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Contact Officer:

John Armstrong, Democratic Services Manager

25 November 2016

Dear Councillor

Your attendance is requested at a meeting of the **HEARINGS SUB-COMMITTEE** to be held in the Council Chamber, Millmead House, Millmead, Guildford, Surrey GU2 4BB on **MONDAY 5 DECEMBER 2016** at 7.00 pm.

Yours faithfully

Sue Sturgeon
Managing Director

MEMBERSHIP OF THE SUB-COMMITTEE

Under Article 10 of the Council's Constitution, the Hearings Sub-Committee shall be politically balanced and comprise five members drawn on a "panel" basis from the voting membership of the Corporate Governance and Standards Committee.

The five members are as follows:

Councillor Philip Brooker
Councillor Alexandra Chesterfield
Councillor Colin Cross
Councillor Geoff Davis
Councillor Jo Randall

Authorised Substitute Members:

(drawn from the list of substitute members of the
Corporate Governance and Standards Committee)

Councillor Richard Billington
Councillor David Goodwin
Councillor Liz Hogger

Councillor Nigel Kears
Councillor Nikki Nelson-Smith
Councillor Caroline Reeves

QUORUM 5



THE COUNCIL'S STRATEGIC FRAMEWORK

Vision – for the borough

For Guildford to be a town and rural borough that is the most desirable place to live, work and visit in South East England. A centre for education, healthcare, innovative cutting-edge businesses, high quality retail and wellbeing. A county town set in a vibrant rural environment, which balances the needs of urban and rural communities alike. Known for our outstanding urban planning and design, and with infrastructure that will properly cope with our needs.

Five fundamental themes that support the achievement of our vision:

- **Our Borough** - ensuring that proportional and managed growth for future generations meets our community and economic needs
- **Our Economy** - improving prosperity for all by enabling a dynamic, productive and sustainable economy that provides jobs and homes for local people
- **Our Infrastructure** - working with partners to deliver the massive improvements needed in the next 20 years, including tackling congestion issues
- **Our Environment** - improving sustainability and protecting our countryside, balancing this with the needs of the rural and wider economy
- **Our Society** - believing that every person matters and concentrating on the needs of the less advantaged

Your Council – working to ensure a sustainable financial future to deliver improved and innovative services

Values for our residents

- We will strive to be the best Council.
- We will deliver quality and value for money services.
- We will help the vulnerable members of our community.
- We will be open and accountable.
- We will deliver improvements and enable change across the borough.

Mission – for the Council

A forward looking, efficiently run Council, working in partnership with others and providing first class services that give our society value for money, now and for the future.

AGENDA

ITEM

1. **ELECTION OF CHAIRMAN OF THE SUB-COMMITTEE**
2. **APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**

3. **DISCLOSURE OF INTERESTS**

In accordance with the local Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, you must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

4. **ALLEGATION REGARDING THE CONDUCT OF A COUNCILLOR**
(Pages 1 - 106)

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Corporate Governance and Standards Committee

Hearings Sub-Committee

Report of the Monitoring Officer

Author of report: Sandra Herbert, Monitoring Officer and Legal Services Manager

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Lead Councillor responsible: Matt Furniss

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Date: 5 December 2016

Allegation regarding the conduct of a Councillor

Executive Summary

The Council has a duty to promote and maintain high standards of conduct. The Council has adopted a Code of Conduct for councillors to support this duty (Appendix 1). Any allegation of failure by a councillor to comply with the Code of Conduct is dealt with under the Council's Arrangements for dealing with Code of Conduct complaints (Appendix 2).

The Monitoring Officer has received three complaints (Appendix 3) regarding the conduct of a Councillor ("the Subject Member"). The Subject Member has provided a response to the complaints received (Appendix 4). The complaints were assessed (Appendix 5) and the Independent Person was also consulted (Appendix 6). The (then) Monitoring Officer considered the assessment report and the views of the Independent Person and decided that the matter should be referred for an investigation (Appendix 7).

Paragraph 8.1 of the Council's current Arrangements for dealing with complaints regarding councillors provides that when the Monitoring Officer receives an investigator's report which indicates a breach of the code he will review the report and either send the matter for a local hearing or, after consulting the Independent Person, seek a local resolution.

The Monitoring Officer has been seeking a local resolution of this matter. The Subject Member has now provided a resolution to the three complainants (Appendix 8). The Independent Person is of the view that a local resolution is a fair resolution to the matter (Appendix 9). A response has been received from the complainants indicating that they do not accept the local resolution (Appendix 10).

