

CODES AND PROTOCOLS

Members Code of Conduct

Officers Code of Conduct

Protocol for Member and Officer Relations

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THE MODEL CODE OF CONDUCT

THE GENERAL PRINCIPLES

Selflessness – Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity – Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity – Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement – Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership – Members should promote and support these principles by leadership and by example, and should act in a way that secures or preserves public confidence.



General provisions

Introduction and interpretation

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

Scope

- 2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

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

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2) (c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.— (1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006(a));
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

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

(a) 2006 c.3.

4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

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

6. You—

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority—
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986(a).

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

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

Part 2

Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who had made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of —

- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
- (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
- (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

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

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1) (a) (i) or (ii).

Disclosure of personal interests

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

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

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

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

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

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

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

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

Prejudicial interest generally

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

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

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
- (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
- (c) relates to the functions of your authority in respect of—
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

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

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

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

Part 3

Registration of Members' Interests

Registration of members' interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1) (a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Registration of Gifts and Hospitality

15.—(i) A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority’s monitoring officer of the existence and nature of that gift or hospitality.

This Code of Conduct was adopted by West Somerset Council on 16th May 2007.

THE EMPLOYEES' CODE OF CONDUCT

Honesty, Integrity, Impartiality and Objectivity

1. An employee must perform his duties with honesty, integrity, impartiality and objectivity.

Accountability

2. An employee must be accountable to the authority for his actions.

Respect for Others

3. An employee must –
 - a) treat others with respect;
 - b) not discriminate unlawfully against any person; and
 - c) treat members and co-opted members of the authority professionally.

Stewardship

4. An employee must –
 - a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and
 - b) not make personal use of property or facilities of the authority properly authorised to do so.

Personal Interests

5. An employee must not in his official or personal capacity –
 - a) allow his personal interests to conflict with the authority's requirements; or
 - b) use his position improperly to confer an advantage or disadvantage on any person.

Registration of Interests

6. An employee must comply with any requirements of the authority –
 - a) to register or declare interests; and

- b) to declare hospitality, benefits or gifts received as a consequence of his employment.

Reporting procedures

- 7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.

Openness

- 8. An employee must –
 - a) not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; and
 - b) not prevent another person from gaining access to information to which that person is entitled by law.

Appointment of staff

- 9. (1) An employee must not be involved in the appointment of any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.
(2) In this paragraph –
 - a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, stepdaughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - b) “partner” in sub-paragraph (a) above means a member of a couple who live together.

Duty of trust

- 10. An employee must at all times act in accordance with the trust that the public is entitled to place in him.

Protocol for Member and Officer Relations

Principles Underlying the Protocol

The principles underlying this Protocol are as follows –

Both Members and Officers shall carry out their respective duties in the best interests of the Council.

There shall be mutual respect between Members and Officers with regard to their respective roles, as set out in this Protocol.

Members should promote equality by not discriminating unlawfully against any person, and be treating people with respect, regardless of their race, age, religion gender, sexual orientation or disability. They should respect the impartiality and integrity of the Authority's statutory Officers, and its other employees.

1. Introduction

- (a) This protocol guides Members and Officers of the Council in their relationships with one another. To a large extent, the protocol is no more than a statement of current practice and convention. As it is in a written form, however, it should promote clarity and certainty.
- (b) This protocol will be kept under review and amended as necessary.

2. Member/Officer Relations

- (a) The general principles on which the Council's Code of Conduct for Councillors and co-opted Members states –

"Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees."
- (b) The Council's Code of Conduct for Councillors and co-opted Members states –

"A member must –
 - (i) Promote equality by not discriminating unlawfully against any person.
 - (ii) Treat others with respect; and

- (iii) Not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.”
- (c) Members and Officers share a responsibility to work together to achieve decisions in the interests of the Council and the area it serves. Officers serve the Council as a whole and they act in a politically neutral way in giving professional advice and general support to all Members.
- (d) Irrespective of size, all political groups are entitled to equal treatment by Officers. All political groups are entitled to access information from Officers at any time prior to a decision being made and to call on the support of Officers to assist them.
- (e) All dealings between Members and Officers should observe reasonable standards of courtesy and neither party should seek to take advantage of their position. On occasions, Members may have reason to complain about the conduct or performance of an Officer. All such complaints should be made personally to the Head of Paid Service or if appropriate to the Leader. It is important that complaints are made in this way, and details are noted.
- (f) If an Officer is concerned about a Member’s conduct it should be brought to the attention of the Head of Paid Service and the Leader of the Council. In the absence of the Leader, the Deputy Leader should be approached. If appropriate, matters of concern will be referred to the Council’s Standards Committee.
- (g) The partnership of Members and Officers depends on mutual trust, respect and understanding of respective roles and responsibilities. **Care should be taken to ensure that dealings with an individual Member or Officer cannot be open to accusations of bias, favouritism or political partiality.**
- (h) A Member or officer may speak to the Monitoring Officer, Chairman of the Standards Committee, Chairman of the Council, Leader or Executive Director if they are experiencing an issue/dispute with a Member or officer of the Council who will first try and mediate a solution outside of any formal complaint process.

3. Advice and Information

- (a) Members are entitled to seek advice (sometimes at short notice) from any relevant Officer. Officers will do their utmost to assist Councillors in their information and advice needs, but may refer Members to another Officer who is better able to give the relevant advice. Any advice given to a political group, or to Members collectively or individually, and the subject of that advice, is strictly confidential to the

Members concerned unless agreed otherwise. Further, the proceedings of a political group meeting are to remain private.

- (b)** Officers are encouraged to work with all political groups and to facilitate discussions between them in order to secure decisions, whenever appropriate. In doing this, Officers must be careful to respect any information confidential to a single political group.
- (c)** The Council wishes to conduct its affairs as openly as possible and to give Members maximum access to information and documents to enable them to discharge their role as Members of the Council. Requests for information can range from general information about an aspect of the Council's work to specific requests for information on behalf of a constituent or Member of the public.
- (d)** Councillors are entitled to access (a) all information that is publicly available and (b) other information held by Officers which it is reasonable for Councillors to access in pursuit of their roles. Individual Officers are entitled to seek confirmation from the Head of Paid Service and the Leader about making sensitive information available if there is any doubt. Councillors must respect the right of Officers to seek this clarification. Officers will co-operate with Councillors in making information available promptly and in accordance with the timescale requested by the Councillor.
- (e)** Members have a statutory right to inspect any Council document (except those available only in draft form) that contain material relating to any business which is to be transacted at a Council, Cabinet or Committee meeting. This right applies irrespective of whether the Member is a Member of the Cabinet or Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right, however, does not extend to documents relating to items containing "exempt information" as detailed in Part 1 of Schedule 12A to the 1972 Act other than information falling within paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract) or information falling within paragraph 6 of Schedule 12A to the 1972 Act.
- (f)** The common law right of Members is much broader, and is based on the principle that any Member has a right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as "the need to know" principle.
- (g)** The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate that he/she has the necessary "need to know". The Courts have held that Members have no right to a

“roving commission” to go and examine documents. Mere curiosity is not sufficient. Where a question arises as to the Member’s need to know, the following procedure will apply -

- (i) The Head of Paid Service will consider in consultation with the Leader of the Council whether the request is reasonably in furtherance of the Member’s need to know. If it is then the document will be produced for the Members inspection.
 - (ii) If the request raises any legal issues, the Leader and the Head of Paid Service will consult the Council’s legal advisors or the Monitoring Officer.
 - (iii) If the matter remains unresolved it will then be referred to the Cabinet or to an appropriate Committee for decision.
- (h) Both Members and Officers must note that where information of a possible defamatory nature is contained in a document, inspection of which is permitted, such inspection is allowed on the clear understanding that neither the document nor its contents should be passed on.

4. Preparation of Agenda

- (a) Agendas for meetings of the Council, its Cabinet and Committees shall be prepared by the Proper Officer in consultation with the appropriate Chairman and Vice-Chairman. Any Member may ask for an item of business to be included on the relevant agenda and where appropriate to write a report on the matter. On receipt of such a request the Head of Paid Service in consultation with the Chairman will determine whether the matter should properly be included on the agenda.

