DARTFORD BOROUGH COUNCIL

CONSTITUTION OF THE COUNCIL

PART 6: CODES AND PROTOCOOLS

Contents

PART 6: CODES AND PROTOCOOLS 1

1. CODE OF CORPORATE GOVERNANCE 5

1. Introduction 5

1.1 What is Governance? 7

1.3 Core Principles of Good Governance 7

1.4. Annual Review and Reporting 18

2. CODE OF CONDUCT FOR EMPLOYEES 19

2.1 Purpose 19

2.2 Standards 19

2.3 Accountability 19

2.4 Disclosure of information 19

2.5 Political neutrality 20

2.6 Relationships 20

2.7 Appointment and other employment matters 21

2.8. Outside commitments 21

2.9 Personal interests 21

2.10 Equality 22

2.11 Anti- Corruption & Bribery 22

2.12 Use of financial resources 22

3. MEMBER CODE OF CONDUCT 23

4. ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER SECTION 28 LOCALISM ACT 2011 36

4.1 Making a complaint 36

4.2 Political expression 40

4.3 Grievance procedures 41

4.4 Training 41

4.5 Investigation 42

4.6 Hearing Panel 43

4.7 Sanctions 43

4.8 Dealing with the recommendation(s) 44

4.9. Determination – Hearing Panel 44

4.10 Appeal and complaints 45
4.11 Ombudsman 45
4.12 Revision of these Arrangements 45

5. GUIDANCE ON SENSITIVE INTERESTS 46

6. MEMBER/OFFICER RELATIONS PROTOCOL 48
1. INTRODUCTION 48
2. THE ROLE OF MEMBERS 49
3. THE ROLE OF OFFICERS 50
4. THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS 51
5. THE COUNCIL AS EMPLOYER 53
6. SCRUTINY COMMITTEE AND OFFICERS 54
8 WARD MEMBERS AND OFFICERS 56
7. THE MAYORALTY 58
10 MEDIA RELATIONS 58
11 COMMUNICATIONS 58
12. USE OF COUNCIL FACILITIES AND RESOURCES 58
13. EMPLOYEES SUPPORTING COUNCILLORS 59
15. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL 59
16. OVERSEEING COMPLIANCE WITH THIS PROTOCOL 60
17. FURTHER GUIDANCE 60

7. PROBITY IN LICENSING PROTOCOL 61
1. INTRODUCTION 61
2. PRINCIPLES FOR A FAIR HEARING 61
3. LICENSING SUB-COMMITTEE MEMBER COMPOSITION 61
4. CODE OF CONDUCT 61
5.LOBBYING 65
7. COUNCILLORS' REPRESENTATIONAL ROLE See Appendix 1 66
8. OPEN MIND 69
9. DUAL - HATTED MEMBERS 72
10. LICENSING POLICY 72
11. SITE VISITS 72
12. COUNCIL'S LICENSING APPLICATIONS 73
13. TRAINING 73

14. OMBUDSMAN & COMPLAINTS ABOUT THE ADMINISTRATION OF LICENSING APPLICATIONS 73
15. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL 74
16. OVERSEEING COMPLIANCE WITH THIS PROTOCOL 74
17. FURTHER GUIDANCE 74

8. PROBITY IN PLANNING PROTOCOL 78
1. INTRODUCTION 78
2. THE PLANNING SYSTEM 78
3. THE COUNCIL'S DECISION-MAKING FRAMEWORK 79
4 CODE OF CONDUCT 80
5 POLICY AND STRATEGIC ISSUES 83
6 DEVELOPMENT PLAN PREPARATION 83
7. REPRESENTING CONSTITUENTS 84
8. MEMBERSHIP OF LOBBY, CAMPAIGN GROUPS & CLUBS & SOCIETIES (UNINCORPORATED ORGANISATIONS) 85
9. LOBBYING 86
10. KEEPING AN OPEN MIND 86
11. BIAS 89
12. DUEL HATTED MEMBERS 89
13. PRE-APPLICATION DISCUSSIONS 90
14. OFFICERS REPORTS 93
15. PLANNING APPLICATIONS SUBMITTED BY COUNCILLORS, OFFICERS AND BY THE COUNCIL 93
16. NATIONAL SCHEME OF DELEGATION 94
17. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS 94
18. MEMBER SITE VISITS 95
19. WITHDRAWN ITEMS 96
20. PUBLIC SPEAKING 96
21. LATE MATERIAL AND UPDATES 97
22. ROLE OF CHAIRMAN 97
23. PLANNING ENFORCEMENT 97
24. TRAINING 98
25. OMBUDSMAN AND COMPLAINTS ABOUT THE ADMINISTRATION OF PLANNING APPLICATIONS 99
26. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL 100

27. OVERSEEING COMPLAINTS WITH THIS PROTOCOL.....100
28. FURTHER GUIDANCE 100

9. PROTOCOL ON THE RELEASE OF CONFIDENTIAL INFORMATION..... 102
1. INTRODUCTION 102
2. MEANING OF CONFIDENTIAL INFORMATION 103
3. MEANING OF EXEMPT INFORMATION.....104
4. OTHER CONFIDENTIAL INFORMATION 104
5. WHEN IS INFORMATION LIKELY TO BE CONFIDENTIAL? 104
6. YOUR RIGHT AS A MEMBER TO ACCESS CONFIDENTIAL INFORMATION 105
7. WHEN IS A MEMBER SUBJECT TO THE DUTY OF CONFIDENTIALITY UNDER THE MEMBER CODE OF CONDUCT? 106
8. PROCEDURE TO BE APPLIED BEFORE DISCLOSING CONFIDENTIAL INFORMATION.....109
9. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL 109
10. OVERSEEING COMPLIANCE WITH THIS PROTOCOL 109
11. FURTHER GUIDANCE 109

1. CODE OF CORPORATE GOVERNANCE

1. Introduction

This document sets out how Dartford Borough Council (the Council) intends to apply the principles of corporate governance in the way the Council operates and conducts

business. It has been developed in accordance with the principles outlined in the framework and guidance notes for CIPFA/SOLACE “Delivering Good Governance in Local Government” (2016).

The Council is required to review existing governance arrangements, develop and maintain an up to date local Code of Corporate Governance (“the Code”) (including arrangements for ensuring ongoing effectiveness), and to prepare an Annual Governance Statement (in order to report publicly on its compliance with the Code and the monitoring of effectiveness of its governance arrangements).

1.1 What is Governance?

Governance is about how the Council ensures that it is doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner. It comprises the systems and processes, and cultures and values, by which such bodies are directed and controlled and through which they account to, engage with, where appropriate, and lead their communities.

Good governance enables the Council to define and pursue its vision more effectively. It leads to improvements in management, performance, stewardship of public money and public engagement and outcomes for individuals and the community. It ensures that appropriate mechanisms for control are in place and that risks and opportunities are managed effectively.

1.2 Core Principles of Good Governance

The following core principles have been taken from the International Framework; Good Governance in the Public Sector (CIPFA/IFAC 2014); which notes that principles A and B "permeate" implementation of principles C-G below.

A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting rule of law.

B. Ensuring openness and comprehensive stakeholder engagement.

C. Defining outcomes in terms of sustainable economic, social, and environmental benefits.

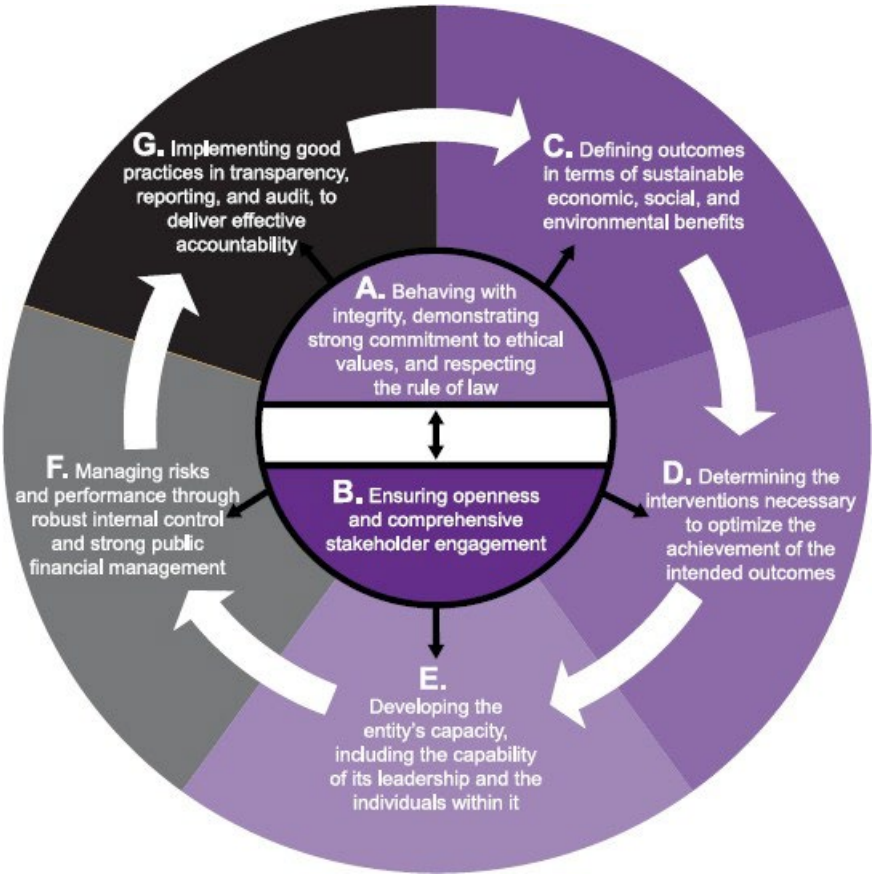
D. Determining the interventions necessary to optimise the achievement of the intended outcomes.

E. Development the Partnership's capacity, including the capability of its leadership and the individuals within it.

F. Managing risks and performance through robust internal control and strong public financial management.

G. Implementing good practices in transparency reporting, and audit to deliver effective accountability.

The diagram below shows how the principles relate to each other.



2. Applying the Principles of Good Governance

Each of the seven core principles above has a number of sub principles, which in turn, translate into a range of specific behaviours and actions that apply across the various aspects of the Council's functions that demonstrate good governance.

Principle A: Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law.

Sub-principle: Behaving with integrity

Behaviours and actions that demonstrate good governance in practice	Ensuring members and officers behave with integrity and lead a culture where acting in the public interest is visibly and consistently demonstrated thereby protecting the reputation of the organisation. Ensuring members take the lead in establishing specific standard operating principles or values for the organisation and its staff and that they are communicated and understood. These should build on the Seven Principles of Public Life (the Nolan Principles). Leading by example and using these standard operating principles or values as a framework for decision making and other actions. Demonstrating, communicating and embedding the standard operating principles or values through appropriate policies and processes which are reviewed on a regular basis to ensure that they are operating effectively.

Sub-principle: Demonstrating strong commitment to ethical values.

Behaviours and actions that demonstrate good governance in practice	Seeking to establish, monitor and maintain the organisation's ethical standards and performance. Underpinning personal behaviour with ethical values and ensuring they permeate all aspects of the organisation's culture and operation. Developing and maintaining robust policies and procedures which place emphasis on agreed ethical values. Ensuring that external providers of services on behalf of the organisation are required to act with integrity and in compliance with high ethical standards expected by the organisation.

Sub-principle: Respecting the rule of law.

Behaviours and actions that demonstrate good governance in practice	Ensuring members and staff demonstrate a strong commitment to the rule of the law as well as adhering to relevant laws and regulations. Creating the conditions to ensure that the statutory officers, other key post holders and members are able to fulfil their responsibilities in accordance with legislative and regulatory requirements.

Striving to optimise the use of the full powers available for the benefit of citizens, communities and other stakeholders.

Dealing with breaches of legal and regulatory provisions

effectively Ensuring corruption and misuse of power are dealt

with effectively.

Principle B. Ensuring openness and comprehensive stakeholder engagement.

Sub-principle: Openness.

Behaviours and actions that demonstrate good governance in practice	Ensuring an open culture through demonstrating, documenting and communicating the organisation's commitment to openness. Making decisions that are open about actions, plans, resource use, forecasts, outputs and outcomes. The presumption is for openness. If that is not the case, a justification for the reasoning for keeping a decision confidential should be provided. Providing clear reasoning and evidence for decisions in both public records and explanations to stakeholders and being explicit about the criteria, rationale and considerations used. In due course, ensuring that the impact and consequences of those decisions are clear. Using formal and informal consultation and engagement to determine the most appropriate and effective interventions/ courses of action.
Behaviours and actions that demonstrate good governance in practice	Engaging comprehensively with institutional stakeholders. Effectively engaging with institutional stakeholders to ensure that the purpose, objectives and intended outcomes for each stakeholder relationship are clear so that outcomes are achieved successfully and sustainably. Developing formal and informal partnerships to allow for resources to be used more efficiently and outcomes achieved more effectively. Ensuring that partnerships are based on: • trust • a shared commitment to change • a culture that promotes and accepts challenge among partners • and that the added value of partnership working is explicit

Sub-principle: Engaging stakeholders effectively, including individual citizens and service users.

Behaviours and actions that demonstrate good governance in practice	Establishing a clear policy on the type of issues that the organisation will meaningfully consult with or involve individual citizens, service users and other stakeholders to ensure that service (or other) provision is contributing towards the achievement of intended outcomes. Ensuring that communication methods are effective and that

members and officers are clear about their roles with regard to community engagement.

Encouraging, collecting and evaluating the views and experiences of communities, citizens, service users and organisations of different backgrounds including reference to future needs.

Implementing effective feedback mechanisms in order to demonstrate how their views have been taken into account.

Balancing feedback from more active stakeholder groups with other stakeholder groups to ensure inclusivity.

Taking account of the interests of future generations of tax payers and service users.

Principle C. Defining environmental benefits in terms of sustainable economic and social outcomes.

Behaviours and actions that demonstrate good governance in practice	Sub-principle: Defining outcomes Having a clear vision which is an agreed formal statement of the organisation's purpose and intended outcomes containing appropriate performance indicators, which provides the basis for the organisation's overall strategy, planning and other decisions. Specifying the intended impact on, or changes for, stakeholders including citizens and service users. It could be immediately or over the course of a year or longer. Delivering defined outcomes on a sustainable basis within the resources that will be available. Identifying and managing risks to the achievement of outcomes. Managing service users expectations effectively with regard to determining priorities and making the best use of the resources available.

Sub-principle: Sustainable economic, social and environmental benefits.

Behaviours and actions that demonstrate good governance in practice	Considering and balancing the combined economic, social and environmental impact of policies, plans and decisions when taking decisions about service provision. Taking a longer-term view with regard to decision making, taking account of risk and acting transparently where there are potential conflicts between the organisation's intended outcomes and short-term factors such as the political cycle or financial constraints. Determining the wider public interest associated with balancing conflicting interests between achieving the various economic, social and environmental benefits, through consultation where possible, in order to ensure appropriate trade-offs.

Ensuring fair access to services.

Principle D. Determining the interventions necessary to optimise the achievement of the intended outcomes.

Sub-principle: Determining interventions.

Behaviours and actions that demonstrate good governance in practice	Ensuring decision makers receive objective and rigorous analysis of a variety of options indicating how intended outcomes would be achieved and including the risks associated with those options. Therefore ensuring best value is achieved however services are provided. Considering feedback from citizens and service users when making decisions about service improvements or where services are no longer required in order to prioritise competing demands within limited resources available including people, skills, land and assets and bearing in mind future impacts.

Sub-principle: Planning interventions.

Behaviours and actions that demonstrate good governance in practice	Establishing and implementing robust planning and control cycles that cover strategic and operational plans, priorities and targets. Engaging with internal and external stakeholders in determining how services and other courses of action should be planned and delivered. Considering and monitoring risks facing each partner when working collaboratively including shared risks. Ensuring arrangements are flexible and agile so that the mechanisms for delivering outputs can be adapted to changing circumstances. Establishing appropriate key performance indicators (KPIs) as part of the planning process in order to identify how the performance of services and projects is to be measured. Ensuring capacity exists to generate the information required to review service quality regularly. Preparing budgets in accordance with organisational objectives, strategies and the medium term financial plan. Informing medium and long term resource planning by drawing up realistic estimates of revenue and capital expenditure aimed at developing a sustainable funding strategy.

Sub-principle: Optimising achievement of intended outcomes.

Behaviours and actions that demonstrate good governance in practice	Ensuring the medium term financial strategy integrates and balances service priorities, affordability and other resource constraints. Ensuring the budgeting process is all-inclusive, taking into account the full cost of operations over the medium and longer term. Ensuring the medium term financial strategy sets the context for ongoing decisions on significant delivery issues or responses to changes in the external environment that may arise during the budgetary period in order for outcomes to be achieved while optimising resource usage. Ensuring the achievement of 'social value' through service planning and commissioning. The Public Services (Social Value) Act 2012 states that this is "the additional benefit to the community...over and above the direct purchasing of goods, services and outcomes".

Principle E. Developing the entity's capacity, including the capability of its leadership and the individuals within it.

Sub-principle: Developing the entity's capacity

Behaviours and actions that demonstrate good governance in practice	Reviewing operations, performance and use of assets on a regular basis to ensure their continuing effectiveness. Improving resource use through appropriate application of techniques such as benchmarking and other options in order to determine how resources are allocated so that defined outcomes are achieved effectively and efficiently. Recognising the benefits of partnerships and collaborative working where added value can be achieved. Developing and maintaining an effective workforce plan to enhance the strategic allocation of resources

Developing the capability of the entity's leadership and other individuals.

Behaviours and actions that demonstrate good governance in practice	Developing protocols to ensure that elected and appointed leaders negotiate with each other regarding their respective roles early on in the relationship and that a shared understanding of roles and objectives is maintained. Publishing a statement that specifies the types of decisions that are delegated and those reserved for the collective decision making of the governing body. Ensuring the leader and the chief executive have clearly defined and distinctive leadership roles within a structure whereby the chief executive leads in implementing strategy and managing the delivery of services and other outputs set by members and each provides a check and a balance for each other's authority. Developing the capabilities of members and senior management to achieve effective leadership and to enable the organisation to respond successfully to changing legal and policy demands as well as economic, political and environmental changes and risks by: • ensuring members and staff have access to appropriate induction tailored to their role and that ongoing training and development matching individual and organisational requirements is available and encouraged ensuring members and officers have the appropriate skills, knowledge, resources and support to fulfil their roles and responsibilities and ensuring that they are able to update their knowledge on a continuing basis. • ensuring personal, organisational and system-wide development through shared learning, including lessons learnt from governance weaknesses both internal and external. Ensuring that there are structures in place to encourage public participation. Taking steps to consider the leadership's own effectiveness and ensuring leaders are open to constructive feedback from peer review and inspections. Holding staff to account through regular performance reviews which take account of training or development needs. Ensuring arrangements are in place to maintain the health and wellbeing of the workforce and support individuals in maintaining their own physical and mental wellbeing.

Principle F. Managing risks and performance through robust internal control and strong public financial management.

Sub-principle: Managing risk.

Behaviours and actions that demonstrate good governance in practice	Recognising that risk management is an integral part of all activities and must be considered in all aspects of decision making. Implementing robust and integrated risk management arrangements and ensuring that they are working effectively. Ensuring that responsibilities for managing individual risks are clearly allocated.

