

## **Spelthorne Borough Council**

### **Standards Committee**

#### **Member Misconduct Complaints Procedure**

##### **Context**

1. These “Arrangements” describe how you may make a complaint that a Member of Spelthorne Borough Council “the Council” has failed to comply with the Member Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the 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. Such arrangements 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 to investigate, 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 16 March 2022, 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 the Monitoring Officer to dismiss complaints which are vexatious, frivolous, politically motivated or otherwise should be dismissed in accordance with the Assessment Criteria in Appendix B;
  - e. They should allow for the Monitoring Officer to be accountable for such decisions in (d);

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

### **The Code of Conduct**

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

### **Making a complaint**

6. If you wish to make a complaint, please complete the **Member Complaint form** and send it to-

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

or by email to: (TBC)

7. The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.
8. Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the Member Complaint Form. The Monitoring Officer will consider your request for confidentiality and, if granted, we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
9. The Council does not normally investigate anonymous complaints unless there is a clear public interest in doing so.
10. Complainants who have difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance. Please contact the Monitoring Officer on 01784 446241
11. The Council expects complaints about Members 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.

12. The Monitoring Officer will acknowledge receipt of a complaint within 3 working days of receiving it and will keep you informed of the progress of your complaint.
13. The Complaints Procedure Flowchart is annexed at Appendix 1 for your assistance.

### **Independent Person**

14. The Council has appointed five Independent Persons in conjunction with:
  - Epsom and Ewell Borough Council
  - Guildford Borough Council
  - Mole Valley District Council
  - Reigate and Banstead Borough Council
  - Surrey Heath Borough Council
  - Waverley Borough Council
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.

### **Will your complaint be investigated?**

19. The Monitoring Officer will review every complaint received and consider it against the Assessment Criteria set out in Appendix 2 (Annexes A and B).
20. The decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the costs of undertaking an investigation.
21. The Monitoring Officer will consult with the Independent Person before taking a decision as to whether it:
  - a. Merits no further investigation
  - b. Merits further investigation
  - c. Should be referred to the Standards Assessment Sub-Committee

22. This decision will normally be taken within 15 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, s/he will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, s/he may come back to you for such information and may request information from the member against whom your complaint is directed but s/he will not conduct an investigation.
23. The Monitoring Officer, in consultation with the Independent Person, may seek to resolve the complaint informally at any stage, in accordance with Annex C of Appendix 2. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
24. If the Monitoring Officer decides that the complaint concerns a service, policy or decision of the Council then s/he may refer you to the Council's Corporate Complaints procedure.
25. If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.
26. There is no right of appeal for the complainant or the Member against a decision of the Monitoring Officer. All decisions will be reported to the next meeting of the Standards Committee.

#### **Referral to the Standards Assessment Sub-Committee**

27. The role of the Assessment Sub-Committee is to review those complaints which the Monitoring Officer has referred to it under the criteria set out in Appendix 2 (Annex B).
28. The Assessment Sub-Committee will comprise three voting members of the Standards Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Standards Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Assessment Sub-Committee but legally cannot vote on the decision.
29. The Assessment Sub-Committee will consider the complaint against the Assessment Criteria set out in Appendix 2 (Annex A).
30. It is expected that the complaint will be confidential during the Assessment phase.

31. The Assessment Sub-Committee may decide whether your complaint:
  - a. Merits no further investigation
  - b. Merits further investigation
32. The decision of the Assessment Sub-Committee is final and will be reported to the next Standards Committee.
- 33. The investigation**
34. If the Monitoring Officer, or Assessment Sub-Committee, decides that a complaint merits further investigation, s/he may appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator.
35. The Investigating Officer will complete the investigation in accordance with the procedure attached as Appendix 3 to these arrangements.
36. The investigation shall be carried out promptly, with the expectation that all investigations, resolutions and Hearing will be completed within a maximum period of four months. All those involved in the complaint should do their utmost to ensure that this can happen.
37. The Investigating Officer or Monitoring Officer will decide whether s/he needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
38. The Investigating Officer or Monitoring Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who s/he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
39. At the end of the investigation, the Investigating Officer will produce a draft report (the "Investigation Report") and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any factual matter in that draft report which is disputed or which you consider requires further investigation.

