

Part 5

Codes and Protocols

MEMBERS' CODE OF CONDUCT

Model Code of Conduct¹

Revised March 2008

MEMBERS' CODE OF CONDUCT

PART I - GENERAL PROVISIONS

I Introduction and interpretation

- I.1** This Code applies to **you** as a member of an authority.
- I.2** You should read this Code together with the general principles prescribed by the Secretary of State^(a).
- I.3** It is your responsibility to comply with the provisions of this Code.
- I.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.
- I.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.

2 Scope

- 2.1** Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:

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

^(a) See the Relevant Authorities (General Principles) Order 2001 (S.I. 2001/1401).

- (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.

2.2 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.

2.3 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.

2.4 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).

2.5 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.

3. General obligations

3.1 You must treat others with respect.

3.2 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^(a));
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a 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.

^(a) 2006 c.3.

3.3 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^(a).

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.

7.2 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

^(a) 1986 c.10.

PART 2 - INTERESTS

8 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.

8.2 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).

9 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.

9.2 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.

9.3 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.

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

9.5 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.

9.6 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.

9.7 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^(a).

10 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.

10.2 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;
- (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

11 Prejudicial interests arising in relation to overview and scrutiny committees

11.1 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

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

- (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.

12 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.

12.2 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.

14. Sensitive information

- 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.

I 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:

I.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 117(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 otherwise 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

“Gift or hospitality” includes any:

- 2.1 (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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Relating to Members and officers

PROTOCOL FOR MEMBER/OFFICER RELATIONS

I. 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

**PROTOCOL ON PLANNING MATTERS IN
HART DISTRICT COUNCIL
OCTOBER 2010**

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Introduction

This Protocol is based on the Model Members' Planning Code of Good Practice issued by the Association of Councils, Secretaries and Solicitors, and guidance given by the Local Government Association in its guidance note "Probity in Planning: the role of Councillors and officers." (May 2009), and Positive Engagement a Guide for Planning Councillors updated version (2009) – LGA and Communities and Local Government (CLG)

The aim of this Protocol: To ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: To control development in the public interest - this means a matter of “common-good”. The presumption in statute is that planning permission will always be granted unless it can be shown that the development would cause a demonstrable planning harm to a matter of public interest

Your role as a Member of the Planning Committee: To make planning decisions openly, impartially, with sound judgement, and for justifiable reasons.

When the Protocol applies: This protocol applies to **ALL** members on all occasions when involving themselves in the planning process. This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority, or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

If you have any doubts about the application of this protocol to your own circumstances you should seek advice from the Monitoring Officer **BEFORE** any meeting takes place.

I RELATIONSHIP TO MEMBERS' CODE OF CONDUCT

- 1.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with as they apply on a statutory basis.
- 1.2 **Do** then apply the rules in this Planning Protocol, which seek to explain and supplement the Members' Code of Conduct. If you do not abide by this Protocol, you may put:
 - 1.2.1 The Council at risk of proceedings on the legality or maladministration of the related decision; and
 - 1.2.2 Yourself at risk of a complaint being made to the Standards Committee for breach of the Code of Conduct.

2 GUIDANCE FOR ALL MEMBERS

- 2.1 This section provides guidance for all Members including those who are members of Planning Committee or Cabinet.
- 2.2 Members will want to engage actively and positively with planning decisions.
- 2.3 Councillors **can** involve themselves in discussions with developers, their constituents and others about planning matters. However, difficulties can be avoided if you follow these useful general principles: **All members Should:**
 - 2.3.1 always involve officers and structure discussions with developers
 - 2.3.2 inform officers about any approaches made to you and seek advice

- 2.3.3 familiarise yourself with the Code of Conduct and follow it when you are representing the council
- 2.3.4 keep your register of interests up to date
- 2.3.5 be aware of what predisposition, predetermination and bias mean in your role – refer to the Standards Board Occasional Paper on Predetermination, Predisposition and Bias if unsure
- 2.3.6 be prepared to hold discussions with an applicant and officers before a planning application is made, not just after it has been submitted
- 2.3.7 preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding
- 2.3.8 be aware of what personal and prejudicial interests are – refer to the Standards Board’s website if you are unsure
- 2.3.9 recognise the distinction between giving advice and engaging in negotiation and when this is appropriate in your role
- 2.3.10 stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- 2.3.11 recognise that you can lobby and campaign but that this may remove you from the decision making process
- 2.3.12 feed in both your own and your local community’s concerns and issues
- 2.3.13 be aware that you can engage in discussions but you must have and be seen to have an open mind at the point of decision making