Managing performance

Behaviours and actions that demonstrate good governance in practice	Monitoring service delivery effectively including planning, specification, execution and independent post implementation review. Making decisions based on relevant, clear objective analysis and advice pointing out the implications and risks inherent in the organisation's financial, social and environmental position and outlook. Ensuring an effective scrutiny or oversight function is in place which provides constructive challenge and debate on policies and objectives before, during and after decisions are made thereby enhancing the organisation's performance and that of any organisation for which it is responsible. Developing protocols to ensure that elected and appointed leaders negotiate with each other regarding their respective roles early on in the relationship and that a shared understanding of roles and objectives is Maintained. Providing members and senior management with regular reports on service delivery plans and on progress towards outcome achievement Ensuring there is consistency between specification stages as (such budgets) and post implementation reporting (e.g. financial statements)

Robust internal control

Behaviours and actions that demonstrate good governance in practice	Aligning the risk management strategy and policies on internal control with achieving objectives. Evaluating and monitoring risk management and internal control on a regular basis.

Ensuring effective counter fraud and anti-corruption arrangements are in place.

Ensuring additional assurance on the overall adequacy and effectiveness of the framework of governance, risk management and control is provided by the internal auditor.

Ensuring an audit committee or equivalent group/ function, which is independent of the executive and accountable to the governing body: provides a further source of effective assurance regarding arrangements for managing risk and maintaining an effective control environment that its recommendations are listened to and acted upon.

Managing data

Behaviours and actions that demonstrate good governance in practice

Ensuring effective arrangements are in place for the safe collection, storage, use and sharing of data, including processes to safeguard personal data.

Ensuring effective arrangements are in place and operating effectively when sharing data with other bodies.

Reviewing and auditing regularly the quality and accuracy of data used in decision making and performance monitoring.

Strong public financial management

Behaviours and actions that demonstrate good governance in practice

Ensuring financial management supports both long term achievement of outcomes and short-term financial and operational performance.

Ensuring well-developed financial management is integrated at all levels of planning and control, including management of financial risks and controls.

Principle G. Implementing good practices in transparency, reporting, and audit to deliver effective accountability.

Sub-principle: Implementing good practice in transparency.

Behaviours and actions that demonstrate good governance in practice

Writing and communicating reports for the public and other stakeholders in a fair, balanced and understandable style

appropriate to the intended audience and ensuring that they are easy to access and interrogate.

Striking a balance between providing the right amount of information to satisfy transparency demands and enhance public scrutiny while not being too onerous to provide and for users to understand.

Implementing good practices in reporting

Behaviours and actions that demonstrate good governance in practice

Reporting at least annually on performance, value for money and stewardship of resources to stakeholders in a timely and understandable way.

Ensuring members and senior management own the results reported.

Ensuring robust arrangements for assessing the extent to which the principles contained in this Framework have been applied and publishing the results on this assessment, including an action plan for improvement and evidence to demonstrate good governance (the annual governance statement).

Ensuring that this Framework is applied to jointly managed or shared service organisations as appropriate.

Ensuring the performance information that accompanies the financial statements is prepared on a consistent and timely basis and the statements allow for comparison with other, similar organisations.

Assurance and effective accountability

Behaviours and actions that demonstrate good governance in practice

Ensuring that recommendations for corrective action made by external audit are acted upon.

Ensuring an effective internal audit service with direct access to members is in place, providing assurance with regard to governance arrangements and that recommendations are acted upon.

Welcoming peer challenge, reviews and inspections from regulatory bodies and implementing recommendations.

Gaining assurance on risks associated with delivering services through third parties and that this is evidenced in the annual governance statement.

Ensuring that when working in partnership, arrangements

for accountability are clear and the need for wider public accountability has been recognised and met.

1.4. Annual Review and Reporting

Each year the Council will carry out a review of governance arrangements to ensure compliance with this Code in accordance with CIPFA/SOLACE "Delivering Good Governance in Local Government" (2016) Framework. The purpose of the review will be to provide assurance that governance arrangements are adequate, operating effectively and to identify action for improvement.

The outcome of the review is factored into the Governance Statement prepared on behalf of the Leader of the Council and Managing Director and submitted to the Audit Board for consideration and review.

The preparation and publication of the Governance Statement will meet the statutory requirement of the Accounts and Audit Regulations 2015 which requires authorities to "conduct a review at least once in a year of the effectiveness of its system of internal control" and to "prepare an annual governance statement". As such, the Governance Statement will be prepared in accordance with the timetable in participation of financial statements in accordance with the Audit and Accounts Regulations 2015.

2. CODE OF CONDUCT FOR EMPLOYEES

2.1 Purpose

A code of conduct for employees provides staff with an effective ethical framework within which to work and it should give the Council's communities confidence that the staff are working on their behalf in an appropriate manner.

2.2 Standards

The public is entitled to expect the highest standards of conduct from all local government employees. The role of employees is to serve the Council in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Where an employee becomes aware of activities which that employee believes to be illegal, improper or unethical, the employee should report this to an appropriate manager through the Council's agreed procedures.

2.3 Accountability

a. Employees are accountable, and owe a duty to the Council. They should act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

2.4 Disclosure of information

b. It is generally accepted that openness in the dissemination of information and decision-making is best. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a relevant Council employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions.

c. The law requires that certain types of information must be available to councillors, auditors, government departments, service users and the public. The Council may decide to be open about other types of information. Employees should be aware of which information the

Council is, and is not, open about, and act accordingly.

d. 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.

e. Nothing in this Code can be taken as overriding statutory or common law obligations to keep certain information confidential, or to divulge certain information.

2.5 Political neutrality

Employees serve the Council as a whole and must ensure the individual rights of all councillors are respected. Employees may be required to advise political groups and should do so in ways which do not compromise their political neutrality. Employees, whether or not politically restricted, should follow every lawfully expressed policy of the Council and should not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

2.6 Relationships

2.6.1 Councillors

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 and working relationships should be kept on a professional basis.

Other employees, the public and service users

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

2.6.2 Contractors and external agencies

All relationships whether of a business or private nature which could or could be perceived to have a detrimental effect or undue influence to the detriment of the Council should be made known to the appropriate manager. Orders and contracts must be awarded in accordance with the Council's Procurement Guide and Contract Standing Orders. No special favour should be shown to businesses run by friends, partners or relatives in the tendering process.

No part of the local community should be discriminated against.

Employees who engage or supervise contractors, or who have any other official relationship with contractors and have previously had, or currently have, a relationship of any type which could or could be perceived to have undue influence to the detriment of the Council, should declare that relationship to the appropriate manager.

2.7 Appointment and other employment matters

2.7.1 Employees involved in recruitment and appointment of staff should ensure 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.

2.7.2 To avoid any accusation of bias, employees should not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

2.8. Outside commitments

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

2.8.2 Employees should follow the Council's rules on the ownership of intellectual property or copyright created during their employment (see employee handbook for further details).

2.9 Personal interests

2.9.2 Employees must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

2.9.2 Employees must declare, to the appropriate manager, any financial or non-financial interests which could conflict with the Council's interests.

2.9.3 Employees should declare to the appropriate manager 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.

2.10 Equality

All those working for or with the Council, members of the local community, customers and service users of the Council have the right to be treated with fairness, equity, dignity and respect. Employees should ensure that policies relating to equality, as agreed by the Council are complied with, in addition to the requirements of the law.

2.10.1 Separation of roles during tendering

a. 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 contractor responsibility must be aware of the need for accountability and openness.

b. Employees in contractor or client units should exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

c. 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.

d. Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.

e. Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

2.11 Anti- Corruption & Bribery

a. Employees must be aware that it is a criminal offence for them to offer, provide, authorise, request or receive a bribe or anything that may be construed as a bribe. Acceptance of bribes in any form (including favours) is unacceptable and will lead to disciplinary action. Employees should ensure that policies relating to anti- corruption and bribery, as agreed by the Council, are complied with, in addition to the requirements of the law.

2.12 Use of financial resources

b. 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. Employees must not utilise property, vehicles or other facilities of the

Council for personal use unless authorised to do so.

3. MEMBER CODE OF CONDUCT

(adopted on 23 February 2026 - under section 27(2) of the Localism Act 2011 (and as amended from time to time).

Introduction:

1. Purpose of the Code of Conduct:

1.1. The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

1.2. The council has adopted this code of conduct as required by section 27 of the Localism Act 2011. The council has a statutory duty to promote and maintain high standards of conduct by councillors and co-opted members, and the code sets out the standards that the council expects you to observe.

1.3. For the purposes of section 27(3) of the Localism Act 2011 any Parish Council within the Council area can adopt this Code of Conduct to comply with its duty under section 27 of the Act.

2. Definitions

2.1. For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of the Council. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who:

a) is a member of any committee or sub-committee of the authority, or;
b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

2.2. For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

3. General principles of councillor conduct

3.1. Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

3.2. Building on these principles, the following general principles have been developed specifically for the role of councillor.

- In accordance with the public trust placed in me, on all occasions:
  - I act with integrity and honesty o I act lawfully
  - I treat all persons fairly and with respect; and
  - I lead by example and act in a way that secures public confidence in the role of councillor.
- In undertaking my role:
  - I impartially exercise my responsibilities in the interests of the local community
  - I do not improperly seek to confer an advantage, or disadvantage, on any person
  - I avoid conflicts of interest
  - I exercise reasonable care and diligence; and
  - I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

4. Application of the Code of Conduct

4.1. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

4.2. This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

4.3. The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

4.4. You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

4.5. Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

5. Standards of councillor conduct

5.1. This section sets out your obligations (formatted in **Bold**), which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

5.2. Guidance is included (formatted in *Italics*) to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1. I treat other councillors and members of the public with respect.

1.2. I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor- officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1. I do not bully any person.
2.2. I do not harass any person.
2.3. I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1. I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1. I do not disclose information:

4.1.1. given to me in confidence by anyone

4.1.2. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless

4.1.3. I have received the consent of a person authorised to give it;

4.1.4. I am required by law to do so;

4.1.5. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or

4.1.6. the disclosure is:

4.1.7. reasonable and in the public interest; and

4.1.8. made in good faith and in compliance with the reasonable requirements of the local authority; and

4.1.9. I have consulted the Monitoring Officer prior to its release.

4.2. I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3. I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1. I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1. I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1. I do not misuse council resources.

7.2. I will, when using the resources of the local authority or authorising their use by others:

7.2.1. act in accordance with the local authority's requirements; and

7.2.2. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor. Examples include:

- *office support*
- *stationery*
- *equipment such as phones, and computers • transport • access and use of local authority buildings and rooms.*

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a councillor:

8.1. I undertake Code of Conduct training provided by my local authority.

8.2. I cooperate with any Code of Conduct investigation and/or determination.

8.3. I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4. I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1. I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

*You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.*

Appendix A *sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.*

10. Gifts and hospitality

As a councillor:

10.1. I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

10.2. I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

10.3. I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**. **“Disclosable Pecuniary Interest”** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.

2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which affects – **8.1.** your own financial interest or well-being;
8.2. a financial interest or well-being of a relative or close associate; or
8.3. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in Table 2 you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) affects the financial interest or well-being:
9.1. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
9.2. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest
9.3. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.
9.4. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.

Subject	Description
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— the landlord is the council; and the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— that body (to the councillor's knowledge) has a place of business or land in the area of the council; and either— the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

'director' includes a member of the committee of management of an industrial and provident society.

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

Table 2: Other Registrable Interests

You must register as an Other Registerable Interest :

a) any unpaid directorships

b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority

c) any body:

I. exercising functions of a public nature

II. directed to charitable purposes or

III. 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

4. ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER SECTION 28 LOCALISM ACT 2011

4.1 Making a complaint

A complaint alleging a breach of the Code of Conduct by an elected member or co-opted member of either:

- Dartford Borough Council; or
- one of the Parish/Town Councils within the Borough of

Dartford, (the Authority)

must be made in writing and addressed to the Monitoring Officer, preferably using the Complaint Form.

It is helpful if the complainant specifies which aspect of the Code of Conduct they believe has been breached.

The complainant will be required to provide evidence, which supports the complaint, including where applicable, minutes of meetings, correspondence, contemporaneous notes or e-mails. If there are other individuals who have witnessed the alleged breach, the complainant should let the Monitoring Officer know who they are. This latter point is especially important, as the Monitoring Officer only has one person's word against another's. In the absence of independent confirmation, the Monitoring Officer may not be able to conclude with sufficient certainty, that there is enough evidence to warrant pursuing the complaint.

Receipt of the complaint will normally be acknowledged by the Monitoring Officer, within 7 working days. The member the subject of the complaint will be provided with a summary of the complaint.

Consultation with the Independent Person

(a) The Monitoring Officer will seek and take into account the views of the Independent Person before she decides that an allegation should be investigated; and

(b) In circumstances other than a decision to investigate, the Monitoring Officer may seek and take into account the views of the Independent Person.

3. Preliminary tests – two stages

The Monitoring Officer will assess the complaint, using the following criteria:

Legal jurisdiction criteria test:

(a) Did the alleged conduct occur before the adoption of the Code of Conduct?
(b) Was the person complained of a member of the Borough or Parish Council at the time of the alleged conduct?
(c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
(d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
(e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct (i.e. is there direct evidence to establish that a breach actually took place?)[1];
(f) The complaint is about dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.

Members are entitled to privacy in their personal lives and the provisions of the Code of Conduct only apply to members when they are acting as a member or co-opted member or as a representative of their Authority.

When reaching a decision as to whether the Code of Conduct applies to a member at a particular time, the Monitoring Officer will have regard to the particular circumstances and the nature of the conduct at that time.

If the complaint fails one or more of the legal jurisdiction tests, it will be rejected.
i.e. 'Dismissed at Preliminary Stage (Legal Jurisdiction Criteria Test not met)'.

If the complaint satisfies the legal jurisdiction test, it will be assessed against the local assessment criteria test below.

Local assessment criteria test:

(a) The complaint is a 'repeat complaint[2]', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
(b) The complaint is anonymous;
(c) No or insufficient information/evidence to substantiate the complaint has been submitted by the complainant;
(d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
(e) The complainant is unreasonably persistent, malicious and/or vexatious;
(f) The alleged misconduct happened more than 3 months ago;
(g) The complaint is relatively minor and/or dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time and not be in the public interest;
(h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;

(i) The complaint has been the subject of an investigation or other

action and there is nothing more to be gained by further action being taken;

(j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;

(k) The complaint is about a deceased person;

(l) The complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member.

If one or more of the local assessment criteria applies to the complaint, the complaint will be rejected i.e. 'Dismissed at Preliminary Stage (Local Assessment Criteria Test not met)'.

The Monitoring Officer may consult with the Independent Person on the decision to reject the complaint. If rejected, the complainant and the member who is the subject of the complaint will be notified of the decision and the member will be provided with a summary of the complaint within 10 working days.

The Monitoring Officer will seek and take account of the views of the Independent Person, where Monitoring Officer decides to formally investigate. On other categorisations of the complaint, the Monitoring Officer may consult with the Independent Person.

7. No further action/rejected

The Monitoring Officer will inform the complainant

and the member who is the subject of the complaint of her decision.

1. Relating to a Disposable Pecuniary Interest, where it appears that the alleged breach may constitute an offence under criminal law

The Monitoring Officer will refer the matter to Kent Police and notify the complainant and the member who is the subject of the complaint and the member who is the subject of the complaint of her decision.

---

1 The level of proof that is required by the Monitoring Officer is on the balance of probabilities

2 Persistent 'repeat complaints' is conduct which in itself, may be investigated as a potential breach of the Code of Condu

2. Relating to a Disposable Pecuniary Interest, where it appears that the alleged breach may constitute an offence under criminal law

The Monitoring Officer will refer the matter to Kent Police and notify the complainant and the member who is the subject of the complaint.

9. Informal/local resolution

The aim of informal/local resolution is to resolve matters at an early stage, to avoid the unnecessary escalation of the situation, which may damage personal relationships within the Authority and the Authority's reputation. The process may result in an apology being offered.

Informal resolution is suited to low-level complaints, which are made by a member against a fellow member. Typically, these complaints will be about alleged failures to show respect and consideration for others as required. Such complaints are more appropriately resolved informally and locally, in order to speed up the complaints process and to ensure that the Monitoring Officer's resources are devoted to the investigation of serious complaints.

The Monitoring Officer will meet/correspond with the member who is the subject of the complaint and seek an informal resolution – e.g. apology, training etc.

The Monitoring Officer may consult with the Independent Person on the proposed informal resolution. The Monitoring Officer will confirm the informal resolution with the member who is the subject of the complaint and seek their agreement in writing. If the member accepts the informal resolution, the Monitoring Officer will inform the complainant. If the member belongs to a political group, the Monitoring Officer will inform the Group Leader of the resolution.

If the member does not accept the proposed informal resolution, or having accepted the informal resolution, fails to comply, the complaint will be escalated to the Mediation stage. The complainant will be notified accordingly.

10. Mediation with the Leader of the Member's Political Group

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting with the Monitoring Officer and the Leader of the member's Political Group. The Monitoring Officer will consult with the Independent Person on the proposed resolution. The Monitoring Officer will inform the complainant and the member who is the subject of the complaint, of the mediation decision.

The mediation meeting will be held in private, with the outcome being reported to the Political Group Leaders for information.

11. Mediation through the Panel of Political Group Leaders

The Monitoring Officer will request the member who is the subject of the complaint, to attend a meeting of the Panel of Political Group Leaders. The Monitoring Officer will consult with the Independent Person on the proposed resolution. The Monitoring Officer will inform the complainant of the decision and the member who is the subject of the complaint, of the mediation decision.

Whilst the meeting will be in private, the outcome of the meeting will be reported to the Audit Board for information.

12. Bullying/harassment allegations

When dealing with allegations of bullying[3] and harassment[4], the Monitoring Officer will consider both the perspective of the alleged victim and whether the member complained of intended their actions to be bullying or harassment. The Monitoring Officer will also consider whether the individual was reasonably entitled to believe they were being bullied or harassed.

Bullying is often carried out face to face, but increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether expressed verbally or in writing.

Harassment can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

When considering such complaints, the Monitoring Officer will take into account the specific circumstances of the case, whether there was an attempt to intimidate or undermine and the content and context of what has been said.

'Abuse' is an inflammatory word, which is often misunderstood and misused. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that the Monitoring Officer will investigate complaints made in this context.

4.2 Political expression

The High Court in Sanders v Kingston [2005] EWHC 1145 (Admin) considered that it had to ask itself three questions in deciding the legality of a finding as to whether a councillor had breached a local authority's code of conduct by not treating others with respect and could reasonably be regarded as bringing their office into disrepute:

- was the decision-maker entitled as a matter of fact to conclude that the conduct breached the code of conduct?

[3] Characterised as offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened

[4] Conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions (Protection from Harassment Act 1997)

[5] Robinson, R (On the Application Of) v Buckinghamshire Council [2021] EWHC 2014 (Admin)

- if so, was the finding in itself or the imposition of a sanction a breach of Article 10[6]?

- if so, was the restriction justified under Article 10(2)[7]?

This test was adopted in R (Calver) v Public Services Ombudsman for Wales [2012] EWHC 1172 (Admin), where the High Court found that a decision that a councillor had breached a local authority's code of conduct by commenting on other councillors online was a disproportionate interference with the councillor's rights under Article 10.

A member's freedom of expression attracts enhanced protection[8] when the comments are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate and it is unlikely that such comments would be considered to be a breach of the Code of Conduct. This would not however include threats to an officer's position or wellbeing.

'Political' comments are not confined to those made within the Authority's meetings and for example, include comments members may generally make on their Authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that the Monitoring Officer will investigate complaints made in this context.