Paragraph 8.2 of the Council's Arrangements that applied at the time the complaints were received provides that if a complainant does not accept the local resolution the Monitoring Officer will refer the matter to the Hearings Sub-Committee.

If the Sub-Committee considers the proposed local resolution to be a fair and reasonable resolution to the matter and do not consider there would be any useful purpose in requiring the matter to be considered at a full hearing this would be a departure from paragraph 8.2 of the Arrangements.

Paragraph 13 of the Arrangements however, provides that the Hearings Sub-Committee can depart from the Arrangements if they consider it expedient to do so in order to secure the effective and fair consideration of the matter.

The Sub-Committee must decide what action to take in this matter.

The Sub-Committee must decide whether:

- (a) (i) They consider the proposed local resolution provided by the Subject Member to the Complainants to be a fair resolution to the matter; and if so
(ii) agree a departure from paragraph 8.2 of the Arrangements in accordance with the provisions of paragraph 13;

or

- (b) To refer the matter for determination before the Hearings Sub-Committee.

The Committee must give reasons for its decision.

1. Purpose of Report

- 1.1 The purpose of the report is to determine a preliminary issue arising from a proposed local resolution provided in response to three complaints received regarding the conduct of the Subject Member. The Sub-Committee is required to determine whether they consider the proposed local resolution to be a fair and reasonable one and, if so, to agree a departure from the Council's Arrangements for dealing with allegations of misconduct by Councillors¹ under paragraph 13 if they consider it expedient to do so. Alternatively, if not, to refer the matter to a full hearing before the Sub-Committee.

2. Strategic Framework

- 2.2 The Council's Constitution sets out in Part 5 a copy of the Code of Conduct for Councillors which has been adopted by the Council. Arrangements for dealing with allegations of misconduct by Councillors is also set out in the Constitution. A copy of the Code of Conduct can be found at Appendix 1 to this report. A copy of the Arrangements for dealing with Code of Conduct complaints can be found at Appendix 2 to this report.

3. Background

- 3.1 The background is as set out in the Executive summary.

¹ These are the Arrangements that were in place at the time the complaints were received

- 3.2 **Decision to be made by the Sub-Committee.** The Sub-Committee is therefore required to consider whether they agree that this is a fair resolution of the matter or whether they believe the matter should now proceed to a hearing. If they consider that the resolution proposed is a fair one they will need to agree a departure from the Council's Arrangements in accordance with paragraph 13. The Committee must provide reasons for its decision.

4. Consultations

- 4.1 The Independent Person has been consulted and supports a local resolution of this matter.

5. Financial Implications

- 5.1 To date a total sum of £2,810 has been paid for initial assessment and external investigation of this matter. An additional fee would be payable to the Investigating Officer for presenting his case to the Hearings Sub-Committee. Whilst there is no specific budget for the investigation, the costs can be covered within the overall budget of the Council and no additional funding has been requested.
- 5.2 The Hearings Sub-Committee cannot make any order as to costs. A Subject Member is required to meet their own costs of any representation at a Hearings Sub-Committee.

6. Legal Implications

The Localism Act Part 1 Chapter 7 sections 26-37.

- 6.1 Section 27(1) sets out a duty upon the Council to promote and maintain high standards of conduct among its Members. In discharging this duty, the Council is required to adopt a Code dealing with the conduct that is expected of members and co-opted members of the Council under section 27(2). Section 28(1) provides that the Council must secure that its code of conduct is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Section 28(4) provides that any failure to comply with the Council's Code of Conduct is to be dealt with in accordance with Arrangements which it is required to adopt under sub-section (6). Such Arrangements must provide for the Council to appoint at least one Independent Person whose views (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated; (b) may be sought by the Council at any other stage, and (c) may be sought by a councillor or co-opted member against whom an allegation has been made.
- 6.2 Section 28(11) provides that if a Council finds that a member of the authority has failed to comply with its code of conduct (whether or not the finding is made following an investigation under Arrangements put in place under subsection (6)) it may have regard to the failure in deciding:
- (a) whether to take action in relation to the member; and
 - (b) what action to take.