2.4 Members **Must Not**:

- 2.4.1 use your position improperly for personal gain or to advantage your friends or close associates
- 2.4.2 meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
- 2.4.3 attend meetings or be involved in decision-making where you have a prejudicial interest under the Code of Conduct – except when speaking when the general public are also allowed to do so
- 2.4.4 accept gifts or hospitality

- 2.4.5 prejudge or be seen to prejudge an issue if you want to be a decision maker on a proposal
- 2.4.6 seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- 2.4.7 compromise the impartiality of people who work for the Council
- 2.4.8 invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in national guidance

2.5 All Members: Declaration of Personal and Prejudicial Interests:

- 2.5.1 All members must disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Members should disclose the interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. An interest can either be personal or personal and prejudicial. The 2007 national code defines personal and prejudicial interest and cites the test to determine whether a personal interest is also prejudicial as one “which a member of the public would regard as so significant that it is likely to prejudice your judgement of the public interest”.

2.6 Where your interest is personal and prejudicial

- 2.6.1 **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by Planning Committee.
- 2.6.2 **Don't** try to represent ward views, get a fellow Councillors or another Ward member to do so instead.
- 2.6.3 **Don't** get involved in the assessment of the application by the case officer.
- 2.6.4 **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor.
- 2.6.5 You are **not** prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing. However, you must be careful not to use or appear to use your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- 2.6.6 Under the Code of Conduct a member with a prejudicial interest may, with the agreement of the Committee, attend a meeting (including a meeting of the overview and scrutiny committee 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. You must thereafter leave the room whilst the meeting considers it. You may not remain to observe the meeting's consideration of it from the public gallery. This is to avoid any perception that your presence may influence or seek to influence the other members of the Committee.

2.6.7 **Do** notify the Monitoring Officer in writing of your own or any relative's application and note that:

2.6.7.1 You should send the notification to the Monitoring Officer as soon as the application is submitted;

2.6.7.2 The application will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and

2.6.7.3 You may employ an agent to act on your behalf on the application in dealing with officers and any public speaking at Committee.

2.6.8 Where a Member is in any doubt about whether they have an interest they are advised always to seek advice of the Monitoring Officer before the meeting.

2.7 Attendance at Hearings and Public Inquiries

2.7.1 If a Councillor intends to make representations to the Planning Inspectorate on any appeal either in writing or in person at any hearing or public inquiry, they should advise the Head of Head of Planning Services 7 days in advance and indicate whether these representations will be in support of the Council's case.

3 ADDITIONAL GUIDANCE FOR WARD MEMBERS WHO ARE NOT MEMBERS OF PLANNING COMMITTEE OR THE CABINET

Paragraphs 2.5.1 to 2.6.8 above apply equally to all members.

3.1 Members, in their roles as ward councillors will often be approached by members of local communities, developers, or landowners seeking either their support or their opposition to proposals - this is a key role for members who are not on the decision-making bodies. Ward members **can** take part in planning discussions and make representations on planning matters or otherwise act as advocates for their communities by:

3.1.1 Joining or leading local campaigns;

3.1.2 Speaking, with the respective Chairman's permission, at the relevant committee in support or against a proposal, policy or enforcement action;

3.1.3 Acting as advocate for their community on a particular issue.

3.2 To promote transparency and following best practice Members **should**:

- 3.2.1 When speaking or making representations at the appropriate decision making committee or Cabinet make it clear their role in any local campaign or supporting any particular position;
- 3.2.2 Make it clear when acting as an advocate or making representations on planning matters that they are not part of the decision making process; and
- 3.2.3 Only carry out any lobbying of their decision making colleagues in favour of a particular planning decision in an open and transparent way

4 ADDITIONAL GUIDANCE FOR MEMBERS OF PLANNING COMMITTEE

4.1 Planning Committee Members: Declaration of Personal and Prejudicial Interests

Paragraphs 2.5.1 to 2.6.8 above apply equally to all members.

