

## STANDARDS HEARING SUB-COMMITTEE

Monday 11 February 2019 at 10.00 am

Committee Room 2 - Epsom Town Hall

The members listed below are summoned to attend the Standards Hearing Sub-Committee meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Councillor Mike Teasdale (Chairman)    Councillor John Beckett  
Councillor Michael Arthur MBE

Yours sincerely



Chief Executive

For further information, please contact Democratic Services, 01372 732122

### AGENDA

**1. DECLARATIONS OF INTEREST**

Members are asked to declare the existence and nature of any Disclosable Pecuniary Interests in respect of any item of business to be considered at the meeting.

**2. CODE OF CONDUCT COMPLAINT (Pages 3 - 64)**

To consider a Member's Code of Conduct complaint against Councillor Mountain.

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## Code of Conduct Complaint against a Councillor

<b>Head of Service/Contact:</b>	Amardip Healy, Monitoring Officer
<b>Annexes/Appendices (attached):</b>	<b>Annex 1:</b> Members Code of Conduct <b>Annex 2:</b> Arrangements for dealing with a complaint about a councillor <b>Annex 3:</b> Investigator's Report ( <b>exempt from publication for reason set out on the Agenda</b> ) <b>Annex 4:</b> Investigation Bundle ( <b>exempt from publication for reason set out on the Agenda</b> )
<b>Other available papers (not attached):</b>	None Stated

### Report summary

To consider a Member's Code of Conduct complaint against Councillor Mountain.

### Recommendation (s)

The Sub Committee is asked to consider the Investigating Officer's report and resolve what action, if any, is required.

## 1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 The Code of Conduct is a way of ensuring the business of the Council is undertaken in a professional manner and clarifies and reinforces the ethical standards in local government.
- 1.2 It defines a set of practical guidelines and clearly sets out the councillor's responsibilities as a representative of the residents of Epsom and Ewell. It also requires that appropriate interests in jobs, property and businesses are declared.
- 1.3 It is important that the public have confidence in all Members of the Council who are duty bound to follow the Council's Members Code of Conduct.

## 2 Background

- 2.1 Under Section 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 (or, additionally, in the case of this authority, Advisory Panel) of the Council, has failed to comply with that Council’s Code of Conduct can be investigated and decisions made on such allegations.
- 2.2 Following the adoption of the Epsom and Ewell Borough Council Member Code of Conduct, the Council also approved a process for investigating complaints in July 2012. The Member Code of Conduct can be found at Section A of Part 5 of the Constitution. A copy of the Code is attached at **Annex 1** and the arrangements for investigation and determination are attached at **Annex 2**.
- 2.3 Guidance on how to make a complaint against a member and the processes for such are on the Council’s website.

## 3 Complaint

- 3.1 A complaint was made against Councillor Mountain by a planning agent, Mr Lewis, acting for a resident on a planning application.
- 3.2 In light of the nature of the complaint, it was referred on for investigation. The Monitoring Officer appointed Ms Beesly, Solicitor, as the Investigator and a copy of her report is attached at **Annex 3 (exempt from publication for the reason set out on the Agenda)** and the bundle of supporting evidence is at **Annex 4 (exempt from publication for the reason set out on the Agenda)**.
- 3.3 There were seven individual parts to the complaint, and these are set out in the Investigator’s report at page 1. The matters are interrelated in that they all relate to an allegation that Councillor Mountain failed to call in a planning application when asked to do so by an applicant who lived in Councillor Mountain’s Ward.
- 3.4 The allegations of the breach of the Members’ Code of conduct related to ‘Openness’ and a failure to comply with the Model Code of Practice in respect of Planning Matters, which the Member Code of Conduct requires to be complied with.
- 3.5 The Investigator found on one of the seven matters. As a result of the arrangements for dealing with a complaint about a councillor, the matter has had to be referred to the Standards Sub Committee for determination.
- 3.6 It is clear from the Investigator’s report that Councillor Mountain accepts that she did not respond to emails to her Council email address. As a result she was unable to engage fully with the complainant over the issues being raised, which ultimately resulted in the complaint being made.

