

# Part 5

## Codes and Protocols

# MEMBERS' CODE OF CONDUCT

Model Code of Conduct<sup>1</sup>

Revised March 2008

## MEMBERS' CODE OF CONDUCT

# PART 1 - GENERAL PROVISIONS

### Introduction and interpretation

1. (1) This Code applies to **you** as a member of an authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State<sup>(a)</sup>.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code “meeting” means any meeting of –
  - (a) the authority;
  - (b) the executive of the authority;
  - (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;“member” includes a co-opted member and an appointed member.
- (5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

### Scope

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<sup>1</sup> Model Code of Conduct [SI 2007 No. 1159 The Local Authorities (Model Code of Conduct) Order 2007  
Adopted at full Council 26<sup>th</sup> April 2007

<sup>(a)</sup> See the Relevant Authorities (General Principles) Order 2001 (S.I. 2001/1401). Updated April 2007

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your authority -
- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

3. (1) You must treat others with respect.
- (2) You must not –
- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006<sup>(a)</sup>);
  - (b) bully any person;

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<sup>(a)</sup> 2006 c.3.

(c) intimidate or attempt to intimidate any person who is or is likely to be -

(i) a complainant,

(ii) a witness, or

(ii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's 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, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**4.** 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 authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

**6.** You -

- (a) must not use or attempt to use your position as a 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 resources of your authority—
    - (i) act in accordance with your authority’s reasonable requirements;
    - (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<sup>(a)</sup>.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—
- (a) your authority’s chief finance officer; or
  - (b) your authority’s monitoring officer, where that officer is acting pursuant to his or her statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

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<sup>(a)</sup> 1986 c.10.

# PART 2 - INTERESTS

## Personal interests

8. (1) You have a personal interest in any business of your authority where either -
- (a) it relates to or is likely to affect –
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body -
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
    - (iii) any employment or business carried on by you;
    - (iv) any person or body who employs or has appointed you;
    - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
    - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
    - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
    - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

- (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
  - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
  - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the

commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000<sup>(a)</sup>.

### **Prejudicial interest generally**

**10.** (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

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<sup>(a)</sup> See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations (S.I 2000/3272).

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority 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 members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Prejudicial interests arising in relation to overview and scrutiny committees**

- 11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where –
- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Effect of prejudicial interests on participation**

- 12.** (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

- (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
  - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
  - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's standards committee;
- (b) you must not exercise executive functions in relation to that business; and
- (c) you must not seek improperly to influence a decision about that business

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

# PART 3 - REGISTRATION OF MEMBERS' INTERESTS

## Registration of Members' Interests

13. (1) Subject to paragraph 14, you must, within 28 days of—
- (a) this Code being adopted by or applied to your authority; or
  - (b) register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

## Sensitive information

14. (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, serious risk that you or a person who lives with you may be subjected to violence or intimidation.

**PROCEDURE TO BE USED IN  
EVENT OF A GRIEVANCE AGAINST  
A MEMBER OF THE COUNCIL**

## **PROCEDURE TO BE USED IN EVENT OF A GRIEVANCE AGAINST A MEMBER OF THE COUNCIL**

### **Grievance by an Employee Against a Member of the Council**

1. The matter should be raised with the appropriate Director and Group Leader (or in respect of Independent Members, the Leader of the Council) who will decide, in the first instance, whether the complaint has substance.
2. If no resolution is reached within five working days, the Director and appropriate Group Leader and the aggrieved will discuss the issue with the Chief Executive as soon as reasonably practicable.
3. If no resolution is reached at this stage, the Chief Executive will discuss the matter with the Group Leader and the Leader of the Council, and an attempt will be made to resolve the matter on an informal basis (i.e. no written memoranda to be required) within 10 working days.
4. In the event of no resolution by this stage, the Chief Executive will advise the Director, Group Leader and the aggrieved. Should the aggrieved wish to pursue the matter, they must give written notice to the Chief Executive within five working days requesting the grievance to be heard by a Member Panel.
5. The panel will consist of cross-party membership drawn from the Appeals Committee consisting of at least three Members. The chairman of the panel will not be drawn from the same political group as the Member against whom the grievance is being pursued.
6. The panel hearing will normally be arranged to take place within 20 working days of receipt of the request from the aggrieved employee.
7. The aggrieved employee and the Member shall have the right to be accompanied by a colleague of their choice. The Director or his nominated officer will have the right to be present but will not participate.
8. The panel decision will be final, and a written note of the decision will be given to the aggrieved employee within five working days of the hearing.

### **Grievance By a Councillor Against a Member of the Council**

1. The matter should be raised with the appropriate Group Leader (or, in respect of Independent Members, the Leader of the Council) and the Chief Executive who will decide, in the first instance, whether the complaint has substance.
2. If no resolution is reached within five working days, the Group Leader and the aggrieved will discuss the issue with the Chief Executive as soon as reasonably practicable.
3. If no resolution is reached at this stage, the Chief Executive will discuss the matter with the Group Leader, if appropriate, or the Leader of the Council, and an attempt will be made to resolve the matter on an informal basis (i.e. no written memoranda to be required) within 10 working days.

4. In there is no resolution at this stage, the Chief Executive will advise the Group Leader and the aggrieved. Should the aggrieved wish to pursue the matter, they must give written notice to the Chief Executive within five working days requesting the grievance to be heard by a Member Panel.
5. The panel will consist of cross-party membership drawn from the Appeals Committee consisting of at least three Members. The chairman of the panel will not be drawn from the same political group as the aggrieved or the member whom the grievance is against.
6. The panel hearing will normally be arranged to take place within 20 working days of receipt of the request.
7. The aggrieved and the Member shall have the right to be accompanied by a colleague of their choice. The Chief Executive or a nominated officer will have the right to be present but will not participate.
8. The panel decision will be final, and a written note of the decision will be given to the aggrieved within five working days of the hearing.