4.3 Grievance procedures

The High Court in the case of R (Harvey) v Ledbury Town Council considered local authority staff grievance procedures and their relationship with the code of conduct regime under the Localism Act 2011. The court held that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.

4.4 Training

Where the member has not undertaken training relating to Code of Conduct matters, they are not able to use this as a defence, where a complaint alleging a breach of the Code is made against them.

4.5 Investigation

It is important to ensure the effective use of the Monitoring Officer's resources and that any investigation undertaken is proportionate and required in the wider public interest (see 'public interest factors' below).

The Monitoring Officer has a wide discretion as to whether to begin or continue an investigation. The two-stage test referred to in section 3 above provides clarity on how that discretion will usually be exercised and to secure a degree of consistency and certainty in the decisions that are reached.

If the Monitoring Officer, in consultation with the Independent Person decides that the complaint merits formal investigation, the Monitoring Officer will appoint and brief an Investigating Officer to undertake the investigation, and inform the complainant, the member who is the subject of the complaint and if applicable, the Clerk to the Parish/Town Council of the appointment.

The Investigating Officer will provide a confidential draft report to the Monitoring Officer.

When the Monitoring Officer has reviewed and accepted the Investigating Officer's confidential draft report, it will be sent to the complainant and the member who is the subject of the complaint on a confidential basis, requesting comments within 10 working days.

A member who is the subject of an investigation is required to comply with the investigation process. Not to do so, may itself be a breach of the Code of Conduct.

Once comments are received, the Monitoring Officer will discuss these with the Investigating Officer and a final report will be agreed.

Public interest factors when deciding to investigate

Some of the public interest factors that the Monitoring Officer will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case:

- the seriousness of the breach;
- whether the member deliberately sought personal gain for themselves or another person at the public expense;
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person;
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity;
- whether there is evidence of previous similar behaviour on the part of the member;
- whether the investigation is required to maintain public confidence in elected members of the Authority;

- whether investigation is a proportionate response, i.e. whether it is likely that the breach would lead to a sanction being applied to the member;
- whether the use of resources in carrying out an investigation or hearing by the Hearing Panel would be regarded as excessive when weighed against any likely sanction.

---

[6] European Convention on Human Rights
[7] Supra
[7] Supra

4.6 Hearing Panel

The Monitoring Officer will reflect on and analyse the evidence gathered by the Investigating Officer and draw conclusions as to whether it is suggestive that a breach of the Code of Conduct has occurred.

Following the submission of the Investigating Officer's report, if the Monitoring Officer concludes that the case needs to be presented to a Hearing Panel, the Monitoring Officer will consult with the Independent Person.

Where appropriate, the Monitoring Officer will arrange for a Hearing Panel to meet and consider the allegation and report of the Investigating Officer and determine the outcome of the complaint. The Hearing Panel will have regard to its Procedure for Conducting a Hearing.

The authority to make a determination of breach rests solely with the Hearing Panel.

Whilst the hearing will be in private, the outcome of the hearing will be a public record and reported to the Audit Board for information.

4.7 Sanctions

Where a member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more of the sanctions below:-

(a) Recommending to the Borough or Parish/Town Council that the member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand);
(b) Recommending to the member's Group Leader, or Parish/Town Council, or in the case of a ungrouped Member, to the Borough or Parish/Town Council that they be removed from committees or sub-committees of the Council;
(c) Recommending to the Leader of the Borough Council that the member be removed from the Cabinet or removed from particular Portfolio responsibilities;
(d) Instructing the Monitoring Officer, or recommending to the Parish/Town Council, to arrange training for the member;

(e) Recommending to the Borough or Parish/Town Council that the member be removed from one or more outside appointments to which they have been appointed or nominated by the Borough or Parish/Town Council;
(f) Recommending to the Borough or Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access;
(g) Recommending to the Borough or Parish/Town Council the exclusion of the member from the Borough or Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending Borough or Parish/Town Council committee and sub-committee meetings;
(h) Instructing the Monitoring Officer to apply the informal resolution process;
(i) Sending a formal letter to the member;
(j) Recommending to the Borough or Parish/Town Council to issue a press release or other form of publicity.

4.8 Dealing with the recommendation(s)

Where recommendation(s) are made to the Borough or Parish/Town Council, the Borough or Parish/Town Council will note the recommendation without discussion (which will be deemed to have been agreed as recommended)[9].

4.9. Determination – Hearing Panel

The complainant and the member who is the subject of the complaint will be informed of the Hearing Panel's determination. The decision notice will be published on the Borough Council's website and reported to the Audit Board.

---

8 R v Brent LBC ex p. Gladbaum and Wood (The Times 14.12.1989)

4.10 Appeal and complaints

There is no right of appeal for the complainant or the member who is the subject of the complaint against decisions of the Monitoring Officer, the determination of the Hearing Panel, or of the outcomes through mediation, with the Leader of the Member's Political Group or the Panel of Political Group Leaders.

An application to the court for judicial review may be made on the grounds that the Monitoring Officer's decision or Hearing Panel's determination, is illegal, unfair, irrational and/or not proportional.

4.11 Ombudsman

The Ombudsman does not offer a right of appeal against the Monitoring Officer's decision or Hearing Panel's determination, but it can consider if there was *administrative fault* in the way the Borough Council considered the complaint. The Ombudsman will only investigate complaints if there is sufficient injustice to warrant its involvement or it considers it in the public interest to do so.

4.12 Revision of these Arrangements

The Audit Board may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

5. GUIDANCE ON SENSITIVE INTERESTS

1. As the report by the Committee on Standards in Public Life said, “Everyone in public life must play their part in taking responsibility for combatting intimidatory behaviour”. Intimidation is unacceptable and it is vital that councillors feel able to raise concerns about intimidation, and that those in leadership positions in councils take any concerns seriously, and deal with them appropriately.

2. A ‘sensitive’[1] disclosable pecuniary interest is one where you consider that the public disclosure of the details could lead to you, or (a person connected with you), being subject to violence or intimidation, and the Monitoring Officer agrees.

3. A ‘sensitive’ interest may include specific types of employment e.g. scientific research, Special Forces, police and judiciary or other interests such as your home address, that are likely to create serious risk of violence or intimidation against you or someone who lives with you.

You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information, including why it is likely to create a serious risk that you or a person who lives with you, will be subjected to violence or intimidation.

The Monitoring Officer will look sympathetically at such requests where there are legitimate concerns of abuse or intimidation e.g. if you are dealing with matters pertaining to criminal justice and may be taking decisions that will affect those who may be involved in crime or who are affected by crime, the publication of your address may put you in a particular category of risk of retaliation, retribution or death threats for your action/decisions.

4. The Member Register of Interests is publicly accessible, through inspection and published on the Council’s website. If the Monitoring Officer agrees that your interest is ‘sensitive’, the Register will not include details of the interest, other than stating that you have an interest, the details of which are withheld.

5. If you are required to declare an interest at a meeting, you should disclose merely the fact that you have a disclosable pecuniary interest, rather than detail/nature of the interest[2].

6. The Monitoring Officer may disagree that your interest is ‘sensitive’ You should be aware that choosing to post the ‘sensitive’ information in the public domain, using social media websites, then further amplified by Google and other search engines, may dilute the ‘sensitivity’ of the information.

7. If the Monitoring Officer disagrees that your interest is ‘sensitive’, you must declare the interest as normal. The interest will be entered on the [Member] Register of Interests.

8. Elections[3] – all candidates in local government elections are able to request that their home address is not made public. Candidates can continue to include a home address if they wish to highlight their local connection to their ward. Candidates' provide their 'qualifying address separately.

---

1 Section 32 Localism Act 2011
2 Standing Order 19(4)
3 The Local Elections (Principal Areas) (England and Wales) (Amendment) (England) Rules 2018

The elections process has its own set of rules. So too matters relating to declarations of disclosable pecuniary interests under the Localism Act 2011. The fact that you, as a candidate in a local government election, have chosen not to make your home address public, in itself, is not a reason for withholding your address from the Member Register of Interests. You are still required to satisfy the Monitoring Officer that the public disclosure of your home address in the Register, could lead to you, or (a person connected with you), being subject to violence or intimidation.

Revised and adopted by the GAC - 16 December 2013 – Min.No.75 Revised and adopted by the Audit Board – 25 June 2014 – Min.No.8 Revised and adopted by the Audit Board – 24 October 2018 – Min.No.23 Revised and adopted by the Audit Board - 23 September 2021 – Min.No. 9 Revised under delegated authority – 14 April 2022

6. MEMBER/OFFICER RELATIONS PROTOCOL

1. INTRODUCTION

1.1 Mutual trust and respect between Members and Officers is at the heart of the Council's good governance. They are essential if the partnership necessary for the effective running of the Council is to succeed.

1.2 The Member Code of Conduct states 'You must promote and support high standards of conduct when serving in your public post, in particular as characterised by leadership and example. You should have regard to the Council's guidance in Protocols on the conduct between officers and members and the conduct when serving on outside bodies.'

1.3 The most common contacts are between Councillors and senior employees at Director or Heads of Service level, and this Protocol is largely about those contacts. There are also many contacts between Councillors and other employees in their daily business, and the principles of this Protocol also apply to them. The particular position of employees who provide direct support services for Councillors is dealt with at para.15 of this Protocol.

1.4 This Protocol guides Members and Officers of the Council in their relations with one another. Members and Officers have a responsibility to act fairly, honestly, in good faith and in an impartial way to meet the specified objectives of the Council. 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. This Protocol supplements respectively the Member and Employee Codes of Conduct.

PRINCIPLES

1.5 Members and Officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.

1.6 Whilst Members and Officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Legally, employees are employed by the Council and are accountable to it. Ultimately, they serve the Council as a whole and not any particular political group, combination of groups or any individual Member. Nonetheless, employees may properly be called upon to assist the deliberations of political groups and also to help individual Members in their different roles. The Directors and Senior Officers have ultimate responsibility to ensure that the Council's responsibilities are implemented.

2. THE ROLE OF MEMBERS

2.1 Members have a number of roles and need to be alert to the potential for conflicts of interest, which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, or the Monitoring Officer.

2.2 Collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the Council's policy framework, strategic plans and budget.

2.3 Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community, often in partnership with other agencies.

2.4 Every elected Member represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on outside bodies.

2.5 Members have personal, individual, and collective responsibility for the Council, as a local authority organisation and its activities. Members will therefore concern themselves with the performance, development, continuity and overall well-being of the Council.

2.6 As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members, they have a duty always to act in the public interest.

2.7 Members are not authorised to instruct Officers other than:

2.7.2 through the formal decision-making process;
2.7.3 to request the provision of consumable resources provided by the Council for Members' use;
2.7.4 where staff have been specifically allocated to give support to a Member or group of Members.

2.8 Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.

2.9 Members must avoid taking actions, which are unlawful, financially improper or likely to amount to maladministration. When reaching decisions, Members should have regard to any advice provided by the Monitoring Officer or the Section 151 Officer.

2.10 Members must respect the impartiality of Officers and do nothing to compromise it,
e.g. by insisting that an Officer change his/her professional advice.

2.11 Members should always deal with Officers in such a way as to preserve

public confidence in the Council. It is equally important for Members to work with each other positively and with mutual respect. Whilst robust debate, challenges and party allegiances are integral to normal political life, it is not appropriate for Members to treat a colleague or an Officer with contempt, or hurl personal abuse to, or, physically attack a colleague or an Officer. Members must seek to act courteously and with integrity at all times and set high standards that Officers and members of the public can follow.

2.12 In the conduct of Council business, there should be mutual respect and courtesy at all meetings and contacts, both formal and informal, between Members and Officers.

2.13 Members should avoid undermining respect for Officers at Council meetings, or in any public forum. This would be damaging both to effective working relationships and to the public image of the Council.

2.14 Members and Officers have a duty to raise any issues where they have reason to think that fraud/probity, corruption or malpractice of any sort is involved within the workplace and are encouraged to raise their concerns through the Council's Whistleblowing Policy.

3. THE ROLE OF OFFICERS

3.1 Officers are responsible for giving advice to Members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors.

3.2 Under the direction and control of the Council and its committees, Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.

3.3 Officers have a duty to implement decisions of the Council and its committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution, and duly minuted.

3.4 Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.

3.5 Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the Council as expressed in the Council's formal decisions.

3.6 Officers must be alert to issues, which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.

3.7 Officers have the right not to support Members in any role other than that

of Member, and not to engage in actions incompatible with this Protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.

3.8 Officers serve the Council through its committees etc. They work to the instructions of their Director and/or Manager - not individual Members of the Council, whatever office the Member might hold. It follows therefore, that Officers must not be asked to exceed the bounds of authority they have been given by their Director and/or Manager, nor should they have unreasonable demands placed on them, in terms of support to an individual Member or Members. Officers will do their best to give timely responses to Members' enquiries.

3.9 Officers' work priorities are set and managed by their Managers or Director.

Members should avoid disrupting Officers' work by imposing their own priorities.

3.10 Except when the purpose of an enquiry is purely to seek factual information, Members should normally direct their requests and concerns to a Senior Officer or Director, at least in the first instance.

3.11 Members are entitled to all reasonable assistance from Officers in support of their role as Council representatives on outside bodies. Such assistance will include the provision of information about the body and the identification of a contact Officer to be available for briefing purposes and to assist the Member in reporting back to the Council on the activities of the body.

4. THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

4.1 The conduct of Members and Officers should be such as to instil mutual confidence and trust. The key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.

4.2 Informal and collaborative two-way contact between Members and Officers is encouraged, but personal familiarity can damage the relationship, as might a family or business connection.

4.3 Members and Officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.

4.4 It is not enough to avoid actual impropriety. Members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Member should not sit on a body or participate in any decision, which directly affects the Officer on a

personal basis.

4.5 Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.

4.6 Members and Officers should respect each other's free (i.e. non-Council) time.

4.7 Officers can expect from Members:

4.7.1 political leadership and direction;
4.7.2 respect, dignity and courtesy;
4.7.3 an understanding of and support for respective roles, workload and pressures;
4.7.4 not to be subjected to bullying;
4.7.5 not to be harassed or placed undue pressure;
4.7.6 not to use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly;
4.7.7 to comply with the Member Code of Conduct.

4.8 Members can expect Officers to:

a. behave in a professional manner sand courteous manner;
b. be helpful and respectful to Members;

c. maintain confidentiality;
d. perform their duties effectively, efficiently and with political neutrality;
e. avoid personal close familiarity with Members and not use their relationship with Members to advance their personal interests or to influence decisions improperly;
f. report to their Director any time that a Member asks or pressurises the Officer to deal with a matter outside of Council procedure or policy;
g. demonstrate an understanding of and support for respective roles, workload and pressures;
h. comply with the Employee Code of Conduct.

4.9 Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the Member has some actual or perceived influence over. This can be contrasted with the legitimate challenges, which a Member can make in challenging policy or scrutinising performance. It is important that Members raise issues about poor Officer performance in the correct way and proper forum.

4.10 Members must not intimidate or attempt to intimidate any Officer who is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Member Code of Conduct.

4.11 A Member who is unhappy about the actions taken by, or conduct of, an Officer should:

1. avoid personal attacks on, or abuse of, the Officer at all times;
2. ensure that any criticism is well founded and constructive;
3. never make a criticism in public; and
4. take up the concern with the Officer privately.

If direct discussion with the Officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the Member should raise the issue with the Officer's Manager or the relevant Director.

4.12 The relationship between Councillors and employees depends upon trust and this will be enhanced by the development of positive, friendly relationships. Councillors and employees will often be thrown together in social situations within the community and they have a responsibility to project a positive image of the Council. Nonetheless, close personal familiarity between individual employees and Councillors can damage the relationship of mutual respect and the belief that employees give objective and professional advice and commitment to the Council. Councillors and employees should, therefore, be cautious in developing close personal friendships while they have an official relationship.

5. THE COUNCIL AS EMPLOYER

5.1 Officers are employed by the Council.

5.2 Members' roles are limited to:

(a) the appointment of specified senior posts;
(b) determining human resources policies and conditions of employment for specified posts, and
(c) hearing and determining appeals for specified posts.

Members will not act outside these roles.

5.3 If participating in the appointment of Officers, Members should:

i. remember that the sole criterion is merit;
ii. never canvass support for a particular candidate;
iii. not take part where one of the candidates is a close friend or relative;
iv. not be influenced by personal preferences; and
v. not favour a candidate by giving him/her information not available to the other candidates.

5.4 Councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to Councillors the respect and courtesy due to them in their various roles.

6. SCRUTINY COMMITTEE AND OFFICERS

6.1 The Scrutiny Committee or the Committee Chairman acting on its behalf, may require Officers to attend meetings. Members should not normally expect junior Officers to give evidence. All requests should be made to Directors in the first instance.

6.2 When making requests for Officer attendance, Scrutiny Committee members will have regard to the workload of Officers.

6.3 Officers required to appear before the Scrutiny Committee may often be those who have advised the Cabinet or another part of the Council on the matter to be scrutinised. In these circumstances, the Officer may have a conflict of interest. Both Members and Officers need to consider the severity of the conflict. If deemed appropriate, research and advice must be sought elsewhere.

6.4 In giving evidence to the Scrutiny Committee, Officers must not be asked to express political views.

6.5 Officers should respect Members in the way they respond to Members' questions.

6.6 Members should not question Officers in a way, which could be interpreted as harassment or bullying. Neither should they ask about matters of a disciplinary nature.

6.7 Scrutiny proceedings must not be used to question the capability or competence of Officers. Members need to make a distinction between scrutinising the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not a scrutiny function.

7 POLITICAL GROUPS AND OFFICERS

7.1 The Council operates through a system of groups of councillors, based on political affiliation. All Officers must, in their dealings with political groups and individual Members, treat them in a fair and even-handed manner. Officers must at all times, maintain political neutrality.

7.2 The support provided by Officers can take many forms, ranging from the meeting with a Chairman and Vice-Chairman before a committee meeting to a presentation to a full political group meeting. Whilst in practice such support is likely to be in most demand from whichever political group is for the time being in control of the Council, it should be available to all political groups. The advice given by Officers to different political groups should be consistent.

7.3 Certain matters must, however, be clearly understood by all those

participating in this type of process, Councillors and Officers alike. In particular:-

8.3.1 Officer attendance at group meetings must be approved in advance, by the the relevant Director.

8.3.2 Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers will not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.

8.3.3 Political group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal Council decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.

8.3.4 Where Officers provide factual information and advice to a political group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant committee of the Council.

8.3.5 It must not be assumed that an Officer is supportive of a particular policy or view considered at a political group meeting simply because he/she has attended or provided information to the meeting.

8.3.6 Officers will respect the confidentiality of any political group discussions at which they are present and, unless requested to do so by that political group, will not relay the content of such discussions to another party group or to other Members. This will not prevent an Officer providing feedback to other Officers on a need-to-know basis. Factual information upon which advice is based will, if requested, be available to all political groups.

8.3.7 The duration of an Officer's attendance at a political group meeting will be at the discretion of the group, but an Officer may leave at any time if he/she feels it is no longer appropriate to be there.

8.3.8 An Officer accepting an invitation to any one political group meeting will not decline an invitation to advise another group about the same matter.

8.3.9 Officers should be given the opportunity of verifying comments and advice attributed to them in any written record of a political group meeting.

8.3.10 No Member will refer in public or at meetings of the Council, to advice or information given by Officers to a political group meeting.

8.3.11 At political group meetings, where some of those present are not members of the

Council, care must be taken not to divulge confidential information relating to Council business.