NOTE: In practice this task is undertaken by staff of the Committee Services Team.

5. Urgent Business

- (a) The decision as to whether an item of business is urgent and should be considered by the meeting is one for the Chairman to make. As a working rule, an item of business will normally only be urgent if it has arisen since the dispatch of the agenda.
- (b) Members or Officers wishing to raise an item of urgent business should approach the Chairman and Meeting Administrator prior to the start of the meeting at which the request is to be raised. The Chairman’s ruling is binding on whether an item is urgent and is not open to discussion or debate.

6. Delegation of Functions

- (a)** The Scheme of Delegation sets out the various powers delegated to appropriate Officers and Councillors. In exercising delegated powers every person is obliged to act in accordance with -
 - (i)** The overall policies laid down by the Council or any of its Committees.
 - (ii)** Standing Orders including those relating to contracts; and
 - (iii)** Financial Regulations.
- (b)** Every Officer is expected to consult with Members as follows:
 - (i)** To maintain a close liaison with the appropriate Chairman and Vice-Chairman; and
 - (ii)** To consult as necessary/inform any other Member who has a specific local or specialist interest in the matter particularly when the issue is controversial or ongoing, i.e. more than two letters/phone calls/visits are needed to resolve the matter.
- (c)** In all cases it is open to an Officer to refer a matter to the Cabinet or appropriate Committee for decision if in his opinion the matter is of such a nature that it should more properly be referred to Members. Such referrals will include items of controversy or where a Councillor has specifically asked for the matter to be referred. If an Officer exceeds the authority given under delegated powers they could be subject to disciplinary action. (Full details of disciplinary procedures are contained in the Disciplinary Procedures booklet available from the HR Advisor.)

7. Support Services to Members

The Council can only lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, shredding of confidential waste etc) to Members to assist them in discharging their role as Members of the Council. Such support services must therefore only be used for Council business and never in connection with party and political campaigning activity, or for private purposes.

8. Relations with the Media

- (a)** Relations with the media need to be handled with care to ensure the Council's position on any issue is represented properly. Day-to-day contact with the press and media will normally be handled by the Head of Paid Service together with the appropriate Cabinet Members, Committee Chairmen and relevant Officers.

- (b) On occasions Members may be approached directly by the media and ask to make a comment or to appear for interview. Members are asked where practicable to ensure the Head of Paid Service is made aware of the approach. Unless Members have been authorised to speak on behalf of the Council they should make it clear that any views they express are not necessarily those of the Council. In all cases Members should uphold the good name and integrity of the Council.

9. Planning Applications - Members Involvement

- (a) The Council's Planning Committee (or the Planning Manager under the Scheme of Delegation) is responsible for making decisions on planning applications. Members may find themselves lobbied both by applicants and objectors. Such approaches need to be handled carefully to maintain the Council's integrity and credibility in the decision-making process. Members should follow the guidelines given below in dealing with these situations.
 - (1) Take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have heard all the evidence and arguments.
 - (2) Encourage lobbyists to write to the Officers so their views can be included in the report to Planning Committee.
 - (3) Make clear if they do express an opinion that they will only be in a position to express a final position when they have heard all the evidence and arguments at Committee.
 - (4) Be aware that the safest option may be not to express any opinion and advise that in order to keep an open mind, all views will be considered.
- (b) Members attention is drawn to the Local Government Association's document 'Probity in Planning - the role of Councillors and Officers (2002). A full copy is available for reference from the Planning Manager. Guidance notes are attached as Annex 1. Members are advised to follow this advice in their involvement with planning matters. Section 5 of the guidance - the general role and conduct of Councillors and officers is reproduced below:

Officers, during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the Council's Monitoring Officer. The requirement to register any such hospitality is likely to be a feature of the statutory code of conduct for employees.

Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

A requirement for staff to act impartially is likely to be a requirement of the statutory employees' code. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraphs 2 (b) and (c) of the Model Code to –

- Treat others with respect; and
- Not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

Finally, planning legislation and guidance can be complex. Both the Nolan Committee's third report and the RTPI study into the role of Councillors recommended that Councillors should receive training. The LGA endorses the good practice of many Councils which ensures that their Members receive training on the planning process when first serving on the Planning Committee. It also recommends that Members must be updated regularly on changes to legislation or procedures. Whilst the LGA would regard such training as essential for those Members serving on Planning Committees, authorities should also consider providing some basic training on the planning process for all Members.

Section 8 lobbying of an officer by Councillors also states –

- Councillors should not put improper pressure on officers for a particular recommendation and, as required by the Model Code, should not do anything which compromises, or is likely to compromise, their impartiality.
- (c) Members should also be aware of the West Somerset Council Code of Good Practice for Planning attached as Annex 2 which includes advice on dual-hatted Members, discussions with developers and decisions contrary to officer recommendation.

Probity in Planning – Guidance Notes**Introduction**

Planning is not an exact science. Rather it relies on reasoned judgement within a firm policy context. It is also highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of development plans and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

One of the key purposes of the planning system is to control development in the public interest. 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 planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgments 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.

The General Role and Conduct of Councillors and Officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. This applies equally to traditional forms of political management based on committees and to models based on forms of executives or elected mayors. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors, and it follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it must never be abused or compromised.

Both councillors and officers are guided by codes of conduct. The statutory local code of conduct, supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Employees will be subject to a statutory Employees' Code of Conduct. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. However, not all planning officers are members of the RTPI and it is therefore recommended that the Code of Professional Conduct (or those parts of it which are relevant) is incorporated into a local code of good practice. In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

The Model Code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, but also appropriate

relationships with other members, staff and the public, which will impact on the way in which councillors participate in the planning process. Of particular relevance to councillors serving on planning committees or who become involved in making a planning decision (where full council deals with a planning application) is the requirement that a member:

*“must not in his official capacity, or any other circumstances, use his position as a member **improperly** to confer on or secure for himself or any other person, an advantage or disadvantage;”* (Paragraph 5(a) of Model Code).

The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

PRINCIPLE ONE

Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

Councillors should also be very cautious about accepting gifts and hospitality. The Model Code requires any members receiving any gift or hospitality, **in their capacity as members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the monitoring officer of the council. Such details will go in a register of gifts and hospitality, which will to be open to inspection by the public.

Lobbying

It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member of the planning committee. As the Nolan Committee’s third report states: *“It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves”* (paragraph 288). Any code of good practice failing to take account of the realities of the political / representative process will not carry credibility with experienced elected members.

However, such lobbying can lead, unless care and common sense is exercised by all the parties involved, to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors, and members of the planning committee in particular, should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officer’s report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

It should be remembered that reports of poor practices within local authorities were greatly concerned with the issue of lobbying. In a number of cases, lobbying had caused considerable public mistrust of the councils. Local Government Ombudsman cases have found maladministration even where there is only a perception of maladministration.

Councillors, and members of the planning committee in particular, need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or another before hearing all the arguments makes them vulnerable to an accusation of partiality. It is probably misleading to describe the determination of a planning application strictly as a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority). It is, nevertheless, a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or to complain to the Local Government Ombudsman on grounds of mal-administration; or to the Standards Board that a member has breached the local code.

In reality, of course, members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward) should not openly declare which way they intend to vote in advance of the planning meeting, and of hearing evidence and arguments on both sides.

Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application. A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the committee meeting before declaring one way or another.

A planning committee member who represents a ward affected by an application is in a difficult position if it is a controversial matter around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome – or even campaigning actively for it – it will be very difficult for that member to argue convincingly, when the committee comes to take a decision on the application, that he or she has carefully weighed the arguments presented – perhaps in some respects for the first time – at the meeting. Whilst in most circumstances this would not amount to a prejudicial interest in terms of the model code of conduct, the proper course of action for such a member would be to make an open declaration and not vote.

PRINCIPLE TWO

All Members should declare at the beginning of the planning meeting whether they have been lobbied in respect of any particular application and by whom (or attended an individual site visit) and whether they intend to vote on the application.

Decisions Contrary to Officer Recommendations and / or the Development Plan

The law requires that where the development plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise (s.54 A Town and Country Planning Act 1990).

