

COUNCIL
30 November 2016

RECOMMENDATIONS OF THE GOVERNANCE AND AUDIT COMMITTEE
Director of Corporate Services – Legal

1 PURPOSE OF REPORT

This report seeks Council endorsement to the recommendations made to Council by the Governance and Audit Committee at its meeting on 21 September 2016

2 RECOMMENDATIONS

- 2.1 That Council adopt the changes to (1) Delegations of Chief Officer: Planning, Transport and Countryside and (2) The Protocol for Members in Dealing with Planning Matters set out in the **Appendix A** to this report.
- 2.2 Agree to the dissolution of the Standards Committee and to the adoption of revised terms of reference of the Governance & Audit Committee to include consideration of Standards issues as set out in **Appendix B**
- 2.3 Approve the procedure for dealing with Councillor Code of Conduct complaints as set out in **Appendix C**
- 2.4 Approve the procedure for dealing with dispensation requests by Councillors who would otherwise be prevented from participating at meetings of the Council, Executive or Committee due to the existence of an Affected or Disclosable Pecuniary Interest as set out in **Appendix D**
- 2.5 Delegate to the Borough Solicitor the authority to make appropriate amendments to the constitution so as to give effect to its decisions in respect of (a), (b) and(c) above
- 2.6 Appoint David St John to fill the Independent Member vacancy on the Governance & Audit Committee arising from the resignation of the previous incumbent

3. REASONS FOR RECOMMENDATIONS

- 3.1 To give effect to the recommendations of the Governance and Audit Committee.
- 3.2 With regard to recommendations 2.2-2.5 it should be noted that a Standards Framework Working Group was set up in May 2016 chaired by Councillor Iain McCracken with the following Terms of Reference:

“To review the effectiveness of the Standards Framework for Councillors currently operating in Bracknell Forest Council, having regard to:

- Local and national experience*
- The role and desirability of a Standards Committee*

- *The effectiveness of available sanctions*
- *The Councillor Code of Conduct”*

3.3 The Working Group met on three occasions between May and July 2016. It considered a report from the Borough Solicitor setting out proposals for changes to the Standards Framework which were agreed subject to a number of amendments at its final meeting on 6 July 2016

4 ALTERNATIVE OPTIONS CONSIDERED

4.1 None

5 SUPPORTING INFORMATION

Chief Officer Delegations /Planning protocol for Members (Appendix A Governance and Audit)

5.1 The proposed changes recommended by the Overview and Scrutiny Panel and endorsed by Executive, seek to ensure that the planning committee determine applications which have a higher level of public interest; this will ensure the effective use of the committee’s time. The other changes seek to ensure that the planning committee determines applications which are made by officers and councillors who are involved in the planning process at Bracknell Forest. This will ensure that such applications are considered in public with an appropriate level of public scrutiny.

Dissolution of Standards Committee (Appendix B Governance and Audit)

5.2 It is proposed that Standards Hearings are conducted before a Panel of Governance and Audit Members (Code of Conduct Panel) including a non voting Independent Member with the Independent Person also being available to further advise the Panel. This is as an alternative to the current procedure which involves an initial “determination” by the Standards Committee which is then recommended for approval by the Governance and Audit Committee. Whilst the current arrangements have the distinct advantage of enabling independent representation in the decision making process, it is arguably unwieldy in requiring two separate meetings of Members in situations where disputes often require timely disposal.

There is no statutory requirement for the Council to retain a Standards Committee. A consequence of adopting a procedure which culminates in a hearing outside the ambit of the Standards Committee is to throw into doubt the continuing viability of that Committee particularly when having regard to the paucity of business in recent years which has resulted in most scheduled meetings being cancelled. In 2015/16 the committee was only convened on a single occasion to consider the Annual Standards Report and a subsequently rescinded report recommending changes to the Standards Framework. This report therefore recommends the dissolution of the Standards Committee and the transference of its functions to the Governance and Audit Committee.