#### **Decision by a Member Panel to Uphold a Grievance**

1. If a Grievance against a Member is upheld, the Panel should consider recommending to the appropriate Group Leader (or, in the case of Independents, the Chief Executive) that :
  - \*in all cases the aggrieved should receive a suitable written note of apology;
  - \*a written statement should be issued to the Member that their behaviour has been adjudged unacceptable by an all-party panel of their peers and should not be repeated;
  - \*the Group Leader or Chief Executive should take steps to ensure that the aggrieved is able to continue working normally;
  - \*in serious cases, and subject to the approval of the relevant committee, panel or of full Council, consideration should be given to relieving the Member of special duties such as chairman of a committee or panel, Member of working party, etc.
  - \*exceptionally, management should agree to transferring an affected employee to other duties, providing that this is agreeable to the individual employee and not detrimental to the work of the organisation.
2. The Group Leader or Chief Executive should remind the Member that, notwithstanding the action taken under the Grievance Procedure, individuals may have a right to pursue the matter through the relevant legal channels.

**OFFICERS' PROCEDURE RULES  
AND CODE OF CONDUCT**

**NOTE : These pages were never completed in the first or subsequent drafts of this part of the Constitution; and therefore any text represents merely a first draft for discussion. The draft below is based on the West Oxfordshire District Council's Procedure Rules.**

## **OFFICERS' PROCEDURE RULES AND CODE OF CONDUCT**

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### **OFFICERS CODE OF CONDUCT**

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## **Standards**

- 1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the Department's Director any impropriety or breach of procedure.

## **Disclosure of Information**

- 2 It is generally accepted that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. The Council itself may decide to be open about other types of information. Employees must be aware of which information the Council is and is not open about, and act accordingly.
- 3 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Council should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

## **Political Neutrality**

4. Employees serve the Council as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.
5. Subject to the Council's conventions, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
6. Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work

## **Relationships**

### **Councillors**

7. Employees are responsible to the Council through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the Council's work. Mutual respect between employees and Councillors is essential to

good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

#### The Local Community and Service Users

8. Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Council.

#### Contractors

9. All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.
10. Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to the Department's Director.

#### **Appointment and other Employment Matters**

11. Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.
12. Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner etc.

#### **Outside Commitments**

13. Some employees have conditions of service which require them to obtain written consent to take any outside employment.
14. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the Council's interests. Employees should follow their Council's rules on the

ownership of intellectual property to copyright created during their employment.

### **Personal Interests**

- 15 Employees must declare to their Director any financial or non-financial interests that they consider could bring about conflict with the Council's interests. Employees must declare to their Director any financial interests which could conflict with the Authority's interests.
- 16 Employees should declare to the Department's Director membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

### **Equality Issues**

- 17 All local government employees should ensure that policies relating to equality issues as agreed by the Council are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

### **Separation of Roles During Tendering**

- 18 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contract responsibility must be aware of the need for accountability and openness.
- 19 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and Sub-contractors.
- 20 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 21 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relative or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

### **Corruption**

- 22 Employees must be aware that it is a **serious** criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is

made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

### **Use of Financial Resources**

- 23 Employees must ensure that they use public funds entrusted to them in **a responsible** and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

### **Gifts and Hospitality**

24. Employees are required to comply with the "Guidance for Officers - Gifts and Hospitality" appended to this Code of Conduct.

## **Gifts and Hospitality: Guidance for Officers**

The acceptance of gifts and hospitality by officers is not merely an administrative issue. It reflects directly upon the perception of the probity of the Council. It is governed by the Code of Conduct for Officers in Wales (and is likely to be covered by the Code of Conduct for Officers in England when finally published).

Acceptance of a gift or hospitality in breach of this Code will be a disciplinary matter and in certain circumstances it can be a criminal offence. It is important that all Council officers operate according to a clear and consistent set of rules, for their own protection and for the protection of the Council.

This guidance sets out:

- (a) the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality
- (b) a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it
- (c) a procedure for declaring any gift or hospitality which you receive and for accounting for any gift to the Council

This guidance does not apply to the acceptance of any facilities or hospitality which may be provided to you by this Council.

### **1 General Principles**

In deciding whether it is proper to accept any gift or hospitality, you should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, you should not accept it to do so would be in breach of one or more of these principles:

#### **1.1 The presumption is that you should not accept any gift or hospitality in connection with the performance of your duties as an officer of the Council**

As an officer, you must act in the public interest, serving the Council and the whole community, rather than acting in the interests of any particular individual or section of the community.

Section 17(2) of the Local Government Act 1972 makes it a criminal offence for you, under colour of your office, to accept any fee or reward whatsoever other than your proper remuneration. Acceptance of any gift or hospitality other than in accordance with this guidance will be outside your proper

remuneration, and will therefore be a criminal offence carrying a maximum fine of £2,500.

**1.2 Never accept a gift or hospitality as an inducement or reward for anything you do in your job**

As an officer, you must act in the public interest and must not be swayed in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner. The Public Bodies (Corrupt Offences) Act 1889 provides that acceptance of any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or forbearing to do anything in respect of any matter or transaction in which the Council is concerned is a criminal offence carrying a maximum term of imprisonment of 7 years

**1.3 You should only accept a gift or hospitality if there is a commensurate benefit to the authority**

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the Council which would not have been available but for the acceptance of that gift or hospitality. That benefit might come in many forms, such as an opportunity to progress the business of the Council expeditiously through a working lunch, to canvass the interests of the Council and its area at a meeting, or the opportunity to examine or test new products which the Council might wish to acquire. But unless there is a clear and commensurate benefit to the Council, the presumption must be that the benefit of the gift or hospitality is purely for your personal benefit.

**1.4 Never accept a gift or hospitality if acceptance might be open to misinterpretation**

The appearance of impropriety can be just as damaging to the Council and to the officer as actual impropriety. The Council must maintain its reputation for acting fairly and in the public interest. You must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that you or the Council favours any particular person, company or section of the community or as placing you under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.

