Consider the matters outlined in this report; and**
- 3. Make such recommendations to Cabinet as they consider appropriate.**

**Report Author: Michael Graham, Head of Corporate Governance**

**Area of Responsibility: Roberto Tambini, Chief Executive**

**Cabinet member: Councillor Frank Ayers, Leader of the Council**

## MAIN REPORT

### 1. BACKGROUND

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

- **Selflessness:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty:** Holder of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership:** Holders of public office should promote and support these principles by leadership and example.

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

### 2. KEY ISSUES

#### Standards Committee

2.1 We will not be required to maintain a Standards Committee as we have at present but will have to establish “arrangements” to deal with complaints against members, including arrangements for investigations. It is practical for such non-executive powers of the Council to be delegated to a Committee. To all intents and purposes we need to have a committee which deals with standards whether we call that the Standards Committee or not.

2.2 The advantage of the present Standards Committee is that it is a distinct committee with a specialised remit which has done a good job over the years. The Committee might consider here the low level of complaints received and the



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

- 2.3 The disadvantages of the present system are that it is a further committee in the structure which has some costs to service (albeit not disproportionate). Having an Independent Chairman and Vice-Chairman doesn't allow councillors to take the lead on an important issue of self-regulation. The work of the committee is similar to other committees, notably Audit Committee which also deals with fundamental safeguards and reassurances to the public, and so there is an overlap.
- 2.4 For information the present remit of the Standards Committee is provided as **Appendix 1 and 2**.
- 2.5 The Act will not require us to have Independent Members on a Standards Committee. However there is no provision which stops us from keeping the Independent Members on a revised committee. The roles of the Independent Members would change slightly because at present (with the Standards Committee formed under the Local Government Act 2000) the Independent Members are full voting members. In any revised committee (which would be an ordinary committee of the Council under the Local Government Act 1972) the Independent Members would be advisory and non-voting.

### **Code of Conduct**

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

### **Registration of interests**

- 2.8 The previous regime in the Local Government Act 2000 and our Code of Conduct for personal and prejudicial interests will be abolished. In its place councillors must now become familiar with the new term “Disclosable Pecuniary Interests”.

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

### **Obligations on councillors as regards interests**

- 2.13 Below is a summary of the obligations on councillors and (voting) co-opted members.
- (a) Notify the Monitoring Officer of Disclosable Pecuniary Interests and the Disclosable Pecuniary Interests of:
- i) A spouse or civil partner
  - ii) A person with whom they are living as husband and wife
  - iii) A person with whom they are living as if they were civil partners
- It is an offence not to make such a disclosure within 28 days and it also an offence to provide false or misleading information when making the disclosure. Note that councillors only have to declare the interests of spouses etc if they are aware that the other person has an interest, but they cannot be reckless as to whether their disclosures are true and not misleading. This is potentially quite a minefield.
- This obligation is therefore far more stringent and intrusive than the existing obligation which is to declare in a meeting any personal or prejudicial interests arising from family and friend relationships where the councillor “ought reasonably to be aware of the existence of the personal interest”. Family and friend relationships and interests arising from those relationships do not have to be declared in the register at the present time.
- (b) When a Disclosable Pecuniary Interest arises at a meeting, the councillor must disclose the interest to the meeting. It is an offence not to do so.
- (c) If a Disclosable Pecuniary Interest arises at a meeting then the councillor must notify the Monitoring Officer within 28 days of the date of disclosure. It is an offence not to do so.

- (d) If a Disclosable Pecuniary Interest arises at a meeting then the councillor may not participate in the discussion of the matter at the meeting or participate in any vote taken at the meeting. It is an offence not to do so. The Council's own standing orders may make provision for the councillor to leave the room when such a situation arises.