This gives rise to two main issues: first, all applications which are not in accordance with the development plan must be identified as soon as possible. They must then be advertised as such, as required by Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. Second, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan clearly demonstrated. The application may then have to be referred to the Office of the Deputy Prime Minister, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's good planning reasons be made and a copy placed on the application file. The Planning Officer and the Council's legal adviser should also be given an opportunity to explain the implications of the contrary decision. The courts have expressed the view that such 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, for example, the provision of a dwelling for an agricultural worker.

PRINCIPLE THREE

Where the planning committee is minded to make a decision contrary to an officer recommendation and / or the development plan, the matter should if necessary be deferred to the next meeting so that the implications of the contrary decision can be fully explained.

Reference/Acknowledgement

Probity in Planning (Update) The Role of Councillors and Officers
LGA 2002

West Somerset Council

Code of Good Practice for Planning

Annex 2

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1. Introduction

- 1.1.** This Code of Good Practice has been adopted by the Council to regulate the performance of its planning function.

The Code has the following objectives -

- To guide members of the Council and officers in dealing with planning-related matters.
- To inform potential developers and members of the public generally of the standards and procedures adopted by the Council in the performance of its planning function.
- To preserve public confidence in the integrity of the planning system by ensuring that decision-making is open, transparent and fair to all parties.

- 1.2.** This Code is intended to supplement the Council's adopted Code of Conduct for Members by providing more detailed guidance on the standards applying to planning-related matters. It also deals with matters not covered by that Code.
- 1.3.** This Code applies to the proceedings of the Council's Planning Committee ("the Committee") and to any other body of the Council making decisions on planning matters

- 1.4. Planning law requires local planning authorities to determine all planning applications in accordance with the Council's approved policy framework for development control unless material considerations indicate otherwise. This responsibility must be performed without members being unduly influenced by any personal interest or other considerations irrelevant to planning.
- 1.5. It is essential that members of the Committee do not give any commitment or impression of a commitment to any particular outcome for a planning matter prior to its consideration at Committee. Planning decisions must be seen to be made impartially and without bias.
- 1.6. It is recognised that members will, from time to time, be approached by developers and objectors in relation to planning proposals. Part of this Code is intended to assist members in dealing with such approaches and to ensure that the integrity of the decision-making process is preserved.

2. Declaring Interests

- 2.1. Under the Council's Code of Conduct for Members, members must declare any personal interest in any matter being considered at a meeting, and must withdraw from the meeting if that personal interest is also prejudicial. The detailed rules on personal and prejudicial interests are set out in the Council's Code of Conduct for Members, but the following paragraphs give a brief summary.
- 2.2. A personal interest is one that affects the well-being or financial position of a member more than the majority of other people in the relevant Council ward. Members will also have a personal interest in a matter if it affects their partner, relative, friend, close associate, or any organisation with which the member or any of these are connected, or relates to any interest which they must register under the Code of Conduct.
- 2.3. If a personal interest exists, then members must declare it and give brief details of its nature at the beginning of the meeting at which the issue is to be considered, or as soon as the interest becomes apparent.
- 2.4. Whether a personal interest is also a prejudicial interest is a matter of judgment for each member. The question they must ask themselves is: "Would a member of the public aware of all the facts reasonably think that this interest was so important that my decision would be affected by it?" Members should remember that prejudicial interests can also arise when a matter affects their partners, relatives, friends or organisations with which the member or any of these are involved.
- 2.5. Members with a personal interest that is not prejudicial may remain in the meeting after declaring it, and take part in the debate and vote. If the personal interest is also prejudicial, members may **not** take part in the debate or vote. As permitted by the Council's Code of Conduct, they may make representations, give evidence or answer questions from the Committee to the same extent as members of the public are permitted to do so (see Section

8 below), but must then leave the room before the debate begins. **Failure to do so could have serious consequences for the member and the Council: see Section 14 below**

- 2.6. Members may take part in decisions relating to land or premises in their wards, subject to complying with the rules in the Members' Code of Conduct on personal and prejudicial interests. If in doubt as to whether an interest should be declared in relation to any matter, members should take advice from the Council's Monitoring Officer

3. The Integrity of the decision making process

- 3.1. Lobbying is a normal and perfectly proper part of the planning process, and both applicants and objectors should have access to their representatives. However, to ensure that the integrity of the decision making process is not impaired, it is important that any representations made to members form part of the public information leading to any decision. If an approach is received by a member of the Committee, from any interested party in relation to a current or proposed planning application, then the member shall:

- a) Inform that party that, in order to avoid accusations of partiality, he/she is only able to offer procedural advice and that they should either write to officers of the Council or write or speak to a member(s) who is not on the Committee. However, members on the Committee are quite free to listen to the views that the lobbyist wishes to express.
- b) Where a member of the Committee receives written representations directly in relation to a planning application, (or proposed planning application) the member should pass a copy of the correspondence to the Planning Manager in order that those representations can be included in the officer's report.

- 3.2. Lobbying is likely to involve ward members or other members of the Council who are perceived as being interested in or having an influence over the proposal, as well as members of the Committee. Ward members (and other members) who are not members of the Committee are in a different position to that of members of the Committee. Ward Members have a very important function in representing the interests of their area or constituents who are affected by a planning proposal. If they are not on the Committee, there is no reason why they should not have a view on planning proposals which are currently under consideration by the Council and make those views known, providing they do not attempt to exert any improper influence over Committee members or officers.

- 3.3. Ward members who are on the Committee must remain impartial and keep an open mind about all applications coming before the Committee until the meeting when the application is to be decided. Members of the Committee have a legal duty in making planning decisions to take all the evidence and arguments into account, not to commit themselves to a fixed or final view before hearing these, and not to favour any particular person, group or locality (or appear to do so). The Local Government Association advises that

“councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee”. Failure to comply with this duty may result in planning decisions made by the Council being quashed by the courts on the grounds of predetermination or bias. It can also damage the public perception of the impartiality and integrity of the planning process.

- 3.4. Members of the Committee who wish to take part in a planning decision should not therefore do anything that gives the impression that they have come to a final view before the Committee meeting, such as making a firm view public, or organising support for or opposition to a planning application, or lobbying other members. It is perfectly proper for members to have a “predisposition” in favour of or against a particular proposal before it is discussed at Committee. It would be unrealistic to expect them to be totally neutral in all cases, and the law does not require this. What is important is that members do not close their mind to further evidence or arguments which may be put forward. Members of the Committee or ward members should also not put pressure on officers for a particular recommendation. This does not preclude members from seeking information or clarification from officers about a planning application.
- 3.5. Members of the Committee who represent a ward affected by an application may be in a difficult position if it is a controversial matter attracting much lobbying, or on which they have strong personal views. In this situation, a member is perfectly free to choose to support one side or the other, to make their views known and to organise lobbying. **However, a member who makes this choice must not take part in the actual making of the decision.** When the matter comes before the Committee, s/he will be entitled to make representations, but should not then take any part in the debate or vote.
- 3.6. In the interests of public participation and involvement, it can be helpful if members involved in the determination of planning applications attend public meetings in relation to planning matters which are under consideration. It is, however, important to ensure that they make clear their position at the outset of the meeting so that there can be no question of misunderstanding or undue influence. Members should identify themselves as being members of the Committee dealing with the application, and make it clear that they are happy to hear views expressed by the public, whether for or against the proposal, but are unable to reach or express any view on the merits or otherwise of the proposal at that stage. Members of the public attending meetings should be advised to contact the relevant officer with their views so that these can be included in the officer’s report.
- 3.7. As no decision on a planning application should be made before the Committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Committee meeting should not be used to decide how members should vote, whether this be for or against an officer's recommendation. Members must be free to take

decisions based on relevant planning considerations only, and any use of a political whip to influence voting may amount to maladministration.

4. Discussions with developers

- 4.1.** Discussion between developers or an applicant for planning permission and the Council, either prior to the submission of an application or during the consideration process of the application, can be of considerable benefit to both parties and is generally encouraged as assisting the planning process. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. Any involvement of members in discussions with developers or applicants should therefore only take place as part of structured arrangements agreed with officers, and the advice given in Section 3 above about the dangers of predetermination should always be borne in mind.
- 4.2.** The following guidance by the Local Government Association and the Planning Officers' Society should be followed in relation to such discussions.