Certain occasions are particularly sensitive, and require the avoidance of any opportunity for such misunderstanding. These include:

- (i) occasions when the Council is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer. The Prevention of Corruption Act 1916 provides that, if you accept any money, gift or other benefit from someone who is a contractor to the authority, or is seeking a contract from the authority, the law will treat the acceptance of that money, gift or benefit by you as corrupt, as an inducement or reward for advantaging the contractor or tenderer, unless you can prove that it was innocent.
- (ii) elections, in respect of any indication of favour for any particular candidate or party
- (iii) determinations of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination,
- (iv) funding decisions, when the Council is in the process of determining a grant application by any person or organisation.

### **1.5 Never solicit a gift or hospitality**

You must never solicit or invite an offer of a gift or hospitality in connection with your work unless the acceptance of that gift or hospitality would be permitted under this guidance. You should also take care to avoid giving any indication that you might be open to such any improper offer.

## **2. Consent Regimes**

### **2.1 General consent provisions**

The Council has agreed that you may accept gifts and hospitality in the following circumstances:

- (i) civic hospitality provided by another public authority
- (ii) modest refreshment in connection with any meeting in the ordinary course of your work, such as tea, coffee, soft drinks and biscuits
- (iii) tickets for sporting, cultural and entertainment events which are sponsored by the authority
- (iv) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and

diaries. However, you should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise

- (v) a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom you have done business on behalf of the Council if you meet accidentally in a public house, cafe or bar. In such cases, you should make reasonable efforts to return the offer where this is practicable
- (vi) a modest working meal not exceeding £10 a head in the course of a meeting in the offices of a party with whom the Council has an existing business connection where this is required in order to facilitate the conduct of that business. When arranging any such meeting, you should make it clear to the other party that such a lunch must not exceed a value of £10 a head
- (vii) modest souvenir gifts with a value below £25 from another public Council given on the occasion of a visit by or to the authority
- (viii) Hospitality received in the course of a members' visit or meeting which has been duly authorised by the Council. When organising such visits or meetings, you should make it clear that any such hospitality for members and officers is to be no more than commensurate with the nature of the visit
- (ix) other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the officer deals with the gift strictly in accordance with the following procedure: The officer must, as soon as practicable after the receipt of the gift, pass it to the Chief Executive together with a written statement identifying the information set out in Paragraph 2(b) below. The Chief Executive will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that you have donated the gift to the Chairman's Charity Fund, on whose behalf it will be raffled or other wise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Chairman.

## **2.2 Special consent provisions**

If you wish to accept any gift or hospitality which is in

accordance with the General Principles set out in Paragraph I, but is not within any of the general consents set out in Paragraph , you may only do so if you have previously obtained specific consent in accordance with the following procedure:

You must make an application in writing to the appropriate officer, setting out:

- (i) the nature and your estimate of the market value of the gift or hospitality
  - (ii) who the invitation or offer has been made by or on behalf of
  - (iii) the connection which you have with the person or organisation making the offer or invitation, such as any work which you have undertaken for the Council in which they have been involved
  - (iv) any work, permission, concession or facility which you are aware that the person or organisation making the offer or invitation may seek from the authority
  - (v) any special circumstances which lead you to believe that acceptance of the gift or hospitality will not be improper
- The appropriate officer for officers is as follows:

- (i) for the Chief Executive, the Monitoring Officer or, in his/her absence, the Head of Human Resources
- (ii) for Strategic Directors, the Chief Executive or the Monitoring Officer
- (iii) for Heads of Service (other than the Monitoring Officer), their Strategic Director or, in his/her absence, the Monitoring Officer
- (iv) for the Monitoring Officer, the Chief Executive or the Head of Human Resources
- (v) for all other officers, their Head of Service

You must not accept the gift or hospitality until you have received the appropriate consent.

The appropriate officer will send copies of any such applications and consents to the Monitoring Officer who will retain them in a register which will be available for public inspection on the occasion of the

public inspection of the Council's accounts for the relevant year.

### **3. Reporting**

Where you accept any gift or hospitality which you estimate to have a value of £25 or greater, you must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the appropriate officer, setting out the information set out in Paragraphs 2(b) above. A form for this purpose is attached to this guidance, but you can send the same information by any convenient means. The appropriate officer will send a copy of any such declaration to the Monitoring Officer who will retain them in a register which will be available for public inspection until the approval of the authority's accounts for the year in question.

Even if the value of the gift or hospitality is less than £25, if you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

### **4. Gifts to the Council**

These may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the Council. You should not solicit any such gift on behalf of the Council except where the Council has formally identified the opportunity for participation by an external party and how that participation is to be secured, for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements.

If you receive such an offer on behalf of the Council, you must report the offer directly to your Strategic Director together with your recommendation, and notify the Monitoring Officer. The Strategic Director will consider whether it is appropriate for the Council to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the Council under any improper obligation, whether there is a real benefit to the Council which would outweigh any disbenefits). Only the Chief Executive and Strategic Directors have authority to accept gifts.

Once a decision has been made whether to accept or decline the offer of the gift on behalf of the Council, the person or organisation making the offer, should be written to record the acceptance or non-acceptance of the gift.

Where a gift is accepted, the Officer accepting the gift as soon as possible thereafter should, make a written declaration to the

Monitoring Officer, setting out the information set out in Paragraphs 2(b) above. The Monitoring Officer will retain the declaration for audit purposes and ensure that the gift is properly applied for the benefit of the Council. If you have any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the Council to accept the gift, you should consult the Monitoring Officer.

## **5. Definitions**

2.1 “Gift or hospitality” includes any:

- (i) the free gift of any goods or services
- (ii) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public
- (iii) the opportunity to obtain any goods or services which are not available to the general public
- (iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

2.2 References to the “value” or “cost” of any gift or hospitality are references to the higher of:

- (i) your estimate of the cost to the person or organisation of providing the gift or consideration
- (ii) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

## Declaration of Receipt of Gifts or Hospitality

Name

Post

Department

What was the gift or hospitality?