4.2 Avoidance of bias or predetermination or fettering your discretion

- 4.2.1 Members have a legal duty to avoid bias or appearance of bias. Members also need to ensure they do not do anything which indicates they have made their mind up on an application or policy matter before it comes before the committee e.g. by stating in advance how they will vote. This is defined in law as fettering your discretion
- 4.2.2 **Bias** has been defined as a tendency towards one side because of an irrelevant factor such as a close relationship; **predetermination** is considered to be having a closed mind in a case. On the other hand a *predisposition* in a particular case means holding a provisional view, which, however strongly held, is capable of being changed by a relevant argument or factor. Predisposition will not invalidate a subsequent decision, but care must be taken to avoid predetermining or appearing to have predetermined an application which is grounds for invalidation.
- 4.2.3 **Don't** fetter your discretion. and therefore your ability to participate in planning decision making at the Committee meeting, by making up your mind, or appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Committee and of your hearing the officer's presentation and evidence and arguments on both sides.
- 4.2.4 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- 4.2.5 **Do** consider yourself able to take part in the discussion of a proposal when acting as part of a consultee body (such as a parish or town council), provided:
- 4.2.5.1 the proposal does not substantially affect the well being or financial standing of the consultee body;
 - 4.2.5.2 you make it clear to the consultee body that your views are expressed on the limited information before you only;
 - 4.2.5.3 you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area or ward as and when it comes before Committee and you hear all of the relevant information;
 - 4.2.5.4 you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
 - 4.2.5.5 you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- 4.2.6 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not have to withdraw, but you may prefer to do so for the sake of appearances.
- 4.2.7 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- 4.2.8 You **may** exercise your separate speaking rights as a Ward member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
- 4.2.8.1 advise the Chairman that you wish to speak in this capacity before commencement of the item;
 - 4.2.8.2 remove yourself from the member seating area for the duration of that item and ensure that this action is recorded. Leave the room whilst the meeting considers it. Do not remain to observe the meeting's consideration of it from the public gallery.
 - 4.2.8.3 It may, however, be advisable if a ward member who is not a member of Planning Committee represented the views of the local electors so that you can participate in the meeting without having fettered your discretion.

4.3 **Planning Committee Members: Development of Council Owned Land**

- 4.3.1 The planning legislation specifically allows local planning authorities to determine applications on Council-owned land. There is therefore, no automatic requirement for Members, even of Planning Committee, to declare an interest when taking planning decisions merely because the land is owned by the Council.

4.3.2 However where you are so committed to a particular development which is likely to be as a result of your Cabinet responsibility and you may be seen as the chief advocate on behalf of the authority for the development you will be perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits. In such circumstances you can address the Committee but should not vote on the relevant applications. You do not have to withdraw but may prefer to do so for the sake of appearances.

4.4 Licensing Committee Members who are also Members of Planning Committee

4.4.1 When an application for development is to be considered by Planning Committee and the application site was the subject of an earlier licensing decision in which you participated you should declare this as a personal interest, but you may remain and participate in the discussion and vote.

4.5 Contact with Applicants, Developers and Objectors

4.5.1 **Do** refer those who approach you for planning, procedural or technical advice to officers where appropriate.

4.5.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should ask the Head of Planning Services to organise it. The officer(s) will then be able to ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

4.5.3 In all circumstance you **Must**:

4.5.3.1 follow the rules on lobbying;

4.5.3.2 make notes when contacted; and

4.5.3.3 report to the Monitoring Officer any significant contact with the applicant and other parties (including other Members and objectors), explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

4.6 Attendance at Presentations or Exhibitions by Applicants or Developers

4.6.1 Members of Planning Committee may attend presentations or exhibitions organised by an applicant or objector and can ask relevant questions for the purposes of clarifying your understanding of the proposals. Members should adhere to the following:

- 4.6.1.1 **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the Planning Committee.
- 4.6.1.2 **Do** avoid expressing an opinion on the merits of the proposal which could indicate you have made up your mind without hearing all the arguments.

4.7 Lobbying of Councillors

People will want to lobby their local Councillors. This is a normal part of the democratic process.

- 4.7.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality and therefore your ability to participate in the Committee's decision making process to express any firm intention to vote one way or another.
- 4.7.2 **Do** remember that your overriding duty is to the whole community, and not just to the people in the ward and, taking account of the need to make decisions impartially and for justifiable planning reasons that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 4.7.3 **Don't** accept gifts or hospitality from anyone involved in or affected by a planning proposal.
- 4.7.4 **Do** copy or pass on any relevant lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity.
- 4.7.5 **Don't** rely on private correspondence. Always copy or pass on any relevant lobbying correspondence you receive to the Head of Planning Services at the earliest opportunity so that it can be made public and placed on the file.
- 4.7.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).
- 4.7.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Protocol through:
 - 4.7.8.1 listening or receiving viewpoints from residents or other interested parties;
 - 4.7.8.2 making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of, or amount to, pre-judging the issue and you make clear you are keeping an open mind;
 - 4.7.8.3 seeking information through appropriate channels; or
 - 4.7.8.4 being a vehicle for the expression of opinion or speaking at the meeting as a Ward member, provided you explain your actions at

the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate. It would, however, be advisable to leave representing ward interests to ward members who are not members of Planning Committee.