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

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

2.14 One peculiar feature of the new regime is that where councillors make a declaration of a Disclosable Pecuniary Interest and then notify the Monitoring Officer, I then have to make that interest known in the register, and this applies even if the interest declared is not a Disclosable Pecuniary Interest. It remains to be seen if this is problematic but the prevailing culture at Spelthorne has always been that councillors err on the side of caution and often leave the room when strictly speaking they do not have a personal and prejudicial interest. In such cases the minutes of the meeting would show that the councillor had made a declaration and left the room, but the register of interests may not be altered. It may be that in the future the register becomes more significant because of the requirement to notify spouses' etc interests and notifications which aren't in fact interests under the regulations.

2.15 Regulations are awaited which will specify the extent of the Disclosable Pecuniary Interests. Once these are known the Council will need to come to a view on whether other interests should be added and registered.

2.16 The Act also provides for non-disclosure of 'sensitive interests' (where violence or intimidation may arise from disclosure). Such circumstances are rare but similar provision is made in the existing Code of Conduct.

### **Arrangements for dealing with complaints**

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

2.18 We will be required to make arrangements for the consideration, investigation and deciding on allegations of breach of the Code and also appoint at least one "Independent Person" whose views must be sought before any decision is made on an allegation. This Independent Person acts as a touchstone to guide those concerned on the application of the Code and is meant to bring an element of outside objectivity to the proceedings.

- 2.19 The Independent Person's views must be taken into account by the Council before it makes a decision on a matter that has been investigated.
- 2.20 The Independent Person's view may be sought:
- a) By the Council in circumstances other than where it has decided to investigate (when consultation is mandatory).
  - b) By a member if that person's behaviour is the subject of an allegation.
  - c) Where the Council decides there is a breach and if so, what action to take against the member.
- 2.21 The Independent Person cannot be a member, co opted member or officer of the authority, a member, or a relative or close friend of any of those people, nor can the Independent Person have been a member, co opted member or officer of the authority at any time in the last five years. This means that the Independent Person may not be one of the current Independent Members of the Standards Committee.
- 2.22 Note that the DCLG has recently announced transitional measures which would allow Independent Members to serve as the Independent Person. The Monitoring officer will provide more details of this at the meeting.
- 2.23 The Act provides for the appointment of the Independent Person, following public advertisement and a vote at a Council meeting and permits the payment of allowances and expenses.
- 2.24 It is proposed that Spelthorne BC appoints an Independent Person (and a reserve/deputy) jointly with other Surrey councils and seeks to pay expenses only as incurred. This should save costs.
- 2.25 Draft arrangements for dealing with complaints are attached as **Appendix 4** to this report, but Members will note that there is further work to be done in relation to supporting documents, procedures etc. These draft arrangements are provided to stimulate discussion and consultation.
- 2.26 It is proposed to make arrangements with the following overall objectives:
- (a) They should reassure residents and others that complaints will be dealt with swiftly, properly and transparently;
  - (b) They should be simple, clear and follow the rules of natural justice;
  - (c) They should not be bureaucratic i.e. they should follow the law and not build in unnecessary additional measures;
  - (d) They should allow councillors to take decisions on whether a fellow councillor should be investigated, and, following investigation whether that councillor should be held in breach of the Code;
  - (e) They should allow the Monitoring Officer to dismiss complaints from timewasters i.e. complaints which are vexatious, frivolous or politically motivated;
  - (f) They should allow for the Monitoring Officer to be accountable for such decisions in (e);
  - (g) They should remove the requirement to have a Standards (Review) Sub-Committee – a feature of the present statutory requirements- which is unnecessary and wasteful; and,

- (h) They should ensure there is an element of outside scrutiny and objectivity by preserving the knowledge and experience of the Independent Members of the Standards Committee.

2.27 Two flowcharts are shown in **Appendix 5** which summarise the present position and the position which might be adopted under the new arrangements.

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

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

### **3. OPTIONS ANALYSIS**

3.1 There is no option but to develop new arrangements for ethical standards. The Council has choice in how to implement them and views are sought on the best way to achieve this.