Procedure for dealing with Code of Conduct complaints

- 5.3 Local Authorities are required to have in place arrangements for investigating and making decisions on allegations into Code of Conduct breaches. The current Bracknell Forest Council arrangements simply set out the following steps;
- Monitoring Officer receives complaint and consults with Independent Chairman of Standards Committee before deciding whether to investigate, resolve informally or take no action
 - If referred for investigation the Monitoring Officer will seek the views of the Independent Person (“IP”)
 - Where the investigation finds breach of the Code the Monitoring Officer may (following consultation with the IP) seek to resolve the matter to the satisfaction of the complainant or where not appropriate, submit the complaint and investigation report for a full hearing before the Standards Committee
 - The Standards Committee reach a view on whether there has been a breach of the Code and if so what sanctions to impose
 - Available sanctions include censure, recommending removal from committees, Executive, Portfolio responsibilities or outside appointments, withdrawal of facilities and exclusion from Council premises

The recommendations in Appendix C of this report have regard to the following matters not captured in the existing provisions above

- | |
|---|
| <ul style="list-style-type: none">– Timescales within which early stages of the complaint will be dealt with– Requirements for complaints to be in prescribed format– Criteria for responding to complainant requests for confidentiality– Examples of where no action should be taken in response to complaint– Summary of investigation process– An alternative hearing forum for determination of complaints which have been investigated and evidence of failure to comply with Code of Conduct is identified– Update in available range of sanctions to reflect Council’s advice |
|---|

- 5.4 The current legislation does not provide an express statutory basis for imposing sanctions on Members and in the absence of a national framework as existed previously it is unclear as to what sanctions can be available to local authorities where there have been breaches of their codes.
- 5.5 The sanctions currently available under current Bracknell Forest Council arrangements include censure, recommending removal from committees, Executive, Portfolio responsibilities or outside appointments, withdrawal of facilities and exclusion from Council premises. In the absence of statutory authority to issue stronger sanctions authorities must place greater reliance on a strong ethical culture, trial by media and Group discipline.
- 5.6 In this respect the arrangements proposed in Appendix C of this report for the investigation of complaints, whilst recognising the limitations on the scope of

Unrestricted

permissible sanctions, nonetheless anticipate a level of interaction between those arrangements and Party Group discipline exercised by Party whips in order that where the Group concludes that the Standards process has not permitted a sufficiently robust outcome, it retains the power to take appropriate action pursuant to its own constitutional arrangements.

5.4

Procedure for dealing with dispensations

5.5 Prior to the coming into force of the relevant provisions of the Localism Act 2011, dispensations could only be granted by the Standards Committee. The Act extended this power to the Council, a Committee, Sub Committee or an Officer.

The Act also broadened the basis upon which dispensations could be granted to incorporate the following scenarios;

- i. without the dispensation the number of persons prohibited from participating in the particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business*
- ii. without the dispensation the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote relating to the business*
- iii. in relation to an Executive function, without the dispensation each member of the Executive would be prohibited from participating in the particular business*
- iv. granting the dispensation is in the interests of persons living in the authority's area*
- v. it is otherwise appropriate to grant a dispensation*

5.6 On 25 April 2012 the Council agreed that dispensations in respect of scenarios (i) to (iii) may be granted by the Monitoring Officer in consultation with the Chairman of the Standards Committee but that decisions relating to (iv) and (v) due to their subjective nature, should be reserved to the Governance and Audit Committee. It was however considered by the Standards Committee at its meeting in February 2016 that due to the tight timeframes involved between a Councillor becoming aware of an Interest and the meeting at which the interest would otherwise need to be declared, determination by a Governance and Audit Committee would be impracticable. It is therefore proposed that such determinations are made by the Monitoring Officer in consultation with the Chair or Vice Chair of the Governance and Audit Committee

Appendix D of this report sets out a procedure for the granting of dispensations for inclusion within the Councillor Code of Conduct to reflect the above.

Governance and Audit Committee-Independent Member

5.7 The Independent Member of the Standards Committee resigned in September and it is recommended that David St.John is appointed in his place.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

6.2 There are no financial implications directly arising.

Equalities Impact Assessment

6.3 Not required.

Strategic Risk Management Issues

6.4 Not relevant.

Other Officers

6.5 None.

7 CONSULTATION

Principal Groups Consulted

7.1 None.

Method of Consultation

7.2 Not Applicable.

Representations Received

7.3 Not Applicable.

Background Papers

None.

