



Please reply to:

Contact: Gillian Hobbs
Service: Corporate Governance
Direct line: 01784 444243
E-mail: g.hobbs@spelthorne.gov.uk
Date: 10 June 2015

Notice of meeting

Members' Code of Conduct Committee

Date: Thursday, 18 June 2015

Time: 7.30 pm

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

To the members of the Members' Code of Conduct Committee

Councillors:

M.M. Attewell
A.E. Friday
A.L. Griffiths
J.G. Kavanagh
S. Lohmann
A.J. Mitchell
R.W. Sider BEM
B.B. Spoor

Independent Members

Mr Murray Litvak (Chairman)
Miss Sue Faulkner (Vice-Chairman)

Spelthorne Borough Council, Council Offices, Knowle Green

Staines-upon-Thames TW18 1XB

www.spelthorne.gov.uk customer.services@spelthorne.gov.uk Telephone 01784 451499

AGENDA

Page nos.

- 1. Apologies**
To receive any apologies for non-attendance.
- 2. Minutes** **1 - 4**
To confirm as a correct record the minutes of the meeting held on 9 October 2014. (Copy attached)
- 3. Disclosures of Interest**
To receive any disclosures of interest from members, in accordance with the Council's Code of Conduct.
- 4. Role of the Independent Persons**
To consider a report from the Monitoring Officer on an additional role for the Independent Persons following amendments to the regulations.
(Report to follow)
- 5. Update on complaints against councillors**
To receive an update report from the Monitoring Officer on complaints made against councillors since the last meeting of this Committee.
(Report to follow)
- 6. Work Programme** **5 - 6**
To consider and approve the Committee's Work Programme for 2015-2016. (Copy attached)
- 7. Training Session** **7 - 44**
Following completion of the business of the Committee, the Deputy Monitoring Officer will lead a training session on dealing with allegations of misconduct by councillors under the Members' Code of Conduct, with the following objectives:

 - To advise members of the overall arrangements for considering complaints.
 - To consider the Access to Information rules and whether the different meetings are public or private.
 - To consider the different stages where a hearing will be called and the roles of each party at the hearing/meeting:
 - Assessment Panel
 - Pre-Hearing Meeting
 - Pre-meetings (informal briefings)
 - Hearing's Panel
 - To consider any issues of concern and how they can be dealt with.

This page is intentionally left blank

**Minutes of the Members' Code of Conduct Committee
9 October 2014**

Present:

Murray Litvak (Chairman)

Councillors:

F. Ayers
P.A. Broom

A.E. Friday
I.T.E. Harvey

Apologies: Councillors C.A. Bannister, R.D. Dunn, A.J. Mitchell and Sue Faulkner (Vice-Chairman).

255/14 Minutes

The minutes of the meeting held on 19 June 2014 were agreed as a correct record.

256/14 Disclosures of Interest

There were none.

257/14 Independent Person Protocol

The Committee Manager reminded the Committee that it had approved an Independent Person Protocol at its last meeting. The Protocol set out the roles and responsibilities and expected conduct of an Independent Person during their involvement in complaints against members under the Code of Conduct.

She advised that the three Independent Persons (IPs) had discussed the Protocol and reviewed how the arrangements had worked since their appointment, with officers from the four local authorities who used the IPs under a panel arrangement. As a result of these discussions a number of amendments were proposed to the Protocol.

All three of the Independent Persons expressed their desire to continue in the role when their current appointment expired in May 2015. They agreed that a four year term of appointment would be appropriate because it ran parallel with the Borough Councillors' term of office.

Resolved to:

- (1) approve the amendments to the Independent Person Protocol as attached to the report of the Monitoring Officer, and
- (2) agree to recommend to Council the re-appointment of the three Independent Persons for a period of four years from the Annual Council in May 2015.