#### **4 Financial and Manpower Implications**

4.1 There are no financial or staffing implications arising out of this report.

4.2 **Chief Finance Officer's comments:** *None arising from the contents of this report.*

#### **5 Legal Implications (including implications for matters relating to equality)**

5.1 None arising from the contents of this report.

5.2 **Monitoring Officer's comments:** *It is important the public have the necessary levels of trust and confidence in the system of support from their Councillors when needed.*

5.3 *There is often a balance to be had, and it may not always be possible for a Councillor to achieve the outcome a resident may be wishing to secure. However, it is important for correspondence to both document and provide responses to those who seek to contact their local representative and for Councillors to be contactable by the methods of communication they have available.*

5.4 *Councillor email addresses are designed to be the route for contact for all Council related activity, be it casework or Council business. All Councillors are now registered as Data Controllers in their own right and it is important for Councillors to understand the risks and obligations which flow from this.*

#### **6 Sustainability Policy and Community Safety Implications**

6.1 N/A

#### **7 Partnerships**

7.1 N/A

#### **8 Risk Assessment**

8.1 N/A

#### **9 Conclusion and Recommendations**

9.1 The Sub Committee is asked to consider the evidence presented and to come to a decision on what action, if any, should be taken in this matter.

9.2 The Council has delegated to the Sub-Committee powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct.

9.3 Paragraph 10 of the "Arrangements for dealing with a complaint about a councillor" sets out the options open to the Sub Committee. Accordingly, the Sub-Committee may –

- Decide that no further action is required;
- Publish its findings in respect of the member's conduct;
- Issue a statement of censure;
- Report its findings to Council;
- Recommend to the member'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 of the Council;
- Withdraw facilities provided to the member by the Council, such as a computer, and/or email and Internet access; or
- Exclude the member from some or all of the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

**Ward(s) affected:** (All Wards);

# Epsom & Ewell Borough Council Member Code of Conduct

Agenda Item 2  
Annex 1

As a member or co-opted member of Epsom & Ewell Borough Council you shall have regard to the following principles of public life

- Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - honesty
- and
- leadership

Accordingly, when acting in your capacity as a member or co-opted member -

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit and must be impartial and seen to be impartial.
4. You must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of Epsom & Ewell Borough Council and should be prepared to give reasons for those decisions and actions.
6. You will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the commercial interests of the Council or another person or organisation. This information must not be revealed without proper authority.

7. You should be mindful of the requirement to declare and record any disclosable pecuniary interests in a manner conforming to the procedures set out in the box below.
8. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
9. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.
10. In addition to compliance with the Member Code of Conduct, you are expected to comply with the following codes:
  - (a) Member/Officer Protocol
  - (b) Planning and Licensing Codes of Conduct and Best Practice

### **Registering and declaring pecuniary interests**

You must, within 28 days of taking office as a member or co-opted member, notify the authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'<sup>1</sup>.

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

**Participating in decision making if you have a pecuniary interest**

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions the authority places on your involvement in matters where you have a pecuniary interest.

**Registering and Disclosing Gifts and Hospitality**

In addition, you must notify the authority's monitoring officer of any gift or hospitality with a value of £100 or above which you have been offered in your role as a Member or Co-opted Member, within 28 days of accepting or refusing the offer and you must declare the acceptance of any such gift or hospitality at any discussion of, vote on, or discharge of any function relating to the donor.

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**Note (not forming part of the Code)**

Apart from the statutory requirements in relation to Disclosable Pecuniary Interests, and the requirement of this Council in respect of Gifts & Hospitality, there are currently no additional restrictions placed by the Council on your involvement in matters in which you have any other pecuniary or non-pecuniary interest. However, you should be aware that your involvement in a matter where you have any such interest could be regarded as being contrary to the spirit of the code of conduct, and might also leave a decision open to legal challenge.

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## **Epsom and Ewell Borough Council**

### **Arrangements for dealing with standards allegations under the Localism Act 2011**

#### **1 Context**

Epsom & Ewell Borough Council has 38 elected Councillors known as “Members”. The Council may also co-opt non-elected members onto its committees, sub-committees or advisory panels. The Council is committed to promoting and maintaining high standards of conduct amongst its Members and has adopted a Code of Conduct setting out the conduct it expects of its Members and Co-opted Members as they carry out that role.

