

Annex 2

SPELTHORNE BOROUGH COUNCIL

LOCALISM ACT 2011 SECTION 28 – CODE OF CONDUCT

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT

Spelthorne Borough Council is committed to promoting and maintaining high standards of conduct amongst its 39 elected councillors, known as Members, and has adopted a Member Code of Conduct setting out the conduct it expects of its Members and co-opted Members as they carry out that role.

The purpose of these arrangements is to set out how allegations that the Code of Conduct has been breached by a councillor, will be investigated. Any decision to investigate an allegation will be a proportionate response to the issues raised when weighed against any likely sanction. It will take into account the wider public interest and the costs of undertaking an investigation. Allegations will only be investigated where the allegation is reasonably considered to be a serious matter and accords with the public interest test as set out in Appendix A.

Consideration of the public interest, however, is only one of a number of criteria which must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported at the outset by detailed and verifiable evidence of a likely breach of the Code.

1. The Code of Conduct

The Council has adopted a Member Code of Conduct, which is set out in the [Constitution](#). A copy may also be requested from Committee Services.

The Member Code of Conduct applies to councillors when they go about the work of the Council or in their role as a Member of the local authority. The Council will not investigate complaints relating to the actions of a councillor whilst going about their private life.

The Council has tasked the Standards Committee to keep the Code of Conduct and the operation of these arrangements under review.

2. How to make a complaint

Any complaint that a serving councillor (the councillor) has failed to comply with the Code of Conduct should be made on the online councillor complaint form: [Making a complaint against a councillor - Spelthorne Borough Council](#)

Alternatively, you can write to:

The Monitoring Officer
Spelthorne Borough Council
Knowle Green

Staines-upon-Thames TW18 1XB

Or email: monitoringofficer@spelthorne.gov.uk

All complaints must be made in writing.

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 446248

Who is the Monitoring Officer?

The Monitoring Officer is a senior member of the Council's staff who has statutory responsibility for maintaining the Register of Councillor's Interests and who is responsible for administering the system in respect of complaints of councillor misconduct.

Will the name of the complainant be disclosed to the councillor?

The Monitoring Officer will disclose the name of the complainant to the councillor unless specifically asked to withhold it. Only in very exceptional cases will the Council be able to progress a complaint to an investigation without disclosing the identity of the complainant to the Member. Anonymous complaints will not normally be investigated unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.

Complaints that a councillor failed to declare a Disclosable Pecuniary Interest (DPI)

. The failure to declare a DPI could amount to a criminal offence. When such allegations are made the complainant should make the complaint direct to the Police. The Council would only consider investigating the matter where the Police decide not to take any action or at the request of the Police.

Other criminal offences

Complaints which identify potential criminal conduct or a breach of other regulations by any person will be referred by the MO to the Police for consideration, or any other relevant regulatory agency. In such cases the MO may pause the consideration of the complaint pending action by the other body.

Who is the Independent Person?

The Council has appointed five Independent Persons under Section 28 of the Localism Act 2011, 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

The Independent Persons are not (and have not been within the last five years) a Member of the Council or its staff.

The role of the Independent Person is to advise the Monitoring Officer on action to take under these arrangements at the points stated.

A councillor who is the subject of a complaint is also entitled to refer to the Independent Person for advice during the course of a complaint.

Conflict of Interest of Monitoring Officer or Independent Person

If at any time during consideration of a complaint the Monitoring Officer or the Independent Person become aware that they have an actual or potential conflict of interest, they will record and declare this to the complainant and councillor concerned. They will withdraw from consideration of the complaint and ensure the complaint is considered independently by an alternative Deputy Monitoring Officer, or an alternative Monitoring Officer appointed from another Local Authority as appropriate, and an alternative Independent Person.

3. Initial action by the Monitoring Officer

Dismissal without further action

On receiving a complaint, the Monitoring Officer may dismiss it without further action where:

- A. The Monitoring Officer, in consultation with an Independent Person (IP), considers that:
 - i. The matter, even if proven, would not amount to a breach of the Code ;
or
 - ii. the complaint is based essentially on hearsay evidence and/or is not supported at the outset by detailed and verifiable supporting evidence;
or
 - iii. the complaint does not relate to behaviour in the councillor's capacity as a member of the local authority;
or
 - iv. the matter complained about is in the view of the MO so trivial that it would not be in the public interest to pursue it further (see **Appendix A**);
or
- B. The person complained about was not a councillor at the time of the alleged incident or is no longer a serving councillor of the local authority; or
- C. The matter being complained about happened more than 12 months before the complaint was received (unless there is a compelling reason why complaint was delayed); or
- D. The matter or issue being complained about came to the complainant's notice more than 3 months before the complaint was received (unless there is a compelling reason why complaint was delayed); or

- E. The complaint is the same as one which has previously been considered and no new material evidence has been submitted; or
- F. The complaint relates to dissatisfaction with a Council decision rather than the specific conduct of an individual.