258/14 Staff Code of Conduct – update

The Committee Manager reminded the Committee that it had considered issues with the current Staff Code of Conduct at its last meeting relating to: the level of disclosure the questions asked for; the consistency of the questions with what is required in the Staff Code of Conduct; the difficulties faced by the Human Resources department with the annual administration of issuing the declaration forms and chasing up responses and the lack of employment action to be taken if individuals persisted in not returning declarations.

The Committee had agreed that: the staff declaration of interest form be re-drafted so that the questions were appropriate to the conflict of interest each was addressing and consistent with the Staff Code of Conduct; a Guidance Note be written to accompany the staff declaration of interest form to assist with its completion; the re-drafted staff declaration of interest form and the new Guidance Note be considered at the next meeting of the Committee; the completion of staff declaration of interest forms be part of the appraisal process from 2015 onwards and following approval of the revised staff declaration of interest form by this Committee, that it be circulated to staff members who had not yet completed a declaration for 2013.

The Committee Manager explained that in re-drafting the declaration form, it had become apparent that there were some inconsistencies in the wording of the Staff Code of Conduct between paragraphs 5 and 11 and that at paragraph 3. Paragraph 3 was amended to be consistent with the revisions in the declaration form.

She also advised that the Staff Code of Conduct itself had sufficient detail to explain what should be declared. Rather than duplicate this in a Guidance Note, the relevant paragraphs had been cross-referenced to each of the questions on the declaration form.

Resolved that:

- (1) the amendments to the Staff Code of Conduct be approved;
- (2) the revised staff declaration of interest form be approved and circulated to staff members who have not yet completed a declaration for 2013 and
- (3) the completion of staff declaration of interest forms be part of the appraisal process from 2015 onwards.

259/14 Members' Training - update

The Committee Manager advised that since the update report considered at the Committee's last meeting in June, (Min 154/14 refers) the Monitoring Officer had agreed that the 8 councillors who had not yet received training in the revised Code of Conduct, adopted on 25 July 2013, should seek 1:1 training with him during normal office hours.

She reported that four councillors had now received that training and one other had a date in hand. There remained just 3 councillors who had not received or sought the training.

Councillors Broom and Friday offered to speak to the 3 councillors about arranging their training.

Resolved that:

- (1) the update report of the Monitoring Officer be noted and
- (2) Councillors Broom and Friday speak to those councillors who have not received training in the Code of Conduct, about arranging their training with the Monitoring Officer.

260/14 Work Programme

The Committee considered the work programme for the Municipal year 2014 - 2015.

RESOLVED to note the work programme as submitted.

261/14 Any Other Business

No other business was reported.

This page is intentionally left blank

Members' Code of Conduct Committee – 18 June 2015

Work Programme 2015 - 2016

Resolution Required

1. Work Programme

1.1 This report covers the Work Programme for 2015 - 2016.

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

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

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

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

2. Current Work Programme

2.1 Four meetings have been scheduled in the Council's Diary for the 2015-16 municipal year and the remaining dates are:

- 8 October 2015
- 4 February 2016
- 14 April 2016

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

Date of meeting	Lead	Purpose
8 October 2015		
Updates on complaint cases	Victoria Statham	As appropriate

Review of Constitution	Victoria Statham	Review if appropriate
4 February 2016		
Updates on complaint cases	Victoria Statham	As appropriate
14 April 2016		
Updates on complaint cases	Victoria Statham	As appropriate

2.3 Members are asked to identify for consideration at the next or any future meeting any topics which they would like to be included in the Work Programme as agreed by the Committee.

3. Resolution

The Members' Code of Conduct Committee is asked to consider and approve the Work Programme as submitted and/or amended at the meeting.

Contact: Victoria Statham, Principal Solicitor (01784) 446241

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

Spelthorne Borough Council

Members' Code of Conduct Committee

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

Context

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

Principles of these arrangements

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

- 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.