The authority encourages these meetings in line with the national view that allows members to attend such meetings so long as they do not predetermine the case.

- Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. Where appropriate, they may take place on site or incorporate a site visit.
 - To promote transparency of the planning process, the public will be invited to attend developer presentations wherever practicable.
 - Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining local policies, although questions may be asked to clarify aspects of a proposal and policy concerns may be raised. The chair or officer should explain this role at the outset of the meeting.
 - The discussions should not develop into negotiations and it must be made clear that they are not part of the determination process.
 - Officers of appropriate seniority should attend the meeting, and written notes should be kept.
 - For major or contentious applications, the involvement of members should be authorised by the Committee and recorded in any subsequent committee report.
 - Members should not seek to influence officers or pressure them to support a particular course of action.
 - The Council should set out in advance how it will deal with any commercially sensitive or confidential information, bearing in mind the requirements of the Freedom of Information Act and the need for transparency.
- 4.3.** To minimise the risks of predetermination in championing their communities, members are encouraged to promote any community aspirations involving sites, land or community benefits from development, or other planning issues

through Local Development Framework and Sustainable Community Strategy preparation at the earliest opportunity.

5. Dual-Hatted Members

- 5.1.** Where a Member is a member of the Planning Committee and is also a parish, or town councillor, caution needs to be exercised in considering matters at the parish/ town council stage. This is because of the member's additional responsibility as a member of the Planning Committee charged with making a decision on the planning application. It is important to bear in mind that parish/ town councils are consultees in the planning process and may be asked for their comments on an application at a time when not all the relevant material planning considerations have become known and the full implications of an application investigated. Members should therefore –
- at the parish/ town level, make it clear that they will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier.
 - at the district level, declare a personal interest arising from their membership of the parish/ town council, and make it clear that the council's view does not bind them and that they are considering the matter afresh.
- 5.2.** The same procedures should be followed by members of the Committee who sit on any other body, such as a Community Partnership or a conservation advisory panel, which is considering an issue which may subsequently come before the Committee. Members may decide that in some circumstances it would be inappropriate for them to participate in the vote that decides the consultative body's comments and views on an application. A member's expertise as a member of the Committee can sometimes be put to best use in advising and guiding other bodies on which they sit on the planning issues that arise from the application. When the application comes to be decided by the Committee, the views of the parish/ town council or other consultative body will be one of the material considerations to be considered and taken into account.
- 5.3.** Ward members who are consulted on delegated planning decisions and who also sit on the Committee should keep an open mind until the matter comes before the Committee, and take all relevant considerations into account before making their decision.
- 5.4.** There may be circumstances where a member of the Committee who is also a member of the Council's executive is so closely involved with a proposal coming before the Committee that s/he may not be seen as impartial in relation to the planning decision. This may occur, for example, if the member concerned is committed to the development as a result of his/her responsibilities for furthering the development of the area, and is effectively acting as an advocate for that development. In these circumstances, the member concerned may argue for the development, but should not take part

in the debate or vote at the relevant Committee meeting. If in doubt, advice should be taken from the Council's Monitoring Officer

6. Applications by members, officers and the Council

- 6.1.** Planning applications made by members of the Council or by Council officers, or involving land owned by them, will be determined by the Committee rather than being delegated for decision to officers under the Council's Scheme of Delegation for planning matters. The same procedure may be followed, at the discretion of the Planning Manager, in respect of applications submitted (whether as applicant or agent) by any person, firm or company closely connected with a member or a relevant officer
- 6.2.** Applications where a member of the Council or an officer is personally involved as agent, consultant or in any other advisory capacity will also be determined by the Committee.
- 6.3.** Members of the Committee will need to consider whether they should declare any personal or prejudicial interest in applications in which other members of the Council or officers are involved. This will normally only be necessary if the member or officer concerned is a "close associate", as that term is used in the Members' Code of Conduct. If in doubt, advice should be taken from the Monitoring Officer.
- 6.4.** Proposals where the Council is the applicant (or a development involving the Council and another party) should be treated in the same way as those by private developers, in accordance with the relevant Town and Country Planning Regulations and government guidance. Current guidance requires that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the Council's approved policy framework for development control, and any other material planning considerations).
- 6.5.** The same procedures also apply to private applications in respect of Council-owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so

7. Members and decision making

- 7.1.** Members are required to arrive at a decision on granting or refusing permission by using planning criteria and by excluding non-planning considerations. In determining planning applications, members are required to have regard to the development plan or local development framework for the area and to any other material considerations. To this end, the reports of officers to members must be accurate and cover all relevant points. These reports:

- a) Should contain a section on the relevance of the development plan, a description of the site and any related planning history and all other relevant material considerations will be outlined.
- b) Should deal with the substance of any objections received and the views of people who have been consulted or notified.
- c) Should incorporate a recommendation for the consideration of members; oral reporting (except to introduce a report or update it) should be extremely rare and carefully minuted when it does occur.
- d) Should contain a technical planning appraisal which clearly justifies the stated recommendation.
- e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

7.2. Members of local planning authorities also have a duty to take into account any representations made to the Council as a result of consultation with interested bodies or as a result of public notices or neighbour notification. In doing so, it is necessary to decide which representations are material to the decision to be made, and if so what weight to attach to them. This conclusion should not be reached until all the facts have been presented in the officer's report to the Committee.

8. Public Speaking at Committee Meetings

8.1. Public speaking at Committee meetings allows interested parties, including the public and applicants, to address the Committee before an issue is debated. This should enhance public confidence in the process and should help reduce direct lobbying.

8.2. It is important that the public's right to speak, which is incorporated in the Council's Constitution, is operated in a clear and equitable manner. The following procedure applies:

- a) The right to speak applies to the public, community groups, applicants, town and parish councillors, West Somerset district councillors not on the Committee, or any representatives of the above.
- b) Prescribed arrangements, as set out in the Constitution, are in place for requests to speak. These are notified on the agendas and in the leaflets made available to third parties. the Chairman will ensure that so far as practical, supporters of and objectors to any application are given an equal hearing.
- c) If there are groups of people wishing to speak, wherever possible the Chairman will seek a representative to put the whole case. A dialogue will not be permitted between various parties attending at the Committee meeting.
- d) Speaking is normally limited to a maximum of 3 minutes per speaker, but the Chairman has discretion to vary this in appropriate cases.
- e) It is intended that the right to speak is operated with the minimum of bureaucracy required to enable the smooth running of the meeting.

There are significant advantages to a flexible approach, but it is critical that this is operated in an equitable manner to maintain the confidence of all parties.

- f) The Chairman will announce at the commencement of the meeting how s/he will manage the meeting to facilitate people being able to put their views to the Committee. The normal order of speaking on any item will be the officer giving their report and recommendation followed by any public speakers. Only Committee members will be able to question officers and speakers for clarification. The Committee will then start to debate the item and from this point members of the public have no further opportunity to speak or be involved in the debate (unless the Chair determines there are exceptional reasons to do so for clarification).

9. Committee Site Inspections

9.1. Site visits will cause delay and additional costs and should only be used where the expected benefit is substantial. A decision by the Committee to carry out a site inspection should normally only take place –

- a) If the impact of the proposed development is particularly difficult to visualise from the plans and any supporting material; or
- b) There is considerable local concern about a proposal, allied to planning reasons for carrying out the visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

Normally officers will identify such cases in advance to avoid delay.

9.2. Applications will only be deferred by the Committee for a site visit in the most exceptional circumstances. Where this occurs, clear reasons should be given at the meeting for the deferral so that the applicant and any third parties involved are able to understand the need for, and the benefit of, a site visit. This is to avoid misunderstanding either about the purpose of the site visit or the matters which are being considered.

9.3. When site inspections take place, careful arrangements must be made to ensure that all parties are treated fairly and equitably, and that the appropriate standards of propriety are seen to be upheld, particularly to avoid the visit being seen as part of a lobbying process. Accordingly, the following rules will apply:

- a) The visit will be led by a planning officer.
- b) Members should not seek to have discussions either with the applicant or with members of the public who may be present. The public should not be invited and have no right to enter a site without the consent of the occupier. However, attendance does occur from time to time and requires careful handling to ensure confidence in subsequent decision making.
- c) If discussions do take place, no view on the merits or otherwise of the proposal should be given, as to do so may lead to suspicion that the

individual Member had already made up his or her mind. Members should keep together, avoiding side discussions.