The Monitoring Officer will inform the complainant and the councillor of their decision accordingly.

What happens if the Monitoring Officer does not dismiss my complaint?

If the Monitoring Officer does not dismiss the complaint on any of the above grounds, the complaint will be acknowledged, and the complainant informed of the procedure to be followed. The Monitoring Officer may ask the complainant for further information or clarification.

The Monitoring Officer will (except in exceptional circumstances where the Monitoring Officer considers that it is in the public interest not to do so) send the councillor complained about, a copy of the complaint and invite the councillor to submit initial written comments within 10 working days.

The Monitoring Officer will also ask the councillor any specific questions they consider will assist the initial assessment of the complaint, whilst not seeking to investigate the complaint at this stage.

Where appropriate the Group Leader(s) will be kept informed of progress with the complaint.

4. Initial assessment of the Complaint

Initial assessment will, if practicable, take place within 20 working days of receipt of the councillor's written comments under section 3 above.

The decision on the initial assessment will be made by the Monitoring Officer, following consultation with an IP.

Before the Monitoring Officer assesses the complaint, the Monitoring Officer will send the IP.

- a. A copy of the complaint.
- b. Any other information in the Monitoring Officer's possession that they consider relevant, including any comments submitted by the councillor complained of.

When will a decision be made?

The Monitoring Officer's decision on the initial assessment, with reasons, and next steps where relevant, will be given in writing to the councillor and the complainant, within 20 working days where practicable; the parties will be notified if there is any delay.

Can I appeal a decision?

There will be no right of appeal by either the complainant or the councillor being

complained about.

The decision will be reported to the next scheduled meeting of the Standards Committee, or by way of an update report in the Councillor's monthly [Briefing Pack](#) published on the Council's website.

5. Decision Options at Initial Assessment

The Monitoring Officer, in consultation with the IP, may decide from the following options:

- a) To take no action (**Appendix B**); or
- b) To attempt to resolve the matter informally between the complainant and councillor, either in writing, by face-to-face meeting, or by any other method the Monitoring Officer considers appropriate. The Monitoring Officer will notify the relevant Group Leader where an informal resolution is considered appropriate. In this case there will be no formal decision as to whether there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved, the alternative options as set out in Appendix B or C, remain open; or
- c) To arrange a formal investigation.

The Monitoring Officer reserves the right, in the following circumstances, to refer a complaint to the Standards Assessment Sub-Committee to determine if an investigation is the appropriate course of action.

1. Where a complaint has been made by the Monitoring Officer or Chief Executive; or
2. Where a matter is high profile i.e. a complaint about the Leader or Mayor; or
3. Such other complaints as the Monitoring Officer considers it is not appropriate for them to assess due to a conflict of interest.

The procedures following referral to the Standards Assessment Sub-Committee are set out in **Appendix C**.

6. The Investigation

The procedures that will be followed where the Monitoring Officer, or Assessment Sub-Committee as appropriate, decides that a complaint merits further investigation, are set out at **Appendix D**.

7. The Hearing

Where the Investigating Officer has concluded that there is evidence of a potential failure to comply with the Code of Conduct, and following consultation with the Independent Person, the Monitoring Officer decides an informal resolution is not appropriate or has not succeeded, they will arrange for the Standards Sub-Committee to hold a hearing.

A hearing takes place before a Sub-Committee of 3 members drawn from the Standards Committee and chaired by the Standards Committee independent chair. Political proportionality does not apply to this Sub-Committee. At the hearing the councillor (Subject Member) and Complainant can state their case and, if

appropriate, call witnesses. Procedures for the Standards Hearing Sub-Committee are set out at **Appendix E**. The hearing will decide whether the councillor has failed to comply with the Code of Conduct, and if so, whether to recommend any action (sanctions) in respect of the councillor.

8. Revision of these arrangements

The Standards Committee is delegated to amend these arrangements where necessary and has delegated to the independent Chair of the Hearing Sub-Committee the right to depart from these arrangements during a hearing, including the Procedures at Appendix E, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

9. Local Government and Social Care Ombudsman

Where a complainant concludes that the authority has failed to deal properly with a complaint, they may make a complaint to the Local Government and Social Care Ombudsman – www.lgo.org.uk

PUBLIC INTEREST CONSIDERATIONS

The purpose of the Code of Conduct is to help councillors achieve the standard of conduct which meets public expectations. The aim is to support proper decision making and the proper use of public resources. Undertaking investigations that do not support these wider benefits is not in the public interest.

The resources should not be used to investigate matters which are trivial, or which have little or no impact on the public. Any decision to investigate an allegation will be a proportionate response to the issues raised when weighed against any likely sanction. It will take into account the wider public interest and the costs of undertaking an investigation.