This page is intentionally left blank

Guide on How to Apply the Regulations for Exempt Information

Exemptions

1. Local authorities are permitted by legislation to exclude the public from meetings of Committees and sub-Committees during items of business when it is likely that confidential or exempt information will be disclosed.
2. A flowchart is provided (see **Appendix A**) to assist report authors in deciding whether their report fits the criteria for an exempt item. You will need to consider whether the public interest in disclosure of the information outweighs the use of an exemption. Public interest is explained in more detail below.
3. A resolution must be passed to exclude the public from the meeting stating the category and reason under which the information has been classified as exempt.
4. There are seven categories of exempt information (see **Appendix B**) which report authors need to consider.
5. If a report meets the exempt criteria, a justification (see **Appendix C**) must be given for why publication would not be in the public interest.

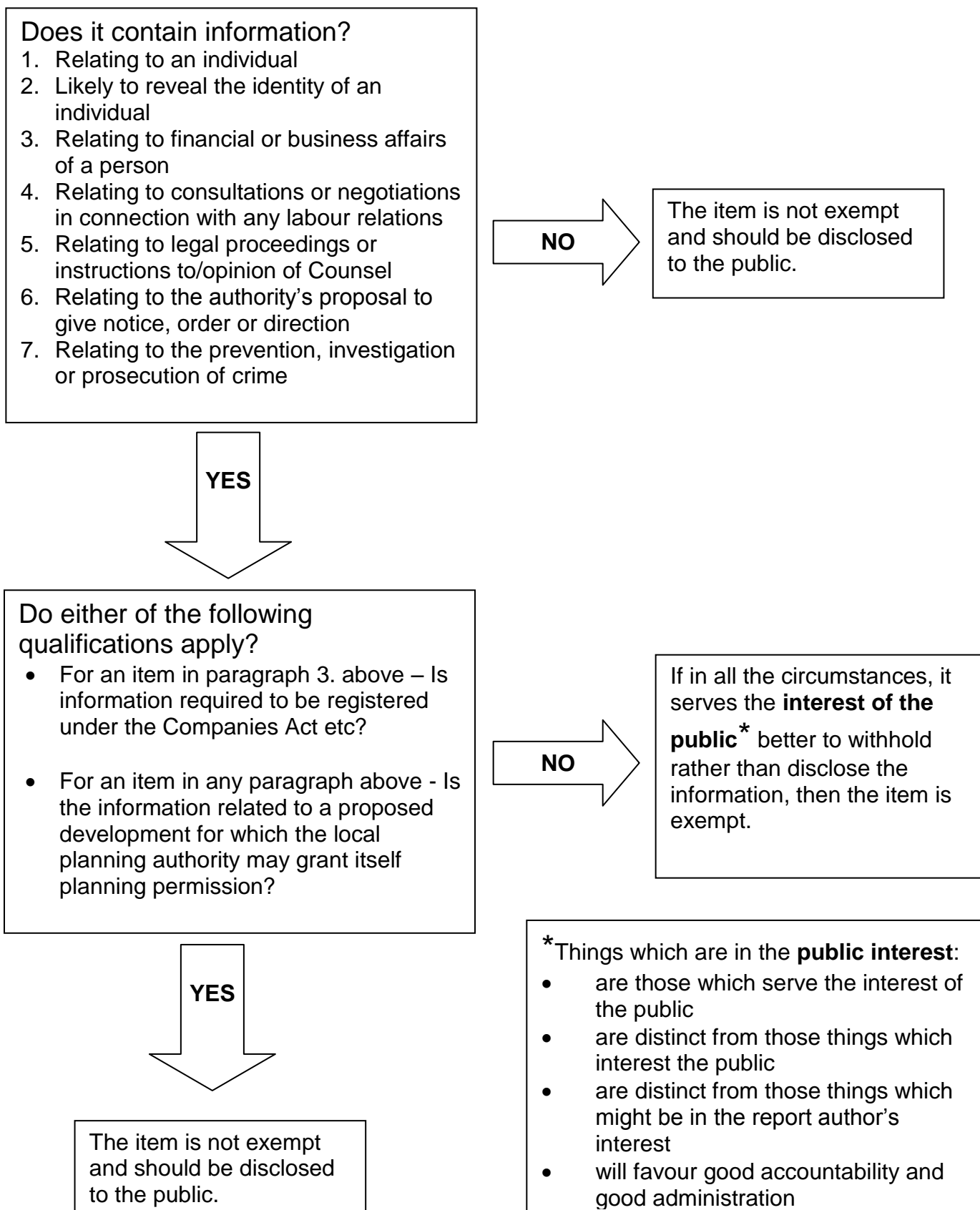
Public Interest Test

6. Exemptions to the requirement to disclose all material are allowed only if the report author can show that the public interest would be better served by keeping matters private rather than disclosing them.
7. When applying the public interest test, the report author is simply deciding whether in a particular case it serves the interest of the public **better** to withhold, or to disclose, the information.
8. Bear in mind the distinction between:
 - things which are in the public interest and those which interest the public.
 - the public (as opposed to the report author's) interest favouring the withholding of information against the public interest favouring disclosure.
9. While the report author may often have a personal interest, view or opinion for withholding the information - for example revealing incompetence, corruption or causing embarrassment to the authority - the public interest will favour accountability and good administration and it is this interest which must be weighed against the public interest in not disclosing the information.
10. Where the situation arises that the information in a report would provide a misleading picture due to it being too complex or incomplete for example, this would not be a ground for withholding the information. In this instance an explanation or further information should be provided to place it in the proper context rather than seeking to withhold the information.

Preparing your report

- Whilst it is for the report author to decide whether the information he/she is dealing with should be disclosed or withheld, Committee Services would be happy to give advice.
- Confirm the exempt category (from those listed in **Appendix B**) with Committee Services.
- Consult Legal Services if you need assistance with the justification (from those listed in **Appendix C**) to meet the public interest test.