6.3 Whilst Section 28(11) provides that the Council can decide whether to take action and what action to take in response to a finding that a member has failed to comply with the code of conduct, no statutory sanctions currently exist under the Localism Act. All statutory sanctions e.g. to suspend a councillor which previously existed under the Local Government Act 2000 have been repealed. Sanctions are now limited to that which can be imposed under common law or by agreement with the member concerned. Accordingly, sanctions are now largely by way of recommendation or request only. The Hearings Sub-Committee may:

- (a) publish and report its findings to full Council;
- (b) recommend to Council that the Subject Member be requested to apologise;
- (c) recommend to the Subject Member's political group leader that the Subject Member be removed from all committees or sub-committees for a specified period;
- (d) recommend to the Leader of the Council that the Subject Member be removed from the Executive (if they are an Executive Member);
- (e) recommend to Council that the Subject Member be requested to participate in training, conciliation or mediation;
- (f) recommend to Council that the Subject Member be removed from outside appointments;
- (g) withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access for a specified period;
- (h) exclude the Subject Member from the Council's offices except for meeting rooms as necessary for attending Council, Committee or Sub-Committees;
- (i) issue a formal letter;
- (j) issue a formal reprimand to the Subject Member.

7. Human Resource Implications

7.1 There are no human resource implications.

8. Conclusion

8.1 The Sub-Committee is required to consider what action should now be taken in response to the allegations regarding the Subject Member. The Arrangements adopted by the Council for dealing with such matters provide that either (a) the matter is referred for local determination before the Hearings Sub-Committee or, after consulting the Independent Person, the matter proceed to a local resolution.

8.2 Where the complainant does not accept the proposed local resolution the matter must proceed to the Hearing Sub-Committee. The Sub-Committee must now decide whether or not they consider the proposed local resolution a fair and reasonable one. The Sub-Committee is therefore asked to consider a preliminary issue as to whether:

- (a) It considers the resolution proposed to be a fair and reasonable one and, if so, to agree a departure from its current Arrangements as permitted under paragraph 13; or
- (b) To refer the matter for a full hearing.

9. Background Papers

Appendix 1: Code of Conduct for Councillors

Appendix 2: Arrangements for dealing with Allegations of Misconduct by Councillors

Exempt under paragraph 1 of part 1 of Schedule 12A to the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure:

Appendix 3: Complaint letters

Appendix 4: Subject Member response

Appendix 5: Assessment report

Appendix 6: Independent Person's response

Appendix 7: Investigating Officers report

Appendix 8: Proposed local resolution by Subject Member

Appendix 9: Independent Person's view on the proposed local resolution

Appendix 10: Complainant responses to the proposed local resolution

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GUILDFORD BOROUGH COUNCIL

CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

PART 1

GENERAL PROVISIONS

Introduction and Interpretation

1. (1) This Code came into effect on 5 July 2012 and applies to you only when acting in your capacity either as a councillor or co-opted (voting) member of the Council or its committees and sub-committees.
- (2) It is your responsibility to comply with the provisions of this Code which will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by its councillors and co-opted members in accordance with the following principles:
 - **Selflessness.** Holders of public office should act solely in terms of the public interest.
 - **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.
 - **Objectivity.** Holders of public office must act and take decisions impartially fairly and on merit using the best evidence and without discrimination or bias.
 - **Accountability;** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - **Honesty.** Holders of public office should be truthful.
 - **Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.
- (3) In this Code:-

A “disclosable pecuniary interest” is an interest within the prescribed descriptions set out below that you have personally, or is an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with

Appendix 1

whom you are living as if you were civil partners, and you are aware that that other person has the interest:

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant

person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31 (7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

“meeting” means any meeting of:-

- (a) the Council;
 - (b) the Executive of the Council;
 - (c) any of the Council’s or its Executive’s committees, sub-committees, joint committees, joint sub-committees or area committees, including any site visit authorised by the Council, the Executive or any of the aforementioned committees.
- (4) This Code does not cover matters in respect of which the Localism Act 2011 specifically provides that criminal sanctions will apply.
- (5) A failure of a councillor or co-opted member to comply with this Code is not to be dealt with otherwise than in accordance with arrangements approved by the Council under which allegations of such failure can be investigated and decisions on such allegations can be made. In particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure by a councillor or co-opted member to comply with the Code.

General Obligations

- 2. (1) You must treat others with respect.
- (2) You must not:-

Appendix 1

- (a) do anything which may cause the Council to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:-
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a councillor or co-opted member (including yourself) has failed to comply with this code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.
3. You must not:-
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:-
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the Council¹; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute, or in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by councillors and co-opted members.
5. You:-
- (a) must not use or attempt to use your position as a councillor or co-opted member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the Council's resources:-
 - (i) act in accordance with the Council's reasonable requirements;

¹ Means the councillor should always consult the Monitoring Officer before taking a decision on whether or not to disclose confidential information

- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
6. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's Chief Finance Officer or Monitoring Officer where that officer is acting pursuant to their statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.