Complaints will be investigated where the allegations have substance¹ and are reasonably considered to be serious matters such as corruption, bullying and misuse of power in public office for example². Allegations are unlikely to be investigated where the matter complained about does not raise a significant matter of public interest.

There is no widely accepted definition of the public interest, but this has been described as “*something which is of serious concern and benefit to the public*”. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the whole of Spelthorne Borough. It may refer to a distinct section of the public such as a small community or interest group.

1. Seriousness

The more serious the alleged breach, the more likely it is that it will be investigated.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor may have been responsible for, or was to blame for, the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person, the Council or organisation.

a) To what extent was the councillor responsible for, or to blame for, the conduct complained of?

Questions of responsibility or blame are likely to be determined by the councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned³; whether they have previously been investigated for a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the councillor's length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

¹ The complaint must have something in it and be of meaningful quality

² The application of the investigations not limited to these matters

³ There must also be some evidence of deliberate fault. If a councillor has made a genuine mistake despite taking reasonable care, then it is unlikely that it will be in the public interest to investigate a complaint simply because it so happened that a breach of the Code of Conduct may have occurred.

b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?

In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and must be taken into consideration⁴.

Particular regard will be taken of whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor showed hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, the views expressed by the complainant, about the impact the alleged breach has had on them will be considered.

2. Proportionality

Account must always be taken of the resource implications of any investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be taken based on resource alone, but it is a relevant consideration when making an overall assessment.

The above considerations will help in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code, and that it has caused an injustice.

⁴ Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the councillor complained about.

NO ACTION will be taken where any of the following apply:

- A. the Monitoring Officer, in consultation with the IP, considers that there is no prima facie evidence that the Code has been breached;
- B. the Monitoring Officer, in consultation with the IP considers that the allegation does not relate to a serious matter and raises no issue of wider public interest (see Appendix A for the Public Interest test).
- C. taking into account the nature of the allegation, the Monitoring Officer, in consultation with the IP, considers that any investigation of the allegation and its associated use of resources would be excessive when weighed against any likely sanction.
- D. the Monitoring Officer, in consultation with the IP, considers that the complaint appears to be vexatious, malicious, frivolous, trivial, politically motivated, or tit-for-tat or made by a persistent complainant. The complaint must have substance.
- E. the conduct complained about has already been the subject of investigation or inquiry by the Council or another public body.
- F. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Officer, in consultation with the IP, considers that there is nothing further to be gained.
- G. the Monitoring Officer, in consultation with the IP considers that there is not enough information to take the matter further.
- H. the complaint was made anonymously (unless the MO concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward).
- I. the complainant has requested that their identity be withheld from the councillor, and the Monitoring Officer, in consultation with the IP considers that the matter cannot reasonably be taken further in these circumstances.
- J. the councillor has apologised for the action that was the subject of the complaint, and the Monitoring Officer, in consultation with the IP, considers that this is sufficient to dispose of the complaint.
- K. the Monitoring Officer, in consultation with the IP considers that the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual councillor(s).
- L. The Monitoring Officer, in consultation with the IP considers there is a reasonable alternative course of action that the complainant could take to achieve an appropriate outcome to the complaint.

Referral to the Standards Assessment Sub-Committee

1. 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 section 5 of the arrangements (page 5) above.
2. 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, subject to avoiding potential conflicts of interest. An Independent Member is invited to Chair the Assessment Sub-Committee but legally cannot vote on the decision.
3. The Member may submit their comments on the allegations for consideration by the Sub-Committee no later than 2 working days before it meets, if they so wish.
4. The Assessment Sub-Committee will consider the complaint against the criteria set out in **Appendices A and B**.
5. It is expected that the complaint will be confidential during the Assessment stage. Neither the Member nor the complainant will be invited to attend the Sub-Committee meeting, however they will be provided with a copy of the report to be considered at the meeting.
6. The Assessment Sub-Committee may decide whether the complaint:
 - Merits no further investigation
 - Merits further investigation
 - Merits alternative action (e.g. informal resolution, mediation and similar)
7. There is no right of appeal for the complainant or the Member against a decision of the Assessment Sub-Committee. The decision will be communicated to the complainant and the Member within 2 working days of the meeting and will be reported to the next Standards Committee.