Contact for Further Information

Sanjay Prashar, Borough Solicitor – 01344 355679

sanjay.prashar@bracknell-forest.gov.uk

APPENDIX A – Governance and Audit

1. **Delegations to officers: Chief Officer: Planning , Transport and Countryside**

Amendments

i. **Paragraph J.2.b**

Applications (including applications to vary planning obligations or for a building to be listed but not including applications for Certificate of Lawful Use) attracting valid planning objections before a delegated decision is made, where valid planning objections arise from more than ~~three~~ five households and/or organisations, may only be allowed by the Chief Officer: Planning ~~and~~ Transport and Countryside if he considers it appropriate to do so following reference to the Chairman of the Planning Committee and Ward Councillors. This exception does not apply to determination of Prior Approvals under paragraph A4 of Part 1 Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

Source

<p>The Panel recommends that to minimise the number of minor and non-controversial Planning Applications referred to the Planning Committee, there should be an increase in the threshold for the numbers of objections resulting in referral to the Planning Committee, from ‘more than 3’ to ‘more than 5’, and the criteria for referral could usefully distinguish between major and minor developments. The current trigger point of three can be met very easily, and setting the bar higher should result in only those applications attracting substantial opposition (i.e. beyond the immediate neighbours of the applicant) being put before the PC.</p>	<p>Amend Constitution Chief Executive and Directors – general powers Section J2b,</p>	
<p>The Panel also recommends that any objections that do not refer to any Planning issues should be excluded from the calculation of the number of objections (though the existence of all objections should be recognised in the Case officer’s report).</p>	<p>Amend Director’s delegation, to refer to valid planning reasons (as referred to in Chief Executive and Directors – general powers Section J2b)</p>	

ii. **Additional paragraph J.2.0**

Determination of whether an application under 2 (a) or (b) above from a member of Council staff whose role involves working directly with the Planning division should be referred to the Planning Committee. (Refer to Protocol for Members dealing with Planning matters for consideration of Applications from any Council Chief Officer)

Source

(see below)

2. Protocol for Members dealing with Planning Matters

Add additional paragraph between existing paragraphs 4.1 and 4.2 as follows;

All planning applications submitted by a Councillor (or their partner/spouse or close family member) shall be determined by the Planning Committee.

All planning applications submitted by a Council Chief Officer and above (or their partner/spouse or close family member) shall be determined by the Planning Committee.

Source

Recommendation of O&S Panel	Action agreed by Executive
In the interests of high standards of governance, we recommend that the Council should explicitly require Committee approval for planning applications by any Borough Councillor, perhaps by amending the Planning Protocol.	Directors Delegations to be amended

Unrestricted

<p>The Chief Officer: Planning and Transport's delegated authority requires that any planning applications from members of staff in that division, also any staff involved in the decision making process, shall be determined by the Planning Committee (PC). To achieve and maintain high standards of governance, the Panel recommends that the Council should require Committee approval for planning applications by any Council employee.</p>	<p>Delegation to be amended to include all Chief Officers, Directors and the Chief Executive, and that the Chief Officer : Planning Transport and Countryside uses his discretion to bring applications to the planning committee where the applicant is a member of staff whose role involves working directly with the planning division -Directors Delegations and Planning Protocol to be amended</p>
---	--

APPENDIX B – Governance and Audit

Governance & Audit Committee – Revised Terms of Reference

Amended Part 2/Section 4 paragraph 2.6 as follows

2.6 Standards ~~Committee~~ Framework

1. To advise the Council on promoting and maintaining high standards of conduct by the Members and co-opted Members of the Council
2. To convene Panels to be known as Code of Conduct Panels to consider allegations of misconduct against Members (and Co-opted Members) of the Council, ~~meaning a breach of~~ pursuant to the Council's Code of Conduct or of any code or protocol adopted by the Council, and to impose appropriate sanctions in the case of a breach being found ~~and advise the Governance and Audit Committee as to whether any such allegation should be upheld and if so what the sanction should be.~~ *Each Panel to comprise three councillors drawn from the Governance & Audit Committee based on their availability, and one nonvoting co-opted member who is not a Borough councillor*
3. (a) To assist Members and co-opted Members of the Council to observe the Codes of Conduct
(b) the adoption and revision of its Codes of Conduct
(c) the adoption of appropriate protocols governing the ethical standards of the Members and Officers of the Council
4. To monitor the operation of the Council's Codes of Conduct
5. To advise, train or arrange to train Members and co-opted Members of the Council on matters relating to their Codes of Conduct