- Choose 'Yes' on the drop down menu in the 'Confidential' box on the report summary page.
- On submitting your report to Committee Services for inclusion on a Cabinet/Committee agenda, advise by email the relevant exempt category and justification, both of which will be included on the agenda front sheet.

Is my report exempt?



Categories for exempt information
1. Information relating to any individual 2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes, (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction of any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Suggestions for Justifications for the 'Public Interest' Test

1. Information relating to any individual
Reason for claiming exemption – 1) Personal Data 2) Disclosure is not in accordance with Data Protection Act 1998 3) Information provided under an obligation of confidentiality 4) Criminal records or information provided by an authority holding such records
2. Information which is likely to reveal the identity of an individual.
Reason for claiming exemption – 1) Personal Data 2) Disclosure is not in accordance with Data Protection Act 1998 3) Information provided under an obligation of confidentiality 4) Criminal records or information provided by an authority holding such records
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
Reason for claiming exemption – 1) Commercially sensitive data 2) Information provided under an obligation of confidentiality 3) Damage Intellectual Property Rights 4) Disclosure of the amount involved would be likely to give an advantage to a person entering into or seeking to enter into a contract with the authority. 5) Disclosure to the public of the terms would prejudice the authority in those or any other negotiations concerning property, goods or services
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
Reason for claiming exemption – 1) Disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter.

5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
	Reason for claiming exemption –
	1) Counsel’s Opinion
	2) Advice from a Solicitor (whether employed directly by the Council or engaged in a consultative role)
	3) Determinations from local government ombudsman, adjudication panel, or standards board during a moratorium on publication
6.	Information which reveals that the authority proposes, (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction of any enactment.
1)	Disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be give or made. (e.g. Enforcement Action, Debt recovery, Compulsory Purchase Orders, Contaminated Land Issues)
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
1)	Disclosure to the public might afford an opportunity to defeat the purpose or one of the purposes for which the prevention, investigation or prosecution of crime is being made. (Might also include ASBO)

N.B. Justification of the ‘public interest’ test is not limited to the suggestions included above. If you have any questions or wish to use an alternative, please contact Michael Graham, Head of Corporate Governance on x6227.