THE INVESTIGATION

1. If the Monitoring Officer, or Assessment Sub-Committee as appropriate, decides that a complaint merits further investigation, the Monitoring Officer will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator.
2. The Investigating Officer will complete the investigation in accordance with these procedures.
3. The investigation will be carried out promptly, with the expectation that all investigations, resolutions and Hearing will be completed within a maximum period of four months after the referral. All those involved in the complaint should do their utmost to ensure that this can happen. Where reasonably necessary, the deadline can be extended with the agreement of the IP and the independent chair of the Standards Committee. The revised deadline will be communicated to the parties.
4. The Investigating Officer or Monitoring Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and provide them with an opportunity to explain their understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
5. The Investigating Officer or Monitoring Officer will normally write to the councillor complained about and provide them with a copy of the complaint. The councillor will be asked to provide their explanation of events, and to identify what documents the Investigator needs to see and anyone they need to interview. In exceptional cases, where the Monitoring Officer, after consulting the Independent Person, considers disclosing details of the complaint to the councillor might prejudice the investigation, these will be withheld from the councillor until the investigation has progressed sufficiently.
6. At the end of their investigation, the Investigating Officer will produce a draft report (the "Investigation Report") and will send copies of that draft report, in confidence, to the complainant and to the councillor concerned. Both parties will be given this opportunity to identify any factual matter in the report which is disputed and asked to provide their written comments on its findings within 10 working days.
7. Having received and taken account of any comments made on the draft Investigation Report, the Investigating Officer will send their final report to the Monitoring Officer.
8. The investigation and the Investigating Officer's report will be kept confidential at this stage.

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

9. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation and seek their views on whether to convene a Standards Sub-Committee hearing.
10. Following consultation with the Independent Person, if the Monitoring Officer:
 - a. is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report
 - b. is satisfied with the Investigating Officer's report and considers a hearing is inappropriate, they will write to the complainant and the councillor concerned notifying them that they are satisfied that no further action is required. The Monitoring Officer will send both parties a copy of the Investigating Officer's Final Report, which will remain confidential.
11. The Monitoring Officer will report the outcome of the complaint to the next Standards Committee. The decision is final and there is no right of appeal.

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

12. Following consultation with the Independent Person, the Monitoring Officer will either:
 - arrange for the Standards Sub-Committee to hold a hearing in accordance with the procedures in **Appendix E**, within six weeks of the final report being issued, so that it can take a decision on the complaint; or
 - seek an informal resolution; or
 - take no further action where the breach is considered technical or has already been resolved.

Informal Resolution

13. Where the Monitoring Officer considers that the matter can be resolved informally, i.e. without the need for a hearing, they will consult with all parties in seeking to agree a fair resolution, which also helps to ensure higher standards of conduct for the future.

14. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action agreed with all parties, such as:
 - a. Referring the matter to the relevant Group Leader(s) to address.
 - b. The Subject Member being required to attend training.
 - c. The Subject Member being required to meet with the Monitoring Officer and/or other relevant officers.
 - d. Such other action as is considered appropriate by the Monitoring Officer and Independent Person

15. If the Monitoring Officer considers that informal resolution is not appropriate, or the councillor concerned is not prepared to undertake any proposed remedial action or the action is not taken within a reasonable time or to the MO's satisfaction, then the Monitoring Officer will arrange for the Standards Sub-Committee to hold a hearing in accordance with the procedures in **Appendix E**, so that it can take a decision on the complaint.

PROCEDURE RULES FOR STANDARDS SUB-COMMITTEE HEARINGS

1. Definitions

Complainant(s)	The person/people making the complaint.
Subject Member	The councillor or co-optee against whom an allegation has been made.
Appointed Representative	The Subject Member may be represented or accompanied during the meeting by any third party where one has been engaged to represent them.
Hearing	A Sub-Committee held in accordance with the provisions of the Local Government Act 1972. The Hearing Sub-Committee considers whether the Subject Member has breached the Member Code of Conduct. The Sub-Committee comprises three voting members of the Standards Committee (councillors). An Independent Member (the Chair or Vice-Chair of the Standards Committee) is invited to Chair the Hearing Sub-Committee but legally cannot vote on the decision.
Independent Person	An Independent Person may be invited by the Monitoring Officer to attend a Hearing. Their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of a failure to comply with the Code of Conduct, in accordance with the provisions of the Localism Act 2011. The Independent Person cannot vote.
Investigating Officer	The person appointed by the Monitoring Officer to undertake a formal investigation on behalf of the Monitoring Officer. This person may be the Monitoring Officer, one of their Deputies, an officer of another authority or an external investigator.
Investigating Officer's Report	The report of the Investigating Officer to the Monitoring Officer, setting out their findings and recommendations in respect of the allegation.
Legal Advisor	A person responsible for providing legal advice to the Sub-Committee, where the Monitoring Officer considers their presence to be appropriate or necessary. This may be an external third-party legal advisor appointed for the purpose.
Chair	The Chair of the Sub-Committee, will be an Independent Member i.e. either the Chair or Vice-Chair of the Standards Committee.
Code	The Members Code of Conduct for Spelthorne Borough Council, formally adopted by it at the relevant time.
Monitoring Officer	The Officer designated as such Spelthorne Borough Council in accordance with section 5 of the Local Government and Housing Act 1989.
Exempt Information	As defined in section 100A and Schedule 12A to the Local Government Act 1972.

2. Introduction

These Procedure Rules are intended to provide the Hearing Sub-Committee of the Standards Committee with an efficient and effective hearing process for the determination of any matter referred to it. This will help the Sub-

Committee to uphold the principle of natural justice in dealing with all the issues that need to be resolved, and in a way that is fair to the Subject Member(s) and to any other person involved.