4.8 Lobbying by Councillors

- 4.8.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal prejudicial interest.
- 4.8.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as Campaign for the Preservation of Rural England, The Ramblers Association or a local civic society, but you should disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 4.8.3 **Don't** excessively lobby or put pressure on fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 4.8.4 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should **never** dictate how Members should vote on a planning issue.

4.9 Site Visits

4.9.1 Site Visits by Planning Committee

Site visits should only be called where the expected benefit is substantial.

4.9.2 **Don't** seek a site visit unless you feel it is strictly necessary because:

- 4.9.2.1 The impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
- 4.9.2.2 There is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing or by verbal presentation at the Committee meeting.

4.9.3 **Don't** call for a site visit simply to appease some one or another body or a consultee.

4.9.4 Site Visits by individual members of Planning Committee

- 4.9.4.1 Many members may already be familiar with sites that are the subject of applications but not necessarily in all cases. It is normal and proper for members, in these circumstances, to visit a site themselves before the Committee meeting. Where individual members of the Committee wish to undertake their own site inspection prior to the Committee meeting, these should be conducted unannounced and from a public vantage point. Members of the Committee should not arrange to meet applicants, agents, or third parties for the purpose of a site inspection.
- 4.9.4.2 If a Committee member is approached on site by any applicant, agent, objector, or other third party interest they should seek to avoid discussion of the application and should ensure they do not give any indication of their views or the likely decision of the Committee. Where it is not practical to avoid some discussion the member should note that it took place and pass the information to the Head of Planning Services so that it can be recorded at Committee.

4.10 Conduct at Meetings

- 4.10.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias. You should avoid communicating privately with applicants and objectors either immediately before or during the Committee meeting.
- 4.10.2 **Avoid** speaking to other members whilst the applicant or objectors are making representations to Planning Committee as this may give the impression you are not taking into consideration their views.
- 4.10.3 **Be** aware of public perception. You should appear to be paying attention to the discussion at all times.
- 4.10.4 **Do** ensure that you comply with the Council's procedures in respect of public speaking. Do not seek to change on an 'ad hoc' basis the agreed procedures for public speaking.

4.11 Membership of other Bodies

- 4.11.1 A Member who is a member of another body such as a Parish Council or Hampshire County Council that may have been consulted on a planning matter or particular application will have a personal interest which **must** be disclosed at the beginning of the meeting. This does not necessarily mean however, that you have a prejudicial interest. In carrying out their role and duties with the other authority the Member should ensure that they do not fetter their

discretion to deal with any planning matter or application at Planning Committee in a fair, unbiased and open minded way.

- 4.11.2 Councillors who also serve on Parish Councils may need to clarify their separate roles in each Council regarding District planning policies, and take advice at an early stage if they anticipate a potential conflict of interest. The public and other interested parties should be clear at all times when the Councillors are acting as a Parish Councillor and when they are acting in their role as a District Councillor.
- 4.11.3 Where you serve as an appointed or nominated representative of the Council on an outside body, such as on the Board of a Registered Social landlord for example it is inevitable that conflicts (actual or potential) will arise, from time to time, between the duties you owe to the outside body, and the duties you owe to the Council. Conflicting interests should be declared on every occasion. If you are appointed to an outside body, you will have a personal interest in that body. Provided that you do not have a prejudicial interest, you only need to declare your interest if and when you speak on the matter at a Council meeting. You will have a prejudicial interest in a matter relating to the outside body, if you are in a position of control or management on the outside body and the interest falls into one of the following two categories:
- 4.11.3.1 the matter affects the financial position of the outside body e.g. an application for grant funding to the outside body; or
 - 4.11.3.2 the matter relates to an approval, consent, licence, permission or registration that affects the outside body e.g. application by the outside body for planning permission
- 4.11.5 A member who is a member of a lobby or campaign group should carefully consider whether they can participate in a planning application where the group has campaigned for or against a particular proposal.
- 4.11.7 A member should consider the nature of their involvement with the group; the publicly expressed views of the lobby or campaigning group; what has been or done in relation to the particular group and consider whether a member of the public with all the facts would reasonably think the interest is significant, that your decision on the matter would be prejudiced by it. If the answer is “yes” then you must declare a personal and prejudicial interest and leave the room.