What is your best estimate of its market value or cost?	
Who provided it?	
When and where did you receive it?	
Does it come within one of the general consents set out in the guidance? If so, which?	
Did you get the consent of any officer before accepting it? If so, who?	
Were there any special circumstances justifying acceptance of this gift or hospitality?	
Do you have any contact in your job with the person or organisation providing the gift or hospitality?	
Signed	Date

PROTOCOL  
FOR MEMBER/OFFICER  
RELATIONS

# **PROTOCOL FOR MEMBER/OFFICER RELATIONS**

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## **PROTOCOL FOR MEMBER/OFFICER RELATIONS**

### **1. Introduction**

- 1.1 The purpose of this protocol is to guide Members and officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol is to a large extent no more than a written statement of current practice and convention. It seeks to promote greater clarity and certainty. If the advice is followed it should also ensure that Members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from Members.

### **2. General Principles**

- 2.1 This protocol seeks to reflect the principles underlying the respective Codes of Conduct which apply to Members and officers and are referred to more fully in section 12 below. The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand very high standards of personal conduct.
- 2.2 A relevant extract from the National Code of Local Government Conduct for members is reproduced below:

"Both councillors and officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to councillors and the council, and to carry out the council's work under the direction and control of the council, their committees and sub-committees.

Mutual respect between councillors and officers is essential to good local government. Close personal familiarity between individual councillors and officers can damage this relationship and prove embarrassing to other councillors and officers."

- 2.3 A balance between formality and informality in Member-officer relations needs to be struck - there are dangers in over emphasising informality, just as unnecessary formality is unduly restrictive. In terms of the new roles and settings that are emerging, formal relations need to be maintained in all public decision-making arenas, including DSO board-style arrangements, policy scrutiny committees and multi-agency partnerships. More informal relations may be appropriate, however, in Panels, Area Forums and area-based partnerships as well as in community development initiatives and for strategy formulation or problem-solving more generally.

- 2.4 In line with the National Code's reference to "mutual respect" it is important that any dealings between Members and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 2.5 Members should not raise matters relating to the conduct or capability of a Council employee or of employees collectively at meetings held in public. This is a longstanding tradition in public service. Employees have no means of responding to criticisms like this in public. Such criticism should, however, be distinguished from Members' right to disagree with the professional judgement of officers; Members are not *bound* to follow officers' advice. If Members feel they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of a Council employee, they should raise the matter with the Director/Head of Service of the department concerned if they fail to resolve it through direct discussion with the employee. The Director/Head of Service will then look into the facts and report back to the Member. If the Member continues to feel concern, the Member should then report the facts to the Chief Executive who will look into the matter afresh.
- 2.6 There is also an established convention that officers do not criticise Members in public meetings. The Council's Standing Orders contain a procedure for dealing with a grievance by an officer against a Member (as well as one for dealing with a grievance by one Member against another) pursuant to the Council's harassment policies.
- 2.7 It is an inevitable consequence of political life that there may be occasions on which a Member feels bound publicly to criticise the Council. However, before doing so, it is important that the Member has taken adequate steps to verify the accuracy of the facts upon which such criticism is based. The Member concerned would normally be expected to verify the facts with the relevant officer, unless he or she is sure as to their accuracy.
- 2.8 It is recognised that there may be close social or personal relationships between Members and officers which commenced either before or after a Member's election to or an officer's employment by the Council. In these circumstances, the Member should disclose this relationship to his or her group leader and to the Council's Monitoring Officer, and the officer to his or her Director/Head of Service and to the Monitoring Officer. In order to maintain the integrity of the individuals concerned and the Council, such relationships should never be hidden. To do so can lead to suspicion and mistrust. The group leaders and Chief Executive will endeavour to ensure that neither the Member nor the officer is placed in a position where such relationship between the Member and the officer will be seen to conflict with the remaining provisions of this protocol.

### **3. Officer Advice to Members**

- 3.1 It must be recognised by all officers and Members that, in discharging their duties and responsibilities, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Member of the Council.
- 3.2 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to certain matters of Council business in advance of such matters being considered by the relevant Council

decision making body. All officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner.

- 3.3 The support provided by officers will most frequently/has usually taken the form of a briefing meeting with a Chairman and/or Vice Chairman prior to a committee or panel meeting. It is likely that similar arrangements will evolve with the relevant portfolio holder in the Cabinet. Whilst in practice officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.4 Officer support must not extend beyond providing information and advice in relation to matters of *Council* business. Officers must not be involved in advising on any matters of party business.
- 3.5 Unless otherwise agreed in advance with the Chief Executive, officers will not brief meetings which include persons who are not Members of the Council. However, where attendance in these circumstances has been agreed by the Chief Executive, special care will need to be exercised by officers involved in providing information and advice to such meetings. Persons who are not Councillors will not be bound by the National Code of Local Government Conduct (in particular, the provisions concerning the declarations of interests and confidentiality) and, for this and other reasons, officers may not be able to provide the same level of information and advice as they would to a Members-only meeting.
- 3.6 Any request for advice, together with the advice given to a political group or Member will be treated with strict confidentiality by the officers concerned and will not be accessible to any other political group. It is acknowledged, however, that factual information upon which any advice is based will, if requested, be available to all Members.
- 3.7 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 3.8 Any particular cases of difficulty or uncertainty in this area of officer advice to Members should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### **4. Support Services to Members**

- 4.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, photocopying, meeting rooms etc.) to Members is to assist them in discharging their role as members of the Council. Such support services must therefore be used only on Council business. This limitation will on occasion require a distinction to be made between the business of a political group on the one hand and more general party political or campaigning activity on the other. Support services can properly be used for the former purposes but not for the latter.

#### **5. Members' Access to Information and to Council Documents**

- 5.1 Members are free to approach any Council Department to provide them with such information, explanation and advice (about that Department's functions)

as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Director/Head of Service or another senior officer of the Department concerned. In cases of doubt, officers in the Democratic Services Group should be asked for assistance.