[Part 1/Section 6 of the Constitution setting out composition, roles and functions of the Standards Committee to be deleted in its entirety]

APPENDIX C – Governance and Audit

BRACKNELL FOREST BOROUGH COUNCIL **RECOMMENDED ARRANGEMENTS FOR DEALING WITH COUNCILLOR CODE** **OF CONDUCT COMPLAINTS**

1. Context

- 1.1 These 'Arrangements' set out how a complaint may be made that an elected or co-opted member of this Council has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with that Code of Conduct.
- 1.2 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place 'arrangements' under which allegations that a member or co-opted Member of the Council, or of a committee or sub-committee of the Council, has failed to comply with its Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member against whom an allegation as been made.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on its web site

3. Making a complaint

- 3.1 Complaints alleging that a member has breached the Code of Conduct must be in writing stating the paragraph of the Code that it is alleged the member has not complied with and explaining the circumstances of the non-compliance. The complainant must complete the Council's complaint form which is available on the Council's web site at www.bracknell-forest.gov.uk
- 3.2 Where a complaint is received orally or by email the complainant will be advised to complete the complaint form. If necessary, assistance will be provided or arrangements made to enable the complainant to complete the complaint form.
- 3.3 The complainant must provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If they wish to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose it to the member against whom the complaint has been made without their prior consent. However there may be exceptions, such as those outlined in paragraph 3.7 below. A request from a complainant for confidentiality should be supported by reasons. The Council may investigate complaints received anonymously or where the complainant

Unrestricted

cannot otherwise be identified, where there is a clear public interest in doing so.

- 3.4 The Democratic Services Team will log the complaint and write to the complainant **within five working days** acknowledging receipt of the complaint.
- 3.5 Officers in the Democratic Services Team will check a complaint. If a complaint specifies that it relates to a failure to comply with the Code of Conduct by a member, or it appears that it might relate to a member and a failure to comply with the Code of Conduct, then it will be passed to the Council's Monitoring Officer for further action **within two working days** of its acknowledgement, together with any relevant correspondence with the complainant.
- 3.6 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. The Deputy Monitoring Officer may take the role of the Monitoring Officer if the Monitoring Officer is unable to act.
- 3.7 The Monitoring Officer will normally disclose to the subject member, and where applicable, the Party whip, the details of the complaint, except where such disclosure would be against the public interest or would prejudice any future investigation, or where the complainant has requested confidentiality. If any one of these exceptions applies the Monitoring Officer may only notify the Member of the fact that an allegation has been made and the reasons why details cannot be disclosed. A complainant who has requested confidentiality will be informed if the Monitoring Officer considers that it is necessary to divulge their details to the member so that an investigation can be progressed.

4. Will the complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take one of three decisions:
 - i. Take no action
 - ii. Seek to resolve the complaint informally
 - iii. Refer the Complaint for investigation

This decision will normally be taken **within 14 days** of receipt of the complaint. The Monitoring Officer will inform the complainant, the Member, and where applicable, the Party whip, of his decision and the reasons for that decision.

- 4.2 It is likely that no action will be taken where;
 - there is no prima facie evidence that the Code has been breached;
 - taking into account the nature of the allegation, using public funds to examine the matter further would be disproportionate;
 - the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;

Unrestricted

- the conduct complained about has already been the subject of investigation or enquiry by another public body;
- the same, or substantially the same issue (arising from the same act or omission) has been the subject of a previous Code of Conduct allegation, and there is nothing further to be gained;
- there is not enough information to take the matter further;
- the complaint was made anonymously;
- the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances;
- the member has already apologised for the action that was the subject of the complaint, and that is sufficient to dispose of the complaint;
- the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).
- the complaint relates to conduct in a Members private life and not in their official capacity.

4.3 Where the Monitoring Officer requires additional information in order to come to a decision they may seek such information from the complainant, and may request information from the member against whom the complaint is directed.

4.4 As indicated in paragraph 4.1 above, 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 member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Before seeking such a resolution the Monitoring Officer shall have regard to previous infringements of the Code of Conduct by the Member and may in those circumstances refer the matter to the Code of Conduct Panel for the imposition of an appropriate sanction.