- d) If at all possible, individual Members should not have discussions with the applicant or members of the public as again suspicion may arise that this is part of the lobbying process rather than the information-gathering process.

10. Individual Site Inspections by Members

- 10.1. Members are encouraged to look at an application site following the receipt of the agenda and prior to the date of the Committee meeting. This will enable them to acquaint themselves with the nature of the proposal and will help avoid delay and unnecessary site visits. However, Members should wherever possible conduct such site inspections from a public vantage point and should avoid discussing the application with any applicant/agent or third party. Entering a site which is subject to a planning proposal may give the impression of bias, and members should only do so if they feel that it is essential to their consideration of the proposal.

11. Training

- 11.1. Members of the Committee responsible for planning will receive training in the planning system as soon as possible after appointment to the Committee. Under the Council's Constitution, Members may not take part in planning decisions unless they have received appropriate training, as considered necessary from time to time by the Chairman of the Committee in consultation with the Planning Manager. This is to ensure that correct procedures are followed and proper planning considerations are employed in decision making.
- 11.2. Refresher training, updates, and more detailed training on specific issues will also be provided, and should be taken up by all Committee members.

12. Complaints and Record Keeping

- 12.1. Whatever procedures the Council operates, it is likely that complaints will be made. In order that any complaints can be fully investigated, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 12.2. The same principles of good record keeping will be observed in relation to all other planning matters. Monitoring of record keeping will be undertaken on a continuous basis by the Planning Department.

13. Officer's Function

13.1. An officer's function is to advise members on all matters of planning policy and procedure in their determination of planning and related applications by:

- a) Providing impartial and professional advice which is properly recorded
- b) Making sure that all the necessary information is available for a decision to be made.
- c) Providing a clear and sufficient analysis of the issues including development plan policies and all other material considerations.
- d) Giving a clear recommendation.
- e) Carrying out the decisions made by members at meetings of the Committee.

Officers are governed by the Royal Town Planning Institute Code of Professional Conduct which states that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions.

13.2. Officers shall also comply with the following -

- a) Free and impartial advice will be given to prospective applicants prior to submitting an application. Advice will reflect approved Council planning policy. It will then be made clear that such advice will be without prejudice to any subsequent recommendation or formal decision by the Committee or a decision made under delegated powers.
- b) All application sites will be visited.
- c) Officers will endeavour to deal with applications and make final recommendations for the grant or refusal of permission
- d) All applications will be considered by at least two officers, i.e. the case officer plus the officer responsible for the final decision and/or recommendation.
- e) Members of the public and applicants will not be advised of the officer's final recommendation to Committee until agendas have been sent to Members.
- f) In all dealings with applicants, agents, and the public officers should maintain a courteous and professional relationship adhering to the Council's policies and officer codes ensuring that all parties are treated fairly and respecting people's rights.
- g) When an application is submitted by an officer involved in the planning process the officer shall advise the Planning Manager. Such applications shall not be determined under delegated powers.
- h) Where an officer has a relationship with any applicant, agent or organisation that could lead to a third party suggestion of bias, the officer will inform the Planning Manager in writing and take no part in processing or determining the application. If the Planning Manager has an interest s/he will inform the Monitoring Officer in writing and take no part in processing or determining the application.
- i) Officers should not, under any circumstances, accept gifts or hospitality beyond simple basic refreshment where necessary or unavoidable. If, however, a degree of hospitality is unavoidable, it should be ensured

that this is of the minimum. All gifts and hospitality beyond simple basic refreshment should be declared to the Monitoring Officer for entry in the Council Register of Gifts and Hospitality.

14. Decisions Contrary to Officer Recommendation and/or Development Plan

- 14.1.** The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 14.2.** In discussing and then determining a planning application, members should confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. All decisions must be founded on planning reasons and there must be planning evidence to substantiate them.
- 14.3.** There is no reason in law why a Planning Committee may not make a decision contrary to the officer's recommendation, whether it is for approval or refusal. Nevertheless, the law does require that in the case of approvals and refusals of planning permission detailed reasons are given, and it is important that where members have made a decision contrary to an officer's recommendations the reasons for the decision should be made clear. In such a situation, therefore, whether the decision by members is to approve or refuse permission, the planning reasons should be clearly minuted, together with the evidence to substantiate them.

15. Consequences of Failure to Comply with Code

- 15.1.** This Code, together with the provisions of the Members' Code of Conduct, sets out the standards that the Council will operate in dealing with planning applications. Members and officers should be aware that failure to comply with this Code or the Code of Conduct may have legal consequences.
- 15.2.** These include -
 - a) A complaint to the Standards Committee of the Council, and a subsequent investigation, which may result in a member being censured, suspended or disqualified.
 - b) An investigation by the Ombudsman if complaints are received about the manner in which a planning application is dealt with. In determining whether or not there has been maladministration the test that is currently used is that members must "at all times avoid any occasion for suspicion and any appearance of improper conduct" and must not allow "the impression to be created that (the Member) is or may be using his position to promote a private or personal interest". Individuals involved may be named, and the Council may be found guilty of maladministration and recommended to compensate the claimant.

- c). Appeal to the Secretary of State. As well as granting planning permission s/he can award costs against the Council if it has acted unreasonably – for example, bias has been present or the decision has been taken for non-planning reasons.
- d) Court action (judicial review) to quash a planning decision, which may succeed if bias or apparent bias was present, or if it is demonstrated that a decision was taken for non-planning reasons or material considerations were ignored. Procedural errors may also have this result if any party was prejudiced. Costs will be awarded against the Council which will have to re-determine the application correctly.

PROTOCOL FOR THE MONITORING OFFICER AND SECTION 151 OFFICER
UNDERTAKING STATUTORY DUTIES

1. The Monitoring Officer and the Section 151 Officer undertakes to discharge his/her responsibilities with determination and in a manner which will enhance the reputation of the Council. In general terms his/her ability to discharge these duties depends on excellent working relations with colleagues and Councillors and also on the flow of information and access to debate, particularly at the early stages.
2. The following arrangements and understandings between the Monitoring Officer and the Section 151 Officer and colleagues and Councillors are designed to help ensure the effective discharge of their functions -
 - (a) If not a Member of the Corporate Management Team the Monitoring Officer and the Section 151 Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak.
 - (b) Advance notice of significant meetings between Members of CMT and Cabinet Members and/or Committee Chairmen will be given to the Monitoring Officer and the Section 151 Officer who will have the right to attend if they feel that any matters may arise which fall within their statutory remit.
 - (c) Members of CMT will alert the Monitoring Officer and/or the Section 151 Officer as appropriate to all emerging issues of concern including legality, probity, vires and constitutional issues.
 - (d) The Monitoring Officer and the Section 151 Officer will have copies of all reports to Councillors (Council, Cabinet and Committee reports and also reports to Lead Members).
 - (e) The Monitoring Officer and the Section 151 Officer are expected to develop good liaison and working relations with other relevant bodies such as the District Auditor, the Standards Board for England and the Ombudsman, including the giving and receiving of relevant information whether confidential or otherwise.
 - (f) The Monitoring Officer and the Section 151 Officer will have special relationships with the Chairman of Council, the Chairman of the Standards Committee and the Chairman of the Scrutiny Committee and will ensure that all the Council's statutory Officers have up-to-date information regarding emerging issues.
 - (g) Monitoring Officers will be expected to make enquiries into allegations of misconduct by Councillors upon receipt of a complaint or upon the the instruction of the Standards Board for England.

- (h)** The Head of Paid Service, Section 151 Officer and the Monitoring Officer will meet regularly to consider and recommend action in connection with governance and probity issues.
- (i)** In carrying out any investigation the Monitoring Officer and the Section 151 Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions.
- (j)** Following consultation with the Head of Paid Service, the Monitoring Officer and the Section 151 Officer may from time to time report to Council on necessary or desirable changes to the Constitution.
- (k)** In consultation with the Chairman of the Council and any other relevant body the Monitoring Officer or Section 151 Officer may delay making a formal report where another investigative body is involved.
- (l)** The Monitoring Officer and the Section 151 Officer will be provided with sufficient resources to discharge their functions.
- (m)** The Monitoring Officer will appoint a deputy and keep him/her briefed on emerging issues.
- (n)** Monitoring officers will make arrangements to ensure good communication between themselves and the Clerks to Parish Councils.