- 5.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 5.3 Members have a statutory right to inspect any Council document *which contains material relating to any business which is to be transacted at a Council, Cabinet, Committee or Sub-Committee meeting*. This right applies irrespective of whether the Member is a member of the Cabinet, committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right does not, however, apply to documents relating to certain items which may appear on the "Exempt" section of the agenda for a meeting. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, the care of children, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 5.4 The common law right of Members is much broader and is based on the principle that any Member has a prima facie right to inspect Council documents *so far as his or her access to the documents is reasonably necessary to enable the member properly to perform his or her duties as a Member of the Council*. This principle is commonly referred to as the "need to know" principle.
- 5.5 The exercise of this common law right depends therefore, upon the Member's ability to demonstrate that he or she has the necessary "need to know". In this respect a Member has no right to "a roving commission" to go and examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the "need to know". This question must initially be determined by the particular Director/Head of Service whose Department holds the document in question (with advice from the Head of Support/Chief Executive). In the event of dispute, the question falls to be determined by the Cabinet or relevant committee - i.e. the committee in connection with whose functions the document is held.
- 5.6 In some circumstances (e.g. a Cabinet or Committee member wishing to inspect documents relating to the business of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (e.g.. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms. Furthermore, there will be a range of documents which, because of their nature are either not accessible by Members or accessible only by the political group forming the administration and not by the other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft committee reports, the disclosure of which prematurely might be against the Council's and the public interest.

- 5.7 Whilst the term "Council document" is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a "need to know" and, therefore, a right to inspect, a document which forms part of the internal workings of another party group.
- 5.8 Further and more detailed advice regarding Members' rights to inspect Council documents may be obtained from the Head of Support.
- 5.9 Finally, any Council information provided to a Member may be used by the Member only for the purpose for which it was provided, i.e.. in connection with the proper performance of the Member's duties as a Member of the Council. This point is emphasised in the National Code of Local Government Conduct in the following terms:

"26. As a Councillor or a committee or sub-committee Member, you necessarily acquire much information that has not yet been made public and is still confidential. It is a betrayal of trust to breach such confidences. You should never disclose or use confidential information for the personal advantage of yourself or of anyone known to you, or to the disadvantage or the discredit of the council or anyone else."

## **6. Officer/Chairman Relationships**

- 6.1 It is clearly important that there should be a close working relationship between the Chairman of a committee and the Director/Head of Service and other senior officers of any department who will report to or service the meetings of that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other Members and other party groups.
- 6.2 Whilst the Chairman of a committee (or sub-committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Director/Head of Service will be under a duty to submit a report on a particular matter. Similarly, a Director/Head of Service or other senior officer will always be fully responsible for the contents of any report submitted in his or her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. Any issues arising between a Chairman and a Director/Head of Service in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 6.3 A Director/Head of Service will seek to ensure that the relevant committee or panel chairman or portfolio holder is aware of information provided by him or her to other members when the information clearly relates to the business of that committee, panel or portfolio holder. This would not apply where the information was of a routine or trivial nature or where it would involve a breach of confidence or other statutory or formal requirement.
- 6.4 When there is no overall control of the Council, it would be expected that, in addition to the chairman's briefing before any meeting, the political groups' representatives on a committee or sub-committee would also be offered the opportunity of a briefing through their spokespersons.

- 6.5 In relation to action between meetings, it is important to remember that the law allows for decisions (relating to the discharge of any of the Council's functions) to be taken only by the Executive, a committee, a sub-committee or an officer. The Council's constitution does not allow for such decisions to be taken by a Chairman or indeed by any other single Member.
- 6.6 At some committee and sub-committee meetings, a resolution may be passed, which authorises named officers to take action between meetings in consultation with the Chairman. It must be recognised that it is the officer, rather than the Chairman, who takes the action and it is the officer who is accountable for it.
- 6.7 Finally, it must be remembered that officers within a Department are accountable to their Director/Head of Service and that whilst officers should always seek to assist a Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director/Head of Service.

## **7. Member/Officer Roles**

- 7.1 Traditionally, the distinction between roles turns on Members being responsible for determining policy whilst officers are responsible and accountable for implementing policy and managing the organisation. Given these roles, officers are expected to work within and pursue Council policies. Equally, Members must not interfere with executive matters that are the responsibility of managers.
- 7.2 Organisational, managerial, political and other changes in local government have all combined to prevent this traditional distinction being used as a precise demarcation tool to define the respective roles of Members and officers (if it ever could be). However, it remains a useful touchstone to guide Members and officers. The former should guard against becoming involved in operational detail whilst the latter must demonstrate commitment to the properly formulated policies of the Council irrespective of any personal views.
- 7.3 It is a fundamental principle that officers should not hold themselves out to third parties as having power to bind the Council (leaving aside any issue of delegated powers). Similarly, Members should not seek to negotiate with third parties and purport to represent the will of the Council.
- 7.4 Officers are accountable to their Director/Head of Service from whom they will normally receive their work through the line management structure. There will be occasions when officers receive work direct from a member of the Cabinet or from the Chairman of a committee, sub-committee or panel. Officers will routinely liaise with their line managers on their capacity to undertake such tasks. There may be occasions when the Director/Head of Service or other senior officer reverts to the Member concerned to discuss the impact of such work. It would not normally be expected that other members would approach officers with tasks (save for the Chairman of the Council in relation to his or her secretary).

## **8. Correspondence**

- 8.1 Correspondence between an individual member and an officer will not as a matter of course be copied (by the officer) to any other Member. Where correspondence is copied to another member, this should be made clear to the original Member. In other words, a system of "silent copies" should not be employed. Members will, of course, bear in mind that officers will brief Chairmen and portfolio holders as outlined in paragraph 6.3 above.
- 8.2 Where an officer corresponds with a Member on a matter of general interest in his or her ward or parish, it is in the best interests of the Council to ensure that other Members in the locality are informed of such matters. In these circumstances, copies of correspondence will normally be sent to all Members in the locality unless there is a reason why this is not appropriate.

[DSWG recommendation 2006]

- 8.3 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than under the name of a Member. It will be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a Member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member. When Members use official Council notepaper, they should be careful to make clear the capacity in which they are writing.

## **9. Involvement of Ward Councillors**

DSWG December 2006 – DVE to suggest additional sentence for incorporation prior to para 9.1 with regard to an executive focussed culture.]

- 9.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the ward or wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward Members should be notified at the outset.
- 9.2 Officers will seek both to inform and to keep Members informed about any initiative which is being developed. However, Members must be aware of the pressures on officers' time and that officers may exercise judgement as to how much information is provided. Officers will seek in a timely manner both to inform and to keep members informed about any initiative which is being developed or decision which is to be made that affects the Ward.