Spelthorne Borough Council

Members' Code of Conduct Committee

Hearing Procedures - Assessment Hearings

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

The Panel will comprise of three voting members of the Members' Code of Conduct Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Members Code of Conduct Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Panel but legally cannot vote on the decision.

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

A flowchart is shown at **Appendix A** which summarises the position under these arrangements.

INTERPRETATION

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

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

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

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

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

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

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

Pre-hearing Process

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

Hearings Procedure

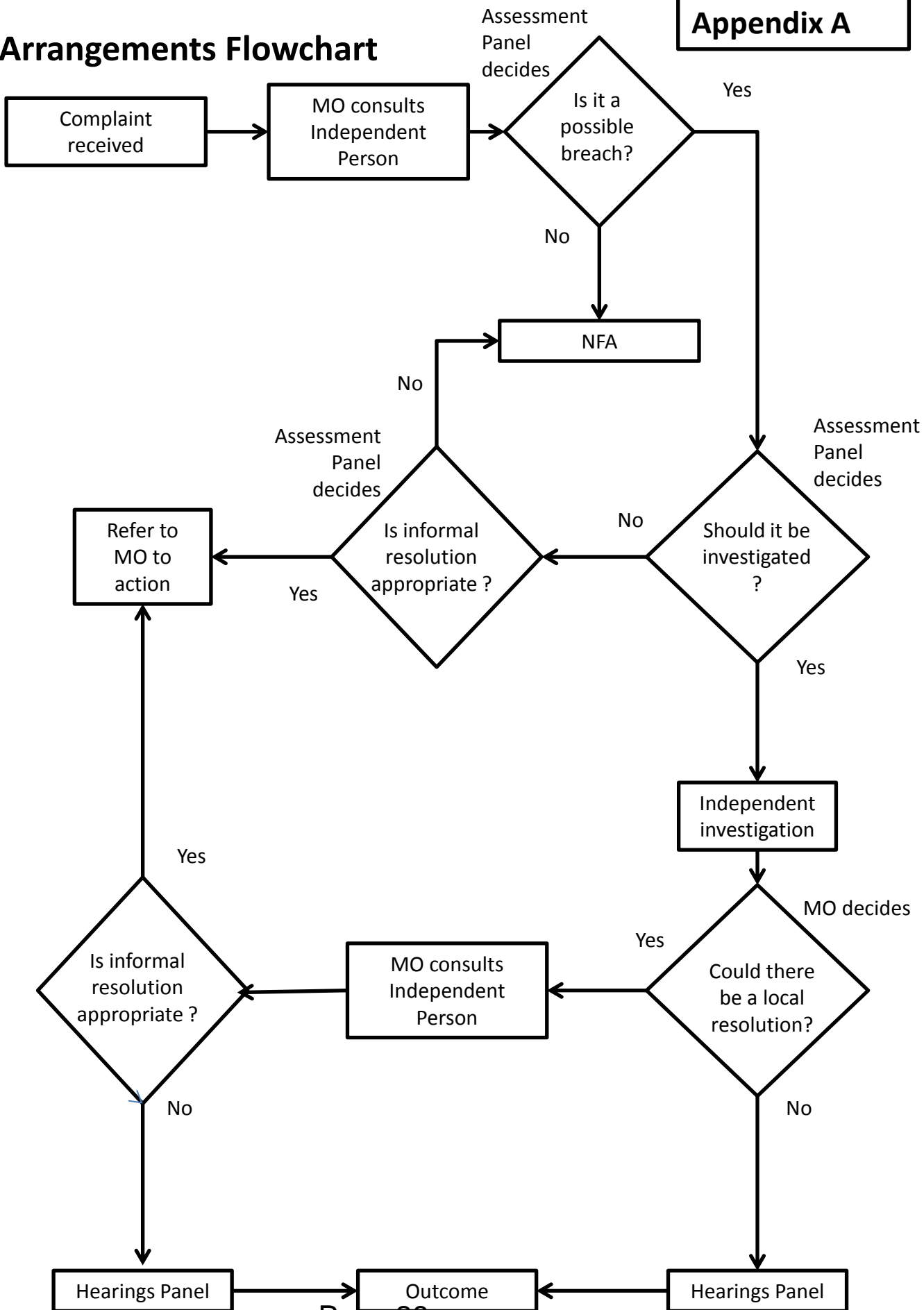
10. At the start of the hearing the Chairman will:
 - Introduce members of the Committee and others in attendance
 - Explain the purpose of the meeting and how it will proceed
11. The Legal Advisor will advise the Chairman whether the hearing should be in public or private. The Access to Information Rules will apply to this hearing as it would