PART 2

INTERESTS

Predetermination

7. (1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as a councillor.
- (2) However you should not place yourself under any financial or other obligation to outside organisations that might seek to influence you in the performance of your official duties.
- (3) When making decisions you must consider the matter with an open mind and on the facts before the meeting at which the decision is to be made.
- (4) If a councillor considers that they could be biased or they have predetermined their position to a decision, he or she should disclose this and should not take part in the decision making process whenever it becomes apparent that the matter is being considered.

Registration of Disclosable Pecuniary Interests

8. As a councillor or co-opted member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromised your honesty or objectivity. Equally you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and to promote openness and accountability, the Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at the Council's offices and publicly accessible on our website:

<http://www.guildford.gov.uk/article/1306/Councillor-search>

9. You must, before the end of 28 days beginning with the day on which you became a councillor or co-opted member of the Council, notify the Monitoring Officer of any disclosable pecuniary interests which you have at the time when the notification is given. You should be aware that these interests include those of your spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if they were a civil partner so far as you are aware of the interests of that person. These interests will then be entered on the register of interests.

10. Where you become a councillor or co-opted member of the Council as a result of re-election or re-appointment, paragraph 9. applies only as regards disclosable pecuniary interests not entered in the register when the notification is given.

Disclosure of Disclosable Pecuniary Interests and participation in decision making

11. Subject to paragraphs 15 to 18 (*dispensations*), if you are present at any meeting and you are aware that you have, or any other person referred to in paragraph 8 above has, a disclosable pecuniary interest in any matter that will be, or is being, considered at that meeting, you must, irrespective of whether that interest has been registered:

- (a) disclose the nature of the interest to the meeting (or, if it is a sensitive interest as described in paragraph 19 below, disclose merely the fact that it is a disclosable pecuniary interest);
- (b) not participate in any discussion or vote regarding that matter; and
- (c) withdraw immediately from the room or chamber (including the public gallery) where the meeting considering that matter is being held.

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date of the meeting at which it became apparent.

12. Subject to paragraphs 15 to 18 (*dispensations*), if you are aware that you have, or any other person referred to in paragraph 9 above has, a disclosable pecuniary interest in any matter on which either:

- (a) you are authorised to make decisions, or
- (b) you are consulted by an officer discharging powers delegated to them,

you must not, in relation to (a) above, take any decision on that matter or, in relation to (b) above, participate in any consultation with such officer in respect of that matter

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date on which it became apparent.

13. You may participate in any business of the Council where that business relates to the Council's functions in respect of:-

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to councillors or co-opted members
- (v) any ceremonial honour given to councillors; and
- (vi) setting Council Tax or a precept under the Local Government Finance Act 1992.

Acceptance of Gifts and Hospitality

14. As a councillor or co-opted member of the Council you must avoid accepting any gift, hospitality or other favour which could give the impression of compromising your integrity, honesty or objectivity. In particular, you
 - (1) should avoid any behaviour which might reasonably be seen as motivated by personal gain;
 - (2) should exercise caution in accepting any gifts or hospitality which are (or which you might reasonably believe to be) offered to you because you are a councillor or co-opted member;
 - (3) should never accept significant gifts or hospitality (i.e. anything with a value of £25 or more) from suppliers or contractors seeking to acquire or develop business with the Council; and
 - (4) must, within 28 days of receipt or acceptance, notify the Monitoring Officer of any gift you receive or hospitality you accept (of a value of £25 or more) for inclusion in the register of interests.

Dispensations

15. A councillor or co-opted member with a disclosable pecuniary interest in a matter may submit a written request to the Monitoring Officer for the grant of a dispensation allowing that councillor or co-opted member to participate in any discussion and/or vote on that matter at a meeting.
16. The Monitoring officer may, after having had regard to all relevant circumstances, grant a dispensation to the councillor or co-opted member only if, he considers that without the dispensation:
 - (a) the number of persons prohibited from participating in any particular business in relation to the matter would be so great a proportion of the body transacting the business as to impede the transaction of that business, or
 - (b) considers that without the dispensation each member of the Executive would be prohibited from participating in any particular business to be transacted by the Executive in relation to the matter.
17. The Corporate Governance and Standards Committee may, after having had regard to all relevant circumstances, grant a dispensation to the councillor or co-opted member only if, the Committee considers that:
 - (a) without the dispensation the representation of different political groups on the body transacting the particular business would be so upset as to alter the likely outcome of any vote relating to that business, or
 - (b) granting the dispensation is in the interests of persons living in the borough, or
 - (c) it is otherwise appropriate to grant the dispensation.
18. Any dispensation granted must specify the period for which it has effect, and the period specified may not exceed four years.