Section 28(6) and (7) of the Localism Act 2011 requires the Council to have in place “arrangements” to deal with allegations that a member or co-opted member of the Council or of a Committee or Sub-Committee (or, additionally, in the case of this authority, Advisory Panel) of the Council, has failed to comply with that Council’s Code of Conduct.

These are the Council’s arrangements setting out how complaints can be made and how we will deal with any complaint, we receive.

The Council will appoint at least one Independent Person, whose views must be sought before we take a decision on any allegation which we decide should be investigated. We may also seek the view of the Independent Person at any other stage and a Member against whom an allegation has been made can consult the Independent Person.

#### **2 What is the Standards Committee and what is a Hearings Sub-Committee?**

The Standards Committee is a Committee of Members of the Council chaired by the Chairman of the Standards Committee. A Hearings Sub-Committee comprising three of their number, one of whom shall be the Chairman or Vice Chairman of the Standards Committee, who will chair the meeting, will conduct any hearing. In the event that neither the Chairman nor Vice Chairman are able to chair the meeting the hearing will be conducted by three members of the Standards Committee and the election of one of their number to chair the hearing will be the first item of business at the meeting.

The Independent Person’s views will be sought and taken into consideration before the Hearings Sub-Committee takes any decision on whether the 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.

### **3 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.

Under the Localism Act 2011, a person cannot be “independent” if he/she –

- is, or has been within the past 5 years, a member, co-opted member or officer of the Council; or
- is a relative, partner or close friend, of a member, co-opted member or officer of the Council;

This restriction is subject to transitional arrangements in the case of former Independent Members of the Council’s Standards Committee.

In addition, the Council will not regard a person as “independent”, and eligible for appointment as an Independent Person, if they are actively involved in any registered political party.

### **4 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is available for inspection on our website and available to view on request from Reception at the Town Hall.

The Code applies to Members when they go about the work of the Council or their role as a Member. We will not investigate complaints relating to a Member’s private life.

### **5 Making a complaint**

If you wish to make a complaint, please write to, or email, the Monitoring Officer (postal and email address below):

Epsom & Ewell Borough Council  
Town Hall  
The Parade  
EPSOM  
KT18 5BY

[monitoringofficer@epsom-ewell.gov.uk](mailto:monitoringofficer@epsom-ewell.gov.uk)

The Monitoring Officer is a senior Council officer 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.

We will normally only consider complaints in writing and we will require a name and a contact address or email address to acknowledge receipt of the complaint and keep you informed of progress. "Writing" includes complaints submitted by email.

We will not normally investigate a complaint sent in anonymously, unless there is a clear public interest in doing so.

For all other complaints, the Monitoring Officer will disclose the name of the complainant to the Member unless specifically asked to withhold it. However only in very exceptional cases will the Council be able to progress a complaint to an investigation without from the outset disclosing the identity of the complainant to the Member.

If you want to keep your name and address confidential, please indicate this in your complaint, explaining why. We will notify you of our decision about confidentiality and we will not give your name and address to the member against whom you make the complaint without your prior consent. However, if initial confidentiality is agreed, this might affect how we deal with your complaint.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint. At the same time, the Monitoring Officer will normally also inform the Member that a complaint has been received.

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

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. If considered appropriate the Monitoring Officer will consult with the Independent person before reaching their decision. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he will inform you of his decision and the reasons for that decision.

Where the Monitoring Officer is of the view that your complaint, if proven, would not amount to a breach of the Members Code of Conduct they will notify you of this and will usually take no further action on it.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer it to the Police and/or other agencies.

Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the member against whom your complaint is directed.

Wherever possible the Monitoring Officer will seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution could involve, for example, the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the member or the Council makes a reasonable offer of local resolution, 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. The Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person before reaching a decision.

On some occasions, informal resolution will not be possible, because one of the parties does not agree to co-operate with an informal process, or the process breaks down. If this happens, the Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person, before deciding whether the complaint merits formal investigation. The Monitoring Officer may, in order to inform that decision, disclose information to the Chairman and Independent Person, including details of the complaint, steps taken to achieve resolution informally and why this has not been successful. You and the Member will be notified of the outcome.