4.12 Decision Making

- 4.13.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 4.13.2 **Do** come to meetings with an open mind and demonstrate your willingness to listen.

- 4.13.3 **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.13.4 **Do** come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you then you should request a deferral but don't use the lack of information as a basis for moving refusal.
- 4.13.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 4.13.6 **Do** have recorded the reasons during the meeting for Planning Committee's decision to defer any proposal.
- 4.13.7 **Don't** ask any proposals to be deferred unless there are sound planning reasons – a failure of a consultee to respond in time is not a sound planning reason. Remember, costs can now be awarded against the District Council in the event of a planning appeal against the failure to determine a planning application within time.
- 4.13.8 **Do** make sure that in discussing, and determining a planning application or other planning matter, you confine yourself to the planning merits of the case. Do not raise non-planning considerations even if only in passing.
- 4.13.9 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion or decision. You should always be aware of the consequences of any decision before it is made. Detailed reasons must be given including policy references. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge so be prepare to attend and support Officers at any public inquiry or hearing.
- 4.13.10 **Always** bear in mind that if planning permission is to be refused it is solely for the Council to demonstrate why. Where technical evidence, such as transport or highway statements, are submitted, planning permission should not be refused simply because one does not like, agree or is satisfied with the technical evidence/advice. This does not seek to prevent proper scrutiny and testing of the evidence but in every instance, all refusals of planning permission must be underpinned by substantiated evidence.

4.13 Review of planning decisions

- 4.13.1 From time to time arrangements will be made for Councillors to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken. The outcome of this review will be considered by the Planning Committee Working Party and may lead to identification of possible amendments to existing policies or practice.

5 ADDITIONAL GUIDANCE FOR CABINET MEMBERS

Cabinet members may be approached by parties, members of local communities, developers, landowners seeking both their support and their opposition to planning matters as are those serving on Planning Committee. In these circumstances the same opportunities and constraints apply as to members generally but the level of potential scrutiny is likely to be higher

5.1 Cabinet Members: Declaration of Personal and Prejudicial Interests

Paragraphs 2.5.1 to 2.6.8 apply equally to all members.

5.2 Cabinet Members – Avoidance of Bias and Predetermination

Cabinet members are referred to the guidance on bias, predetermination and predisposition in paragraph 4.1 above which applies to all members as appropriate.

- 5.2.1 For clarity: Support for an overall policy stance or objectives, as distinct from a specific application of that policy approach in any decisions would be regarded as legitimate predisposition, rather than a predetermination which would render a member's involvement in decision making unsafe.

5.3 Cabinet Members – Attendance at presentations/exhibitions and site visits

- 5.3.1 The formulation of policy and the development of site briefs may benefit from early engagement by members. Officers may prepare a committee report or briefing note, or arrange a presentation or meeting in order to identify or debate key issues. This provides the opportunity for cabinet members to raise questions of their own or seek further information regarding a proposed policy.
- 5.3.2 Information presented and comments made at such briefings/meetings will have regard to the stage of negotiations and their sensitivity and possible links to other large scale schemes or planning activities which raise the same issues.

5.4 Cabinet Members: Planning and property functions: Development of Council-owned land

- 5.4.1 The planning legislation specifically allows local planning authorities to determine applications on council owned land so there is no automatic requirement for members of the cabinet to declare an interest when making planning decisions e.g. on planning briefs, merely because the land is owned by the council.
- 5.4.2 When a former council site is being considered by Cabinet (e.g. for inclusion in the LDF or for a planning brief) and a cabinet member was also member of the cabinet when a decision was taken on the disposal of the land he/she should declare this as a personal interest by the member concerned **may** remain and take a full part in any decision taken.

5.5 Cabinet Members who are also Planning Committee members

- 5.5.1 When a proposal is under consideration at a Planning Committee meeting and a committee member was also a member of the Cabinet making a decision (e.g. a planning brief) this should be disclosed as a personal interest but the member concerned may remain and take a full part in any decision taken. However, where a member is identified with a development, for example as the lead proponent of a council led Development, then the member should declare his involvement, may address the committee but should take **no** further part in the discussion and should **not** vote.
- 5.5.2 Where a cabinet member was part of the cabinet meeting which determined the planning brief affecting land where a planning application is now to be determined the member **can** take a full part in the committee discussions as the planning brief is council policy.