40. Having received and taken account of any comments which you may make on the draft Investigation Report, a final Investigation Report will be prepared by the Investigating Officer..
41. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.

**What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

42. Following consultation with the Independent Person, if the Monitoring Officer:
  - a. is not satisfied that the investigation has been conducted properly, s/he may ask the Investigating Officer to reconsider his/her report
  - b. is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that s/he is satisfied that no further action is required and give you both a copy of the Investigation Final Report.
43. The Monitoring Officer will report the outcome of the case to the next Standards Committee. The decision is final and there is no appeal.

**What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

44. Following consultation with the Independent Person the Monitoring Officer will either send the matter for a hearing before the Standards Hearing Sub-Committee or seek an informal resolution.

**Informal Resolution**

45. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, s/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 member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action..
46. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action.

47. Where the member or the authority makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint should progress to a Hearing Sub-Committee.

### **Hearing by a Sub-Committee of the Standards Committee**

48. If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigation Report to the Hearing Sub-Committee which will conduct a 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.
49. The Hearing Sub-Committee will comprise three voting members of the Standards Committee (councillors) selected by the Monitoring Officer in consultation with the Chairman of the Standards Committee. The councillors shall, wherever possible, be selected on a politically proportionate basis. An Independent Member is invited to Chair the Hearing Sub-Committee but legally cannot vote on the decision.
50. The Standards Committee may agree a procedure for Hearing Sub-Committees.
51. The Monitoring Officer may conduct a “pre-hearing process”, requiring the member to give his/her response to the Investigation 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 Hearing Sub-Committee may issue directions as to the manner in which the hearing will be conducted.
52. To give confidence to the public it is expected that the Hearing Sub-Committee 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.
53. 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 Member has or has not failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant to attend and give evidence to the Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses, to cross-examine and to make representations to the Sub-Committee as to why

s/he considers that s/he did not fail to comply with the Code of Conduct.

54. The Independent Person may attend the hearing but is not required to attend.
55. The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint.
56. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct.
57. In doing this, the Sub-Committee will give the member an opportunity to make representations to the Sub-Committee, but will then decide what action, if any, to take in respect of the matter.

**What action can the Hearing Sub-Committee take where a member has failed to comply with the Code of Conduct?**

58. The powers of the Hearing Sub-Committee to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct 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 full report in the newspaper and/or on the Council's website about the member's conduct.
  - f. To withdraw privileges provided to the member by the Council such as computer equipment, internet or email access.
  - g. To recommend to the member's Group Leader that the member be removed from any or all Committees or sub-committees or Outside Body appointments (as appropriate).
  - h. Or a combination of any of the above.

and the Sub-Committee may set the time frame for the actions that are required to be taken.

59. As a matter of law, the Hearing Sub-Committee does not have the power to suspend or disqualify the member or to withdraw allowances to which members are entitled.



## **Appeals**

60. Where a Hearing Sub-Committee makes any recommendations to a Group Leader about a penalty then that member may make representations in advance of that decision being taken.
61. Where a Hearing Sub-Committee makes any recommendations to Council about a penalty then that member may make representations in advance of that decision being taken.

## **What happens at the end of the hearing?**

62. At the end of the hearing, the Chair will state the decision of the Hearing Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.
63. As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearing Sub-Committee, and send a copy to all the parties, and if required by the Hearing Sub-Committee, make that decision notice available for public inspection. The decision will be reported to the next convenient meeting of the Standards Committee.

## **Revision of these arrangements**

64. The Standards Committee is delegated to amend these arrangements where necessary and has delegated to the Chair of the Hearing Sub-Committee the right to depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.