The Monitoring Officer will seek to convene the Sub-Committee within six weeks* of receiving the Investigating Officer's Report or as soon as practicably possible thereafter.

**there may be some occasions where due to the particular circumstances, it may not be possible to hear the complaint within this timescale. The Monitoring Officer will consult with the Independent Person and the Chair of the Standards Committee in this instance.*

The Sub-Committee will comprise of three elected Members of the Standards Committee, selected by the Monitoring Officer in consultation with the Chair of the Standards Committee. The composition of the Sub-Committee will, where possible, consider political, demographic and equality issues, subject to avoiding potential conflicts of interest and where Members' availability permits. A Member who sat on the Assessment Sub-Committee for the same matter will not usually be called to sit on the Hearing Sub-Committee.

An Independent Person (IP) appointed under Section 28 of the Localism Act 2011 may also be invited to attend the Hearing. Whilst it is not a legal requirement for the IP to attend a hearing it is considered best practice. If the IP does not attend the hearing the Monitoring Officer must ensure that the views of the IP are provided to the Sub-Committee, as in accordance with the LGA Guidance on complaints handling, the IP must provide their views to the Hearing Sub-Committee which the Hearing Sub-Committee must have regard to in reaching its decision.

The Monitoring Officer or Deputy Monitoring Officer will be present as advisor to the Sub-Committee. There will normally be no requirement to have a separate legal representative present to advise the Sub-Committee unless the matter is peculiarly complex. It will be for the Monitoring Officer to determine if a Legal Advisor is either appropriate or necessary.

3. Before the hearing

The pre-hearing process – Led by the Monitoring Officer

- (a) The Subject Member and Complainant will be asked to provide their written responses to the Investigating Officer's Report (within 10 working days) in order to clarify any areas of agreement and/or contention.
- (b) The Subject Member and Complainant will be asked to confirm their intention for attendance or non-attendance at the Hearing. They may present their own case, or they may be represented. If they wish to be represented, they must provide details of any third party who they have engaged to represent or accompany them to the Monitoring Officer, with no less than 3 working days' notice in advance of the Hearing.
- (c) Both parties may bring witnesses (of a number the Sub-Committee considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least 10 working days before the Hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted. The cost

of any attendance/representation must be borne by the parties concerned.

- (d) The Subject Member will be asked to identify and produce any further documentary evidence which they would need to rely upon at the Hearing, at least 6 working days before the Hearing.
- (e) All written evidence referred to at section 3(a), (c) and (d) will be circulated to the Sub-Committee, the Independent Person, the Subject Member and the Complainant at least 5 working days before the Hearing.
- (f) If the Monitoring Officer considers that any of the Hearing should be held in private, or whether any of the documentation supplied to the Sub-Committee should be withheld from public scrutiny, they will seek comments on this from the Subject Member and Investigating Officer.
- (g) The Hearing Sub-Committee, taking account of the advice of the Monitoring Officer, may issue directions about the way in which the Hearing will be conducted. For example, agreeing the number and identity of witnesses, who, as a general guide, will be called in those circumstances when matters cannot be proved by documentary evidence. Directions may be given either before or at the Hearing and may be decided at a pre-meeting or by correspondence involving all Members of the Hearing Sub-Committee.
- (h) Any pre-meeting or correspondence (dealing with pre-hearing process issues) will be held privately and in the absence of either the Complainant or Subject Member.
- (i) The Independent Person will be invited to attend – however, if unable to, they may submit comments in writing either for circulation with the Agenda papers or at the Hearing.

4. Documentation

Hearing Sub-Committee meetings of the Standards Committee are subject to the normal rules for publication of Committee Agendas and Access to Information.

The Agenda papers for the Hearing Sub-Committee will include:

- Monitoring Officer report
- Investigating Officer's Report
- The complaint
- Witness statements
- Subject Member's response to the Investigating Officer's Report
- Any other documents submitted by the Subject Member in advance of the Hearing
- For ease of reference – the Members Code of Conduct and these Hearing Arrangements.

5. Sub-Committee

5.1 Scheduling a hearing

The Hearing will be scheduled to take place in the daytime and aim to be completed in one sitting. This is to avoid late nights and/or lengthy

meetings which can give rise to ineffective decision-making.

The Monitoring Officer will consult with the Subject Member and the Complainant on their availability, giving 30 days' notice of the proposed Hearing. Their requests will be accommodated where practicable, with a final decision on the Hearing date being made by the Monitoring Officer.

5.2 Officer Assistance to the Hearing Sub-Committee

The Hearing Sub-Committee will be assisted on matters of law and procedure by the Monitoring Officer or Deputy Monitoring Officer.