8.3.12 Members must not do anything which compromises or is likely to compromise Officers' impartiality.

8.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a meeting of a political group, which includes persons who are not members of the Council. Such persons will not be bound by the codes of conduct for Members and employees (in particular, the provisions concerning the declarations of interest 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.

8.5 Should any difficulty or uncertainty arise in the area of Officer advice to political groups, this will be raised with the relevant Director who should discuss the matter with the group leader.

9 WARD MEMBERS AND OFFICERS

9.1 To enable them to carry out their ward role effectively, Members need to be fully informed about matters affecting their ward. Directors and Senior Officers must ensure that all relevant staff are aware of the requirement to keep local Members informed, thus allowing Members to contribute to the decision-making process and develop their representative role. This requirement is particularly important:

(1) during the formative stages of policy development, where practicable;
(2) in relation to significant or sensitive operational matters;
(3) whenever any form of public consultation exercise is undertaken, and
(4) during a scrutiny investigation.

9.2 Issues may affect a single ward. Where they have a wider impact, a number of local Members will need to be kept informed.

9.3 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected, should be invited to attend the meeting as a matter of course.

9.4 If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant Officer. Provided the meeting has not been arranged on a party political basis:

i. an Officer may attend, but is not obliged to do so; and
ii. the meeting may be held in Council-owned premises.

No such meetings will be arranged or held in the immediate run-up to Council elections.

9.5 Whilst support for Members' ward work is legitimate, care should be taken if Officers are asked to accompany Members to ward surgeries. In such circumstances:

- the surgeries must be open to the general public; and
- Officers should not be requested to accompany Members to surgeries held in the offices or premises of political parties.

9.6 Officers must never be asked to attend ward or constituency political party meetings.

9.7 In seeking to deal with constituents' queries or concerns, Members should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale, and may need to seek instructions from their Managers or Director.

9.8 Officers must treat all Councillors fairly and openly in their role as local representatives.

10 OFFICER/COMMITTEE CHAIRMAN RELATIONSHIP

10.1 It is clearly important that there should be a close working relationship between the Chairman of the committees of the Council and the Director and Senior Officers of the Department, which reports to that body. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question, the Officer's ability to deal impartially with other Members and other party groups.

10.2 Whilst the Chairman will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, in some situations, a Director will be under a duty to submit a report on a particular matter. Similarly, a Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in his/her name. Any issues arising between a Chairman and a Director in this area, should be referred to the Managing Director for resolution.

10.3 Committee Chairmen are recognised as the legitimate elected spokesperson on their committees' areas of responsibility. Where authority is delegated to Officers (under the Scheme of Delegations to Officers), they will often wish to consult the relevant Chairman about the action which they propose to take, but the responsibility for the final decision remains with the Officer who is accountable for it.

10.4 A resolution may be passed at meetings which authorises an Officer to take action between meetings in consultation with the Chairman/Leader/Portfolio Member etc. Whilst such action is sometimes

(incorrectly) referred to as ‘Chairman's action’, it is the Officer, not the Chairman, who takes the action and is responsible for it. Under the Council’s Constitution, a Member has no legal power to take decisions on behalf of the Council and its committees etc.

10.5 Officers within a Directorate are accountable to their Director and 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. Officers are ultimately responsible to the Head of the Service.

THE MAYORALTY

10.6 The Mayor has a representative role on behalf of the Council and the Borough to local residents and those who work or study in the Borough. The position is non- political. It is reasonable for the Mayor to be supportive of local business, but the office should not be used for commercial promotions and the Mayor should not use his/her office, nor Officers, to by-pass recognised systems of working.

11 MEDIA RELATIONS

11.1 All formal relations with the media must be conducted in accordance with the Council’s agreed procedures and the law on local authority publicity.

11.2 Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a political group.

12 COMMUNICATIONS

12.1 Communications between an individual Member and an Officer should not normally be copied (by the Officer) to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member. In other words, a system of ‘silent/blind copies’ should not be employed.

12.2 Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister), for a letter to appear in the name of a Cabinet member, or Chairman of a committee, 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 in the name of a Member.

12. USE OF COUNCIL FACILITIES AND RESOURCES

12.1 The only basis on which the Council can lawfully provide support

services to Members (e.g. stationery, typing, printing, photocopying, transport, computers etc), is to assist them in discharging their role as members of the Council.

12.2 Members should not approach or pressure staff to carry out duties or provide resources or support in a biased or partisan way. Examples are:

1. business which is solely to do with a political party;
2. work in connection with a ward or constituency party political meeting;
3. electioneering;
4. work associated with an event attended by a Member in a capacity other than as a member of the Council;
5. private personal correspondence;
6. work in connection with another body or organisation where a Member's involvement is other than as a member of the Council; and
7. support to a Member in his/her capacity as a councillor of another local authority.

13. EMPLOYEES SUPPORTING COUNCILLORS

13.1 Where the relevant Director arranges for Officers staff to support Members directly in carrying out their duties, particular considerations apply. Such employees are normally involved in administrative and practical support of Members. While such staff may operate to the requirements of individual Members in their daily business, it must be remembered that the employees are accountable to their line managers and any issues about conflicting priorities, conduct or performance must be referred to those managers.

Officers may receive and handle messages on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.

14. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL

a. If a Member believes an Officer may have acted other than in accordance with this Protocol, he/she should raise their concern with the relevant Director who will consider how the complaint or allegation should be dealt with. A breach of this Protocol by an Officer, may lead to an investigation under the Council's Disciplinary Policy and Procedure.

b. If an Officer believes a Member may have acted other than in accordance with this Protocol, he/she should raise their concern with the Monitoring Officer who will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

15. OVERSEEING COMPLIANCE WITH THIS PROTOCOL

The Audit Board oversees compliance with this Protocol.

16. FURTHER GUIDANCE

Further advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.

Can I represent my constituents if I have a prejudicial interest or am conflicted in other ways?

Yes, by:

- making written representations - these should be addressed to officers;
- arranging for another Member to represent the views of your constituents.

B. What happens if I do not know the value of the gift, benefit or hospitality? The general rule is, if in doubt, register it as a matter of good practice.

C. Do I have to register gifts, benefits or hospitality I do not accept? No, but you may wish to do so, as a matter of good practice.

D. Do I have to register gifts, benefits or hospitality from Council-owned companies? Yes - wholly- owned companies are separate bodies from the Council.

What about official gifts, benefits or hospitality given to the Mayor or Leader of the Council?

1. Gifts that are clearly made to the Council do not need to be registered;
2. Gifts made directly to the Mayor's charity appeal do not need to be registered;
3. There is no requirement to register hospitality that has been extended to the office holder
   e.g. Leader of the Council, rather than the individual.

E. Find out more - The Protocol on Gifts, Benefits and Hospitality offers further guidance. Advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.

7. PROBITY IN LICENSING PROTOCOL

1. INTRODUCTION

1.1 The purpose of this Protocol is to support and assist the Council in the proper discharge of its functions as licensing authority and to ensure there are no grounds for suggestion that a Licensing Sub-committee decision has been biased or otherwise not well founded. This Protocol supplements the Member Code of Conduct.

2. PRINCIPLES FOR A FAIR HEARING

2.1 The following general principles apply to the conduct of hearings by the Licensing Sub-committee:

(a) all parties have a right to a fair hearing;
(b) each application shall be treated on its own merits;
(c) decisions shall be lawful, proportionate, non-discriminatory, open and transparent; and
(d) decisions shall be made on the basis of the following considerations:
  (i) the merits of the application;
  (ii) the promotion of the licensing objectives;
  (iii) Statements respectively, of Licensing and Gambling Policy;
  (iv) guidance issued from time to time by the Home Office.

3. LICENSING SUB-COMMITTEE MEMBER COMPOSITION

3.1 The Licensing Sub-committee comprises three (3) Members appointed from the membership of the Licensing Committee. It is for the Licensing Committee to determine how Licensing Sub-committee members are selected, for example alphabetically or by rotation, to ensure regular Sub-committee sittings for all Members. In practice, selection is often determined by Member availability to ensure the Sub-committee is quorate.

3.2 Being a ward Member does not in itself constitute an interest in an application or create a risk of apparent bias. Providing the ward Member does not have a disclosable pecuniary interest or prejudicial interest in applications before the Sub-committee or providing there is nothing to indicate any risk of bias or predetermination (see sections 7 & 8 of this Protocol), a ward Member's local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives. Ward members may use their local knowledge to ask relevant questions and clarify facts.

4. CODE OF CONDUCT

3.3 The adopted Member Code of Conduct states:

‘You must act solely in the public interest and should never improperly

confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.'

'You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.'

'You must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions.'

'You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.'

3.4 The Member Code of Conduct covers issues central to the preservation of an ethical approach to Council business, including the need to ensure appropriate relationships with other Members, Officers and the public, which will impact on the way in which Members participate in the licensing process. The following 'guiding principles' (explained in detail elsewhere in this Protocol), should assist you in complying with the Code.

(a) Licensing officers' views, opinions and recommendations are 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 Licensing Sub-committee or its members. You must never seek to pressure Officers to provide a particular recommendation - this does not prevent you from asking questions or submitting views to Officers, which may be incorporated in a committee report.

(b) Do not 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. This would include, where you have a disclosable pecuniary interest or prejudicial interest in a proposal, using your position to discuss that proposal with Officers or fellow Councillors, when members of the public would not have the same opportunity to do so.

(c) If you propose to take part in the Licensing Sub-committee's decision making process, you must not give grounds to doubt your impartiality by:

making public statements about a pending decision before the Sub-committee meeting where it can be anticipated that the information required to take a decision will be available – such public statements could be seen as you prejudging a decision, or being biased in respect of, or be seen to be prejudging or demonstrating bias in respect of, the decision;

by indicating or implying your support or opposition to a proposal, or declaring your voting intention, before the meeting. Anyone who may be seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

(d) When making a decision on a licensing application, you may have to take account of different points of view and make decisions based on the licensing objectives. It is your duty to ensure that decisions are properly taken and that the parties involved in the process are dealt with fairly. In making any decision, you should only take into account the licensing objectives and you should discount any irrelevant or immaterial considerations.

(e) To reduce the risk of your, or the Licensing Sub-committee's decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance or perception of improper conduct. The responsibility for this rests with you.

(f) Do not accept gifts, benefits or hospitality from any person involved in or affected by a licensing proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum. Remember to notify the Monitoring Officer of the offer and your acceptance of any gift, benefit or hospitably where its value is over £100.

(g) If you have a disclosable pecuniary interest or prejudicial interest in an item under discussion at the Licensing Sub-committee meeting:

- □ unless you have a dispensation, you must not participate in the discussion and vote on the item and cannot be present in the public gallery/meeting room to observe the debate;
- □ you must not make representations to Licensing Sub-committee members - written relevant representations should be submitted to Officers within the specified period after notice of the application is published by the Council (as licensing authority);
- □ you should approach other fellow Councillors to represent your constituents' views at the Sub-committee meeting in accordance with section 6.2.(b)(ii) of this Protocol;
- □ you must not attempt to lobby Licensing Sub-committee members about the matter, before, during or after a meeting, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation;
- □ you must avoid discussing your personal licensing application with other Councillors and cannot ask a fellow Councillor to make written relevant representations on your behalf or to represent you at the Licensing Sub- committee meeting.

These rules apply to all members of the Council.

(h) Be aware that a presentation by an objector, professional agent, applicant or licence holder is a form of lobbying and you must not express any strong view or state how you or other Members might vote. Do refer those who approach you for licensing, procedural or technical advice to Officers.

(i) Do not agree to any formal meeting with applicants or groups of objectors, unless an Officer is present.

(j) Notify the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or hospitality).

(k) If, as a Licensing Committee member, you have decided in advance that you will take a particular view on a licensing application or that on an objective analysis of the facts, a fair minded observer would conclude that there is a real possibility of bias on your part, you:

- □ must not volunteer to sit on the Licensing Sub-committee which deals with the application;
- □ you must not participate in the Licensing Sub-committee's decision-making on the application;
- □ cannot be present in the public gallery/meeting room to observe the debate; must not make representations to Licensing Sub-committee members - written relevant representations should be submitted to Officers in accordance with section 6.2(b)(ii) of this Protocol;
- □ must not attempt to lobby Licensing Sub-committee members about the matter, before, during or after a meeting, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation.

(l) Where you have a responsibility for making a formal decision, you must not only act fairly, but also be seen as acting fairly ('quasi-judicially') in the decision-making process.

(m) As a Licensing Sub-committee member, you will not have fettered your discretion or breached this Protocol through:

- □ listening or receiving viewpoints from residents or other interested parties;
- □ making comments to residents, interested parties, other Members or Officers, provided they do not consist of or amount to pre- judging the issue and you make clear you are keeping an open mind;
- □ seeking information from licensing officers; or
- □ 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.

4.3 Disclosing Interests

4.3.1 The quorum of the Licensing Sub-committee is three (3) for the duration of the meeting. Where a Sub-committee meeting becomes inquorate during the course of the meeting, then the meeting must be adjourned to such time, place and date as may be determined by the Members present. It is therefore important that Licensing Committee members should consider their interests' position, before they volunteer to sit on a Licensing Sub-

committee.

4.3.2 If you have a disclosable pecuniary interest or prejudicial interest in a matter to be considered, or being considered at a meeting, you must:

(a) disclose the interest; and
(b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to paragraph4.3.3 of this Protocol); and unless you have been granted a dispensation:
(c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
(d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
(e) not seek improperly to influence a decision about that business.

4.3.3 Where your disclosable pecuniary interest or prejudicial interest has been agreed by the Monitoring Officer as being a sensitive interest, you need only disclose the existence of the interest, but not its nature.

4.3.4 The responsibility for declaring a disclosable pecuniary interest or prejudicial interest rests with you.

5.LOBBYING

5.1 Lobbying is a normal and perfectly proper part of the political process: those who may be affected by a licensing decision may seek to influence it through an approach to their elected ward Member or a Licensing Committee/Sub-committee member. However, lobbying can, unless all parties concerned exercise care and common sense, lead to the impartiality and integrity of the Member being called into question.

3.5 As the membership composition of the Licensing Sub-committee is drawn from the membership of the Licensing Committee, Committee members should avoid any attempts by others to lobby them on particular applications where they volunteer to sit on the Licensing Sub-committee dealing with the application(s). Members' responses to approaches by applicants, objectors, licence holders or other members of the public are of critical importance if they are not to be seen to have pre-determined an application (section 7 of this Protocol). Accordingly when approached, Licensing Sub-committee members should never commit themselves to speak or vote in any particular manner or express such a firm point of view that it amounts to predetermination. In practice, Members can respond by saying that whilst they understand the person's views, they cannot commit themselves until they have addressed their minds to the full range of information at the Licensing Sub-committee meeting. Members may also advise that the person's best interests would be served by submitting their relevant representations (based on the licensing objectives) in writing, to the Licensing Team or their ward Member.

Licensing Committee/Sub-committee members should normally point out

the quasi-judicial nature of the proceedings and explain that they cannot enter into discussions. Members should restrict themselves to giving procedural advice only.

3.6 Licensing Sub-committee members should not attend private meetings with applicants or groups of objectors on their own. Such meetings, if considered helpful in order to clarify issues, should be arranged by or attended by relevant licensing officers so that those present at the meeting can be advised from the outset that the discussions will not bind the Council as licensing authority to any particular course of action and to ensure the meeting is properly recorded on the application file and disclosed when the matter is reported to the Sub-committee. The same principle applies to formal presentations which are sometimes requested by applicants particularly on major applications. Such presentations are a form of lobbying and whilst Licensing Sub-committee members at such events may quite properly ask questions and seek clarification about the proposals, they should not express views or indicate how they are likely to vote when the matter comes before the Sub-committee.

3.7 Councillors must not lobby Licensing Sub-committee members directly or indirectly, in writing or otherwise, in respect of applications to be decided by the Sub-committee, with a view to influencing their decision.

3.8 Licensing Sub-committee members should not accept invitations from individuals to discuss applications on site. Formal site visits should only be attended if they are arranged by the Licensing Sub-committee, with licensing officers present

(see section 11 of this Protocol).

6. COUNCILLORS' REPRESENTATIONAL ROLE *See Appendix 1*

- Representations on an application are based on the licensing objectives and can be made by any person or their representative. Any Councillor can therefore make written relevant representations in their own right or on behalf of their constituents and subject to the rules detailed in paragraphs.6.2(b)(i) and (b)(ii) of this Protocol, can also appear at a Licensing Sub-committee meeting in accordance with the Licensing Sub-committee Hearing Procedure.

•

(a) Under the Council's Standing Order 35, subject to not having a disclosable pecuniary interest or prejudicial interest in the item, and subject to the Chairman's agreement, any Member may, on the giving of 24 hours' notice in writing to the Member Services Manager, be entitled to request to speak on any item(s) on the agenda of a committee, board etc *of which they are not a member* in the context of this Standing Order, 'not being a member' means not appointed to membership of the committee, board etc).

The parties to a Licensing Sub-committee meeting are the licensee and the

responsible authorities/interested parties who have made written relevant representations and whilst they are allowed to expand on their representations, they cannot raise new matters. Allowing Members to address the Licensing Sub- committee in the same way as other committees, could result in the Sub- committee's decision being open to challenge on the ground that the Sub- committee has taken into account matters which were not raised as written relevant representations in response to the notice of the application.

Therefore, with licensing applications, due to the requirement to submit written relevant representations within a specified period after notice of the application is published by the Council (as licensing authority) and it is only those representations which can then be considered by the Licensing Sub-committee, the procedure for speaking at the Licensing Sub-committee under Standing Order 35, differs from that applied to other committees etc.

(b) As a non Licensing Sub-committee member:

(i) providing you do not have a disclosable pecuniary interest or prejudicial interest in the licensing application:

you may make written relevant representations in your own right or on behalf of your constituents within the specified period after notice of the application is published by the Council. You must be able to demonstrate to the Council as licensing authority, that you have been requested to represent the person in question; and

you may appear at the Licensing Sub-committee meeting in the same way as the responsible authorities/interested parties.

(ii) if you have a disclosable pecuniary interest or prejudicial interest in a licensing application, you can still present your views or those of your constituents in the following ways:

(aa) you may make written relevant representations to Officers (not Councillors) in your own right or on behalf of your constituents within the specified period after notice of the application is published by the Council as licensing authority providing you disclose the existence and nature of your interest and do not seek preferential consideration of your representations;

(bb) if you have been asked to represent a constituent(s), you should formally advise them about your disclosable pecuniary interest or prejudicial interest;

(cc) unless you have been granted a dispensation to appear at the Sub-committee meeting, you can arrange for another Member to represent your constituents' views at the Sub-committee meeting providing you are able to demonstrate to the Council as licensing authority, that you have been requested to represent the person in question - this Member may then appear at the Licensing Sub-committee meeting in the same way as the responsible authorities/interested parties and that Member should make it clear to the Sub-committee, that he/she is acting in the place of a Member who has a disclosable pecuniary interest or prejudicial interest in the

matter.

(iii) The legal principles of ‘predetermination’ and ’bias’ (sections 7 & 8 of this Protocol) will not apply to you, if you take no part in the Licensing Sub- committee’s decision making process.

- When representing your constituents, your overriding duty is to the whole community, not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

(a) If you are representing an applicant or constituent in a professional capacity e.g. as a paid agent or advocate, you will have a vested interest in the outcome and therefore a prejudicial interest.

(b) If you wish to act on behalf of applicants or constituents in a professional capacity, remember that the efficacy of acting in a representative capacity, relies on you being present throughout the Licensing Sub-committee’s decision making process but that, in accordance with section 4.3 of this Protocol, the efficacy of your representation is significantly reduced by the requirement on you, to leave the meeting room prior to the item being discussed and voted on.

