

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.