6 ROLE OF OFFICERS

- 6.1 Don't** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions).
- 6.2 Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

7 TRAINING

- 7.1 Don't** participate in decision making a meeting of the Planning Committee if you have not undertaken the annual Induction to Planning /Refresher training organised for all members at the beginning of each municipal year by the Head of Planning.
- 7.2 Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above, in paragraph 7.1 above, and thus assist you in carrying out your role properly and effectively.

Powers granted by the Council to the Head of Planning Services to deal with Planning Matters (March 2010)

1. To determine or decline to determine all applications made, deemed to be made or referred to the Council under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and any statutory instruments made under those Acts, together with applications for certificates of Appropriate Alternative Development, together with determinations that it is not expedient to take enforcement action except an application where
 - Ia a. within four weeks of its registration by the Council, or
 - b. within five working days of being notified that it is intended to grant permission where:
 - i). the parish/town council (within the 21 day parish/town council notification period) has raised material planning objection^{2,3} that cannot be overcome by reasonable amendment to the application or by the imposition of planning conditions; or
 - ii). more than 3 letters of objection from independent sources⁴ have been received (within the 21 day published notification period) each raising substantive material planning objections^{2,3} that cannot be overcome by reasonable amendment to the application or by the imposition of planning conditionsany one of the local Ward Councillor (or in the absence of a local Ward Councillor another previously nominated District Councillor) requests in writing to the Head of Planning Services, giving relevant substantive material planning reasons, that the application be determined by the Planning Committee and the referral is agreed by the Chairman of the Committee
- Ib The Head of Planning Services considers that the application/notice/order should be considered by Committee
- Ic The approval of the application would represent a material departure from the policies of the statutory development plan
- Id The proposal involves the District Council as applicant or land owner or as interested party

² To be material the objection must be related to the development and use of land in the public interest and must fairly and reasonably relate to the application concerned.

³ In the case of applications for the approval of reserved matters following the grant of outline planning permission representations from third parties will not be treated as objections when they raise issues that are, in the opinion of the Head of Planning Services, not material to the determination of such applications in accordance with the relevant statutory provisions.

⁴ To be independent each letter must be written so that it is unique to the objector. Letters based upon a common template or proforma shall not be treated as individual letters. Letters which state that the author objects but do not give reasons will not be counted. Signatures on petitions will not be counted as individual objections.

- Ie Submitted by (including acting as an agent) or on behalf of a District Councillor (or his/her spouse or partner or immediate family) or where a District Councillor lives in the adjoining property, a property opposite the application site or a property either side
- If The applicant or agent is an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Planning Services or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions
- Ig Where an officer who is a Member of the Council's Management Team, a Service Unit Head, or a member of staff within Planning Services or any member of staff within the Authority who could be seen as having a direct input to, and therefore influence on, application decisions, lives in the adjoining property, a property opposite the application site or a property either side

General Principles of operation within the delegated scheme

- A The role of Planning Committee is to determine major or more complex applications that raise issues of more than immediate local importance. The intention is to allow councillors to focus on applications needing additional scrutiny where added member value in balancing conflicting pressures is important. This does not necessarily preclude consideration by the Committee of minor or other applications provided that they raise issues of more than local importance.
- B Planning applications should normally only be referred to the Planning Committee where a matter of fundamental principle or precedent is identified which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where the Local Ward Member can demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee.
- C Referral to the Planning Committee should not be used as a means to arbitrate between competing interest groups or to put off making difficult decisions.
- D Referral to Planning Committee should also not be used as a means to change the outcome of any decision on a planning application.

Process

- 1. All members are notified by email of individual applications within their wards.
- 2. Members are encouraged to view the plans on-line via the internet. Members are also encouraged to contact the Case Officer if there are any queries or if they want to discuss issues of principle or detail.
- 3. Officers are encouraged to contact members where they feel that the matter may be contentious and this should be done as soon in the process as possible.
- 4. Where an application is required to be referred to a local Ward Member(s) the Ward Member(s) will be sent a copy of the report.
- 5. A 5 working day turnaround for responses will be strictly applied.
- 6. If the Ward Member(s) disagrees with the Officer's recommendation to grant planning permission, they should advise the Case Officer in writing clearly stated material planning issues that give them concern. In seeking to have the application referred to Planning Committee the Ward Member(s) must demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible but must be within the 5 working day turnaround.