There will normally be no requirement to have a separate legal representative present unless the matter is peculiarly complex. It will be for the Monitoring Officer to determine if a legal representative is either appropriate or necessary.

The Hearing Sub-Committee may take legal advice from the Monitoring Officer/Legal Advisor, in private if necessary, at any time during the process. The substance of any legal advice given should be shared with the Subject Member, the Complainant and the Investigating Officer.

5.3 Public or Private Hearing

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. Having regard to any advice from the Monitoring Officer/Legal Advisor as to public interest, the Hearing Sub-Committee will consider whether to hear the matter in private. This will need a resolution to be passed to exclude the press and public from the meeting. Any such resolution may only be passed on the grounds set out in Section 100A and Schedule 12A to the Local Government Act 1972.

If the hearing is held in public, the Council's Constitution allows for the webcasting of meetings.

Conduct of the Hearing

5.4 Procedure

The Chair will follow these Procedure Rules for the Hearing unless the Monitoring Officer considers it is expedient to vary them (see Section 8.)

The Hearing is intended to be an informal process and allows for all parties to respond to any questions that the Hearing Sub-Committee might have, and to let everyone make their case known.

The Chair will ensure that while Hearing Sub-Committee questioning may be thorough, all questioning must be fitting for the relative informality of the Hearing and no cross-examination of either party will be allowed. No questioning shall be leading, argumentative (e.g. badgering), or aggressive. A party may decline to answer a question if they consider the question to be inappropriate.

The Hearing Sub-Committee may adjourn the Hearing at any time.

5.5 The Order of Business

Provided that the principles of natural justice are upheld and that

proceedings are fair and in the public interest, the Chair may exercise discretion in amending the order of business.

The order of business will ordinarily be as follows (Points 1-14):

1. Apologies for absence.
2. Declarations of interest.
3. The Chair shall confirm that the Hearing Sub-Committee comprises three elected Members from the Standards Committee and is quorate.
4. The Chair will introduce the Members of the Hearing Sub-Committee, the Independent Person, the Monitoring Officer and/or Legal Advisor to the Hearing Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member, and their representative (if appointed) and any other persons present.
5. If the Subject Member (or their appointed representative) is not present, the Hearing Sub-Committee will consider whether to proceed and make a decision, or whether to adjourn the Hearing. Where the Hearing Sub-Committee is not satisfied with their explanation for their absence from the Hearing, it may in the first instance have regard to any written representations submitted by the Subject Member and may resolve to proceed with the Hearing in the Subject Member's absence and make a determination. If the Hearing Sub-Committee is satisfied with the Subject Member's reasons for not attending the Hearing, it may adjourn the Hearing to another date. The Hearing Sub-Committee may resolve in exceptional circumstances, that it will proceed with the Hearing on the basis that it is in the public interest to hear the allegations expeditiously.
6. To determine whether the public/press are to be excluded from any part of the Hearing and/or whether any documents (or parts of them) should be withheld from the public/press.
7. If the Hearing is to be heard in private, the Hearing Sub-Committee will need to pass a resolution under Section 100A of the Local Government Act 1972 to exclude the public and press from the Hearing.
8. The Monitoring Officer will give a brief outline of the allegation before the Hearing Sub-Committee, namely that the Subject Member has failed to comply with the Code of Conduct and outline the procedure to be followed and confirm that those present understand it.
- 9. Presentation of the complaint and questions to the Investigating Officer**

- i. The Investigating Officer will present their report into the allegation against the Subject Member, including any findings of fact, call any complainant witnesses they consider necessary and present evidence to demonstrate failure of compliance with the Code.
- ii. Written statements will not usually be read out at the Hearing as it will be assumed all those present are already familiar with their contents.
- iii. Where the Subject Member admits failure in complying with the Code of Conduct as presented in the Investigating Officer's Report, the Hearing Sub-Committee may accept the findings and proceed directly to agreed action (see Paragraph 6.4 below).
- iv. At the conclusion of the Investigating Officer's Report and/or evidence of the Complainant witnesses, the Hearing Sub-Committee and / or the IP may question the Investigating Officer upon the content of their report, and any Complainant witnesses called by the Investigating Officer.
- v. The Subject Member will be invited to put any questions to the Investigating Officer and/or Complainant's witnesses.

10. Presentation of the Subject Member's case and questions to the Subject Member

- i. The Subject Member (or their representative) will present their case, may call witnesses, and has the opportunity to make representations to the Hearing Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.
- ii. No cross-examination shall be permitted, however, at the conclusion of the Subject Member's evidence, and/or evidence of the witnesses, the Chair shall ask the Investigating Officer if they have any questions of the Subject Member or their witness(es).
- iii. The Hearing Sub-Committee may question the Subject Member upon the contents of their case and any witnesses called by the Subject Member.

11. Views/Submissions of the Independent Person

Based on the facts presented to the Hearing Sub-Committee, the Chair will invite the Independent Person to give their views on whether or not there has been a breach of the Code of Conduct.