apply to any other meeting of the Council. In order to have an effective airing of matters which are still at a preliminary stage it is not expected that the Panel will take place in public unless there are exceptional circumstances which dictate otherwise.

12. Should the Panel decide to proceed with the hearing in public, it will have the discretion to move into private session in order to deliberate and make its decision.
13. The Committee will then consider the report of the Monitoring Officer and take into account the Assessment Criteria of the Members Code of Conduct Committee.
14. The Committee will then consider whether a complaint should be:
 - a. Rejected as not disclosing a possible breach of the Code of Conduct
 - b. Referred to the Monitoring Officer to try any further attempts at local resolution following advice from the Assessment Panel. The Hearings Panel may also indicate that should any party fail to comply with its advice on a local resolution then the complaint may be:
 - i. Terminated, or
 - ii. Referred for Investigation with a view to a full hearing.
 - c. Investigated with a view to a full hearing.
15. The Monitoring Officer will write to all parties within 7 days to advise them of the outcome of the Assessment Panel.

27 February 2013

Arrangements Flowchart



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

This page is intentionally left blank

Spelthorne Borough Council

Members' Code of Conduct Committee

Hearing Procedures - Final Hearings

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

The Panel will comprise of three voting members of the Members' Code of Conduct Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Members Code of Conduct Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Panel but legally cannot vote on the decision.

The investigation shall be carried out promptly, with the expectation that all investigations, resolutions and hearings will be completed within a maximum period of three months. All those involved in the complaint should do their utmost to ensure that this can happen.

There will be an expectation that the Hearing will sit from 10.00am to 4.00pm and if there is a need for the hearing to continue then the hearing will re-convene the following day.

INTERPRETATION

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

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

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

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

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

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

Pre-hearing Process

1. The Monitoring Officer or the Hearings Panel may conduct a pre-hearing process in order to narrow the issues between the parties and make appropriate provision for the smooth running of the Hearing. Where this happens the Monitoring Officer will provide a letter to all parties outlining the issues to be determined for and the arrangements for making decisions about all such matters.

2. In complex cases it may be appropriate for the Hearings Panel to meet in advance to deal with all such procedural issues but the Monitoring Officer will provide an agenda for such meeting outlining the matters to be resolved.
3. The Legal Advisor will advise the Chairman whether the hearing should be in public or private. The Access to Information Rules will apply to this hearing as it would apply to any other meeting of the Council. In order to air procedural matters properly in advance of a hearing it is normally expected that the Panel will take place in private unless there are exceptional circumstances which dictate otherwise.

Hearings Procedure

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

13. If any clarification or legal advice is needed this will be undertaken with all parties present.
14. On their return to the hearing, the Chairman will announce the Committee's findings of fact and whether the Member has failed to follow the Code of Conduct.
15. If the Committee decides that the Member has failed to follow the Code of Conduct, the chairman will inform the Member of this finding.
16. The Investigator and the Member will be invited to make any final relevant points as regards the sanction which should be imposed.
17. The Committee will then consider the representations and make its decision in private and will consider any representations from the Investigator and the Member as to:
 - (a) Whether or not the committee should set a penalty; and
 - (b) What form any penalty should take.
18. The Committee will then consider in private whether or not to impose a penalty on the Member and, if so, what the penalty should be.
19. The Chairman will then announce the committee's decision.
20. The Committee will then consider whether it will make any recommendations to the Council on any future preventative measures or tightening up procedures, with a view to promoting high standards of conduct among members. In doing so they will consider any verbal or written representations from the investigator.
21. The Committee will announce its decision on the day and provide a short written decision on that day. It will issue a full written decision as soon as practicable and send it to all concerned with the hearing.