- Any Councillor may apply/call for a review in relation to any premises in any ward within the Borough of Dartford, even when none of their constituents have approached them formally to do so and subject to not having a disclosable pecuniary interest or prejudicial interest in a review application, may appear at any subsequent Sub-committee meeting.

- The participation of or association with action groups by Licensing Sub- committee members requires particular care. Membership or active participation may give the appearance that Members are committed to the aims of the action group and therefore to a particular view on the application, as well as giving the impression of bias. Attendance at any meetings of the action group would be inadvisable, unless it is a public meeting and attendance is on the express basis of listening only and not being committed to vote on the matter in a particular way, until all the evidence is to hand.

- To be effective in representing the views of interested parties and not mislead them about the licensing decision process, Councillors should advise that local opposition to, or support for, a licence application is not in itself grounds for refusing or granting the licence and that consideration must be given to the licensing objectives. Where opposition to, or support for a licensing application is not founded upon the licensing objectives,

Councillors should avoid giving the impression that such representations can be given weight and be careful about promoting that opposition or support both before and at the Sub- committee meeting. To do so may raise false expectations of a decision, wh i c h cannot be justified when it comes to objective formal consideration, potentially resulting in disillusionment and confusion over both the decision process and the role of that Councillor.

7. OPEN MIND

Predetermination (i.e. a mind that is closed to the consideration and weighing of relevant factors in the decision making itself) is a legal concept that the courts have always applied to local authority decision making and predates the Member Code of Conduct and is not altered by it.

A Licensing Sub-committee member with a pre-determined view on a licensing application, is disqualified from participating in the Sub-committee's decision- making on the application.

a. Central to the determination of licensing applications by the Licensing Sub-committee, is the principle that Members who determine licensing applications should come to the Sub-committee meeting with an open mind and be ready to hear and consider all arguments relating to the application. Licensing Sub- committee members are, of course, free to form a personal opinion on a licensing application, listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments to Officers, but, if taking part in the Licensing Sub-committee's decision making process on the licensing application, should not publicly commit themselves to a particular point of view on the application prior to its full consideration at the Sub-committee meeting, as this could be perceived by others, as the Member having closed his/her mind to hearing all the relevant licensing considerations and/or other relevant considerations.

The legal principle of predetermination applies to a decision maker when making the decision. Where for example, a Licensing Sub-committee member has publicly committed themselves to a particular point of view (e.g. supporting or opposing a proposal or declared their voting intention before the matter has been fully reported to the Licensing Sub-committee), that may amount to predetermination, were that Member to participate in the decision on that application.

b. A public statement by a Licensing Sub-committee member (who participates in the decision making process) saying that they are open to persuasion may not be sufficient to prove they are not predetermined – they must genuinely be open to persuasion. It is for the courts to determine if a decision is flawed because a Member was not open to persuasion on the merits of the case.

Example of predetermination

This application is a disaster waiting to happen. Under no circumstances

could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

7.2 If a Licensing Committee member is 'predetermined' on an application, they cannot take part in the Licensing Sub-committee meeting deciding the application and must withdraw from the meeting room during consideration of the application. The Member may however make written relevant representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Sub-committee meeting, providing they are able to demonstrate to the Council as licensing authority, that they have been requested to represent the person in question.

7.4 Licensing Sub-committee members are not prevented from having a predisposition towards a particular outcome for a licensing application as they are entitled to begin forming a view on the application as more information becomes available before the Licensing Sub-committee meeting, but if they have formed a provisional view, they must still be willing to consider all arguments presented at the Sub-committee meeting and be open to persuasion on the merits of the application, as a decision on the application can only be taken by the Sub- committee after all available information is to hand and has been duly considered. *It is important that Licensing Sub-committee members be open to any new argument at all times up to the moment of decision.*

There is a clear parallel with section 25 of the Localism Act 2011, which confirms that a councillor should not be held to have a closed mind just because they have previously indicated a view on a matter relevant to a decision.

Example of predisposition

I am very concerned about the impact of this proposal on the public nuisance licensing objective. There have been numerous complaints about music noise from the premises from mid-evening until either late evening or early morning. I want to see convincing measures within the direct control of the applicant, that this proposal will not make matters even worse.

7.5 It is important that no Licensing Sub-committee member comes to a Sub-committee meeting with a pre-determined view on any licensing application. If a Licensing Sub-committee member is seen to have predetermined their view and fettered their discretion and then takes part in the Sub-committee's decision – making process, it will put the Council at risk of a maladministration complaint or legal proceedings on the grounds of the decision being tainted with bias.

7.6 If a Licensing Sub-committee member decides in advance that they are bound to take a particular view on an application (for example because it is so controversial with constituents in their ward) then that will preclude the Member from participating in the Sub-committee's decision making process in relation to the application. In effect, the Member has to choose between publicly supporting or opposing a particular application and retaining their

ability to participate in the Sub-committee's decision making process.

7.7 A Licensing Sub-committee member may consider that they run too great a risk of becoming identified with one side of the argument no matter what safeguards they take. In these circumstances, the only wise course is not to

participate in the Sub-committee's decision making process on that application.

7.8 Licensing Sub-committee members may receive correspondence from constituents, applicants and licence holders asking them to support or oppose a particular proposal. Members should acknowledge the correspondence by saying that the matter has been referred to the Strategic Director. Condoning a point of view in advance of the application being reported to the Licensing Sub- committee, will raise the issue of pre-determination and will prevent the Member from fully taking part in the determination of the application.

7.9 Licensing Sub-committee members should not attend a licence application presentation unless an Officer is present and/or it has been organised by Officers. Remember that the presentation is not part of the formal process of a hearing and determination of any subsequent application.

8
BIAS

c. Licensing Sub-committee members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality, nor give the appearance of bias (bias may include pre-judged ideas based on the Member's own prejudices or political affiliations). It does not matter whether there is actual bias – the legal test for apparent bias is whether a fair minded observer aware of all the facts would conclude there was a real possibility of bias.

d. If a Licensing Committee member has formed or shown bias against, or, in favour of any particular person, or there is an appearance of bias in a particular application, they cannot volunteer to sit on a Licensing sub-committee that decides the application. The Member may however make written relevant representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Sub-committee meeting, providing they are able to demonstrate to the Council as licensing authority, that they have been requested to represent the person in question

e. Participation in the decision making at a Licensing Sub-committee by a Member disqualified by bias, potentially invalidates the decision.

8. DUAL - HATTED MEMBERS

f. Councillors often consider issues at more than one tier of local government, including speaking and voting in all tiers. For example, councillors may be a borough/parish and county councillor.

g. Parish/Town Councils may make written relevant representations in their own right. Licensing Sub-committee members who are 'dual-hatted members' must have regard to the guidance at sections 4.3, 7 and 8 of this Protocol on interests, predetermination and bias.

10. LICENSING POLICY

10.1 A Licensing Committee member who participated in a Council meeting which approved the Statement of Licensing Policy/Policy Statement under respectively, the Licensing Act 2003 and the Gambling Act 2005, may sit as a Licensing Sub- committee member, providing they do not have a disclosable pecuniary interest or prejudicial interest or have not fettered their discretion through pre-determination or bias.

11. SITE VISITS

11.1 Site visits are generally unnecessary in respect of licensing applications and should only be held where particular site factors cannot be ascertained from plans provided with the application. Where a site visit is deemed necessary, it will be part of the Licensing Sub-committee's formal hearing process. No representations from the applicant or other interested parties will be heard or accepted on site. No indication of the likely outcome of the application will be given on site.

11.2 Interests: Any Councillor (including Licensing Sub-committee members) with a disclosable pecuniary interest or prejudicial interest in a licensing application, must not attend a site visit relating to that application.

11.3 Predetermination (approaching a decision with a closed mind): Licensing Sub-committee members who have fettered their discretion by publicly committing themselves to a particular point of view (e.g. supporting or opposing a licensing application or declaring their voting intention or a firm view on the merits of an application before the Sub-committee meeting) cannot attend the site visit relating to that application. Members in this position should be mindful that they must not attempt to lobby other Sub-committee members about the matter at any time nor should they attempt to use their status as a Member to influence consideration of a submission, or try to get officers to change a decision or recommendation.

11.4 Bias: Where a Licensing Sub-committee member's interest in the licensing application may give rise to an appearance of potential bias, they should not participate in the site visit.

11.5 Predisposition (without amounting to apparent bias): Where Licensing Sub-committee members have formed a provisional view towards a particular outcome, but remain prepared to consider and weigh relevant factors in reaching the final decision, they may attend a site visit and raise questions etc.

12. COUNCIL'S LICENSING APPLICATIONS

12.1 Where the Council applies for a premises licence for open spaces or for buildings that it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Licensing Sub-Committee must hear and determine the application or review in exactly the same way as other applications and reviews. Licensing Sub-committee members must have no regard to the interests of the Council itself, aside from receiving written relevant representations on the application.

12.2 If a Licensing Committee member has taken a role in the decision to submit the application, they must not sit on the Licensing Sub-committee, which determines the application.

13. TRAINING

h. Specialised training sessions are designed to extend Members' knowledge of licensing law, regulations, procedures and codes of practice and thus assist

them in carrying out their role properly and effectively.

i. Licensing Committee members are required to attend training on the Member Code of Conduct and the application of disclosable pecuniary interests, prejudicial interests, predetermination and bias in the decision making context. Members who fail to attend such training are excluded from meetings of the Licensing Sub-committee until they have been trained.

14. OMBUDSMAN & COMPLAINTS ABOUT THE ADMINISTRATION OF LICENSING APPLICATIONS

j. The Commission for Local Administration ('the Ombudsman') is a principal mechanism for accountability in respect of local authority administration, and constitutes an independent system for the investigation and resolution of complaints of injustice caused by the maladministration (with injustice or without injustice) of local authorities (and of certain other bodies).

k. Members of the public who claim to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of the Council, can bring a complaint, or can have a complaint brought on their behalf, and on occasions may ask Councillors to take a complaint forward on their behalf.

l. Although complainants can approach the Ombudsman at any time, the Council must first be given an opportunity to answer the complaint, through its Corporate Complaints Procedure. The Ombudsman may ask what efforts, if any, have been made to resolve concerns personally and locally, and may encourage and assist complainants to make this effort.

m. The Ombudsman has discretion as to whether or not to investigate a complaint, although such discretion must be exercised reasonably.

n. In assessing a complaint, the Ombudsman will not be concerned with the nature, quality or reasonableness of the decision itself. Of concern, will be the manner in which the Licensing Sub-committee decisions are reached and the manner in which they are, or are not, implemented.

o. The five most common causes of maladministration relate to:

- unreasonable delay in taking appropriate action;
- failure to provide adequate information, explanation or advice to users;
- failure to take appropriate action;
- taking incorrect action;
- failure to investigate an issue properly.

p. Appeals against refusal of a licensing application are dealt with by the Magistrates' Court.

15. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL

Allegations of any failure to meet this Protocol must be made in writing, to the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

16. OVERSEEING COMPLIANCE WITH THIS PROTOCOL

The Audit Board oversees compliance with this Protocol.

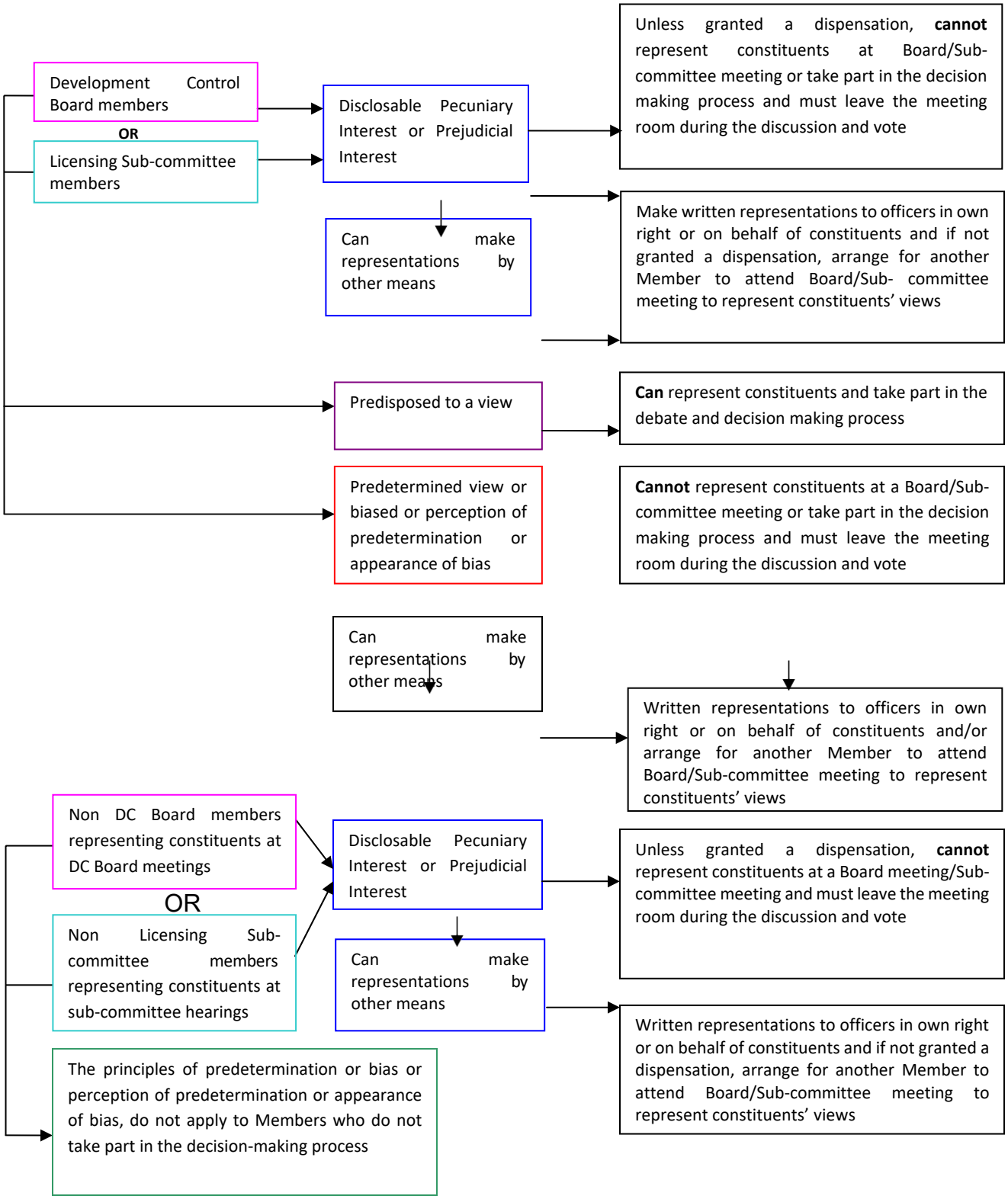
17. FURTHER GUIDANCE

Further advice or clarification can be sought from the Head of Legal Services & Monitoring Officer.

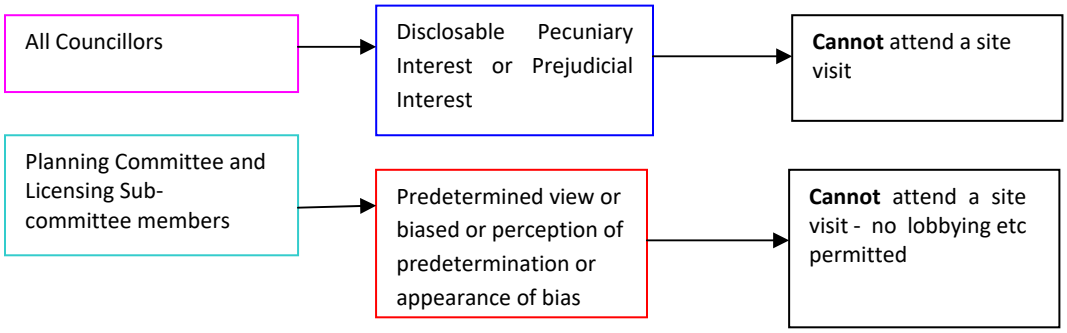
Adopted by the Licensing Committee
19.12.2012 [Min.No.11] Endorsed by the

Audit Board 09.01.2013 [Min.No.43]
Amended under delegated authority -21 December 2021

APPENDIX 1 - A COUNCILLOR'S REPRESENTATIONAL ROLE – DEVELOPMENT CONTROL BOARD AND LICENSING SUB-COMMITTEE



SITE VISITS – PLANNING COMMITTEE AND LICENSING SUB- COMMITTEE



Legal/Member Code of Conduct/ Flowchart on Councillor Representational Role

Adopted by the General Assembly of the Council - 30 July 2007 [Min.No.52] Agreed by Cabinet – 25.04.2013 [Min. No. 181] Reviewed and adopted by the Audit Board 13.5.2013 [Min.No.5] Reviewed under Strategic Directors' delegated authority – 29 June 2020

8. PROBITY IN PLANNING PROTOCOL

1. INTRODUCTION

1.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its Officers. Open and transparent decision-making enhances local democracy and should lead to better informed citizens. A common understanding of the various roles, responsibilities and accountabilities should also enhance citizen participation.

1.2 Members are guided by the [Member] Code of Conduct. Officers are guided by the Employee Code of Conduct. Chartered Town Planners will also be guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct.

1.3 The basis of the planning system is the consideration of private proposals against wider public interests. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way that is not only fair and impartial, but is also clearly seen to be so. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Planning Committee members have a special duty to their ward constituents, including those who did not vote for them, their over-riding duty is to the whole community. Councillors should not favour any individuals or groups and not put themselves in a position where they appear to do so. Although Councillors may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, represent their constituents as a body and vote in the interests of the whole Borough. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Planning Committee.

1.4 This Protocol guides Members and Officers in the discharge of the Council's statutory planning functions and informs potential developers and the public generally, of the high standards of ethical conduct adopted by the Council, in the exercise of its planning functions. This Protocol supplements the [Member] Code of Conduct and the Employee Code of Conduct.

1.5 Reference to ‘Planning Committee member(s)’ in this Protocol, means a Member(s) who has been appointed to the Committee’s membership and includes a Member who may substitute for a Committee member at a Planning Committee Board meeting or site visit.

2. THE PLANNING SYSTEM

2.1 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is often highly contentious, because decisions of the Council, as local planning authority, affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system, which actively invites public opinion before taking decisions and is reinforced by the legal status of development plans and decision notices. It is essential, therefore, that the planning process is characterised by open and transparent decision-making, that planning decisions are taken on proper planning ggrounds, are applied in a consistent and open manner and that Members and Officers are held accountable for those decisions.

2.2 One of the key purposes of the planning system is to ensure that development takes

place through a framework, whereby the public interest is well represented at every point, from the preparation of development plans and policies, the determination of planning applications and in undertaking enforcement action. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important therefore, that the Planning Committee should make planning decisions affecting these interests are made openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

2.3 The Human Rights Act 1998, and in particular Article 6, is concerned with guaranteeing procedural fairness in the determination of civil rights and obligations, especially the entitlement to a fair and public hearing within a reasonable time by an independent and impartial tribunal. These principles are at the heart of the planning system. The Human Rights Act 1998, therefore, provides additional safeguards for citizens and encourages the application of best practice in the planning process.