On some occasions the Monitoring Officer may consider that the conduct alleged, if proven, would amount to a breach of the Members Code of Conduct and would not be appropriate for, or capable of, informal resolution. In this case, the Monitoring Officer will normally consult the Chairman of the Standards Committee and the Independent Person, before deciding whether the complaint merits formal investigation. In making that, decision the Monitoring Officer will take into account both the seriousness of the alleged breach and the information provided in support of the complaint.

Where the Monitoring Officer requires additional information in order to come to a decision, they may contact either the complainant or the Member to request that information.

## **7 How is an investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will decide whether to speak to you and to any other witnesses and what other evidence they need to see, including, for example, correspondence, minutes of meetings and other relevant documents.

The Investigating Officer will normally contact the member against whom you have complained and provide them with a copy of your complaint, and ask the member to provide their explanation of events.

In very exceptional cases, where the Monitoring Officer, after consulting the Independent Person, considers that it is appropriate to keep your identity confidential or that disclosure of details of the complaint to the member might prejudice the investigation, they can delete your name and address from the papers given to the member. Alternatively, in such circumstances, they may delay notifying the member until the investigation has progressed sufficiently.

At the end of their investigation, the Investigating Officer will produce a draft report and, in addition to providing a copy to the Monitoring Officer, will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any inaccuracies in the report and to comment on their findings.

Having received and taken account of any comments made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer. The investigation and the Investigating Officer's report will be kept confidential at this stage.

**8 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 send a copy of the Investigating Officer's report to the Chairman of the Standards Committee and to the Independent Person for their views on whether it is necessary to convene a Hearings Panel. Where it is decided that a hearing is not necessary the Monitoring Officer will write to the parties, notifying them that they are satisfied that no further action is required. The Monitoring Officer will send all parties a copy of the Investigating Officer's final report, which will no longer be confidential at this point.

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

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will arrange for the Hearings Sub-committee to hold a meeting, within three months of the Investigator's final report being issued, so that it can take a decision on the complaint.

The Monitoring Officer will invite the Member to reply in writing to the Investigation Officer's report, in particular, to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Member will be invited to give a view on whether the sub-committee should meet in public or in private. The Chairman of the Standards Committee or the Monitoring Officer may issue directions as to the manner in which the hearing will be conducted, including whether or not the Hearings Sub-committee will meet in public or private.

At the hearing, the Investigating Officer will present their report, call such witnesses, as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct.

The Member will also have an opportunity to give evidence, to call witnesses and to make representations to the Hearings Sub-committee as to why they consider that they did not fail to comply with the Code of Conduct.

After hearing from all the parties, the Hearings Sub-committee may conclude either:

- that the Member did not fail to comply with the Code of Conduct or
- that the Member did fail to comply with the Code of Conduct, in which case it will also decide what action to recommend or to take.

The Hearings Sub-committee will not announce its decision at the hearing. Before reaching a final decision on the complaint and any sanction, the Chairman of the Hearings Sub-committee will report its finding to the Independent Person, whose views will be sought and taken into account by the Sub-Committee before a final decision is made.

The Member will be given the opportunity to make representations to the Hearings Sub-committee about the action that the Sub-Committee proposes to take, particularly if the Sub-Committee decides that the Member has failed to comply with the Code of Conduct.

**10 What action can the Hearings Sub-Committee take where a 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 members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may –

- Decide that no further action is required.
- Publish its findings in respect of the member's conduct;
- Issue a statement of censure ;
- Report its findings to Council;
- Recommend to the member'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 of the Council;

- Withdraw facilities provided to the member by the Council, such as a computer, and/or email and Internet access; or
- Exclude the member from some or all of 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.

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

As soon as reasonably practicable after the sub-committee has made its final decision, the Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Hearings Sub-committee, and send a copy to the complainant and to the Member and will make that decision notice available for public inspection.

#### **12 Revision of these arrangements**

The Council may agree, by resolution, to amend these arrangements, and has delegated to the Monitoring Officer and the Standards Committee the right to 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**

There is no right of appeal for a complainant against a decision of the Monitoring Officer or of the Hearings Sub-Committee

A Member has no right of appeal against a finding of breach of the Member Code of Conduct. However, a Member may require that a further Hearing Sub-Committee meeting reviews any sanction imposed at the first hearing

#### **14 Local Government Ombudsman**

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

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