### **4. PROPOSALS**

4.1 To consider the contents of this report, provide feedback, and consider any recommendations to Cabinet.

### **5. BENEFITS AND SUSTAINABILITY**

5.1 Not applicable.

### **6. FINANCIAL IMPLICATIONS**

6.1 Not applicable.

### **7. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS**

7.1 Identified in the report.

### **8. RISKS AND HOW THEY WILL BE MITIGATED**

The current risk to implementation is the tight timetable. On the current calendar of meetings a programme has been developed which works on the assumption that the implementation date will be 1 July 2012. This timetable requires an extraordinary meeting of Council in June to accommodate these changes.

### **9. TIMETABLE FOR IMPLEMENTATION**

9.1 See table below.

<b>Date</b>	<b>Meeting</b>	<b>Note</b>
10 May	Standards	Consult on proposals
16 May	Overview and Scrutiny	Consult on proposals

12 June	Cabinet	Final recommendations for reports
Before 1 July	Council	Decision for reports

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

**Background Papers:  
There are none**

**Appendices:**

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

## Article 10 – The Standards Committee

### 9.1 Appointment

The Council will appoint a Standards Committee at its Annual Meeting.

### 9.2 Membership

The Standards Committee will be composed of:

- six 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 or any other body having a Standards Committee (an independent member);

The Independent members will be entitled to vote at meetings.

### 9.3 Chairing the Committee.

The Chairman and Vice Chairman of the committee shall both be independent members.

### 9.4 Role and Functions

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Members and any co-opted members;
- (b) the establishment of three Standards Sub Committees to assess, review and determine complaints against Members under the Code of Conduct, as follows:
  - (1) **Standards (Assessment) Sub Committee** – To make initial assessments of allegations of misconduct by Borough Members;
  - (2) **Standards (Review) Sub Committee** – At the request of a complainant, to review any decision of the Standards (Assessment) Sub Committee to take no action in relation to an allegation of misconduct by Borough Members; and
  - (3) **Standards (Determination) Sub Committee** – To determine complaints about the conduct of Borough Members and, where appropriate, to impose sanctions;
- (c) to support the Monitoring Officer in implementing the requirement that all members of the Standards Committee shall be eligible to serve on the three Standards Sub Committees at (b) above;
- (d) to support the Monitoring Officer in exercising his delegated authority, in consultation with the Chairman of the Standards Committee, to select members in accordance with the

- regulations to serve on the three Standards Sub Committees at (b) above, on a case by case basis;
- (e) to support the Monitoring Officer in implementing the requirements (i) that any of the three Standards Sub Committees at (b) above shall only be chaired by an Independent member and (ii) that at least three Standards Committee members are present at any meeting, including at least one Borough Member, but preferably two;
  - (f) assisting the Members and any co-opted members to observe the Members' Code of Conduct;
  - (g) assisting the Members in carrying out their civic duties effectively;
  - (h) advising the Council on the adoption or revision of the Members' Code of Conduct;
  - (i) monitoring the operation of the Members' Code of Conduct;
  - (j) advising, training or arranging to train Members and any co-opted members on matters relating to the Members' Code of Conduct, including, where appropriate, attendance with the Monitoring Officer and the Chairman of the Committee at the Annual Standards Board for England Conference;
  - (k) granting dispensations to Members and any co-opted members from requirements relating to interests set out in the Members' Code of Conduct;
  - (l) keeping an overview of and advising the Council on the Council's Complaints Procedure;
  - (m) keeping an overview of and advising the Council on its Anti Fraud and Corruption Strategy and Confidential Reporting Code (Whistleblowing policy);
  - (n) keeping an overview of and advising the Council on its Planning Code;
  - (o) keeping an overview of and advising the Council on its Member and Officer Protocol;
  - (p) keeping an overview on the operation of and advising the Council on any changes to its Constitution;
  - (q) any other responsibilities which may be delegated to it by the Council.