4.5 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police and other regulatory agencies.

5. How is the investigation conducted?

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator. The Monitoring Officer will write to the relevant parties and, where applicable, the Party whip:

- a) informing them that the matter has been referred for investigation;
- b) if appropriate, advising them who is to be responsible for conducting the investigation;
- c) advising them how the investigation will be carried out and within what timescale; and
- d) giving any Member who is the subject of the investigation the opportunity to comment on the complaint made.

5.2 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what

documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

- 5.3 The Investigating Officer will normally write to the member against whom the complaint has been made and provide them with a copy of the complaint, and ask the member to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete personal details from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 5.4 At the end of their 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 member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or which they consider requires more consideration.
- 5.5 Having received and taken account of any comments which may be made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

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

- 6.1 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 the complainant, the member concerned, and where applicable, the Party whip notifying them that he/she is satisfied that no further action is required, and give both parties a copy of the Investigating Officer's final report. The findings will be reported to the Council for information, without question or debate, unless the member asks that they be not reported. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

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

- 7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before a Code of Conduct Panel or, after consulting the Independent Person, seek a resolution.

Resolution

- 7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such resolution may include the member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Governance and Audit Committee for information, but will take no further action. However, if

Unrestricted

the Monitoring Officer concludes that a resolution cannot be reached at this stage he will refer the matter for a Code of Conduct Panel hearing.

Hearing

- 7.3 If the Monitoring Officer considers that resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, 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 a Code of Conduct Panel which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

1. What is the Code of Conduct Panel?

- 8.1 The Code of Conduct Panel will comprise four members of the Governance and Audit Committee one of whom will be an Independent Member. (Substitution provisions relating to G&A Committee will apply)
- 8.2 The Independent Person will be present at any hearing to advise the Panel
- 8.3 The Monitoring Officer will conduct a 'pre-hearing process', requiring the 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, and the Chair of the Code of Conduct Panel may issue directions as to the manner in which the hearing will be conducted.
- 8.4 A member who is the subject of a hearing may be represented by Counsel, by a Solicitor or, with the consent of the Code of Conduct Panel, by any other representative.
- 8.5 If a member who is the subject of a report to the Code of Conduct Panel fails to attend a hearing of which that member has been given notice, the Code of Conduct Panel may:
- (a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that member; or
 - (b) adjourn the hearing to another date.
- 8.6 The Panel may not proceed in the absence of the Independent Member without the prior consent of the Governance & Audit Committee Chairman and the Monitoring Officer

9. What action can the Code of Conduct Panel take where a member has failed to comply with the Code of Conduct

- 9.1 The sanctions which may be imposed upon a Councillor found to be in breach of the Code are;

Unrestricted

- The Panel recommending that the Council issue a formal Censure towards the Councillor/Co-opted member eg through a Motion at a Council meeting
- The Panel publishing its decision by issuing a press release
- The Panel reporting findings to Council for inclusion on Council agenda
- The Panel recommending to the Councillor's group leader (or in the case of "ungrouped" members, recommend to Council or to Committees) that he/she be removed from any or all committees or sub-committees
- The Panel recommending to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular portfolio responsibilities
- The Panel recommending that the Councillor be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council
- The Panel Instructing the Monitoring Officer to arrange appropriate training
- The Panel requiring the Councillor/Co-opted Member to issue a written apology to the complainant in an open letter
- The Panel referring the matter to the party whip in order that the Political group may consider what action to take under its own procedures

9.2 The Code of Conduct Panel has no power to suspend or disqualify the member or to withdraw the member's allowance.

10. What happens at the end of the hearing?

10.1 At the end of the hearing, the Chair will state the decision of the Code of Conduct Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Code of Conduct Panel resolves to take.

10.2 As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Code of Conduct Panel, and send a copy to the complainant, the member, and where applicable, the Party whip. The Monitoring Officer will make that decision notice available for public inspection and report the decision to the next convenient meeting of the Governance and Audit Committee.