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5, Local Government and Housing Act 1989
2	Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Section 5, Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5, Local Government and Housing Act 1989
4	Report on Resources	Section 5, Local Government and Housing Act 1989
5	Receive notifications from the Standards Board for England of allegations of Councillor misconduct	Model Code of Conduct for Councillors, Statutory Instrument
6	Assessment of complaints that a Councillor may have breached the Code of Conduct	Standards Committee (England) Regulations 2008 and Local Government Act 2000
7	Investigate misconduct at the direction of the Standards Board for England (Ethical Standards Officers)	Sections 66(1) and 66(6) Local Government Act 2000
8	Establish and maintain registers of interests and gifts and hospitality (district and parish Councillors)	Section 81 (1) Local Government Act 2000
9	Advice to Councillors (parish and district) on Code of Conduct issues	Local Government Act 2000 and its subsidiary legislation
10	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance Paragraph 8.20
11	Compensation for maladministration	Section 92 Local Government Act 2000
12	Advice on vires issues, maladministration, financial impropriety, probity, policy framework and budget issues to all Members	DETR Guidance on new Council Constitutions

MEMBERS' MEDIA RELATIONS PROTOCOL

Introduction

This document sets out how media relations should be handled across the authority.

The purpose is to clarify the roles and responsibilities of members, and provide guidance on how to handle media enquiries.

It is designed to ensure that the council maximises opportunities for positive media coverage, minimises negative coverage, and provides a fast and effective service to the media.

The Media & PR Officer deals with media enquiries, issues press releases, organises photo-calls and broadcast interviews. To ensure all this activity is co-ordinated effectively, it is important that it is channelled through one central point.

The only exception to this is publicity of a political nature, which is handled by the individual political groups.

The legal context

This protocol reflects the guidance contained in the Code of Recommended Practice on Local Authority Publicity 2001 (as amended).

Key points are:

- The council should not publish material designed to affect public support for a political party.
- Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts and explanations.
- Publicity paid for by the council should not in any way be designed to influence support for a political party.
- The purpose of a press release is to promote the council's services or policies and any quotes used should reflect this.

Approach to publicity

It is vital that the council communicates regularly with the media, as it plays such an important role in informing residents about what we do and how we spend their money.

Wherever possible the council will meet media requests for information and interviews. This approach will help us ensure that the council is recognised as open, accountable and accessible.

Planning / identifying newsworthy items

Media activity needs to be planned as far ahead as possible to ensure a good spread of news stories being sent out at relevant times.

Members are requested to notify the Media & PR Officer as soon as they become aware of a good or bad news story, or of any potentially controversial issues, policies, decisions or events.

Handling media enquiries / interview requests

The Media & PR Officer will co-ordinate media enquiries that come in to the council and arrange appropriate responses, and will prioritise enquiries, source relevant information and arrange interviews.

Simple factual queries may be dealt with by the Media & PR Officer without reference to other officers or executive members. If the relevant officer or cabinet member is unable to supply information for a response within deadline, the officer will aim to a holding statement which avoids detail but which seek to protect the council – for example: ‘The matter is being investigated’. The council will seek to avoid ‘no comment’ at all times, unless the issue relates to an internal staffing matter when the statement should read “this relates to an internal staffing matter and it would be inappropriate to comment”. The council is open and accountable and should always explain if there is a reason why it cannot answer a specific enquiry.

When the Media and PR officer receives an interview request for a council representative, factors considered will include: the appropriate person; their availability; media training the person has undergone and the aptitude shown; the necessity of a brief / time available to draft a brief, and whether the interview is a live recording or pre-recorded.

The person put forward for interview will depend on the situation and the information required by the journalist.

If the Media & PR Officer contacts a member with a media query

Members are requested to return their call or email as soon as possible. By missing a deadline, a story will appear without a council comment – it won’t wait or go away and the council’s reputation could suffer.

Members should give the officer as much information as possible. Withholding vital details could delay things or lead to inaccurate information being released. The query is an opportunity to achieve positive publicity for your service or to correct misleading views. At the very least it is an opportunity for damage limitation.

Press releases

Press releases are one of the key techniques for publicising council activities, decisions and achievements.

The Media & PR Officer will issue all press releases on behalf of the council. This ensures that releases follow a style appropriate to the media being targeted.

All releases will accurately reflect the corporate view of the cabinet and council and contain the relevant facts.

Where a press release requires a quote from a member, the relevant executive member will be used.

Statements from other members will be included when they are:

- Commenting as chair of a committee
- Commenting as the chair of a quasi-judicial forum
- Representing a local area specifically affected by a change in service
- Representing an area affected by a major event or incident

A relevant officer may also be quoted to provide factual or technical information, or if the appropriate member is unavailable.

In most cases the Media & PR Officer will draft a quote based on the information given and get this agreed by the member / officer.

Final approval for news releases will be sought from the originator and their service manager.

In the case of sensitive, significant or controversial issues approval may also be sought from a member of the Corporate Management Team.

Meetings

The media pick up stories from agendas and reports ahead of meetings. All council papers are sent to local media.

The Media & PR Officer aims to attend Cabinet and Council pre-agenda meetings to try to identify issues that may attract media interest, or that need to be communicated to a wider audience.

In addition, where possible, officers and executive members should make the officer aware of any potentially newsworthy items due to be considered at public meetings the earliest possible date. This includes planning, scrutiny, licensing, area partnerships, Strategic Partnership etc.

It may then be possible to issue a news release, summarising the main points of the report, at the same time that the papers go out. This type of release is usually very useful to journalists who would not otherwise read an agenda and may help secure coverage.

Press releases confirming the decisions taken at meetings will be issued at the request of cabinet members and CMT. Such requests should be made prior to the meeting where possible to allow for the speedy issue of the release immediately after the meeting.

Generally releases giving information on decisions taken should not be issued more than 24 hours after the meeting.

Members of Cabinet

The Leader and Cabinet have prerogative on policy statements. These are generally based on advice from officers including the Media & PR Officer.

Cabinet members can respond directly to the press about matters relating to their executive responsibilities, always ensuring they represent the policies of the council when speaking on their portfolio areas.

Individual Members and Political Groups

All members are asked to bear in mind their Code of Conduct when responding to media queries and, in particular, paragraph 4 which relates to the disclosure of confidential information. Members should also have regard for the adopted Protocol for Disclosure of Confidential Information.

Nothing in this protocol precludes any political group from issuing its own media information through its own channels, or any member from speaking to the press.

Ideally press releases issued by individual groups or members should be copied to the Media & PR Officer. These will be held in strict confidence and used only to help inform corporate responses to media enquiries.

Where individual members wish to promote a council activity or respond to media coverage relevant to their particular ward, they should liaise with the Media & PR Officer.

Political issues

There are times when an issue becomes 'political'. In such cases an official council response will not be given but political groups can comment directly. In this case the Media & PR Officer will pass on the contact numbers for the political group leaders.

Publicity in election periods

The rules governing publicity change when an election has been announced. In the period between the notice of an election and the election itself, all proactive publicity about candidates or other politicians is halted. This applies to local, national or European elections.

During this period council publicity should not deal with controversial issues or report views, proposals or recommendations in a way that identifies them with individual members or groups of members. This is to make sure that no individual member or political party gains an unfair advantage by appearing in corporate publicity.

In these circumstances, where a quote is required, the relevant officer may be quoted.

Proactive events arranged in this period should not involve members likely to be standing for election.

However, this does not stop the council responding to major events or service enquiries. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for member level response to an important event outside the authority's control.

Correcting inaccurate reporting

Should a newspaper or broadcaster publish/broadcast something inaccurate about the council, a quick decision needs to be taken on any action necessary to correct it.

The Media & PR Officer scans the media daily to identify inaccurate reports and will alert the relevant officer/member where appropriate.