## STANDARDS COMMITTEE

<b>MEMBERSHIP</b>	
(8 Members)	
Chairman - Co-Opted	Mr. M. Litvak
Vice-Chairman - Co-Opted	Miss S. Faulkner
R.D. Dunn, Ms P.C. Forbes-Forsyth, G.E. Forsbrey, C.M. Frazer, Mrs M.J. Madams and S.D. Taylor	
<b>RESPONSIBILITIES</b>	
<p>Promoting and maintaining high standards of conduct by councillors and any co-opted members.</p> <p>Assisting the councillors and any co-opted members to observe the Members' Code of Conduct.</p> <p>Advising the Council on the adoption or revision of the Members' Code of Conduct.</p> <p>Monitoring the operation of the Members' Code of Conduct.</p> <p>Advising, training or arranging to train councillors and any co-opted members on matters relating to the Members' Code of Conduct</p> <p>Granting dispensations to councillors and any co-opted members from requirements relating to interests set out in the Members' Code of Conduct.</p> <p>Establishing three sub committees to assess, review and determine complaints against councillors under the Code of Conduct:</p> <p><i>Standards (Assessment) Sub Committee</i> – To make initial assessments of allegations of misconduct by Borough Councillors.</p> <p><i>Standards (Review) Sub Committee</i> – At the request of a complainant, to review any decision of the Standards (Assessment) Sub Committee to take no action in relation to an allegation of misconduct by Borough Councillors.</p> <p><i>Standards (Determination) Sub Committee</i> – To determine complaints about the conduct of Borough Councillors and, where appropriate, to impose sanctions.</p> <p>All members of the Standards Committee may serve on a sub committee and delegated authority is given to the Monitoring Officer, in consultation with the Chairman of the Standards Committee, to select members in accordance with the regulations to serve on the three sub committees on a case by case basis;</p>	

**RESPONSIBILITIES (CONTINUED)**

Any sub-committee must be chaired by an Independent member and at least three members must be present at any meeting, including at least one borough councillor but preferably two.

Keeping an overview of and advising the Council on the Council's Complaints Procedure.

Keeping an overview of and advising the Council on its Anti Fraud and Corruption Strategy and Confidential Reporting Code (Whistleblowing policy).

Keeping an overview of and advising the Council on its Planning Code.

Keeping an overview of and advising the Council on its Member and Officer Protocol.

Keeping an overview on the operation of and advising the Council on any changes to its Constitution.

Any other responsibilities, which may be delegated to it by the Council.

To hear appeals against political restriction of an officer post.

**Spelthorne Borough Council****[Draft] Code of conduct for councillors and co-opted members****General Obligations**

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

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

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
4. You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
6. You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out below.
7. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
8. 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.
9. You must treat others with respect. This means treating people fairly and equitably and with courtesy, compassion and sensitivity. You should treat other people equally as you yourself would expect to be treated. You must not use behaviour which a reasonable person would consider as offensive, intimidating, malicious, insulting or humiliating.
10. You must respect the distinct but complementary roles that members and officers have in their work for the Council and abide by the advice in the Member Officer Protocol.

11. You must recognise that the staff working for, or on behalf of, the Council are required to be impartial and you must not do anything which compromises that impartiality.
12. If a complaint is made under this Code of Conduct then you must not interfere with the administration or investigation of the complaint and you must not intimidate any complainant, witness or likely witness.

### **Registering and declaring pecuniary and non-pecuniary interests**

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

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

### Spelthorne Borough Council

#### Members' Code of Conduct

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

##### Context

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

##### Principles of these arrangements

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

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

### **The Code of Conduct**

5. The Council has adopted a Member Code of Conduct, which is available for inspection on the Council's website. The Council has tasked the Audit and Standards 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 Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint at appropriate junctures.

### **Role of the Monitoring Officer**

9. The Monitoring Officer's job is to oversee the complaints process and refer complaints to the Independent Person, the Assessment Panel and where appropriate to an Investigator and a Hearings Panel.
10. The Monitoring Officer is accountable to the Audit and Standards Committee for this function.