11. Withdrawal of complaint

11.1 The complainant can request, but there is no right, to withdraw a complaint and it is for the Monitoring Officer in any particular case to consider and decide whether or not to agree to a withdrawal. When making a decision the Monitoring Officer will give due consideration to such matters as:

- a) Whether there are identifiable underlying reasons for the withdrawal request;
- b) Whether the public interest in taking action on a complaint outweighs the reasons behind the complainant's withdrawal request; and
- c) Whether the complaint can be adequately investigated without the complainant's participation.

11.2 The Party whip will, where applicable, be notified by the Monitoring Officer prior to a decision being taken to agree to a withdrawal of the complaint.

12. Revision of these arrangements

12.1 The Council may by resolution agree to amend these arrangements, and the Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

13.1 There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer or the Code of Conduct Panel.

13.2 If either party feels that the Council has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman

Code of Conduct Panel Hearing Procedure

1. Pre Hearing Procedure

- 1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre -hearing procedure to:
- (a) Identify which facts in the investigation report are agreed and which are in dispute;
 - (b) Determine whether any fresh evidence not mentioned in the investigation report may be put before the hearing;
 - (c) Determine whether documentary evidence which a party wishes to put before the hearing is admissible;
 - (d) Establish whether the parties intend to attend; whether the parties intend to be represented in accordance with paragraph 2 and, if so, by whom; and the number and identity of witnesses to be called;
 - (e) Determine whether the whole or any part of the hearing should be held in private;
 - (f) Determine whether the whole or any part of the investigation report or other relevant documents should be withheld from the public.
- 1.2 The Monitoring Officer will notify the parties of the date, time and place for the hearing.

2. Rules of procedure

- 2.1 The Code of Conduct Panel consists of the Members of the Governance and Audit Committee.
- 2.2 The quorum for a meeting of the Hearing Panel is three voting members
- 2.3 The Independent Person's views must be sought and taken into consideration before the Code of Conduct Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Panel in writing.
- 2.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Code of Conduct Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings

Unrestricted

of the Code of Conduct Panel where it is likely that confidential or exempt information will be disclosed.

- 2.5 All matters/issues before the Code of Conduct Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 2.7 Where the Subject Member fails to attend the Panel and where the Panel 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 or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Panel 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.

3. Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the Code of Conduct Panel by a fellow councillor, friend or colleague.

4. The conduct of the hearing

- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:
- (a) elect a Chairman;
 - (b) apologies for absence;
 - (c) declarations of interests;
 - (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing
 - (e) introduction by the Chairman, of members of the Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their presentative;
 - (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
 - (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
- 4.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 4.3 The Code of Conduct Panel may adjourn the hearing at any time.
- 4.4 Presentation of the complaint
- (a) The Monitoring Officer, legal advisor or chairman may each make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.

Unrestricted

- (b) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (c) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (d) The Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

4.5 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Panel may question the Subject Member and any witnesses called by the Subject Member.

4.6 Summing up

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

4.7 Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Panel, there has been a breach of the Code of Conduct.

4.8 Deliberations of the Code of Conduct Panel

Deliberation in private

- (a) The Code of Conduct Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.

4.9 **Announcing decision on facts found**

- (a) The Code of Conduct Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct

Unrestricted

- (b) Where the Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to apply one or more sanctions, the Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- What was the Subject Member's intention and did they know that they were failing to follow the Council's Code of Conduct?
- Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- Has there been a 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 Council's 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 reprimanded or warned for similar misconduct?
- Has the Subject Member previously breached of the Council's Code of Conduct?
- Is there likely to be a repetition of the incident?

- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Panel will adjourn and deliberate in private.

4.10 Formal Announcement of Decision

- (a) Where the complaint has a number of aspects, the Code of Conduct Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer's on the

Unrestricted

application of sanctions, the Panel will reconvene the hearing in public and the Chairman will announce:

- the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
- the sanctions (if any) to be applied;
- the recommendations (if any) to be made to the Council or Monitoring Officer;
- that there is no right of appeal against the Panel's decision and/or recommendations.