7. The Case Officer will then send the report to the Chairman of the Planning Committee with a risk assessment if necessary. Should the Chairman of the Planning Committee agree with the Case Officer rather than the Ward Member(s) then the Chairman should seek to notify the Ward Member(s) to explain his reasons prior to making any final decision as whether the application should be decided under delegated powers and not referred to the Planning Committee for decision.
8. Householder or Other applications will not normally be presented to a committee as they raise issues of only local impact. It is expected that members will work through any issues arising from the proposal with the Case Officer managing that process and with the involvement of applicant or agents as appropriate.
9. If in any instances a Ward Member(s) wishes any application to be considered by the Planning Committee, they should advise the Case Officer in writing with clearly stated planning issues that give them concern. The Ward Member must also demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee. This should be done as soon in the process as possible and in any event must be done within 28 days of first being notified of the receipt of the planning application.
10. Where the request by a Ward Member for an application to be considered by the Planning Committee is agreed by the Chairman of the Planning Committee, the reason given by the Ward Member should be included in the report.
11. If a scheme is capable of minor revision to overcome the members concerns (such as the addition of a condition or reasonable amendment to the development) the Case Officer will seek to achieve such revisions with the applicant, provided it can be achieved within the deadline for decision.
12. Where Members have spoken to the Officers they must exercise care not to go on public record with their views of a planning application, as this may mean that they are excluded from the process later on.
13. Members must not enter into any negotiations or discussions relating to planning applications with applicants or agents unless accompanied by an officer and the discussions are minuted.
14. Parish councils have an enhanced role in the process of determining planning application under the Council's adopted scheme of delegation. The process nevertheless allows the determination of the application to be contrary to the views of parish councils without the applications being automatically referred to the Planning Committee. Parish councils will be encouraged to "qualify" their comments and thus the basis on which an objection is raised can be made clear. Parish council comments are important as they are based on a wealth and depth of local knowledge, which can benefit the consideration of the application. Nonetheless the parishes, whilst important parties to the process, are one of a wide range of consultees and their comments should not be given additional weight purely because they are made by a parish council. Therefore, simply because a parish council has raised objections to a development will not in itself

be sufficient grounds to refer a planning application to Planning Committee. The substance of any comments rather than its source is the more important issue.

15. Applications will not normally be referred to Planning Committee simply to allow an objector/applicant an opportunity to air their views in a public forum except where a matter of fundamental principle or precedent is identified which shall be taken to involve the interpretation of a matter of policy which could undermine the purpose and objectives of the Local Plan or Local Development Framework, and where the Local Ward Member(s) can demonstrate that the proposal would have such a prejudicial impact or effect on the area or District or its residents as to warrant determination by Planning Committee.
16. Where a decision is made that is contrary to the view of the parish council the Case Officer will write to the parish council and explain the reasons for taking a contrary view. A copy of the Case Officer's report may be sufficient in these circumstances.

Material and Non Material Planning Considerations

- A. The planning presumption is that planning permission will always be granted unless the development would give rise to a material harm to a matter of public planning interest.
- B. Material considerations must be genuine planning considerations, i.e. they must be related to the development and use of land in the public interest. They must also fairly and reasonably relate to the application concerned. The Courts are the arbiters of what constitutes a material consideration. All the fundamental factors involved in land-use planning are included, such as:
- the number,
 - size,
 - layout,
 - siting,
 - design,
 - external appearance of buildings
 - the proposed means of access,
 - landscaping,
 - impact on the neighbourhood, and
 - the availability or lack of infrastructure (provided that there is substantive evidence to support such a claim).
- C. Matters that should **not** be taken into account include:
- loss of property value
 - land and boundary disputes
 - the impact of construction work
 - need for development (save in certain defined circumstances)
 - ownership of land or rights of way
 - change to previous scheme – each application must be determined on its own particular merits
 - that the work or change in use may have been carried out in advance without planning permission – the essential test is not that the works have been carried out but whether those works in themselves have caused a planning harm to a matter of public interest
 - loss of view
 - matters covered by leases or covenants
 - property maintenance issues
 - the identity or personal characteristics of the applicant
 - competition between firms and uses
 - moral objections to development such as amusement arcades or betting shops
 - the weight of public opposition or support – it is not the number of public representation made that is relevant but rather the material planning issues raised that is important
 - personal preferences – applications have to be determined on the basis as submitted by the applicant. Changes should only be made where there are overriding material planning objections

- matters that are dealt with by other legislation, such as the Building Regulations (e.g. structural safety, fire risks, means of escape in the event of fire etc). - The fact that a development may conflict with other legislation is not a reason to refuse planning permission or defer a decision. It is the applicant's responsibility to ensure compliance with all relevant legislation
- D. Government statements of planning policy are material considerations that must be taken into account in deciding planning applications. These statements cannot make irrelevant any matter that is a material consideration in a particular case. Nevertheless, where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them.
- E. In those cases where the development plan is not relevant, for example because there are no relevant policies, the planning application should be determined on its merits in the light of all the material considerations.