### **Independent Person**

11. The Council has appointed an Independent Person in conjunction with x council.
12. The Independent Person is not (and has not within the last five years been) a Member or an Officer of the Council.

13. The role of the Independent Person is to advise the Monitoring Officer on action to take under these arrangements at the points stated.
14. 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.
15. The Independent Person receives expenses for undertaking this role but no other remuneration.

### **The Assessment Panel**

16. The Assessment Panel is a Sub-Committee of the Audit and Standards Committee.
17. The role of the Assessment Panel is to review complaints for investigation which are sufficiently serious to warrant such formal action.
18. The remit of the Assessment Panel and the Audit and Standards Committee is available for inspection on the Council's website.
19. The Assessment Panel will comprise of three voting members of the Audit and Standards Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of Audit and Standards 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**

20. The Monitoring Officer will review every complaint received and, consult with the Independent Person.
21. 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.
22. Following discussions with the subject Member and the Independent Person the Monitoring Officer will refer the matter to the Assessment Panel with a recommendation as to whether it merits formal investigation. This Assessment Panel will normally meet within 14 days of receipt of a complaint.
23. 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 Audit and Standards Committee who are entitled to refer the matter for investigation if they feel that the Monitoring Officer has acted incorrectly.

24. 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.
25. 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.
26. 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.
27. The Audit and Standards Committee has adopted 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.
28. If the Assessment Panel decides that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator.
29. 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 Audit and Standards Committee.
30. 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**

31. The Investigating Officer will complete the investigation in accordance with any policy or guidelines that the Audit and Standards Committee shall specify.
32. The investigation shall be carried out promptly.
33. 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.
34. 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.
35. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.
36. 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.
37. 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"**

38. 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 Audit and Standards Committee. The decision is final and there is no appeal.

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

39. 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**

40. 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.
41. If the subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee for information, but will take no further action. Such report should be open to public scrutiny.
42. 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.

### **Local Hearing**

43. If the Monitoring Officer considers that local resolution is not appropriate, or the Member or Employee 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.
44. The Hearings Panel will comprise of three voting members of the Audit and Standards Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of Audit and Standards Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Hearings Panel but legally cannot vote on the decision.
45. The Audit and Standards Committee may agree a procedure for Hearings Panels.
46. The Monitoring Officer will 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.
47. The Monitoring Officer will advise the Chairman whether the hearing should be in public or private. The Access to Information Rules will apply to this hearing as it would apply to any other meeting of the Council. In order to give confidence to the public it is expected that the

Hearings Panel will take place in public unless there are exceptional circumstances which dictate otherwise.

48. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the subject Member or has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Hearings Panel. The subject Member will then have an opportunity to give his/her evidence, to call witnesses 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.
49. The Independent Person may attend the hearing to advise the Panel but is not required to attend.
50. 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.
51. 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**

52. In considering its response the Hearings Panel will give the Member an opportunity to make representations to the Panel, but will then decide what action, if any, to take in respect of the matter. The powers of the Hearings Panel are:
  - a. To require the Member to apologise either privately or in public.
  - b. To require the Member to attend training.
  - c. To censure the Member.
  - d. To send a report to Council to censure the Member.
  - e. To require the Monitoring Officer to publish a report in the newspaper or on the Council's website about the Member's conduct.
  - f. To withdraw privileges provided by the Council such as computer equipment, internet or email access.
  - g. To recommend to the Member's Group Leader that the Member be removed from a Committee, a Cabinet responsibility or an Outside Body (as appropriate).
  - h. Or a combination of any of the above.

53. 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**

54. There is no right of appeal for the complainant or for the Member against a decision of the Hearings Panel.

### **Post hearing**

55. 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.
56. 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 Audit and Standards Committee.