5. Range of possible sanctions

- The range of possible sanctions are as follows;

- | |
|--|
| <ul style="list-style-type: none">• The Panel recommending that the Council issue a formal Censure towards the Councillor/Co-opted member eg through a Motion at a Council meeting• The Panel publishing its decision by issuing a press release• The Panel reporting findings to Council for inclusion on Council agenda• The Panel recommending to the Councillor's group leader (or in the case of "ungrouped" members, recommend to Council or to Committees) that he/she be removed from any or all committees or sub-committees• The Panel recommending to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular portfolio responsibilities• The Panel recommending that the Councillor be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council• The Panel Instructing the Monitoring Officer to arrange appropriate training• The Panel requiring the Councillor/Co-opted Member to issue a written apology to the complainant in an open letter• The Panel referring the matter to the party whip in order that the Political group may consider what action to take under its own procedures |
|--|

- The Code of Conduct Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- The Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

APPENDIX D – Governance and Audit

Procedure for the Granting of Dispensations

1 Introduction

1.1 This guide explains:-

- (a) The purpose and effect of dispensations
- (b) The procedure for requesting dispensations
- (c) The criteria which are applied in determining dispensation requests the terms of dispensations.

2 Purpose and effect of dispensations

2.1 In certain circumstances Councillors may be granted a dispensation which enables them to take part in Council business where this would otherwise be prohibited under the Code of Conduct or by law. (ie where they have a Disclosable Pecuniary Interest or Affected Interest). If Councillors act within the terms of their dispensation there is deemed to be no breach of the Code of Conduct or the law.

3 Process for making requests

3.1 Any Councillor who wishes to apply for a dispensation must fully complete the attached form and submit it to the Monitoring Officer at least 3 working days before the meeting for which the dispensation is required. Applications may be accepted within a shorter period in exceptional circumstances.

3.2 In order to avoid delay Councillors must ensure that they give full details of the grounds for their request and submit it to the Monitoring Officer as soon as they become aware that a dispensation is necessary.

3.3 A request for dispensation must be made on an individual basis. Group applications are not permitted.

4 Consideration by the Monitoring Officer in consultation with the Chair of the Governance & Audit Committee

Unrestricted

- 4.1 The Monitoring Officer will consider requests for a dispensation having regard to the criteria set out in paragraph 5.
- 4.2 The Monitoring Officer, after consultation with the Chairman, or in their absence the Vice Chairman of the Committee, may grant a dispensation if they consider that either;
- (a) Without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business (i.e. the meeting would be inquorate);
 - (b) Without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote and;
 - (c) Without the dispensation each member of the Council's Executive would be prohibited from participating in any particular business to be transacted by the Council's Executive.
 - (d) Granting a dispensation is in the interests of persons living in the Authority's area; or
 - (e) It is otherwise appropriate to grant a dispensation.
- 4.3 The terms of any dispensation shall be in accordance with paragraph 6.
- 4.4 The Monitoring Officer will notify the Councillor of their decision and reasons in writing at the earliest opportunity.

5 Criteria for determination of requests

- 5.1 In reaching a decision on a request for a dispensation the Monitoring Officer will take into account:
- (a) The nature of the Councillor's Disclosable Pecuniary interest or Affected Interest

Unrestricted

- (b) The need to maintain public confidence in the conduct of the Council's business
- (c) The possible outcome of the proposed vote
- (d) The need for efficient and effective conduct of the Council's business
- (e) Any other relevant circumstances.

6 Terms of dispensations

6.1 Dispensations may be granted:

- (a) For one meeting; or
- (b) For a period not exceeding 4 years.

6.2 Dispensations may allow the Councillor:

- (a) To participate, or participate further, in any discussion of the matter at the meeting(s); and/or
- (b) To participate in any vote, or further vote, taken on the matter at the meeting(s).

7 Disclosure of decision

7.1 Any Councillor who has been granted a dispensation must declare the nature and existence of the dispensation before the commencement of any business to which it relates.

BRACKNELL FOREST COUNCIL

Dispensation Request Form

Please give full details of the following in support of your application for a dispensation. You should refer to the accompanying "Procedure for Granting Dispensations"

If you need any help completing this form please contact the Monitoring Officer.

Your name	
Decision-making body in respect of which you require a dispensation	
Details of your membership of that body	
The business for which you require a dispensation (refer to agenda Item number if appropriate)	
Details of your interest in that business	
Date of meeting or time period (up to 4 years) for which dispensation is sought	
Dispensation requested to participate, or participate further, in any discussion of that business by that body	Yes/No
Dispensation requested to participate in any vote, or further vote, taken on that business by that body	Yes/No

Unrestricted