[DSWG recommendation Dec 2006]

## **10. Ceremonial Events**

- 10.1 The Chairman of the Council, or in his absence the Vice-Chairman, will be the appropriate person to lead Council ceremonial events which are not specifically associated with a Cabinet function or particular committee and to represent the Council by invitation at ceremonial events of other organisations

which are not specifically associated with a Cabinet function or particular committee.

- 10.2 Portfolio holders and Chairmen of committees (or, where Chairmen are not available, Vice-Chairmen) are the appropriate candidates for ceremonial events within the scope of their portfolios or committees. Where the relevant portfolio holder is not available, he or she may nominate any other Member of the Council. If neither the Chairman nor Vice-Chairman of a Committee are available, any other Member may be nominated by the Chairman or Vice-Chairman.
- 10.3 Local Members should always be informed of, and where possible, invited to, ceremonial events taking place within their wards, as should Parish and Town Councils as appropriate.
- 10.4 Any Member taking part in a ceremonial event must not seek disproportionate personal publicity or use the occasions for party political advantage bearing in mind that the Member is representing the Council as a whole.

## **11. Public Relations and Press Releases**

- 11.1 The Council's PR and Marketing team services the Council as a whole and must operate within the limits of the Local Government Act 1986, which prohibits the Council from publishing material which appears to be designed to influence public support for a political party. Council press releases are drafted by officers and will often contain quotations (within the limits of the Local Government Act 1986) from the Leader and Deputy Leader of the Council, the relevant portfolio holder the Chairman and Vice-Chairman of the committee or sub-committee whose service is involved and from the Chairman and Vice-Chairman of the Council about ceremonial events. Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their party political affiliation or to attribute policies or initiatives to the ruling group.
- 11.2 Similar considerations apply to Partners magazine. Valuable Member guidance to the magazine is provided by the Communications Advisory Group. However, the ultimate editorial discretion resides with officers who must ensure that the content reflects a corporate point of view.

## **12. Other Codes**

- 12.1 Officers are subject to the Council's Disciplinary and Grievance Procedures and Harassment Policy, which are incorporated into their contracts of employment.
- 12.2 Integral to this are an Officer Code (based upon the LGMB's Code of Conduct for Local Government Employees) and the National Code of Local Government Conduct (by which all Members have declared, on accepting office, that they will be guided).
- 12.3 A significant number of officers throughout the Council are also subject to codes from their professional bodies e.g. Law Society, RTPI etc.

- 12.4 Reference has already been made to the procedures incorporated into the Council's Standing Orders for dealing with grievances by officers against Members or by one Member against another.

# PROTOCOL FOR THE MONITORING OFFICER

## PROTOCOL FOR THE MONITORING OFFICER

1. The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this paper with determination and a manner which will enhance the reputation of the Council. In general terms, his or her ability to discharge these duties depends on excellent working relations with colleagues and Members, but also on the flow of information and access to debate, particularly at early stages.
2. The following arrangements and understandings between Monitoring Officers and colleagues and Members are designed to help ensure the effective discharge of their functions:
  - (a) if not a member of the Management Team, the Monitoring Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak;
  - (b) advance notice of meetings between Chief Officers and members of the Executive or Committee Chairmen will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise;
  - (c) Chief Officers will alert the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues;
  - (d) the Monitoring Officer or his or her staff will have copies of all reports to Members;
  - (e) the Monitoring Officers is expected to develop good liaison and working relations with the Standards Board, the District Auditor and the Ombudsman, including the giving and receiving of relevant information whether confidential or otherwise;
  - (f) the Monitoring Officer will have a special relationship with the Chairman of the Council and the Chairmen of the Standards and Scrutiny Committees, and will ensure that the Head of Paid Service and Chief Financial Officer have up to date information regarding emerging issues;
  - (g) the Monitoring Officer will be expected to make enquiries into allegations of misconduct in the absence of a written complaint being received by the Standards Board and, if appropriate, will make a written report to the Standards Committee unless he and the Chairman of the Standards Committee agree that a report is not warranted;
  - (h) the Head of Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity;
  - (i) in carrying out any investigation (whether under regulations or otherwise), the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions;

- (j) the Monitoring Officer will have control of a budget sufficient to enable him or her to seek counsel's opinion on any matter concerning his or her functions;
- (k) the Monitoring Officer will be responsible for preparing a training programme for Members on the ethical framework, subject to the approval of the Standards Committee;
- (l) the Monitoring Officers will report to the Council from time to time on the constitution and any necessary or desirable changes, following consultation in particular with the Head of Paid Service and Chief Financial Officer;
- (m) in consultation with the Chairman of the Council and Standards Board, the Monitoring Officer may defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved;
- (n) the Monitoring Officer will make reports to the Council from time to time, as necessary, on the staff, accommodation and resources they require to discharge his or her functions;
- (o) the Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues;
- (p) the Monitoring Officer will make arrangements to ensure good communication between his or her office and Clerks of parish councils.

# PROTOCOL FOR THE SECTION 151 OFFICER

## **PROTOCOL FOR THE SECTION 151 OFFICER**

1. The Section 151 Officer undertakes to discharge his or her responsibilities with determination and in a manner which will enhance the reputation of the Council.
2. The following arrangements and understandings between the Section 151 Officer and colleagues and elected Members are designed to help ensure the effective discharge of their functions:
  - (a) if not a member of the Management Team, the Section 151 Officer will have advance notice of those meetings and agendas and reports and the right to attend and speak;
  - (b) advance notice of meetings between Business Unit Heads and members of the Executive or Committee chairmen will be given to the Section 151 Officer where any financial issues are likely to arise;
  - (c) Business Unit Heads will alert the Section 151 Officer to all emerging issues of concern including legality, probity, vires, and constitutional issues;
  - (d) the Section 151 Officer will have copies of all reports to Members;
  - (e) the Section 151 Officer will have a special relationship with the Chairman of the Council and the Chairmen of the Standards and Scrutiny Committees, and will ensure that the Head of Paid Service and Monitoring Officer have up to date information regarding emerging issues;
  - (f) the Head of Paid Service, the Section 151 Officer, and the Monitoring Officer shall meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity;
  - (g) the Section 151 Officer will report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation with the Head of Paid Service and the Monitoring Officer;
  - (h) the Section 151 Officer will make reports to the Council from time to time, as necessary, on the staff, accommodation and resources they require to discharge his/her functions;
  - (i) the Section 151 Officer will appoint a deputy and keep him or her briefed on emerging issues.



