



Please reply to:

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Date: 3 March 2020

Notice of meeting

Members' Code of Conduct Committee Panel

Date: Wednesday, 11 March 2020

Time: 3.30 pm

Place: Trevor Baker Room, Council Offices, Knowle Green, Staines-upon-Thames
TW18 1XB

The members of the Panel
Mr Murray Litvak (Chairman)
A.C. Harman
V.J. Leighton
R.W. Sider BEM

Spelthorne Borough Council, Council Offices, Knowle Green

Staines-upon-Thames TW18 1XB

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AGENDA

Page nos.

1. Disclosures of Interest

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

2. Exclusion of Press and Public

The Panel is asked to consider excluding the press and public from the meeting during consideration of the following item on the grounds that it is likely to involve the disclosure of exempt information as defined in Paragraph 2 (Information likely to reveal the identity of an individual) of Part 1 of Schedule 12A of the Local Government Act 1972.

In making its decision, the Panel is asked to confirm that having regard to all circumstances, it is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In this case the proper administration of the complaints procedure in the public interest is that consideration of complaints should not be made public at an early stage, when the complaints may or may not be proved and may or may not be investigated.

3. Exempt Complaint Assessment Report against Councillor C

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The report of the Monitoring Officer sets out an allegation made by way of a complaint against a Borough Councillor concerning a potential breach of the Members' Code of Conduct.

The Assessment Panel is asked to make a determination in respect of whether or not any action should be taken.

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By virtue of paragraph(s) 2 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Spelthorne Borough Council

Code of conduct for councillors and co-opted members

General Obligations

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

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

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
4. You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
6. You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out below.
7. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.
8. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
9. You must treat others with respect. This means treating people fairly and equitably and with courtesy, compassion and sensitivity. You should treat other people equally as you yourself would expect to be treated. You must never use behaviour which a reasonable person would consider as offensive, overbearing, intimidating, malicious, insulting or humiliating.
10. You must discharge your duties and conduct yourself in such a way that assists the Council to comply with its duties under the Equality Act 2010.

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

Registering and declaring pecuniary and non-pecuniary interests

14. You must, within 28 days of taking office as a councillor or co-opted member, notify the Monitoring Officer of any "Disclosable Pecuniary Interest" as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
15. In addition, you must, within 28 days of taking office as a councillor or co-opted member, notify the Monitoring Officer of other Non-Pecuniary Interests which the Council has decided should be included in the register.
16. The Council has decided that it is appropriate for you to register and disclose Non-Pecuniary Interests that arise from your membership of, or your 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.
17. If an interest (under paragraphs 14-16 above) 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 an interest in any matter being considered and where the matter is not a 'sensitive interest'.¹
18. 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.
19. 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 Disclosable Pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions the Council places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by the Council.

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

Other guidance

20. The Members' Code of Conduct Committee publishes other guidance to assist councillors and co-opted members to meet the aspirations of this Code. You should make yourself familiar with this guidance and act accordingly:
 - a. The Planning Code
 - b. Policy on Gifts, Hospitality and Sponsorship
 - c. Conflicts of Interest Policy

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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);

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

The Code of Conduct

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

Making a complaint

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

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

Email: m.graham@spelthorne.gov.uk

7. The Council will only process complaints which are in writing. The name and address of the complainant must be given and only in very exceptional circumstances will the Council investigate anonymous complaints.
8. The Council expects complaints about councillors to be made without delay so that matters can be investigated promptly. Unless there are exceptional circumstances, complaints should be made within 28 days of the incident giving rise to concern.
9. The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint at appropriate junctures.
10. Where a complaint concerns an issue between two Spelthorne Borough Councillors, the Monitoring Officer will initially refer the matter to the appropriate Group Leader(s) to resolve amongst themselves, if at all possible. Every effort should be made to resolve the matter within 28 days and if this is not possible the matter may be referred back to the Monitoring Officer.

Role of the Monitoring Officer

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

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

The Hearings Panel - Assessments

19. The Assessment Panel drawn from the membership of the Members' Code of Conduct Committee.
20. The role of the Assessment Panel is to review complaints for investigation which are sufficiently serious to warrant such formal action.
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

22. The Monitoring Officer will review every complaint received and consult with the Independent Person.

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.
24. 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.
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.
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.
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.
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.
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.

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

33. The Investigating Officer will complete the investigation in accordance with any policy or guidelines that the Members' Code of Conduct Committee shall specify.
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.
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.
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.
37. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.
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.
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"

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"

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

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.
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.
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

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.

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 Member is invited to Chair the Hearings Panel but legally cannot vote on the decision.
47. The Members' Code of Conduct Committee may agree a procedure for Hearings Panels.
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.
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.
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.
51. The Independent Person may attend the hearing but is not required to attend.
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.
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

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:
- 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.

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

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.
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

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.

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.

Revision of these arrangements

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.

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Spelthorne Borough Council

Members' Code of Conduct Committee

Initial Assessment of Complaints

Assessment Criteria

1 Introduction

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

2 Local resolution of complaints

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

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

3 Which complaints can be considered?

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

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

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

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

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

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

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

- a) who the complaint is against;

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

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

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

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

- 5.1** Where the Assessment Panel has concluded that there appears to have been a breach of the Code, it has four options open to it. These are as follows:-
 - a) to direct the Monitoring Officer to secure that the complaint is investigated.**

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

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

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

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

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

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

Such alternative action is therefore most suitable where –

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

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

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

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

6 Confidentiality

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

7 Withdrawing complaints

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

27 February 2013

Spelthorne Borough Council

Members' Code of Conduct Committee

Assessment Criteria

1 Unreasonable and unreasonably persistent complainants

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

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

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

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

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

26 July 2012

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