If the Independent Person is unable to attend the Hearing their views can be presented for consideration in writing.

12. Deliberations of the Hearing Sub-Committee

The Hearing Sub-Committee will withdraw from the Hearing to discuss and

decide in private, on the balance of probability based on the evidence before it, whether the Subject Member has failed to comply with the Code

of Conduct. The Hearing Sub-Committee will be assisted on matters of law and process by the Monitoring Officer/ Legal Advisor. Any advice provided by the Monitoring Officer/ Legal Advisor will be made clear when the Hearing Sub-Committee reconvenes in public.

If the IP retires with the Hearing Sub-Committee, they should not take part in any decision making and any views they give to the Hearing Sub-Committee must also be made publicly to the meeting

Further guidance on deliberations for the Hearing Sub-Committee is set out in **Annex A**.

The Hearing Sub-Committee may, at any time, come out of private session and reconvene the Hearing, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Hearing Sub-Committee cannot be presented, then the Hearing Sub-Committee may adjourn the Hearing and issue directions as to the additional evidence required and by whom.

Where the complaint has a number of aspects, the Hearing Sub-Committee may reach a finding, apply a sanction, and /or make a recommendation on each aspect separately.

13. Hearing Sub-Committee findings, representations on sanctions

- i. Once the Hearing Sub-Committee has decided whether there has been a breach of the Code of Conduct, it will reconvene the Hearing and announce its findings.
- ii. The Chair will set out the principal reasons for any decision made.
- iii. The Chair will then invite the Investigating Officer and the Subject Member to make their representations regarding the nature of any sanction(s) or recommendations that might be applied. No new representations, or comments on the complaint will be permitted.
- iv. In addition to any possible sanctions that might be applied, the Hearing Sub-Committee may make recommendations to the Council to ensure the promotion and maintenance of high standards of conduct among Members.
- v. Where the Independent Person is in attendance, they will be invited to express their view on any sanction(s) or recommendation(s) and will be afforded time to consider what they have heard before providing their view.
- vi. After representations and views have been heard, the Hearing Sub-Committee will deliberate in private on the application of any sanctions, having regard to matters set out in **Annex A**.

14. Delivering the Decision

- i. After full consideration of all factors involved in the case, the Hearing Sub-Committee will announce its decision in the presence of all parties and this will normally be after passing a resolution that, if necessary, the public should no longer be excluded from the meeting.
- ii. The Hearing Sub-Committee will give the rationale for its decision and will explain any reasons why advice from the Independent Person was, or was not, followed in forming the decision.
- iii. In delivering the Hearing Sub-Committee's decision, the Chair will announce:
 - Whether any sanctions are to be applied and the nature of those.
 - Whether any recommendations will be made to the Council or the Monitoring Officer, and the nature of those.
 - That the Monitoring Officer will prepare a formal decision notice in consultation with the Chair, no later than 10 working days of the Hearing and send a copy to the Subject Member and the Complainant.
 - That the formal decision notice, and the Investigating Officer's Report after appropriate redaction as required, will be published on the Council's website.
 - That the Monitoring Officer will report the decision to the next convenient meeting of the Standards Committee.
 - That there is no internal right of appeal against the Hearing Sub-Committee decision and/or recommendation(s).
- iv. The Chair will close the Hearing.

6. Making the findings public

A summary of the decision and reasons for that decision will be published on the Council's website. The Monitoring Officer and the Chair shall agree the wording and arrange for the publication as soon as reasonable following the determination of the matter and no later than 10 working days.

7. Appeals

A Member is expected to comply with the decisions taken through this process and has no right of appeal against a finding of a breach of the Members Code of Conduct.

8. Variations to these Procedure Rules

The Monitoring Officer, or the Hearing Sub-Committee on the advice of the Monitoring Officer, in consultation with the Chair of the Standards Committee, may vary this procedure in any particular instance where they are of the opinion that such a variation is expedient in order to secure the effective and fair consideration of any matter, is lawful, and is consistent with the principles of procedural fairness.

Annex A

Matters for Hearing Sub-Committee to Consider when Applying a Sanction for a finding of failure to comply with the Code of Conduct