# **GUIDANCE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS**

**A LOCAL CODE OF GOOD PRACTICE**

**OCTOBER 2002**

## **HART DISTRICT COUNCIL**

### **GUIDANCE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS**

#### **Introduction**

1. The Planning system involves taking decisions about the use and development of land in the wider public interest having regard, in particular, to the Development Plan. The system also includes the processes for preparation of the Development Plan itself and associated supplementary guidance and development briefs. Parties such as landowners, residents and businesses have an interest in all these processes. In their considerations Members and officers of the Council have to balance the requirements of the individual, whether the applicant or a neighbour, against the broader public interest.
2. It is fundamentally important that the planning system should not only be fair but should be seen to be fair. Accordingly, a number of bodies including the Local Government Association, the Audit Commission, and the Royal Town Planning Institute, have recommended that planning authorities should agree and adopt guidance for Members, officers and developers in the way the authority goes about its business.
3. This Guidance deals with the conduct of Members and officers and does not deal with planning processes or merits of planning issues. Procedures are dealt with as a separate document.

#### **General Role and Conduct of Members**

4. General matters relating to Code of Conduct at Meetings, including Members' interests are to be found in Standing Orders.
5. Members of the Council are accountable to the electorate and officers are accountable to the Council as a whole. Members must follow the Council's adopted general Code of Conduct for Members, and officers must comply with any statutory or other adopted Code of Conduct for Officers.
6. In addition, Members and officers must comply with all Standing Orders and Financial Regulations.
7. Members shall remember that the public's perception of the way we deal with planning applications is often formed as result of attending Committee meetings.
8. It is important to remember that Members and Officers should be seen to be working in partnership and that the Committee forum should not be seen as a confrontation between Officers and Members. Members are, of course, free to disagree with the officer advice but heed must be paid to issues raised earlier in the section on Members' conduct.

9. In making decisions on planning applications, remember that the law requires decision-makers to have regard to the Development Plan, so far as it is material to the application and to any other material consideration. Where the Development Plan is material to the development proposal and must therefore be taken into account, Section 54A of the Town and Country Planning Act 1990 requires the application to be determined in accordance with the Plan, unless material considerations indicate otherwise. Appropriate consideration must also be given to the Crime and Disorder Act 1998 and the Human Rights Act 2000.

### **Role of Elected Members in Relation to Planning**

10. Elected Members set the Council's planning policy, make policy decisions, and determine planning applications and planning enforcement issues within the context of that policy (except those delegated to officers). When Members come to make a decision on a planning matter, they must:
  - Act fairly and openly
  - Approach each application with an open mind
  - Carefully weigh up all relevant issues
  - Determine each application on its own merits, taking into account all material planning considerations
  - Ensure that there are clear and substantial reasons for their decisions, based on planning considerations, and that those are clearly stated.
11. Members should not favour any individuals or groups and although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Members cannot accept an instruction from anyone, including a political group, to determine an application or make other decisions in a particular way but must determine the application or matter on its planning merits, taking into account all material considerations. Such action could amount to maladministration.
12. Paragraphs 5 and 6 above apply to all Members dealing with planning matters, whether as a Cabinet Member, a Member of the Planning Committee, an Overview Panel / Scrutiny Panel, in full Council, or other body of the authority.

### **Role of Officers**

13. The function of officers is to advise and assist Members in matters of planning policy and in the determination of planning applications and enforcement issues by:

- Providing impartial and professional advice
  - Making sure that all the information necessary for the decision to be made is given
  - Providing a clear and accurate analysis of the issues
  - Setting applications and enforcement issues against the broader Development Plan policies and other material considerations
  - Giving a clear recommendation
  - Carrying out the decisions of Members of the Executive or the Planning Committee or other body of the Council
  - Exercising any powers delegated to them in accordance with the above principles and any conditions attached to the delegation.
14. Officers should comply with rules of conduct of professional bodies to which they are subject, including the Royal Town Planning Institute, and it is appropriate that officers who are not members of the Institute should work, so far as is possible, to its principles of conduct.
15. The role of the Head of Environmental Services is to offer advice on an application including a recommendation based on his professional judgement. He is not there to "sell" or promote an applicant's proposal.

### **Disclosure of Interests**

16. In dealing with any planning matter, including any proposed or actual application for planning permission Members must comply with provisions of the Code of Conduct for Members in relation to personal and prejudicial interests, disclosure of and participation in relation to such interests.
17. Members should ensure that they are consistent in disclosing interests covered by their Code of Conduct, whether at a meeting of a body of the Council that they attend, or at full Council.
18. The provisions of this Guidance apply equally to officers involved in planning matters and interests should be disclosed accordingly.
19. Members should already be aware of the Members Code of Conduct, which explains interests.

### **Gifts and Hospitality**

20. Gifts and hospitality can give rise to particular problems in respect of the credibility of the planning process, and Members and officers should be aware of potential criminal offences under legislation relating to corruption. Members should have regard to the Code of Conduct for

Members and also the Council's own Statement of Gifts and Hospitality. Members and officers should avoid any behaviour that might be taken as indicating that they are open to offers of gifts and hospitality. Officers should politely decline offers and where it is unavoidable should ensure that it is of the minimal level and declare its receipt as soon as possible (procedure note applies).

