

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-

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Knowle Green
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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 five 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.