3. THE COUNCIL'S DECISION-MAKING FRAMEWORK

3.1 The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 introduced a national scheme of delegation which came into effect on 31st October 2026. This categorises planning applications into Schedule 1 and Schedule 2 applications. Schedule 1 applications must be delegated to officers for decisions. Schedule 2 applications are delegated to officers unless the application is considered to meet statutory criteria for reporting the application to the Planning Committee for determination. The Planning Committee will also be responsible for decisions relating to matters in the remit not covered by the national scheme of delegation. The Cabinet is responsible for preparing/formulating the Local Plan and other documents which form part of the statutory development plan; Supplementary Plans and the Community Infrastructure Levy (CIL). The General Assembly of the Council (the GAC), adopts the development plan documents, the Community Infrastructure Levy charging schedule and Neighbourhood Plans. The responsibilities of the GAC, the Cabinet and the Planning Committee are set out in their Terms of Reference.

3.2 When planning applications are reported to the Planning Committee, in determining the application Members must have regard to the statutory Development Plan. The Development Plan applicable includes: Dartford's Local Plan adopted 2024, the Neighbourhood Plan for Stone made 2022, Kent's adopted Minerals and Waste Plans, and any new Supplementary Plan that Dartford may subsequently adopt), and governmentguidance set out in the National Planning Policy Framework (NPPF), National Planning Policy Guidance (NPPG) and other relevant material considerations (including existing Dartford Supplementary Planning Documents). Officer reports to planning committee will make clear what are the relevant material planning considerations, when determining the application. Members will need to judge the weight to be given to each material considerations and the overall planning balance. Applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

CODE OF CONDUCT

4.1 The adopted Member Code of Conduct states:

'You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.'

'You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.'

'You must be as open as possible about your decisions and actions and the decisions and actions of the Council and should be prepared to give reasons for those decisions and actions.'

'You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.'

4.2 The Member Code of Conduct covers issues central to the preservation of an ethical approach to Council business, including the need to ensure appropriate relationships with other Members, Officers and the public, which will impact on the way in which Councillors participate in the planning process. The following 'guiding principles' (explained in detail elsewhere in this Protocol), should assist you in complying with the Code.

(a) Planning officers' views, opinions, recommendations and decisions are 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 Planning Committee and members or other members of the Council. You must never seek to pressure Officers to provide a particular recommendation or make a particular delegated decision - this does not prevent you from asking questions or submitting views to Officers, which may be incorporated in delegated or committee report (see (k) below for planning committee member guidance).

(b) Do not 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. This would include, where you have a disclosable pecuniary interest or prejudicial interest in a proposal, using your position to discuss that proposal with Officers or fellow Councillors, when members of the public would not have the same opportunity to do so.

(c) If you propose to take part in the Planning Committee's decision making process, you must not give grounds to doubt your impartiality by:

- making public statements about a pending decision before the Planning Committee meeting where it can be anticipated that the information required to take a decision will be available – such public statements could be seen as you prejudging a decision, or being biased in respect of, or be seen to be prejudging or demonstrating bias in respect of, the decision;
- by indicating or implying your support or opposition to a proposal, or declaring your voting intention, before the meeting. Anyone who may be

seeking to influence you must be advised that you will not formulate an opinion on a particular matter until all available information is to hand and has been duly considered at the relevant meeting.

(d) If as a member of the planning committee you are making a decision on a planning committee, you may have to take account of different points of view or make decisions based on specified statutory criteria. It is your duty to ensure that decisions are properly taken and that the parties involved in the process are dealt with fairly. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

(e) To reduce the risk of your, or the Planning Committee's decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance or perception of improper conduct. The responsibility for this rests with you.

(f) Do not accept gifts, benefits or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum. Remember to notify the Monitoring Officer of the offer and your acceptance of any gift, benefit or hospitably where its value is over £100.

(g) If you have a disclosable pecuniary interest or prejudicial interest in an item under discussion at the Planning Committee meeting:

- unless you have a dispensation, you must not participate in the discussion and vote on the item and cannot be present in the public gallery/meeting room to observe the debate;
- you must not make representations to Planning Committee members - written representations should be submitted to Officers;
- you should approach other fellow Councillors to represent your constituents' views;
- you must not attempt to lobby Planning Committee members about the matter, before, during or after a Board meeting/site visit, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation;
- you should avoid discussing your personal planning application with other Councillors and cannot ask a fellow Councillor to represent you at a Committee meeting or make written representations on your behalf, on a personal planning application.

These rules apply to all members of the Council.

(h) Be aware that a presentation by a developer, professional agent or applicant/landowner is a form of lobbying and you must not express any strong view or state how you or other Members might vote. Do refer those who approach you for planning, procedural or technical advice to Officers.

(i) Do not agree to any formal meeting with applicants, developers or groups of objectors without discussion first with a planning officer; it may not be appropriate to meet e.g. if the Council is taking legal action. An officer should always be present at any such meeting.

(j) Notify the Monitoring Officer if you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts, benefits or hospitality).

(k) If, as a Planning Committee member, you have decided in advance that you will take a particular view on a planning application or that on an objective analysis of the facts, a fair minded observer would conclude that there is a real possibility of bias on your part, you:

- must not participate in the discussion and vote on the item;
- cannot be present in the public gallery/meeting room to observe the debate;
- must not make representations to Planning Committee members - written representations should be submitted to Officers;
- should approach other fellow Councillors to represent your constituents' views;
- must not attempt to lobby Planning Committee members about the matter, before, during or after a Board meeting/site visit, attempt to use your status as a Member to influence consideration of a submission, or try to get Officers to change a decision or recommendation.

(l) Where you have a responsibility for making a formal decision, you must not only act fairly, but also be seen as acting fairly ('quasi-judicially') in the decision-making process.

(m) As a Planning Committee member, you will not have fettered your discretion or breached this Protocol through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or Officers, provided they do not consist of or amount to pre- judging the issue and you make clear you are keeping an open mind;
- seeking information from planning officers; or
- 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.

NB: Central to a Court of Appeal case (Wokingham Borough Council. v. Scott and others [2019] EWCA Crim 205), was disclosure of emails from councillors' personal email accounts, which had been used to communicate with other councillors and planning officers about a planning related matter. This could equally apply to WhatsApp messages between elected Members, Teams messages or other such means of communication. This case highlighted the need to be aware of the effects of statements made by councillors and officers in the minds of potential defendants and to be alive to the need to conduct discussions with good sense on each side and in good faith.

4.3 **Disclosing Interests**

4.3.1 If you have a disclosable pecuniary interest or prejudicial interest in a matter to be considered, or being considered at a meeting, you must:

(a) disclose the interest; and
(b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to paragraph4.3.2 of this Protocol); and unless you have been granted a dispensation:
(c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
(d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
(e) not seek improperly to influence a decision about that business.

4.3.2 Where your disclosable pecuniary interest or prejudicial interest has been agreed by the Monitoring Officer as being a sensitive interest, you need only disclose the existence of the interest, but not its nature.

4.3.3 The responsibility for declaring a disclosable pecuniary interest or prejudicial interest rests with you.

5. POLICY AND STRATEGIC ISSUES

5.1 As a Councillor, you may discuss or debate matters of policy or strategy, even though these may provide the framework within which individual applications reported to Planning Committee will be decided. Therefore, if you have a key role in establishing planning policies for the area, you are fully entitled to express your views or advocate proposals for the making, approval or amendment of the Development Plan, including SPDs published by the Council as local planning authority, both relating to general policies for the Borough of Dartford and to briefs and master plans prepared for specific sites in anticipation of planning applications.

6 DEVELOPMENT PLAN PREPARATION

6.1 Cabinet Members may be involved in discussions with a number of third parties over development proposals within the Borough and may also themselves have ideas on the future development of/within the Borough. Members should always be mindful that third parties may wish to influence them over the Development Plan's content, for their own or others' personal benefit.

6.2 Cabinet members must exercise their own judgement in deciding whether they might be influenced or could be seen as being influenced over the Local Plan preparation. If it could be reasonably considered that discussions with third parties are such as to lead Members to be influenced or seen to be influenced, the following should apply;

- any discussions with the third party over the contents of the draft Development Plan should be recorded and submitted to the Assistant Director – Planning & Place or the Head of Planning Strategy;

- where a third party is lobbying to advance a particular site or policy stance for inclusion in the Development Plan, any meetings with that third party should be recorded and be held in the presence of the Assistant Director – Planning & Place or a nominated representative.

- any Officer should only hold such discussions in the presence of a

planning colleague.

6.3 In any discussion with the third party, Members should make it clear:

(a) that consideration of any particular proposal will have to be judged against the advice of professional Officers of the Council and the statutory planning framework;

(b) that it is for the Council to make the final decision through its formal decision making procedures.

6.4 Should a Cabinet member with portfolio responsibility for strategic development be able to vote on planning applications? The appropriate action is not clear cut and will depend on the circumstances of a particular case. However, the general advice is that a Member in such circumstances, may well be so committed to a particular view as a result of their Cabinet/portfolio responsibility, that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached (see sections 9 & 10 of this Protocol on predetermination and bias).

7. REPRESENTING CONSTITUENTS *See Flowchart at Appendix 1*

7.1 (a) Under the Council's Standing Order 35, subject to not having a disclosable pecuniary interest or prejudicial interest in the item, and subject to the Chairman's agreement, a non-Planning Committee member may, on the giving of 24 hours' notice in writing[1] to the Democratic Services Manager, request to speak on any item(s) on the Committee's agenda. The decision to accept such a request will be at the Chairman's discretion and his/her decision will be final.

Please note that Councillors cannot 'stand in' for a speaker who has registered to speak at the Board meeting (see section 7.5 of this Protocol).

As a non-Planning Committee member:

(i) If you have a disclosable pecuniary interest or prejudicial interest, you can still present your views or those of your constituents in the following ways:

(aa) you can make written representations to Officers (not fellow Councillors), providing you disclose the existence and nature of your interest and do not seek preferential consideration for your representations;

(bb) if you have been asked to represent a constituent(s), you should formally advise them about your disclosable pecuniary interest or prejudicial interest;

(cc) unless you have been granted a dispensation to appear at the Committee meeting, you can arrange for another Member to represent your constituents' views at the Committee meeting - this Member should make it clear to the Planning Committee that he/she is acting in the place of a Member who has a disclosable pecuniary interest or prejudicial interest in the matter.

(ii) The legal principles of 'predetermination' and 'bias' (sections 9 & 10 of this Protocol) will not apply to you, as you take no part in the Committee's decision making process.

7.2 As a Planning Committee member, if you have a disclosable pecuniary interest or

prejudicial interest in an application before the Planning Committee, you can still present your views or those of your constituents to the Committee meeting through the ways described in section 7.1(b)(i) of this Protocol.

7.3 When representing your constituents, your overriding duty is to the whole community, not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

7.4 (a) If you are representing an applicant or constituent in a professional capacity e.g. as a paid agent or advocate, you will have a vested interest in the outcome and therefore a prejudicial interest.

(b) If you wish to act on behalf of applicants or constituents in a professional capacity, remember that the efficacy of acting in a representative capacity, relies on you being present throughout the Planning Committee's decision making process but that, in accordance with section 4.3 of this Protocol, the efficacy of your representation is significantly reduced by the requirement on you, to leave the meeting room prior to the item being discussed and voted on.

(c)Planning applications involving representation by councillors in a professional capacity, will be considered an own "own-interest" application in terms of the national delegations and will be considered by the nominated ember and nominated officers as set out in the Planning sub-delegations for referral to the Planning Committee main items, and not dealt with by Officers for decision.

7.5 The Committee's decision-making process must be seen to be fair and impartial from the perspective of an external observer. Therefore, Councillors cannot 'stand in' for a speaker who has registered to speak at the Committee meeting[2] To do otherwise, could leave the Committee decision making process open to accusation of partiality or undue influence.

8. MEMBERSHIP OF LOBBY, CAMPAIGN GROUPS & CLUBS & SOCIETIES (UNINCORPORATED ORGANISATIONS)

8.1 If the matter to be discussed at a Planning Committee meeting has a direct impact on a lobby, campaign group or club or society of which you are a member, you will most likely have a prejudicial interest. 'Direct impact' in this context means anything that directly affects the rights and obligations of a group, club etc - e.g. a planning application submitted by a lobby group.

8.2 Matters that relate to the issues on which a group campaigns or has expressed public opinions about, without affecting the operation of the group directly, has an indirect impact on that group. If the matter to be discussed at a Planning Committee meeting relates indirectly to a lobby or campaign group of which you are a member, you may, depending on the facts, have a prejudicial interest. You need to consider the following factors in determining whether you have a prejudicial interest in a matter of indirect impact:

(i) the nature of the matter to be discussed;
(ii) the nature of your involvement with the lobby or campaign group;
(iii) the publicly expressed views of the lobby or campaign group;
(iv) what you have said or done in relation to the particular issue.

[1] Includes notification by email

8.3 Your membership of, or you leading or representing an organisation whose primary purpose is to lobby to promote or oppose planning proposals may raise bias and predetermination considerations (see section 9 & 10 of this Protocol).

8.4 It is possible that, in certain circumstances, membership of a private club or society could give rise to a prejudicial interest or bias or predetermination considerations.

9. LOBBYING

9.1 Members should not excessively lobby Planning Committee members regarding their concerns or views on a planning application, 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.

9.2 Members should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, is likely to compromise, or could be seen as compromising an officer's impartiality or professional integrity. Nor should they request officers to speed up or delay the determination or assessment of an application for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.

9.3 Members of Planning Committee should not decide or discuss how to vote on any application at any sort of political group meeting or lobby any other Planning Committee Member to do so.

9.4 As previously outlined, Councillors must always be mindful of their responsibilities and duties under their Code of Conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this Code.

10. KEEPING AN OPEN MIND

Predetermination (i.e. a mind that is closed to the consideration and weighing of relevant factors in the decision making itself) is a legal concept that the courts have always applied to local authority decision making and predates the Member Code of Conduct and is not altered by it

A Planning Committee member with a pre-determined view on a planning application, is disqualified from participating in the Committee's decision- making on the application.

10.1 Central to the determination of planning applications by the Planning Committee, is the principle that Members who determine planning applications should come to the Committee meeting with an open mind and be ready to hear and consider

all arguments relating to the application. Planning Committee members are, of course, free to form a personal opinion on a planning application, listen to a point of view about a proposal, give procedural advice and agree to forward any comments to Officers, but should not publicly commit themselves to a particular point of view on a planning application prior to its full consideration at the Planning Committee meeting, as this could be perceived by others, as the Member having closed his/her mind to hearing all the relevant considerations and/or other relevant considerations.

The legal principle of predetermination applies to a decision maker when making the decision. Where for example, a Planning Committee member has publicly committed themselves to a particular point of view (e.g. supporting or opposing a proposal or declared their voting intention before the matter has been fully reported to the Planning Committee), that may amount to predetermination, were that Member to participate in the decision on that application.

---

[2] Refer to the Protocol for Public Speaking at Planning Committee

10.2 A public statement by a Planning Committee member saying that they are open to persuasion on a particular application which the committee are to determine, may not be sufficient to prove they are not predetermined – they must genuinely be open to persuasion of the planning merits of the decision in question. It is for the courts to determine if a decision is flawed, because a Member was not open to persuasion on the merits of the case.

Example of predetermination

This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

10.3 If a Planning Committee member is 'predetermined' on an application, they will be disqualified from taking part in the Committee meeting and decision- making process on the application and must withdraw from the meeting room during consideration of the application. A 'predetermined' Committee member may however, make written representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Committee meeting.

10.4 Planning Committee members are not prevented from having a predisposition (i.e. preparedness to consider and weigh relevant factors in reaching the final decision) towards a particular outcome for a planning application as they are entitled to begin forming a view on the application as more information becomes available before the Committee meeting, but if they have formed a provisional view, they must still be willing to consider all arguments presented at the Committee meeting and be open to persuasion on the merits of the application, as a decision on the application can only be taken by the Committee after all available information is to hand and has been duly considered. *It is important that Planning Committee members be open to any new argument at all times up to the moment of decision.*

There is a clear parallel with section 25 of the Localism Act 2011, which confirms that a councillor should not be held to have a closed mind just because they have previously indicated a view on a matter relevant to a decision.

Examples of predisposition

I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.

This proposal is in the Green Belt and the proposed extension would be inappropriate development. Its design does not seem to be particularly sympathetic to its surroundings. In such a prominent location, there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved, then I cannot currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

10.5 A Planning Committee member will not have fettered their discretion merely by listening to and receiving representations from residents or interested parties, making comments to such people or being a vehicle for the expression of local opinion at a Committee meeting, provided they make it clear that they are not already committed to voting in accordance with those views.

10.6 It is important that no Planning Committee member comes to a Board meeting with a pre-determined view on any planning application. If a Planning Committee member is seen to have predetermined their view and fettered their discretion and then takes part in the Committee's decision – making process, it will put the Council at risk of a maladministration complaint or legal proceedings on the grounds of the decision being tainted with bias.

10.7 If a Planning Committee member decides in advance that they are bound to take a particular view on an application (for example because it is so controversial with constituents in their ward) then that will preclude the Member from participating in the Committee's decision - making process in relation to the application. In effect, the Committee has to choose between publicly supporting or opposing a particular application and retaining their ability to participate in the Committee's decision-making process.

Explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

10.8 A Planning Committee member may consider that they run too great a risk of becoming identified with one side of the argument no matter what safeguards they take. In these circumstances, the only wise course is to withdraw from the Committee's decision-making process on that application.

10.9 Planning Committee members may receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should acknowledge the correspondence by saying that the matter has

been referred to the Assistant Director – Planning & Place. Condoning a point of view in advance of all the planning considerations of a proposal being reported to the Planning Committee will raise the issue of pre-determination and will prevent the Member from fully taking part in the determination of the application.

10.10 Planning Committee members should not attend a planning presentation unless an Officer is present and/or it has been organised by Officers. Remember that the presentation is not part of the formal process of debate and determination of any subsequent application.

11. BIAS

11.1 A Planning Committee member should not form or show bias against, or, in favour of any particular person, company or group or any particular site or locality, nor give the appearance of bias (bias may include pre-judged ideas based on the Member's own prejudices or political affiliations). It does not matter whether there is actual bias – the legal test for apparent bias is whether a fair minded observer aware of all the facts would conclude there was a real possibility of bias.

If a Planning Committee member has formed or shown bias against, or, in favour of any particular person, or there is an appearance of bias in a particular application, the Member will be disqualified from taking part in the Committee meeting and decision-making process, but may make written representations to Officers (not fellow Councillors) and/or arrange for another Member to represent their constituents' views at the Committee meeting.

Example - You are a member of the Planning Committee and have made a particular issue a centrepiece of your election campaign, or were elected on the basis of a single-issue campaign, but are not a member of a related lobby group. Here, you will not have a prejudicial interest. However, you still need to consider whether you are genuinely open to persuasion about the matter.

Example - You are a member of the Planning Committee and a director of a housing association with an interest in tendering for the delivery of the affordable housing scheme part of the development. In your capacity as director of the housing association, you will be automatically disqualified from participating in the decision making process on the planning application by reason of the appearance of bias i.e. the interest of the housing association and your interest as director of the housing association in having the planning permission approved, are aligned[3].

11.2 Participation in the decision-making at Planning Committee by a Member disqualified by bias, potentially invalidates the decision.

12. DUAL - HATTED MEMBERS

12.1 Councillors often consider issues at more than one tier of local government, including speaking and voting in all tiers. For example, councillors may be a borough/parish and county councillor.