Sensitive Information

19. (1) Sub-paragraphs (2) and (3) apply where:
- (a) a councillor or co-opted member of the Council has an interest (whether or not a disclosable pecuniary interest), and
 - (b) the nature of the interest is such that the councillor or co-opted member, and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the councillor or co-opted member, or a person connected with that councillor or co-opted member, being subject to violence or intimidation.
- (2) If the interest is entered in the register of interests, copies of the register that are made available for inspection, and any version of the register published on the Council's website, must not include details of the interest (but may state that the councillor or co-opted member has an interest the details of which are withheld under this provision of the Code).
- (3) Where a disclosable pecuniary interest is not entered on the register of interests and would otherwise require disclosure at a meeting, the councillor or co-opted member shall be entitled to merely disclose at the meeting the fact that they have such an interest in the matter concerned.

Removal of entries in the register

20. An entry in the register of interests will be removed once the person concerned:
- (a) no longer has the interest, or
 - (b) is (otherwise than transitorily on re-election or re-appointment) neither a councillor nor a co-opted member of the Council.

GUILDFORD BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS AND CO-OPTED MEMBERS

1 Context

These Arrangements set out:

- (a) how you may make a complaint that a councillor or co-opted member of Guildford Borough Council (“the Council”) or of any parish council within the borough has failed to comply with the code of conduct adopted by the Council or relevant parish council, and
- (b) how the Council will deal with allegations of a failure to comply with the relevant code of conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a councillor or co-opted member of the Council or of any parish council within the borough has failed to comply with the relevant code of conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person¹, 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 authority at any other stage, or by a councillor or co-opted member against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a code of conduct for councillors and co-opted members, which is available for inspection on the Council’s website and on request from the Monitoring Officer. The various codes of conduct adopted by the 23 parish councils within the borough are available for inspection by arrangement with the relevant parish clerk, whose contact details may be viewed by visiting the Council’s website:

www.guildford.gov.uk/parishcouncils

3 Making a complaint

All complaints must be made in writing. If you wish to make a complaint, please write or email to the Council’s Monitoring Officer, Mr Satish Mistry, whose contact details are:

Guildford Borough Council
Millmead House
Millmead
GUILDFORD
Surrey GU2 4BB
Email: satish.mistry@guildford.gov.uk

Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance.

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Council’s Register of Interests and the register of interests for each of the

¹ The Council has appointed Vivienne Cameron, Roger Pett and Bernard Quoroll as its independent persons

parish councils within the borough. The Monitoring Officer is also responsible for administering the system in respect of misconduct complaints.

Please do 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 say and we will not disclose your name and address to the councillor or co-opted member against whom you make the complaint without your prior consent. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

The Monitoring Officer may reject your complaint if, following consultation with the Independent Person, it is considered by the Monitoring Officer to be vexatious, frivolous or politically motivated.

4. Notification of complaint to Subject Member

The Monitoring Officer will normally notify the Subject Member that a complaint has been made.

5. Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the councillor or co-opted member against whom your complaint is directed. Where your complaint relates to a parish councillor, the Monitoring Officer may also inform the relevant parish council of your complaint and seek the views of one of the co-opted parish members on the Corporate Governance and Standards Committee before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the councillor or co-opted member accepting that their conduct was unacceptable and offering an apology or other remedial action. Where a reasonable offer of local resolution is made, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct by the councillor or co-opted member, the Monitoring Officer will refer the matter to the Police.

6. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another council or an external investigator. The Investigating Officer will decide whether he/she 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 the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the councillor or co-opted member against whom you have complained and provide them with a copy of your complaint, and ask them to provide their explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or where disclosure of details of the complaint to the councillor or co-opted member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the councillor/co-opted member, or delay notifying them until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the councillor/co-opted member concerned, to give you both an opportunity to identify any matter in that draft report with which you disagree or which you consider requires more consideration.

Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the councillor/co-opted member concerned and to the relevant parish council, where your complaint relates to a parish councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

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

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub-Committee or, after consulting the Independent Person, seek local resolution.