27 February 2013

This page is intentionally left blank

Final Hearing – re Cllr

Hearing procedure for the final hearing panel

1	Introductions and preliminary remarks	
	<p>Chairman to draw attention to general housekeeping matters.</p> <ul style="list-style-type: none">• <i>Please turn all mobile phones to silent</i>• <i>There are no fire drills planned for today, so if the alarm sounds, please proceed through the marked exits and congregate on the grass at the front of the building.</i>	
2	<p>The Chairman will open the meeting, introduce members of the Panel and officers present and explain the nature of the decision to be taken and the procedure to be followed.</p> <ul style="list-style-type: none">• <i>Please may I introduce the members of the panel today. We have Cllr A, Cllr B and Cllr C and I am the independent Chairman of the Members' Code of Conduct Committee, Murray Litvak.</i>• <i>As the independent member of the panel, I sit to discuss and raise issues, but I do not have a vote on the final decision.</i>• <i>The officers assisting the panel today are Victoria Statham, Principal Solicitor who will advise the panel on legal matters and Gill Hobbs who will take the minutes of the meeting.</i>• <i>When the panel retire to make their decision, they will be accompanied by both Victoria and Gill to fulfil their roles, but they will not take part in any deliberations or any decisions.</i>• <i>The purpose of today's hearing as to whether Cllr X's actions / behaviour [brief summary], amounted to a breach of the members' code of conduct. The code of conduct to which this matter relates is the code which was applicable at the time of the [incident].</i>• <i>The hearing will be conducted in accordance with the Arrangements for dealing with allegations of misconduct under section 28 Localism Act 2011 and the hearing procedures – final hearings adopted by the Council.</i>• <i>I would like to remind all persons present that this is a hearing conducted under the Localism Act and is an administrative procedure. This is not a court of law and the strict rules of evidence do not apply. There will be opportunities to ask questions of each other, but these should not be in the form of</i>	

	<p><i>cross-examination.</i></p> <ul style="list-style-type: none"> • <i>Please note that this hearing will be recorded. Please ensure that you turn on you micro-phone each time you speak to ensure the clarity of the recording and to ensure that all those in attendance can hear.</i> • <i>As part of the procedures it was agreed that the panel will not sit beyond 4pm</i> • <i>[Details of any issues which need to be referred to from any earlier Pre-Hearing process conducted by the Monitoring Officer or the Panel]</i> 	
3	<p>Declarations of Interest</p> <ul style="list-style-type: none"> • <i>Do any members of the panel have any declarations of interest?</i> 	
4	<p>Cllr X [and any representatives] to introduce himself / herself</p> <ul style="list-style-type: none"> • <i>Please can Cllr X and his representatives please introduce himself etc.</i> 	
5	<p>The Investigator to introduce himself</p> <ul style="list-style-type: none"> • <i>Would the investigator please introduce himself.</i> 	
6	<p>Consideration of whether the hearing should be in public or private</p> <ul style="list-style-type: none"> • <i>The panel are to decide on whether this hearing should be in public or in private. I would therefore ask Victoria Statham to set out the legislation which is applicable to this decision.</i> • <i>I will now ask Cllr X representative to make any representations in this regard</i> <p>Note: at this point the panel are to deliberate and discuss in public whether the meeting should be in public or in private. The decision should then be announced. If private you need to resolve to remove the press and the public. If not they can remain and the hearing continues.</p>	
7	<p>Investigator to present report</p> <ul style="list-style-type: none"> • <i>I would now ask Mr Y to present his report to the panel.</i> 	
8	<p>Cllr X to present case.</p>	