### **Lobbying**

21. It is quite common for applicants or other interested parties to wish to discuss with Members or seek to influence Members (whether or not members of the Planning Committee) before a planning application is determined.
22. Discussion can help Members' understanding of the issues and concerns associated with an application or planning matter. However, Members are under an obligation to determine matters on their merits. If they do express an opinion, they should make it clear that they will only be in a position to make a final decision after having heard all the relevant evidence and arguments at Committee.
23. When being lobbied, all Councillors and Members of the Planning Committee in particular, should take care about expressing an opinion that may be taken as indicating that they have made up their mind on the issue before they have been exposed to all the evidence and arguments. If a Member responds to lobbying by deciding to go public in support of a particular outcome – or even campaigning actively for it – it will be very difficult for that Member to argue convincingly, when the Committee comes to take a decision on the application, that he or she has carefully weighed the arguments presented at the meeting. The proper course of action for such a Member would be to make an open declaration and not vote.
24. Members must not put undue pressure upon officers to make a particular recommendation in their report.
25. Members of the Planning Committee must not organise support or opposition or lobby other Councillors to the extent that their impartiality may be called into question.
26. It is also common for applicants, objectors and other interested parties to seek to influence or lobby officers. Officers must avoid compromising or binding Members in relation to any issue. They will make it clear to any person seeking to lobby or influence that no commitment can be given and that they can give only personal and provisional views.

### **Pre-Application Discussions**

27. Pre-application discussion and meetings between applicants and officers are encouraged. Officers will make it clear at the outset, and at the end

of discussion, that the advice given is personal and provisional and will not bind the Council to a particular decision. (Procedure Note applies)

28. For Members, pre-application discussions with developers or potential applicants should be avoided unless such discussions are part of structured arrangements with officers. Contact should, in any case, only be made if it is considered to be beneficial and a written record of any discussion, in the absence of officers, should be sent to the Head of Environmental Services so that it may be placed on file. The same advice applies where a Member is contacted by a developer.
29. Social contact with known developers should be kept to a minimum and should be avoided when the latter are contemplating development (and the submission of a planning application) or when controversial decisions are likely to be needed.
30. Avoid commitment - even of giving that impression - when faced with lobbying by any person or group Concerned with a planning application. Indeed it would be prudent to explicitly state that no commitment may be given.
31. Officers follow a procedure on dealing with pre-applications and must take a consistent approach. Members should not require officers to take site visits when this would be contrary to the procedure (i.e. not required or insufficient information submitted by the developer or other).
32. As stated above pre-application meetings should be avoided by Members. However in the exceptions where Members are involved:
  - Where meetings are to involve Members, they will be arranged by and attended by officers and may include the Chairman of the Planning Committee or his/her representative
  - Potentially contentious meetings should normally be attended by at least two officers or a senior officer.
  - A note of the discussions made must be made and placed on file (officer's procedure note applies).
  - Officers to evaluate brown field sites in conjunction with the Urban Capacity Study
33. Site inspections can be useful to identify features of a proposal that may be difficult to convey in written report, but site inspections can cause delay and additional costs. Consequently site inspections and site meetings should only be used where expected benefit is substantial and justifiable.

## **Decisions Contrary to Officer Recommendation**

34. As stated above the law requires that where the development plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise. From time to time, Members dealing with planning matters will disagree with the professional advice given by officers. In cases where there is a decision, for good and valid reason, not to follow officers' advice, those reasons should be recorded in the minutes of the meeting. Where it is not possible for Members to define the reasons with sufficient precision at the meeting, determination should be deferred/adjourned until officers have presented draft reasons for approval by Members.
35. The Head of Environmental Services is obliged, under his own Professional Code of Conduct, to give you his view. Nevertheless he will endeavour to help Members frame reasons where they decide to go against his recommendation. Members should consider discussing his or her concerns with the Head of Environmental services, or one of his team, before a meeting so that he or she is able to express planning reasons clearly when putting forward a motion to oppose the Head of Environmental Services recommendation.
36. The Head of Environmental Services, and his team, will normally represent the Council, at Appeal. In those cases where the Members go against his recommendation, however, he reserves the right to ask Members to conduct an appeal where he feels that he, and his team, are unable to positively support a decision. In these latter circumstances the Head of Environmental Services and his team will do all that can be done to help Members prepare a case. Consideration should also be given, in these cases, to the appointment of a Planning Consultant to take on the case

## **Applications by Members and Officers**

37. Applications made by Members and officers should be notified to the Monitoring Officer and the Chief Development Control Officer. The Member or officer should take no part in the processing of the application.
38. Such applications will be determined by the relevant Committee and not by officers under delegated powers.
39. Serving Councillors who act as agents for people pursuing planning matters within their authority should play no part in the decision making process for those proposals. Such Councillors should not accept appointment to either the Planning Committee or the Community and Environment PRP.
40. Members will wish to make planning applications and may wish to make representations on their own behalf where development is proposed and affects their property. In either case they cannot participate in the

decision by reason of their prejudicial interest. They should not seek to promote their own interests in a manner that is not available to others and in particular they should not discuss the matter with other Councillors. The public speaking arrangements at Committee will not be used by Councillors save through their own representative.

### **Members' Viewing Panel**

41. Site visits can cause delay and additional costs and should only be used where the expected benefit is substantial.
42. The Viewing Panel visit is not a formal committee and is not bound by Committee Rules. No decision or debate on the merits of the application must be taken on site. Factual advice only may be sought from officers. A Member or Officers shall ask for a site visit only where he/she is genuinely concerned that there is an issue on site, which can only be appreciated, by others, if they are taken to see it.
43. Applications submitted by a serving Councillor or officer or by an ex-Councillor or ex-officer, shall be treated in exactly the same way as any other application in this context.
44. No site inspection will normally take place on private land without the consent of the owner. If consent is not given, a site may be viewed from outside of it, provided that no obstruction or nuisance is caused. Members of the public and objectors, or other persons, will not be allowed to enter private land without the consent of the owner.

### **Review of decisions**

45. An annual review of the broad range of planning application types (major, minor, permitted departures, upheld appeals, listed building works and enforcement cases) should be made. An evaluation of such should give rise to the need to reconsider policies or practices.

### **Complaints**

46. Record keeping of complaints should be accurate and complete so that complaints may be fully investigated and learnt from.