12.2 Parish/Town Councils are consultees on planning applications. A Planning Committee member who is also a Parish/Town Councillor may take part in the debate on a planning application at the Parish/Town Council provided they:

(i) do not have a disclosable pecuniary interest or prejudicial interest in the application;

(ii) make it clear to the Parish/Town Council as consultee body:

- that their views are expressed on the limited information before them; and

- that they reserve judgement and the independence to make up their own mind on the application, based on their overriding duty to the whole community and not just to the people in that area, ward or parish, as and if a as a Schedule application it comes before the Planning Committee and they hear all of the relevant information; and

- that they will not in any way commit themselves as to how they or others may vote if the application comes before the Committee.

12.3 The principles referred to in paragraph 12.2 above, apply to the Council's Development Plan proposals that particularly affect a parish. Subject to not having a disclosable pecuniary interest or prejudicial interest, a Member may speak and vote on an issue relating to the Council's Development Plan that particularly affects their parish.

12.4 A Parish/Town Councillor who also sits on the Planning Committee will have a prejudicial interest in a planning application submitted by their Parish/Town Council.

13. PRE-APPLICATION DISCUSSIONS

13.1 Discussions between a potential applicant and the Council as local planning authority prior to the submission of an application, can be of considerable benefit to both parties and is encouraged by the National Policy Framework and national planning guidance. However, it would be easy for such discussions to become, or be seen (especially by objectors) to become, part of a lobbying process.

13.2 When involved in pre-application discussions, Officers should always act fairly to all and completely impartially, by providing accurate advice and assistance when pre-application advice is requested by general public, developers or Members and the relevant fee paid. A written record of all such discussions should be retained on the planning file.

13.3 Occasionally, the Planning Committee Chair or other Committee members may be invited to attend pre-application discussions with an applicant. Where Members choose to accept the invitation, they should be accompanied by an Officer and a written note made of the discussion and retained on the planning file. For Committee members to do otherwise, could leave them open to accusation of partiality or undue influence.

13.4 The Council charges for pre-application planning advice to be provided by qualified planning officers. Officers and members should make it clear at any discussion with a developer prior to an application being submitted to the Council, that if no formal pre-application request has been made to officers (and the appropriate fee paid) officers and members cannot provide any advice.

13.5 The Borough Council are not the local planning authority for development management within the area covered by the Ebbsfleet Development Corporation (EDC). Officers and members of the Borough Council should not provide any planning advice on matters that are due to be considered by the EDC.

13.6 Pre-application discussions should take place within clear guidelines and the same considerations should apply to any discussions which take place before a decision is taken or when the application is submitted to the Council, as local planning authority:

- it should always be made clear at the outset, that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings, not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;

- advice should be consistent and based upon the Development Plan and material planning considerations, including the NPPF. There should be no significant difference of interpretation of planning policies amongst Planning Officers. In addition, all Officers taking part in such discussions should make clear whether or not they are the decision- maker under delegated powers;

- at least one Planning Officer should attend such meetings and follow-up written advice should be provided where a formal pre-application request has been made;

- care must be taken to ensure that advice is not partial, nor seen to be;

- No pre-application advise should be provided without a formal written request for such advice and details provided of the proposed development to ensure that the details upon which the advice is provided is clear.

---

[3] Kelton v Wiltshire Council [2015] EWHC 2853 (Admin) (QBD) and see Porter v Magill [2002] 2 AC 357 for test of bias

14. OFFICER REPORTS

14.1 To avoid public concern and a loss of confidence in the planning system, and in order to avoid criticisms relating to inadequate consideration of the issues, inconsistency of decision-making, or claims of unclear or non-existent reasoning behind a recommendation or no recommendation, Officers should have regard to the guidelines set out below. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, and/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 Section 54A of the Act.

- reports must be accurate and cover, among other things, the substance of objections and the views of organisations and people who have been consulted/notified;

- relevant points must include a clear exposition of the Development Plan, site or related history, and any other material considerations;
- reports must have a written recommendation of action;
- oral reporting at planning committee (except to update a report) is extremely rare and must be carefully minuted when it does occur;
- reports must contain a technical appraisal which clearly justifies the recommendation and reasons for the recommendation must be clearly set out;
- reports must contain an appraisal of the human rights implications relevant to the issue and which clearly justifies that any interference is 'proportionate' to the aims of the legislation;
- reports must have due regard to the public sector equality duty relevant to the application;
- if the report's recommendation is contrary to the provisions of the Development Plan, the material considerations, which justify this, must be clearly stated.

14.2 **Decisions Contrary to Officer Recommendation and/or the Development Plan**

14.3 The law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise (Section 54A of the Act).

14.4 If the Planning Committee makes a decision contrary to the Officer's recommendation (whether for approval or refusal), the Officer should always be given the opportunity to explain the implications of the contrary decision. Unless the Committee's argument against the Officer's recommendations are very clear and substantiated on planning grounds and detailed conditions and a s106 heads of terms are provided to mitigate the impacts, the application should be deferred to enable the Officer to draft a further report for a subsequent meeting of the Committee, outlining the implications of making a decision contrary to the Officer's recommendation. The Commitee's reasons must be formally recorded in the minutes.

14.5 When a planning application has been deferred following a resolution of 'minded to approve' or 'minded to refuse', contrary to the Officer's recommendation, then at the subsequent Committee meeting, the Assistant Director of Planning and Place or Head of Development Management will have the opportunity to respond both in a further written report and orally, to the reasons formulated by the Committee for granting or refusing permission. If the Committee is still of the same view, then it will again consider its reasons for granting or refusing permission, and a summary of the planning reasons for that decision will be given, which reasons must then be formally recorded in the minutes of the meeting.

14.6 The Courts have expressed the view that reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this e.g. a dwelling for an agricultural worker.

14.7 In the case of conditions which the Committee wishes to add or amend, the Officer should be invited to draft the condition(s) and either refer this to the Committee for approval at a subsequent meeting, or agree the condition with the Committee Chairman.

15. PLANNING APPLICATIONS SUBMITTED BY COUNCILLORS, OFFICERS AND BY THE COUNCIL

15.1 Proposals to the Council, as local planning authority, by serving and former (within the last four years) Councillors and their family or close associates etc, can easily give rise to suspicions of impropriety. Although it is perfectly legitimate for such proposals to be submitted, it is vital to ensure that they are handled in a way that gives no grounds for accusations of favouritism. Members will need to consider the rules on disclosable pecuniary interests and prejudicial interests when such applications are submitted.

Do notify the Monitoring Officer in writing, of your own application or if you have an interest in an application and note that:

- you should send the notification no later than submission of the application to the Council as local planning authority;
- your application will be reported to the Planning Committee as required under the National Scheme of Delegation and not dealt with by Officers under delegated powers; and
- it is advisable that, in relation to your application, you employ an agent to act on your behalf in dealing with Officers and any public speaking at the Planning Committee meeting.

15.2 Proposals for the Council's own development can take the form of either planning applications or Development Plan proposals. It is perfectly legitimate for such proposals to be submitted to and determined by the Council however, such proposals can easily give rise to suspicions of impropriety. It is vital to ensure that they are handled in a way that gives no grounds for accusations of favouritism. Proposals for the Council's own development must be treated in the same way as those by private developers. Minor development where the Council is applicant will normally be determined by planning officers, Major development will generally be considered by the Planning Committee where in accordance with the by National Scheme of Delegation (see below). In deciding whether to refer to committee, the Nominated Member and Officer should ensure that, because of the nature of the applicant, there is not a real (or reasonably perceived) risk of bias by determining the application under delegated powers and secondly that, because of the nature of the development, there is a good reason to refer it to Committee.

15.3 Certain members may, through their other roles outside of Planning Committee (eg a Portfolio Holder), have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at Planning Committee, the Councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action, if that is the case, is that the Councillor concerned may address the Committee in the applicant's speaking slot but does not take part in the consideration and determination of the application. It is important that the Councillor should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

15.4 Planning Officers should not submit applications within the Borough boundary on behalf of third parties except as part of their duties as Council employees. In

cases where Planning Officers or members of their family submit applications for planning permission, the Assistant Director- Planning & Place should be notified and the proposals reported to the Planning Committee and should not be dealt with by Officers under delegated powers in accordance with the National Scheme of Delegation.

16. NATIONAL SCHEME OF DELEGATIONS

16.1 The Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 came into force on 31st October 2026. This classifies what applications must be determined by planning officers under delegated powers and which applications can be considered against the national criteria. The presumption throughout the new Regulations and government guidance is that applications should be determined by planning officers and referral to the Committee is an exception

16.2 The Regulations make provision, in Regulation 5(3), for the matters that must be considered by the Nominated Member and Nominated Officer when they agree whether or not to refer a proposal to determine a Schedule 2 Application to committee. They are known as the Gateway Test and are that the proposal raises:

a) one or more issues of economic, social or environmental significance to the local area; or

b) one or more significant planning matters having regard to the development plan and any other material considerations.

If it is agreed to refer an application to committee, that decision and the reasons for it should will be set out succinctly and clearly in the associated committee report.

16.3 The Assistant Director – Planning & Place will keep up to date a Triage system which seeks to reduce the number of applications that need to be discussed by the Nominated Member and Nominated Officer and provides clarity on the type of developments that need to be considered against the Gateway Test.

16.4 With respect to planning applications covered by the Regulations, officers do not have discretion to decide to report a matter to committee. Only the nominated member and officer can jointly take that decision. Government guidance advises that nominated officers and nominated members should make every effort to reach agreement on which cases should be referred to committee. However, where agreement is not possible, the case must be determined by officers in accordance with regulation 5(2) or regulation 6(3).

17. Relationship Between Councillors And Officers

17.1 Mutual trust, respect and understanding between members and officers are the keys to achieving effective local government. A successful relationship can only be based upon mutual trust and an understanding of each other's positions. This relationship, and the trust and respect that underpins it, must never be abused or compromised.

17.2 Planning officers act for the Council in its role as local planning authority. Planning officers' views, opinions and recommendations will be presented based

on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of a committee or other meeting or its Councillors. All planning officer delegated decisions must be made or signed off by a planning officer with the relevant delegated authority.

17.3 Members must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a member, including members of the planning committee from asking questions or submitting views to an officer. These views must be received in written form (eg. email) and be placed on the public planning file, so that they can be considered together with submissions where they are material planning considerations and will be reported along with other representations.

18. MEMBERS SITE VISITS

18.1 Members site visits are arranged for an item of the Planning Committee agenda are arranged before a meeting and are treated as an opportunity to seek additional information and to observe the application site. The lack of any common approach on when and why to hold a site visit and how to conduct it, may leave the Planning Committee open to the accusation that it is, at best, arbitrary and unfair and, at worst, a covert lobbying device. All site visits are therefore conducted in accordance with the 'Site Visit Procedure' adopted by the Development Control Board from time to time.

18.2 Interests: Any Councillor (including Planning Committee members) with a disclosable pecuniary interest or prejudicial interest in a planning application, must not attend a site visit relating to that application.

Predetermination (approaching a decision with a closed mind): Planning Committee members who have fettered their discretion by publicly committing themselves to a particular point of view (e.g. supporting or opposing a planning application or declaring their voting intention or a firm view on the merits of an application before the Committee meeting) cannot attend the site visit relating to that application. Members in this position should be mindful that they must not attempt to lobby other Committee members about the matter at any time nor should they attempt to use their status as a Member to influence consideration of a submission, or try to get officers to change a decision or recommendation.

Bias: Where a Planning Committee member's interest in the planning application may give rise to an appearance of potential bias, they should not participate in the site visit.

Predisposition (without amounting to apparent bias): Where Planning Committee members have formed a provisional view towards a particular outcome, but remain prepared to consider and weigh relevant factors in reaching the final decision, they may attend a site visit and raise questions etc.

18.3 The deferral of an application for a site visit should not be on the basis of exposing Planning Committee members to local opinion, but should be on sound and proper planning grounds, which will be recorded in the minutes of the Committee meeting.

18.4 Members should avoid discussing the merits of any planning application and should avoid expressing views that could be perceived as prejudicial to the

determination of the application.

18.5 The Planning & Place service will inform the ward Member of the date and time of the site visit.

18.6 A Planning Committee member who proposes the site visit should attend the site visit or arrange for a substitute Member to attend. If the site visit arises as a result of a deferral by the Committee, the Member who seconds the proposal, should also attend the site visit or arrange for a substitute Member to attend.

18.7 Subject to not having a disclosable pecuniary interest or prejudicial interest in the application the subject of the site visit, ward Councillors may attend and participate in site visits.

18.8 Members should only enter a planning application site as part of an official site visit.

18.9 Prospective election candidates who are not already Council members, may attend a site visit on the same basis as members of the public.

19. WITHDRAWN ITEMS

19.1 Items are reported to committee by the Head of Development Management and if there is a need to withdraw a report from an agenda (such as where new information comes to light that needs to be considered, the applicant has withdrawn the application for consideration or there has been a significant procedural error) it is wholly within the Head of Development Management's discretion to do that.

20. PUBLIC SPEAKING

20.1 The Planning Committee allows for public participation in its meetings, in accordance with the 'Protocol for Public Speaking at Planning Committee Meetings'. During public speaking, the following should not occur:

- Members should not ask leading questions of Officers or speakers as by way of introducing new facts to the debate;

- Members should only ask relevant planning-related questions; and

• Speakers may not distribute or display any written or visual material, e.g., written statements, photos, videos etc. to Committee Councillors by members of the public (including public speakers) or other Councillors during the meeting, including the period before it starts or during any adjournments.

• The distribution of such material should be done in advance of the meeting by either supplying it to the Planning & Place Service (planning.admin@dartford.gov.uk) , if it is written material and can be includedn the Update Report, or otherwise by sending it direct to all Councillors in advance of the meeting. Councillors' contact details are available from the Council's website. Anything sent to Councillors must also be sent to the Planning & Place service before the deadline set out in 21.2 below.

• The deadline for the submission of late material (below) also applies to any lobbying material and where this has not been met, members of the committee will be required to not take such late material into account.

21. LATE MATERIAL AND UPDATES

21.1 It is common for material (such as late representations or consultee responses) to be received by the Planning & Place service after the close of the agenda. Where this material needs to be brought to the attention of the Committee so that it can be considered (i.e. where new matters are raised), it will be presented in the Update Report. It will comprise a summary of what has been raised and be reported in the same way as representations are presented in the main Committee report.

21.2 The Update Report will contain the following:

• Errata in the committee report that it is necessary to correct.
• Report any material received or identified since the close of the agenda which needs to be brought to the attention of the committee to enable them to consider/determine an agenda item.
• Set out any material changes to the details within the recommendation.
• Amend conditions and or the recommendation as a result of the additional information.
• The practicality of producing such a report means that there must be a cut off point for the receipt of late material by the Planning & Place service. This is 11.00am on the Tuesday before the meeting. Generally, material received after this time will not be reported to the Committee. The Head of Development Management (or Assistant Director-Planning & Place), in consultation with the Chair has an absolute discretion in this regard.

22. ROLE OF CHAIR

22.1 The Planning Committee Chair should ensure that:

- Members' comments at Committee meetings only relate to the planning merits of the application before them;
- Reference at Committe meetings to non-planning issues by the public and or Members are discouraged;
- Cross-questioning of speakers should only take place, if there is need for clarification of what a speaker has already outlined; and
- Members and the public should be made aware that the late submission of representations or evidence will normally not be permitted at Committee meetings, as this can lead to allegations of unfairness.

23. PLANNING ENFORCEMENT

23.1 It is perfectly legitimate for members to bring to the attention of the planning service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the Planning & Place service via the online form on the Planning Enforcement web page.

23.2 Where a constituent has raised an issue with a member; the constituent should be directed to complete the online form on the website themselves to ensure that the Planning & Place service have the necessary details to start investigation of the breach and there is a clear audit trail.

23.3 The Council's planning enforcement service operates a priority system set out in the Council's Planning Enforcement Plan so that those breaches that cause the most harm are dealt with first. This priority system is designed to produce a fair and responsive enforcement service within the resources available. Members must not seek to have matters that they have raised given preferential treatment merely because they are a member and updates will not be able to be provided until the investigation is complete.

24. TRAINING

24.1 Specialised training sessions a r e designed to extend Members' knowledge of planning law, regulations, procedures, codes of practice and the Development Plans and thus assist them in carrying out their role properly and effectively.

24.2 Planning Committee members are required to attend training on the Member Code of Conduct and the application of disclosable pecuniary interests, prejudicial interests, predetermination and bias in the decision making context. Members who fail to attend such training are excluded from meetings of the Development Control Board until they have been trained.

24.3 Regular training will be provided and training on planning legislation will be compulsory for all Planning Committee members.

24.4 All members on Planning Committee (and substitutes) must attend the planning legislation training at least every two years, or as otherwise recommended individually or collectively by the Monitoring Officer.

24.5 All members on Planning Committee (and substitutes) should endeavour to attend any other specialised training sessions provided, since these will be designed to extend and deepen their knowledge of planning law, policy, procedures, and good practice, which will assist them in carrying out their role.

24.6 Planning committee member training may include a balance of the following:

• Updates on planning legislation and policy

• organised visits to review permissions granted, with evaluation and lessons learned presented as a paper;

• special topic groups to consider complex issues in depth;

• formal training by internal and external speakers;

• visits to other authorities • briefing presentations by Officers on hot topics, e.g. new legislation, white papers and their impacts, followed by a brief question and answer session;

• attendance at Public Inquiries, where Officers have identified something

specific that will be of interest to Members.

24.7 Training provided on planning related matters, whilst aimed at Planning Committee members is open to any Councillor with an interest in the matter.

25. OMBUDSMAN & COMPLAINTS ABOUT THE ADMINISTRATION OF PLANNING APPLICATIONS

25.1 The Local Government and Social Care Ombudsman ('the Ombudsman') is a principal mechanism for accountability in respect of local authority administration, and constitutes an independent system for the investigation and resolution of complaints of injustice caused by the maladministration (with injustice or without injustice) of local authorities (and of certain other bodies).

25.2 Members of the public who claim to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of the Council, can bring a complaint, or can have a complaint brought on their behalf, and on occasions may ask Councillors to take a complaint forward on their behalf.

25.3 Although complainants can approach the Ombudsman at any time, the Council must first be given an opportunity to answer the complaint, through its Corporate Complaints Procedure. The Ombudsman may ask what efforts, if any, have been made to resolve concerns personally and locally, and may encourage and assist complainants to make this effort.

25.4 The Ombudsman has discretion as to whether or not to investigate a complaint, although such discretion must be exercised reasonably.

25.5 In assessing a complaint, the Ombudsman will not be concerned with the nature, quality or reasonableness of the decision itself. Of concern, will be the manner in which Planning Committee decisions are reached and the manner in which they are, or are not, implemented.

25.6 The five most common causes of maladministration relate to:

- unreasonable delay in taking appropriate action;
- failure to provide adequate information, explanation or advice to users;
- failure to take appropriate action;
- taking incorrect action;
- failure to investigate an issue properly.

25.7 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule is that every planning application and enforcement investigation file should contain an accurate account of events throughout its life. It should be possible for someone not involved with an application, to understand what the decision was and how and why it was reached. Applications determined under the Scheme of Delegations for Officers, should be documented and recorded in the same way as those taken by the Committee.

25.8 Appeals against refusal of planning permission are dealt with by the Planning Inspectorate on behalf of the Secretary of State.

26. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL

26.1 Allegations of any failure of a Member to meet this Protocol must be made in writing, to the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

26.2 Allegations of any failure of an Officer to meet this Protocol must be made in writing, to the Chief Executive and Monitoring Officer who will consider how the complaint or allegation should be dealt with. A breach of this Protocol by an Officer, may lead to an investigation under the Council's Disciplinary Policy and Procedure.