	<ul style="list-style-type: none"> • <i>I would now ask Cllr X representative to put forward the case for Cllr X.</i> 	
9	<p>Cllr X' representative to ask questions of Investigator.</p> <ul style="list-style-type: none"> • <i>If you have any questions for Mr Y, please can you direct these to him now.</i> 	
10	<p>Investigator's opportunity to question Cllr X</p> <ul style="list-style-type: none"> • <i>Mr Y, do you have any questions for Cllr X?</i> 	
11	<p>Questions to all present by panel members</p> <p>NOTE: see separate question sheet.</p>	
12	<p>Investigator's closing statement</p> <ul style="list-style-type: none"> • <i>Mr Y please will you make a closing statement</i> 	
13	<p>Cllr X's closing statement</p> <ul style="list-style-type: none"> • <i>Cllr X or representative please will you make a closing statement</i> 	
14	<p>Adjournment</p> <ul style="list-style-type: none"> • <i>The Panel will now retire to makes its decision on whether or not there has been a breach of the code of conduct. We will be accompanied by Gill Hobbs who will make notes of our deliberations and Victoria Statham who will advise on legal matters.</i> • <i>We would hope to re-convene with our decision at []. I will advise you if it appears that it will take longer.</i> 	
15	<p>Decision</p> <ul style="list-style-type: none"> • <i>The panel have decided as follows:</i> <ul style="list-style-type: none"> ○ [Detail each allegation so that a summary decision can be annotated onto the working document] 	
16	<p>If breaches are found then the panel will need to consider the sanctions that can be proposed.</p> <ul style="list-style-type: none"> • <i>The Panel will now need to consider the sanctions which can be imposed for those breaches found. The panel can:</i> <ul style="list-style-type: none"> ○ <i>Request a private or public apology</i> ○ <i>Impose a training requirement</i> 	

	<ul style="list-style-type: none"> ○ <i>Censure the member</i> ○ <i>Report the matter to Council for Censure</i> ○ <i>Require the Monitoring Officer to publish a report in the newspaper or on the website</i> ○ <i>Withdraw privileges</i> ○ <i>Recommend to the Council Leader/Group Leader removal from a committee; or</i> ○ <i>A combination of the above</i> <ul style="list-style-type: none"> ● <i>I will presently ask those present to make representations about the imposition of sanctions.</i> 	
17	<p>Investigator invited to give any points with regards to sanctions.</p> <ul style="list-style-type: none"> ● <i>Mr Y would you like to make any representations as to the sanctions that can be imposed?</i> 	
18	<p>Cllr X invited to give any points with regards to sanctions.</p> <ul style="list-style-type: none"> ● <i>Cllr X would you like to make any representations as to the sanctions that can be imposed?</i> 	
19	<p>Adjournment</p> <ul style="list-style-type: none"> ● <i>The Panel will now retire to makes its decision on the sanctions. Again we will be accompanied by Gill Hobbs who will make notes of our deliberations and Victoria Statham who will advise on legal matters.</i> ● <i>We would hope to re-convene with our decision at []. I will advise you if it appears that it will take longer.</i> 	
20	<p>Decision</p> <ul style="list-style-type: none"> ● <i>Having considered the representations made the panel have imposed the following sanctions:</i> ● <i>[Detail each allegation so that a summary sanction can be annotated onto the working document]</i> 	
21	<p>Closing</p> <ul style="list-style-type: none"> ● <i>The Panel has made its decision on the basis of the evidence put forward at the hearing this morning. Taking into account [any mitigating factors put forward]</i> ● <i>A full decision with the reasons will be supplied to you all as</i> 	

	<p><i>soon as possible.</i></p> <ul style="list-style-type: none">• <i>This hearing is now closed.</i>	
--	--	--

This page is intentionally left blank