The issue should be discussed with the Media & PR Officer to decide what action is appropriate. This could be a letter to the editor, a conversation with the journalist concerned, a personal letter to the editor or legal advice.

Officers should act as the spokesperson on any factual information and the appropriate executive member should be quoted when a comment is required.

In the case of minor inaccuracies which have little or no impact on the message being conveyed, it can be counter-productive to complain or respond. Each case must be judged individually.

Only in extreme circumstances should you expect to receive a correction or retraction from the media. In most cases it is better to send out a fresh and positive story about the issue.

Letters to the editor

Letters, whether for publication or not, are one way of correcting misinformation printed in a newspaper.

Sometimes however they can be counter-productive, leading to an on-going public debate via the letters' page. Also the editor will decide when a debate on a topic should end so it is not always possible to get the last word.

If there are serious issues coming from letters' pages which do need addressing, it is recommended that a press statement be issued to put the record straight.

The Media & PR Officer is happy to draft a response which would need to be agreed by the Lead Member and service manager.

All letters to the media sent on behalf of the council must be sent through the Media & PR Officer unless agreed otherwise.

In Absence

If the Media & PR Officer is on leave, another officer will deputise to provide support for members and staff. The Media and PR Officer will email details of the person nominated to staff and members. All media enquiries should be directed to the nominated officer who will deal with them in accordance to this protocol. The officer must ensure that any statement is approved by the Head of Paid Service or a Corporate Director prior to issuing any statement to the media.

Members Code of Conduct

Protocol for Disclosure of Confidential Information

1. Principles Underlying the Protocol

- 1.1 The principles underlying this Protocol are as follows –
- 1.2 The Council adopted the Members Code of Conduct in May 2007. Paragraph 4 of the Code outlines the standards required of members with regard to the disclosure of and access to Council information. This protocol is intended to help Members to understand their responsibilities under Paragraph 4 of the Code. A fact sheet prepared by the Standards Board is attached providing a summary of key points about disclosing confidential information.
- 1.3 As an elected member you are urged to seek advice from the Monitoring Officer before disclosing information given in confidence, in order that you can be advised as to whether such disclosure is reasonable and in the public interest, and whether such disclosure would be made in good faith and in compliance with the reasonable requirements of the Council.
- 1.4 This means that even though a request for exempt information would be refused under the Freedom of Information Act a councillor may be able to disclose information where, for example, he reasonably believes:
 - (i) that the disclosure will indicate evidence of a criminal offence
 - (ii) that the authority is failing to comply with its legal obligations
 - (iii) that a miscarriage of justice has occurred or may occur
 - (iv) that the health and safety of a person(s) has been endangered or;
 - (v) that the environment has been damaged
- 1.5 These defences do not include disclosing properly confidential information for the purpose of political advantage.
- 1.6 Confidentiality and the right to privacy versus openness and accountability engage a number of complex areas of legislation and common law. Decisions about the disclosure of information will often need to be taken on a case-by-case basis, taking into account the potential risks and benefits.
- 1.7 This Protocol has been produced to assist in ensuring the protection of confidential information and in promoting and upholding high ethical standards.
- 1.8 It should be noted that this Protocol is complementary to but does not replace the Access to Information Procedure Rules (in particular Rule 10) which can be found in the Council's Constitution.

2. What is information?

- 2.1 It includes all recorded information held by the Council in any format. This comprises information that is held electronically or as paper records and includes photos, CCTV footage, video and audio material and email and including verbal information. Care should always be taken when sending and forwarding emails that may contain confidential information.

3 Why is some information confidential?

- 3.1 The Local Government (Access to Information) (Variation) Order 2006 provides categories of information that are exempt from public inspection so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The categories include:
Information relating to an individual
Information relating to the financial affairs of any person including the authority holding that information
Information claiming legal professional privilege
Information in connection with the prevention or prosecution of crime
- 3.2 Where it is proposed by a report author that information in the report is exempt, the committee members need to agree that the information shall be taken in closed session. Any Member who believes it to be in the public interest to disclose the information is advised to argue at the meeting that the information should not be considered in closed session.
- 3.3 Outside of committees officers will wherever possible make clear to members that some information should be regarded as confidential indeed maintaining confidentiality is important to conducting the work of the authority in a right and proper manner.

4. What does disclosure mean?

- 4.1 The disclosure of information can be defined as the 'passing, sharing, disclosure or transfer of information between two or more parties and/or between two or more individuals either within an organisation or externally'.

5. Public Interest

- 5.1 There is no legal definition of what the public interest is but the following have been identified as some of the relevant considerations.
- The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national; debate
 - The issue has generated public or parliamentary debate
 - Proper Debate cannot take place without wide availability of all the relevant information
 - The issue affects a wide range of individuals or companies

- The public interest in a local interest group having sufficient information to represent effectively local interests on an issue
- Facts and analysis behind major policy decisions
- Knowing reasons for decisions
- Accountability for proceeds of sale of assets in public ownership
- Openness and accountability for tender processes and prices
- Public interest in public bodies obtaining value for money
- Public health
- Contingency plans in an emergency
- Damage to the environment

6. What do I need to consider when disclosing Council information?

6.1 You will need to ensure that you comply with the law and act reasonably when you are considering disclosing Council information by asking the following questions:

- Is disclosure compatible with the Freedom of Information Act (FOIA) (recorded information)
- Will disclosure breach any of the principles of the Data Protection Act (DPA) (recorded and verbal information).
- Is disclosure compatible with Article 8 of the Human Rights Act (HRA) (recorded and verbal information).
- Does disclosure comply with Council policies, procedures and protocols and other written advice and guidance.

7. The FOIA

7.1 The FOIA provides a right of access to all recorded information held by the Council. However this right is subject to a number of exemptions to legitimately withhold confidential or sensitive information from disclosure. Many exemptions are qualified and subject to the public interest test. It is often a matter of fine judgement as to whether the public interest will be best served by either withholding or disclosing information.

8. The DPA

8.1 The DPA protects recorded, personal information. Personal information is any information that identifies a living individual. There are exemptions that permit the disclosure of personal information where there is an overriding public interest or justification for doing so eg prevention of crime or protection of a child.

8.2 You can be held personally liable under the DPA if you knowingly disclose personal information to a person not entitled to that information.

9. The HRA

9.1 Article 8 of the HRA states 'Everyone has a right to respect for his private and family life, his home and his correspondence'.

9.2 The disclosure of information to meet a legitimate aim that infringes on an individual's right to privacy is permitted where there is an overriding public interest for doing so.

10. Common Law Duty of confidentiality

10.1 Common law is not set in statute but is developed through legal precedents set by the courts. The common law duty of confidentiality is well recognised and is as powerful as legislation that governs access to and disclosure of information.

10.2 Information has a necessary quality of confidence when:

- It is not in the public domain or readily available from another source
- It has a degree of sensitivity and disclosure could be detrimental to a party wishing to keep it confidential
- It is communicated for a limited purpose where the individual is likely to assume an obligation of confidence eg contractor/purchaser, solicitor/client.

10.3 The disclosure of confidential information is permitted where there is an overriding public interest or justification for doing so eg prevention of crime or protection of a child.

10.4 You can be held personally liable if you disclose confidential information to a person not entitled to that information.

11. Council policies, procedures and protocols and other written advice and guidance.

11.1 References to Council policies and guidance that relate to members confidentiality and disclosure of information are identified at the beginning of this document.

Guidance for Members on Gifts and Hospitality

1. Introduction

This guidance is for members of the Authority and independent and co-opted members (voting or non-voting).

2. General Caution

Treat with extreme caution any offer or gift, favour or hospitality that is made to you personally.

Your personal reputation and that of the authority can be seriously jeopardised by the inappropriate acceptance by you of a gift or hospitality.

This acceptance of gifts and hospitality is not always unlawful or inappropriate. The decision for you in every case is whether or not it is appropriate to accept any gift or hospitality that might be offered to you, having regard to how it might be perceived. No hard and fast rules can be laid down to cover every circumstance as to what is appropriate or inappropriate. This guidance is intended to enable you to make your own decision

3. Criminal Law

It is a criminal offence corruptly to solicit or receive any gift, reward or advantage as an inducement to doing or forbearing to do anything in respect of any transaction involving the Authority.