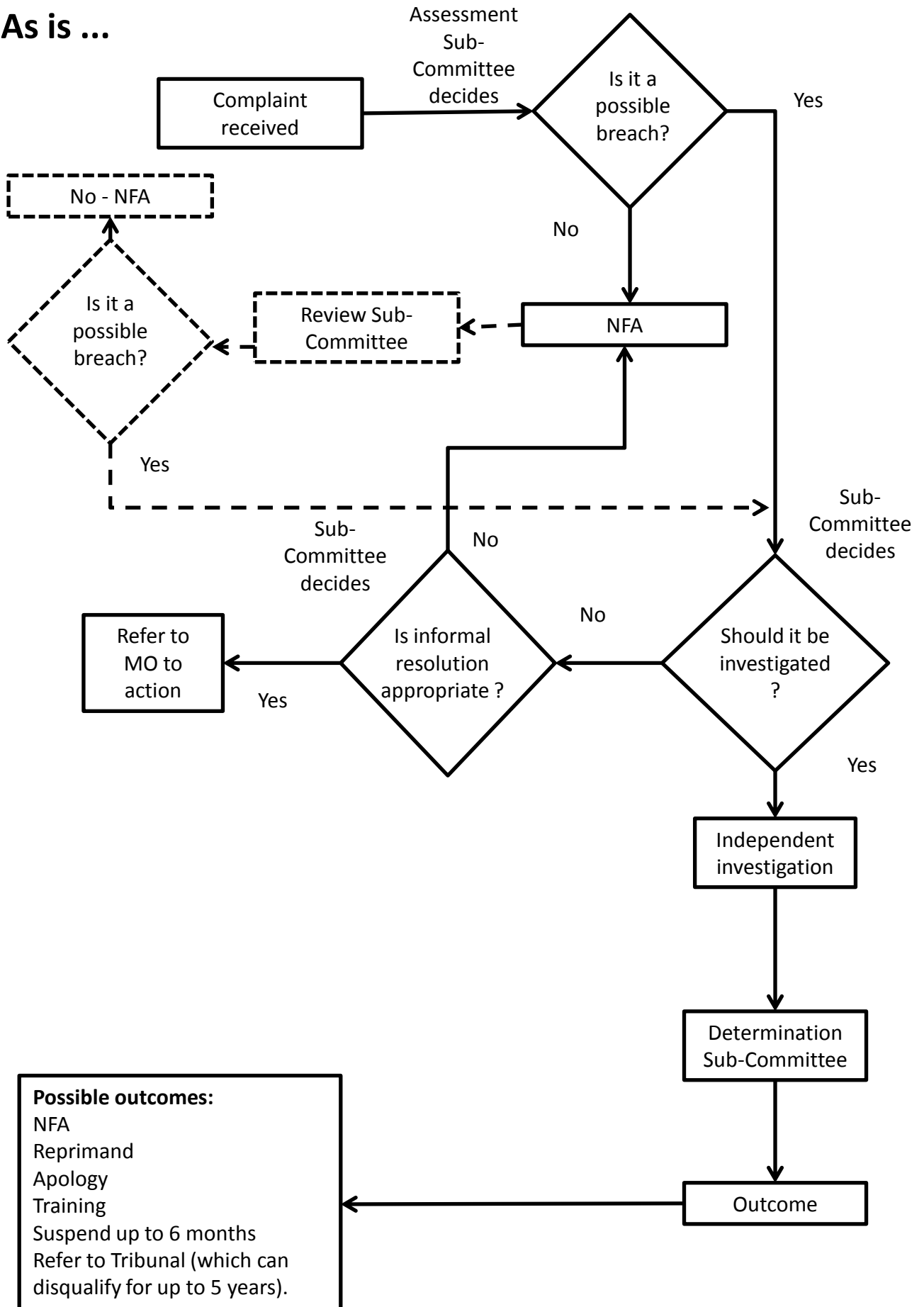
### **Revision of these arrangements**

57. The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Version 0.2

April 2012

# As is ...



# Proposed Arrangements