8.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the councillor/co-opted member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the councillor/co-opted member complies with the suggested resolution, the Monitoring Officer will report the matter to the Corporate Governance and Standards Committee (and the relevant parish council where the complaint refers to a parish councillor) for information, but will take no further action.

8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the councillor/co-opted 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 Sub-Committee which will conduct a local hearing before deciding whether the councillor/co-opted member has failed to comply with the code of conduct and, if so, whether to take any action in respect of the councillor/co-opted member.

Essentially, the Monitoring Officer will conduct a “pre-hearing process”, requiring the councillor/co-opted member to give their 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. 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 councillor/co-opted member has 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 Hearings Sub-Committee. The councillor/co-opted member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub-Committee as to why they consider that they did not fail to comply with the code of conduct.

The Hearings Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the councillor/co-opted member did not fail to comply with the code of conduct, and so dismiss the complaint. If, however, the Sub-Committee concludes that the councillor/co-opted member did fail to comply with the code of conduct, the councillor/co-opted member will be informed of this finding and the Sub-Committee will then consider what action, if any, should be taken as a result of the councillor/co-opted member’s failure to comply with the code of conduct. In doing this, the councillor/co-opted member will be given an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

9. What action can the Hearings Sub-Committee take where a councillor/co-opted member has failed to comply with the code of conduct?

The Council has delegated to the Hearings Sub-Committee such of its powers to take action in respect of individual councillors/co-opted members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Sub-Committee may:

- 9.1 Publish and report its findings in respect of the councillor’s/co-opted member’s conduct to a meeting of the full Council (or to the relevant parish council) for information and recommending that the councillor makes a public apology at that meeting.
- 9.2 Recommend to the councillor’s political group leader (or in the case of un-grouped councillors or co-opted members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period.
- 9.3 Recommend to the Leader of the Council, in the case of a lead councillor who is found to have failed to comply with the code of conduct, that the councillor be removed from the Executive, or removed from particular portfolio responsibilities.
- 9.4 Recommend appropriate training for the councillor/co-opted member.
- 9.5 Remove the councillor/co-opted member or recommend to the relevant parish council that the member be removed from all outside appointments to which they

have been appointed or nominated by the Council or by the parish council for a specified period.

- 9.6 Withdraw or recommend to the relevant parish council that it withdraws facilities provided to the councillor/co-opted member by the Council, such as a computer, website and/or email and internet access for a specified period.
- 9.7 Exclude or recommend that the relevant parish council excludes the councillor/co-opted member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

10. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Sub-Committee as to whether the councillor/co-opted member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the councillor/co-opted member and (if applicable) to the relevant parish council, The Monitoring Officer will make that decision notice available for public inspection and report the decision to the next convenient meeting of the Corporate Governance and Standards Committee.

11. Who are the Hearings Sub-Committee?

The Hearings Sub-Committee is a sub-committee of the Council's Corporate Governance and Standards Committee. The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and his/her views are sought and taken into consideration before the Sub-Committee takes any decision on whether the councillor's/co-opted 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 failure to comply with the code of conduct.

12. Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 12.1 is, or has been within the past five years, a member, co-opted member or officer of the Council; or
- 12.2 is, or has been within the past five years, a member, co-opted member or officer of a parish council within the borough; or
- 12.3 is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means:
 - 12.3.1 Spouse or civil partner;

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- 12.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 12.3.3 Grandparent of the other person;
- 12.3.4 A lineal descendent of a grandparent of the other person;
- 12.3.5 A parent, sibling or child of a person within sub-paragraphs 12.3.1 or 12.3.2;
- 12.3.6 A spouse or civil partner of a person within sub-paragraphs 12.3.3, 12.3.4 or 12.3.5; or
- 12.3.7 Living with a person within sub-paragraphs 12.3.3, 12.3.4 or 12.3.5 as husband and wife or as if they were civil partners.

The functions of the Independent Person are as follows:

- They must be consulted by the Council before it makes a decision on an allegation of misconduct by a councillor/co-opted member that it has decided to investigate or before it decides on action to be taken in respect of that councillor/co-opted member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any other stage; and
- They may be consulted by a councillor or co-opted member of the Council or of a parish council against whom a complaint has been made.

13. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Hearings Sub-Committee the right to depart from these arrangements where the Sub-Committee considers it expedient to do so in order to secure the effective and fair consideration of any matter.

14. Appeals

There is no right of appeal for you as complainant or for the councillor/co-opted member against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Adopted by the Council on: 8 May 2012

Implemented on: 1 July 2012

Amended by the Council on: 9 December 2014

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Appendix 4

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Appendix 9

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