Determining Planning Applications

- A. Planning applications will normally be dealt with within **8 weeks** (13 weeks for major applications).
- B. Additional information will only be sought where it is strictly necessary for the determination process.
- C. Applications will normally be determined as submitted. The Council will not normally support a process of continuing amendments to an application which delays the decision-making process beyond the statutory time period. Applications will not be deferred unless the Council is satisfied that there is an overriding planning purpose. Applications will normally be determined as soon as possible unless they are withdrawn, or amended with by prior agreement.
- D. If the application is unacceptable but minor adjustments could overcome the concerns, the planning officer may explain this to the applicant. Where the amendments are very minor, the applicant will be given a reasonable time to submit revised proposals. If, at the end of that period, amendments have not be received that application will be decided on the proposals as originally submitted.
- E. If more substantial amendments are necessary, particularly if they are likely to require further consultation, the applicant may be invited to withdraw the application and submit a revised scheme. The Council will not however, support the submission of late amendments that seek to substantially alter the nature of the application in circumstances where, to accept those amendments, would delay the determination of an application. In those circumstances, no amendments will be accepted.
- F. If planning permission is to be refused it is solely for the Council to demonstrate why. Where technical evidence, such as transport or highway statements, are submitted, planning permission should not be refused simply because one does not like, agree or is satisfied with the technical evidence/advice. This does not seek to prevent proper scrutiny and testing of the evidence but in every instance, all refusals of planning permission must be underpinned by substantiated evidence.
- G. Unsatisfactory applications will be refused without discussion where:
 - (i) The proposal is unacceptable in principle; or
 - (ii) A completely new design would be needed to overcome objections; or
 - (iii) Clear pre-application advice has been given, but the applicant has not followed that advice; or
 - (iv) No pre-application advice has been sought; or
 - (v) The development does not comply with Local Plan or other published standards.

Decisions contrary to Officer Recommendations and subsequent Appeals

1. In determining planning applications, the Planning Committee is entitled to decide the weight to be attached to the various planning criteria that are relevant to the application. This may lead to a decision contrary to the recommendation of the officers.
2. In these circumstances, it is essential that the reasons for the decision are clear in the minds of the Committee members. It is often possible for the Committee to be clear about the reasons for refusal and to set these out in detail when the application is first considered. Sometimes it may be necessary to defer an application for a further report to enable detailed reasons to be framed and considered. In terms of decisions to grant permission contrary to office advice, the Committee may be happy for these to be left with the Officers or in some cases for subsequent agreement with the Chairman or Vice-Chairman of the Planning Committee.
3. Where the Planning Committee wish to refuse an application contrary to an Officer recommendation the reasons for refusal should be clearly stated and a detailed minute of the decision should be made.
4. Where the Planning Committee wish to grant planning permission contrary to an Officer recommendation a detailed minute of the Committee's reasons will be made. Committee should indicate whether there are any specific conditions that it wishes to see imposed.
5. The drafting of appropriate conditions, including any specifically identified by Committee, will normally be delegated to the Head of Planning Services, unless the Committee indicate otherwise.
6. Where Members wish to add extra planning conditions or delete recommended conditions, a detailed minute of the reasons for the Committee's action should be made.
7. In the cases of decisions made contrary to Officer recommendation, the Officer attending the meeting should first be given the opportunity to explain the implications of the decision before any final decision is made.

Appeals against decisions contrary to the Officer's Recommendations

1. Where an appeal to the Secretary of State is subsequently lodged against a decision made contrary to the Officer's recommendation, Planning Officers (and other Officers as appropriate) will normally act as professional witness to present the Council's case at public inquiries and local hearings unless the Head of Planning Services considers that this would prejudice the outcome.

2. In those circumstances the Head of Planning Services may ask Members to conduct the appeal. The Planning Committee will therefore need to be prepared to identify a Councillor(s) to support the case at a public inquiry or local hearing. This would normally be the Councillors who proposed and seconded the reasons for refusal. This is clearly of considerable importance in stressing to a planning inspector the strength of Members' views and the reasoning behind them. The Head of Planning Services and his team will do all that can be done to help Members prepare a case.

Officer Reports to Committee

The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004.