27. OVERSEEING COMPLIANCE WITH THIS PROTOCOL

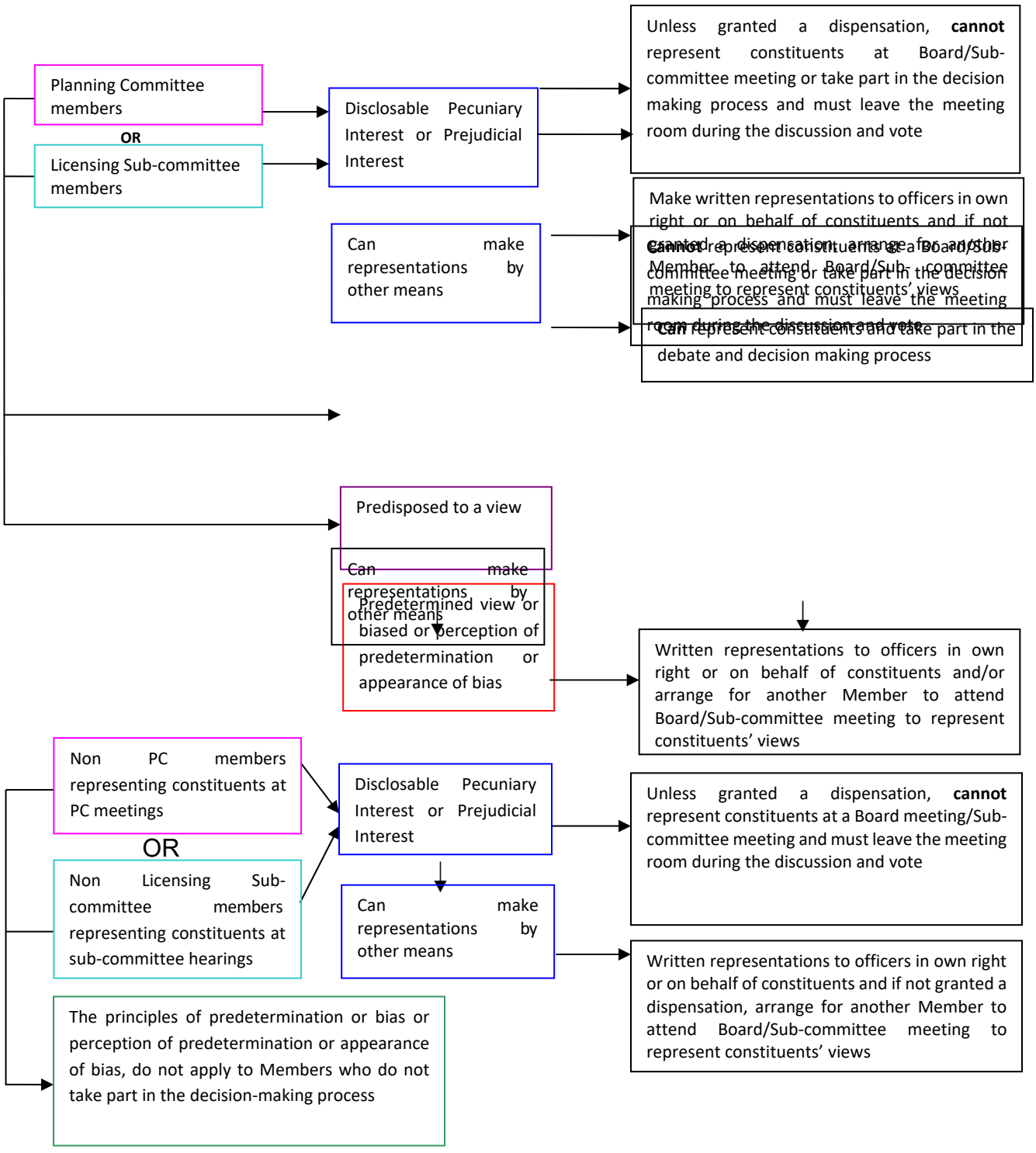
The Audit Board oversees compliance with this Protocol.

28. FURTHER GUIDANCE

Further advice or clarification can be sought from the Head of Legal Services & Monitoring Officer.

Adopted by the Development Control Board 12 July 2007 Min. No.67
Revised and adopted by the Development Control Board
02.04.2009 Min. 200 Revised and adopted by the Development
Control Board 20.12.2012 Min.No.96 Endorsed by the Audit
Board 09.01.2013 Min.No.44
Reviewed under Directors' delegated authority- 19
January 2021 Reviewed under delegated authority- 17
August 2021
Reviewed under delegated authority- 16 December 2021
Reviewed under delegated authority- 25 July 2022Reviewed under delegated authority – 7 September 2022
Revised and to adopted by the General Assembly of the Council – 12 October 2026

APPENDIX 1 - A COUNCILLOR'S REPRESENTATIONAL ROLE – PLANNING COMMITTEE AND LICENSING SUB-COMMITTEE



10. PROTOCOL ON THE RELEASE OF CONFIDENTIAL INFORMATION

1. INTRODUCTION

1.1 As a Member, you will have access to a great deal of information which is confidential, either because it is personal information or because it is commercially sensitive or it is information which would not otherwise be placed in the public arena/domain. Information is a broad term. It includes facts, advice and opinions. It also covers written materials, including tapes, videos, CDs, DVDs and other electronic media. Council or committee reports issued to Members will clearly indicate if they are deemed to contain confidential or exempt information. Councillors may also receive other information from Officers which may be confidential or private.

1.2 The handling of confidential information is an essential element in the relationships of trust that should exist between Members, Officers and the public and a mishandling of such information and/or its accidental or deliberate disclosure is likely to damage trust as well as lead to formal proceedings being taken against the Council, individual Members or Officers.

1.3 The Council is committed to the principles of openness and transparency. However, in the practical application of these principles, you need to have regard to legal obligations which, in some cases, may require information to be kept confidential.

1.4 The Member Code of Conduct states '……. You should have regard to the guidance in the Council's Protocol on the release of confidential information.'

1.5 Standing Order 54 sets down the rules which you must follow in relation to inspection of and/or access to Council information. These rules are summarised in paragraph 6 of this Protocol.

1.6 The Council has policies on data protection, freedom of information, environmental information regulations, human rights and whistleblowing. Other statutory provisions may also be relevant to the disclosure of confidential information. You should seek advice from the Head of Legal Services on the application of the law if you are in doubt.

1.7 Information in documents held by the Council, belongs to the Council corporately and not to individual Officers or Members.

1.8 This Protocol supplements the Member Code of Conduct.

2. MEANING OF CONFIDENTIAL INFORMATION

2.1 In order to ascertain whether information is confidential, it is important to understand what is meant by a duty of confidence and how confidentiality can be established.

2.2 A duty of confidence arises when one person (the 'confident') is provided with information by another (the 'confider') in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. This is generally known as the common law duty of confidence.

2.3 There are various ways in which a person or the Council may be under a duty of confidentiality (either explicitly or implied), such as:

(i) if the relationship is inherently confidential e.g. between client and lawyer.

(ii) if the relationship is personal e.g. it is between colleagues in circumstances that suggest an expectation of confidentiality.

(iii) if the source of the information will be put at risk if identified e.g. whistle blowers.

(iv) if it concerns personal and sensitive data about an individual.

2.4 Confidentiality is unlikely to be established where the information is already known to a wide circle or is in the public domain.

2.5 Information which at one time was to be treated as confidential may subsequently cease to be confidential by passage of time or where, in the case of exempt Information, the relevant meeting did not resolve to exclude the press and public.

2.6 Confidentiality can be agreed either verbally or in writing. However, it is not necessary for the person who supplied the information to have stated expressly that the information is confidential. For example, the fact that correspondence is not marked 'confidential' does not necessarily prevent it from being confidential. In many cases, the fact that the information is confidential may be inferred from the subject matter and the surrounding circumstances.

2.7 With the consent of the 'confider', confidentiality can be set aside.

2.8 It may be difficult to establish that a confidentiality agreement existed retrospectively. This is especially true if there is little or no evidence of an attempt having been made to restrict or protect the information at the time the information was given, but, as outlined in pararaph 2.3 of this Protocol, some relationships are inherently confidential and in those circumstances, confidentiality may well be implicit, rather than explicit.

2.9 Confidential information in the committee agenda context

The meaning of the term 'confidential' in the committee agenda context, is very restricted and tightly defined in law and will relate to information which has been supplied to the Council by a government department upon terms which prevent its disclosure to the public, or information which by law, is prohibited from being disclosed to the public. The public and press must be excluded from meetings where such information is being considered.

3. MEANING OF EXEMPT INFORMATION

3.1 Exempt information comprises information:

- relating to an individual;
- which is likely to reveal the identity of an individual;
- relating to the financial or business affairs of any particular person (including the authority holding the information);
- relating to any consultations or negotiations or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a minister of the crown and employees of, or office-holders under, the authority;
- in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person, or to make an order or direction under any enactment;
- relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

3.2 Reports in Part II of a committee agenda (referred to as 'the pink items') will relate to exempt information matters which remain confidential until the Proper Officer (i.e. the Strategic Director (Internal Services)) considers the public interest test and decides that it is in the interests of the public to release some or all of the information. In practice, this exercise is undertaken at the time the report is drafted and/or following a specific Freedom of Information or Environmental Information Regulations request.

The public and the press may be excluded from a meeting where exempt information is being considered.

4. OTHER CONFIDENTIAL INFORMATION

4.1 It would be a mistake to consider that it is only 'confidential information' or 'exempt information' as defined in the legislation that should be protected from disclosure. Information other than that which is to be discussed at, or is the subject of a report to, a committee meeting may be provided to you in confidence.

4.2 Information provided expressly 'in confidence' to you (whatever words are used to describe its confidential nature), should be treated as confidential information. An example might include sensitive legal, personal or financial information provided to you by Officers outside the context of a formal committee meeting, or sensitive personal information provided to you by a constituent. You must not pass on such information to third parties (such as constituents, colleague councillors or the press).

5. WHEN IS INFORMATION LIKELY TO BE CONFIDENTIAL?

5.1 Generally, the confidentiality or otherwise of information needs to be considered in the context of individual circumstances. By way of indicative guidance, the following categories of information would normally be treated as confidential:

(a) Where there is a legal restriction on the disclosure of information for example under the Data Protection Act 2018, contractual obligations, a court order or

pending legal proceedings covered by the sub judice rule.

(b) All reports that are in Part II of committee agendas (refer to paragraphs 2.10 and 3 of this Protocol).

(c) Where information is supplied to a Member by an Officer or other person in confidence.

(d) Matters concerning terms and conditions of employment of individual Officers or pending grievance or disciplinary proceedings.

(e) Matters concerning details of commercial negotiations.

(f) Personal information concerning an individual.

(g) Information protected by legal professional privilege (i.e. arising from a relationship of lawyer and client).

(h) Information which, given its nature, timing and context is such that a reasonable person would consider it to be confidential.

(i) Information relating to the business of working groups (there is a presumption that the business of working groups is confidential).

(j) Where the disclosure of information would normally tend to have a detrimental effect on the interests of the Council, the service users or third parties involved.

(k) Information concerning legal proceedings.

5.2 Council proceedings and printed material are generally open to the public. This should be the basis on which Members normally work, but there may be times when Members will be required to treat discussions, documents or other information relating to the Council in a confidential manner, in which case they must observe such requirements for confidentiality.

6. YOUR RIGHT AS A MEMBER TO ACCESS CONFIDENTIAL INFORMATION

6.1 The Council has a general commitment to openness. Your access to information and documents is therefore restricted only where there is a good reason for doing so.

6.2 You will often receive information of a private nature which is not yet public or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private. Legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties. Such information is, however, for your individual use as a councillor and must not be disclosed or in anyway used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

6.3 You have a statutory right of access to documents concerned with business about to be transacted at a meeting of the Council, Cabinet, a Committee, Sub-committee, Board or Panel. This right can only be exercised before the matter is considered at the meeting and relates to items that are 'to be considered' at the meeting. The papers of working parties are not covered by this statutory right.

6.4 You have a common law right to access information on a 'need to know' basis. This entitles you to access information or documents that are reasonably necessary to enable you to discharge your functions as a Councillor. This would cover your role as a member of committees, sub-committees or working groups, as well as positions to which you are appointed by the Council and in the undertaking of your ward Councillor responsibilities. The right is limited to a 'need to know' and a mere curiosity or desire to know is not sufficient. The courts have also held that as a Councillor, you have no right to a 'roving commission' to examine the books or documents of the Council.

6.5 One aspect of the 'need to know' principle is proportionality. In asking for information and documents, you need to ensure that what you are asking (in terms of volume of documents, time needed to locate, research and collation of the information etc.), is commensurate to your 'need to know'.

6.6 An Officer receiving a request for information from you, is entitled to know the reasons why the information is needed, so that a proper assessment of the 'need to know' can be made. Where you are dissatisfied with the Officer response, you may refer the matter to the Strategic Director (Internal Services) for a review. The Strategic Director (Internal Services)'s decision will be final.

6.7 You cannot demand to see a document which relates to business not yet due to come before a committee meeting. You have no automatic right to see documents which are in draft form and/or which are intended for future publication.

7. WHEN IS A MEMBER SUBJECT TO THE DUTY OF CONFIDENTIALITY UNDER THE MEMBER CODE OF CONDUCT?

7.1 The duty of confidentiality under the Code applies only when you are acting in an 'official' capacity. The information must therefore have been received and/or disclosed by you in your role as a Councillor. This should however not be interpreted as meaning confidential information which has been received in your role of Councillor, can be disclosed with impunity in a private capacity.

7.2 The duty under the Code is not limited to information supplied by Officers or the Council - it also covers information given to you in your capacity as a Councillor, by any person.

7.3 Where you are under a duty of confidentiality, you cannot disclose confidential information, except in a defined range of circumstances and subject to a number of requirements.

7.4 The defined range of circumstances

Subject to the requirements detailed in paragraph 7.5 of this Protocol:

The first defined range of circumstances is that before disclosing confidential information, you must have the consent of the person authorised to give it. This would normally be the

author of the document or the Director or a Senior.

Officer of the Department for the area of service. In appropriates cases, the Chairman of the relevant committee may need to be consulted.

7.4.1 The second defined range of circumstances is that you may disclose confidential information if you are entitled by law to do so e.g. by a court order.

7.4.2 The third defined range of circumstances is that you may disclose confidential information to a third party e.g. a lawyer for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person.

7.5 The requirements

7.5.1 The first requirement that the disclosure must be reasonable, requires you to consider matters such as:

- whether you believe that the information disclosed and any matters contained in it, is substantially true. If you do not believe this, then the disclosure is unlikely to be reasonable;
- if the disclosure is made for personal gain e.g. where you are paid to disclose the information, the disclosure is unlikely to be reasonable;
- the identity of the person to whom the disclosure is made: it may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media;
- the extent of the information disclosed: the inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable;
- the seriousness of the matter - the more serious the matter, the more likely it is that the disclosure will be reasonable;
- the timing of the disclosure - if the matter to which the disclosure relates has already occurred and is unlikely to occur again, the disclosure is less likely to be reasonable than if the matter is continuing or is likely to re- occur;
- whether the disclosure involves the Council failing in a duty of confidence owed to another person.

Points to remember

- You must not disclose confidential information merely to make political capital/gain.
- Disclosure of confidential information to the press is rarely justified.
- You should have regard to your fiduciary duty to the Council and council taxpayers and that you have joint responsibility to avoid the disclosure of information of a commercially sensitive nature.
- Confidential information gained by you in connection with pending or ongoing litigation should not be disclosed under any circumstances, as this would amount to a breach of trust.

7.5.2 The second requirement that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness that has either happened in the past, is currently happening, or is likely to happen in the future:

(a) a criminal offence is committed.
(b) the Council or some other person fails to comply with any legal obligation to which they are subject.
(c) a miscarriage of justice occurs.
(d) the health or safety of any individual is at risk.
(e) the environment is likely to be damaged.
(f) that information tending to show any matter falling within (a) to (e), is deliberately concealed.

Points to remember

- 'Public interest' has been described as something that is of serious concern or benefit to the public, not merely of individual interest. The public interest does not mean 'of interest to the public' but 'in the interest of the public'. The term is not defined in law, so you will need to make a subjective judgement, in which policy and legal interpretations are both involved to some degree.
- Because of the implications associated with releasing confidential information e.g. risk to an individual, risk to commercial negotiations etc, any decision to release such information has to be made with great care. In evaluating the effect of disclosing confidential information, it will be necessary for you to consider the full context of that disclosure, and to make a risk assessment of the disclosure. Therefore:

  a. identify the relevant public interest factors;
  b. list the factors for and those against releasing the information;
  c. evaluate the relevant public interest factors, e.g. no weight, minimal weight, moderate weight or considerable weight;
  d. determine where the balance lies.

7.5.3 The third requirement that disclosure is made in good faith, will not be met if you act with an ulterior motive, for example to achieve a party political advantage or to settle a score with a political opponent.

Points to remember

- The law defines good faith as a state of mind consisting in:

  (1) honesty in belief or purpose;
  (2) faithfulness to one's duty or obligation;
  (3) observance of reasonable commercial standards of fair dealing in a given trade or business; or
  (4) absence of intent to seek unconscionable advantage.

- In law, the consensus is that someone does something 'in good faith' when they do it honestly and with no ulterior motive.
- It would be prudent for you to balance any risk against the merits of disclosing confidential information. You may believe that you act 'in good faith,' in that you genuinely believe it is in the public interest to disclose certain information (such as personal information about individuals or commercially sensitive information about companies) where on a more objective test, it may not be in the public interest. An example might be the disclosure of the address of a housing benefit claimant or suspected paedophile.
- You must never release confidential information for personal gain, reward or motive.

7.5.4 The fourth requirement that you comply with the reasonable requirements of the Council, means that before making the disclosure, you must comply with the Council's policies or protocols on matters such as data protection, freedom of information, human rights, whistleblowing and this Protocol (refer to para.8 of this Protocol for the procedure to be applied before you disclose confidential information).

Points to remember

- Never allow your party political interests to override the interests of the Council and council tax payers in the way that you deal with access to or the disclosure of confidential information.
- Just because communication is not labelled 'confidential', you should not assume that it is for general release. You should always consider the circumstances.
- Don't take risks.

8. PROCEDURE TO BE APPLIED BEFORE DISCLOSING CONFIDENTIAL INFORMATION

8.1 Where any of the defined range of circumstances do not apply (para. 7.4 of this Protocol), you must not disclose confidential information unless you have first:

(i) challenged the requirement for confidentiality, by submitting a Freedom of Information/Environmental Information Regulations request to the Freedom of Information Officer; or

(ii) made the disclosure under the Council's Whistleblowing Policy having first applied the range of requirements referred to in paras. 7.5.1 to and including 7.5.3 of this Protocol.

9. COMPLAINTS AND ALLEGATIONS OF BREACHES OF THIS PROTOCOL

Allegations of any failure to meet this Protocol must be made in writing, to the Monitoring Officer. The Monitoring Officer will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may result in an investigation and a hearing before the Hearing Panel.

10. OVERSEEING COMPLIANCE WITH THIS PROTOCOL

The Audit Board oversees compliance with this Protocol.

11. FURTHER GUIDANCE

Further advice or clarification can be sought from the Monitoring Officer or the Head of Legal Services.

Adopted by the Standards Committee –
03/10/2007 [Min.No.25] Reviewed and adopted by
the Audit Board 13 May 2013 [Min.No.5] Reviewed
under Directors' delegated authority- 29 June 2020