1. The Standards Committee delegates power to the Hearing Sub-Committee to enable it to act in respect of individual Members to ensure the maintenance of high standards of conduct.
2. In deciding what action to take, the Hearing Sub-Committee should bear in mind an aim of upholding and improving the standard of conduct expected of Members to which the Code of Conduct applies, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Hearing Sub-Committee should be designed both to discourage/prevent the Subject Member from any future non-compliance and also to discourage similar action by others.
3. The Hearing Sub-Committee should take account of the actual consequences which have followed because of the Member's actions, while at the same time bearing in mind what the possible consequences may have been even if they did not occur.
4. Any imposed sanction must be reasonable and proportionate to the breach found and not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Monitoring Officer/Legal Advisor may advise the Hearing Sub-Committee in this regard. The Hearing Sub-Committee has no power to suspend or disqualify the Subject Member, withdraw or suspend allowances, impose financial penalties, award compensation or make an award of costs.
5. The Hearing Sub-Committee may decide to apply one or more of the following sanctions:
 - a. Instruct the Monitoring Officer to send a report to Council to censure the councillor;
 - b. Instruct the Monitoring Officer to publish a full report on the Council's website and/or social media channels about the councillor's conduct;
 - c. Instruct the Monitoring Officer to arrange appropriate training for the councillor which they are required to attend;
 - d. Require the councillor to submit an apology in such form as may be specified and detailed, e.g. the wording of the apology to be agreed by the Monitoring Officer or the Hearing Sub-Committee, the apology to be given in private or public;
 - e. Recommend to the councillor's Group Leader (or in the case of un-grouped members, recommend to Council or to any relevant Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
 - f. Recommend to the councillor's Group Leader (or in the case of un-grouped members, recommend to Council or to any relevant Committees) that they be removed from all outside appointments to which they have been appointed or nominated by the Council or the relevant Committee as the case may be;
 - g. Recommend to Council, or Committee as relevant, that the councillor be removed from any positions of 'special responsibility' e.g. Chair or Vice-Chair of a Committee or Sub-Committee;
 - h. Require the Monitoring Officer to arrange the withdrawal of facilities provided to the councillor by the Council, such as IT equipment and/or email and Internet access;or

- i. Recommend to Council that it exclude the councillor from the Council's Offices or other premises and restrict contact with officers, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
 - j. Require that the councillor takes part in conciliation or mediation as specified and detailed.
 - k. Any other lawful sanction, which in consultation with the Independent Person is considered appropriate.
6. The Hearing Sub-Committee may set the time frame for the actions that are required to be taken.
 7. The Hearing Sub-Committee may make any recommendations it considers appropriate on any procedural amendments that might assist Members generally to follow the Code of Conduct and promote standards.
 8. The Sub-Committee will consider the following questions along with any other relevant circumstances raised at the Hearing:
 - What was the Subject Member's intention, and did they know that they were failing to follow the Members Code of Conduct?
 - Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
 - Has there been a relevant breach of trust?
 - Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
 - What was the result/impact of failing to follow the Members Code of Conduct?
 - How serious was the incident?
 - Does the Subject Member accept that they were at fault?
 - Did the Subject Member apologise to the relevant persons?
 - Has the Subject Member previously been warned or reprimanded for similar misconduct?
 - Has there been a relevant previous breach by the Subject Member of the Code of Conduct, what training have they received and how long have they been a councillor?
 - Is there likely to be a repetition of the incident?
 - Are there any extenuating circumstances?
 9. The Hearing Sub-Committee should disregard any evidence or discussion at the Hearing which is irrelevant to the matters under consideration.

Examples, but not an exhaustive list, of mitigating factors are:

- ❖ An honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- ❖ Substantiated evidence that the Member's actions have been affected by ill-health.
- ❖ Recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the Member.
- ❖ Compliance with the Code since the events giving rise to the determination.
- ❖ Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Examples, but not an exhaustive list, of aggravating factors are:

- ❖ Dishonesty or breaches of trust.
- ❖ Trying to gain an advantage or disadvantage for themselves or others.
- ❖ Bullying.
- ❖ Continuing to deny the facts despite clear contrary evidence.
- ❖ Seeking unfairly to blame other people
- ❖ Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- ❖ Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

DECISION OPTIONS OPEN TO A HEARING SUB-COMMITTEE

To conclude:

1. The councillor did not breach the Code of Conduct;
or
2. The councillor did breach the Code of Conduct, and that:
 - I. No action need be taken – reasons to be given;
or
 - II. The councillor should be censured; and one or more of the following:
 - a. The Monitoring Officer to send a report to Council to censure the councillor;
 - b. The Monitoring Officer to publish a full report on the Council’s website and/or social media channels about the councillor’s conduct;
 - c. The Monitoring Officer to arrange training for the councillor which they are required to attend;
 - d. That the councillor be required to apologise either privately or in public;
 - e. Recommendation be made to the Group Leader that the councillor be removed from any or all Committees or Sub-Committees or outside appointments to which they have been appointed or nominated by the authority;
 - f. Recommendation be made to Council, or Committee as relevant, that the councillor be removed from any positions of ‘special responsibility’ i.e. Chair or Vice-Chair of a Committee or Sub-Committee;
 - g. The Monitoring Officer to arrange for the withdrawal of facilities provided to the councillor by the Council, such as computer equipment, email or Internet access; or
 - h. Recommendation be made to Council that it exclude the councillor from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

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

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

The Sub-Committee may make any recommendations it considers appropriate on any procedural amendments that might assist councillors generally to follow the Code of Conduct and promote standards.