The onus would be on you to disprove corruption in relation to a gift from a person holding or seeking to obtain a contract from the Authority.

4. Limits of Guidance

This guidance does not apply to:

- Gifts and hospitality you may receive from family and friends (as birthday or other festival presents) that are not related to your position as a member. You should however question any such gift or hospitality offered from an unusual source.
- The acceptance of facilities or hospitality provided to you by the Authority.
- Gifts given to the Authority that you accept formally on the Authority's behalf and are retained by the Authority and not by you personally.

5. Meaning of Gifts and Hospitality

The expressions 'gifts' and 'hospitality' have wide meanings and no conclusive definition is possible. Gifts and hospitality include:

- The free gift of any goods or services.

- The opportunity to acquire any goods or services at a discount or at terms not available to the general public.
- The opportunity to obtain goods or services not available to the general public.
- The offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event.

Common gifts include pens, diaries, calendars and other business stationery, articles of clothing, books, flowers and bouquets. Members should however be cautious when purchasing anything, when additional services, privileges or advantages are offered, which might be related to their position as a member.

6. Appropriate Gifts and Hospitality

There are some circumstances where you may accept gifts and hospitality as being in the normal course of your duties as a member.

- Civic hospitality provided by another public authority.
- Normal and modest refreshment in connection with any meeting in the course of your work as a member (e.g. tea, coffee and other normal beverages and refreshments).
- Tickets for sporting, cultural and entertainment events which are sponsored or promoted by the Authority or bodies to which you have been appointed by the Authority, and the tickets offered in relation to that sponsorship or promotion.
- Small low value gifts (such as pens, calendars, diaries, flowers and other mementos and tokens).
- Drinks or other modest refreshment in the normal course of socialising arising consequently from Authority business (e.g. inclusion in a round of drinks after a meeting).
- Modest meals provided as a matter of courtesy in the office or meeting place of a person with whom the Authority has a business connection.
- Souvenirs and gifts from other public bodies intended as personal gifts (e.g. arising from twin-town and other civic events).

7. Principles to Apply in Relation to Gifts and Hospitality

In deciding whether it is appropriate to accept any gift or hospitality you must apply the following principles:

- Do not accept a gift or hospitality as a inducement or reward for anything you do as a member. If you have any suspicion that the motive behind the gift or hospitality is an inducement or reward you must decline it.
- 'Reward' includes remuneration, reimbursement and fee.
- Do not accept a gift or hospitality of significant value or whose value is excessive in the circumstances.
- Do not accept a gift or hospitality if acceptance might be open to misinterpretation. Such circumstances will include gifts and hospitality:

- a) From parties involved with the Authority in a competitive tendering or other procurement process.
 - b) From applicants for planning permission and other applications for licences, consents and approvals.
 - c) From applicants for grants, including voluntary bodies and other organisations applying for public funding.
 - d) From applicants for benefits, claims and dispensations.
 - e) From parties in legal proceedings with the Authority.
- Do not accept a gift or hospitality if you believe it will put you under any obligation to the provider as a consequence.
 - Do not solicit any gift or hospitality and avoid giving any perception of so doing.

8. Gifts Received and Donated to the Chairman's Appeal

Some members receiving gifts of value may prefer not to retain these personally but to pass them to the Head of Paid Service for use in relation to the Chairman's Appeal. Members should indicate this intention to the provider and make this clear on the register of interests.

9. Registration of Gifts and Hospitality

The Code of Conduct for Members and Co-opted Members provides that

'You have a personal interest in any business of your authority where it relates to or is likely to affect the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25.'

This interest must be registered in the register of members' interests. You should register the interest as soon as possible after acceptance of the gift or hospitality. The registration should include the source and nature of the gift of hospitality.

You must disclose the existence and nature of the interest arising from a gift or hospitality at a meeting of the authority at which business is considered to which the interest relates. (i.e. business relating to the interests of the person or body giving the gift or hospitality) The disclosure requirement does not however apply to gifts and hospitality interests registered more than 3 years ago.

Whilst the registration requirement in the code is limited to gifts or hospitality over the value of £25, members are encouraged to register any significant gift or hospitality they receive below this value. There is not obligation to make a disclosure in relation to gifts and hospitality on the register which are below £25 in value.

10. Reporting of Inappropriate Gifts and Hospitality Offered

It is a criminal offence for a person corruptly to give or offer any gift, reward or advantage as an inducement or reward to you for doing or forbearing to do anything as a member of the Authority.

You must immediately report to the Monitoring Officer any circumstances where an inappropriate gift or hospitality has been offered to you.

You may thereafter be required to assist the Police in providing evidence.

11. Enforcement

The Standards Committee has responsibility for overseeing compliance with this guidance.

Allegations of any failure to meet the guidance must be made in writing to the Monitoring Officer.

SITE VISITS

1. Criteria for undertaking Site Visits

- (a)** A site visit will be considered necessary only where the buildings or site need to be seen in context as the available plans and photographs do not provide sufficient information for an informed decision to be made.
- (b)** When a site visit is proposed the reasons for making a site visit must be minuted.
- (c)** The reasons for making a site visit are –
 - (i)** The application is significant in terms of its size or impact on the local environment.
 - (ii)** Where the decision may set a precedent.
 - (iii)** The site relating to the application is of environmental or ecological importance.
 - (iv)** There are concerns over safety issues regarding the location and/or details of the application proposal.
 - (v)** Issues raised during consultation/by the local community.
 - (vi)** Deviation from the Local Plan.
 - (vii)** Deviation from current Council policy.
 - (viii)** Any specific, substantial and relevant reason where the information and facts needed for Members to make an informed decision can only be collected by a visit to the site.

2. Site visit protocol

- (a)** The site visit is for fact finding purposes only, NO DECISIONS can be made at a site visit.
- (b)** Site visits are not formal meetings and decisions cannot be made, therefore such visits do not need to follow the Council Rules of Procedure or be quorate.
- (c)** All Members of the relevant Committee and the relevant ward Member(s) will be invited to attend the visit together with the applicant and/or their agent and any person or representative of any organisation (including town/parish council) who has made representation regarding the application.

- (d) Site visits are not 'open' meetings and attendance will be by invitation of the relevant Committee Chairman. Invitations will be issued in accordance with any statutory requirements and Council policy (see also (c) above).
- (e) The officer leading the visit will record the name of all the people present at the visit, this list will be forwarded to Member Services.
- (f) Members are recommended to declare any relevant interests at the start of the site visit and these will be recorded by the lead officer. The details will be forwarded to Member Services.
- (g) The lead officer will also record any deviations from the protocol or agreed procedure. The lead officer will also make notes of the Chairman's (of the visit) summing up of the visit – such notes will be checked by the Chairman (of the visit) and be presented with the Committee paper when the application is considered.
- (h) Any written information produced by an applicant, agent or any other person at the visit will not be circulated at the visit but be received by the lead officer and circulated with the papers for the meeting at which the application will be considered.
- (i) Members should be mindful of health and safety matters when visiting sites, but lead officers will advise Members of any particular hazards and special precautions that need to be taken, including the wearing of safety clothing if appropriate. (Safety clothing will be issued by the lead officer at the start of the visit if required.)
- (j) Members should take care not to express an opinion regarding any application either at the site visit or to any member of the public prior to the meeting where the application is on the Agenda and the full information to inform decision-making is available.

3. Procedures at a Site Visit

- (a) The Committee Chairman introduces himself/herself and welcomes everyone.
- (b) The lead officer records everyone present and, if appropriate, the person or organisation whom they represent.
- (c) Chairman asks for any declarations of interest from Councillors, which are recorded by the lead officer.
- (d) The Chairman reminds those present that the site visit is for fact finding and information gathering purposes only.
- (e) The lead officer outlines the application and the issues.

- (f)** The Chairman invites any attendees who are not District Councillors to state and explain their case.
- (g)** District Councillors ask questions of the lead officer and, if the Chairman deems it in order, any other attendee.
- (h)** The Chairman sums up any points made, and the lead officer makes a note of the summing up.
- (i)** The Chairman thanks everyone for attending and ends the visit.