



## **Part 5 Codes and Protocols**

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# Members' Conduct

## High Standards

Every Council has a duty to promote and maintain high standards of conduct. The **Standards and Audit Committee** (see Article 9 in Part 2 of this Constitution) upholds these standards within the Council;

The Council has adopted a **Members Code of Conduct**, based on the Local Government Association model, which applies to all elected councillors. The Code sets standards of conduct and follows requirements set by Parliament in the Localism Act 2011. The Code came into effect on 1<sup>st</sup> July 2012 and replaces previous Codes of Conduct.

Members must follow the Code of Conduct at all times when they are representing the authority. They must register and declare any disclosable pecuniary interests, and not take part when these interests arise at meetings, though in some circumstances they may seek dispensations in advance. They must also register certain non-pecuniary interests. More information is set out in the Code of Conduct.

## Complaints about Members' Conduct

Details of how to complain about conduct of a councillor or co-opted member are on the Council's website <https://www.chesterfield.gov.uk/your-council/the-council/your-councillors/members-code-of-conduct.aspx>

The Monitoring Officer assesses any complaints received and decides what, if any, steps should be taken. There is a protocol for dealing with complaints, to be found at:

<https://www.chesterfield.gov.uk/media/393125/procedure-for-breach-of-member-code-of-conduct.pdf>

## Other Rules about Conduct

The Council has a **Code of Conduct for Planning Matters**. The Council's Standards and Audit Committee is responsible for enforcing the Planning Code, insofar as breaches of the Members' Code of Conduct are not involved.

There is also a **Protocol on Member/Officer Relations**.

A summary of statutory and other rules affecting members' conduct is also included in Part 5. These rules are enforced independently of the Code of Conduct, but breaches of some of them may also amount to breaches of the Code of Conduct.

# CHESTERFIELD BOROUGH COUNCIL CODE OF CONDUCT FOR MEMBERS



**Adopted 13<sup>th</sup> June 2012 – Effective from 1<sup>st</sup> July 2012**

- 1 As a member or co-opted member of Chesterfield Borough Council (“the Council”), I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.
- 2 In accordance with the Localism Act 2011 (“the Act”) provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this Council:

**SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take.

They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

- 3 The Act further provides for registration and disclosure of interests and for the Council this will be done as follows:

### **Registering and Declaring Pecuniary and Non-Pecuniary Interests**

- (1) I must, within 28 days of taking office as a member or co-opted member, notify to the Monitoring Officer any disclosable pecuniary interest as defined by regulations made by the Secretary of State. I must do this where the pecuniary interest is that of any relevant person, namely:
- (a) mine
  - (b) my spouse or civil partner,
  - (c) somebody with whom I am living with as a husband or wife, or
  - (d) somebody with whom I am living with as if we were civil partners.

***These categories of disclosable pecuniary interests are set out at Schedule 1 below.***

- (2) I must, within 28 days of taking office as a member or co-opted member, notify the monitoring officer of any non-pecuniary interest.

***These categories of non-pecuniary interests are set out at Schedule 2 below.***

- (3) If an interest has not been entered onto the Register of Interests, then I must disclose the interest to any meeting of the Council at which I am present, where I have a disclosable interest in any matter being considered.
  - (4) Following any disclosure of an interest not on the Register of Interests, or the subject of pending notification, I must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
  - (5) Unless a dispensation has been granted, I may not participate in any discussion of, vote on, or discharge any function related to any matter in which I have a pecuniary interest as defined by regulations made by the Secretary of State. I must observe the restrictions the Council places on my involvement in matters where I have a pecuniary or non-pecuniary interest.
- 4 As a Member of the Council, my conduct will in particular address the statutory principles of the Code of Conduct by:
- (1) Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
  - (2) Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
  - (3) Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the borough or the good governance of the Council in a proper manner.
  - (4) Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who

might seek to influence the way I perform my duties as a member/co-opted member of this Council.

- (5) Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- (6) Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- (7) Contributing to making this Council's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.
- (8) Behaving in accordance with all our legal obligations, alongside any requirements contained within Council's policies, protocols and procedures, including on the use of the Council's resources.
- (9) Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- (10) Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- (11) Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Council.

## **SCHEDULE 1**

### **Categories of Disclosable Pecuniary Interests**

- (1) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (2) Any payment or provision of any other financial benefit (other than from the relevant Council) made or provided within the relevant period in respect of any expenses incurred by me in carrying out duties as a member, or towards my election expenses.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (3) Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council -
  - (a) under which goods or services are to be provided or works are to be executed; and
  - (b) which has not been fully discharged.
- (4) Any beneficial interest in land which is within the area of the Council.
- (5) Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
- (6) Any tenancy where (to my knowledge) -
  - (a) the landlord is the Council; and
  - (b) the tenant is a body in which the relevant person has a beneficial interest.
- (7) Any beneficial interest in securities of a body where -
  - (a) that body (to my knowledge) has a place of business or land in the area of the Council; and

- (b) either -
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*“relevant person” is defined in the Act and is set out in paragraph 3(1) of this Code of Conduct.*

## **SCHEDULE 2**

### **Categories of Non-Pecuniary Interests**

- (1) Any membership of any body to which I am appointed or nominated by the Council.
- (2) Any gift or hospitality with a value in excess of £50 which I have accepted as a member from any person or body other than the Council.



## **Gifts and Hospitality - Voluntary Registration**

Members may sometimes feel uncertain or uneasy about a gift or hospitality they are offered, even if it is worth £50 or under, or even if they refuse to accept it.

Standards and Audit Committee has approved<sup>1</sup> a voluntary code for gifts and hospitality. This voluntary code is additional to the parts of the Code of Conduct dealing with gifts and hospitality, and it is not formally part of that code.

The voluntary code recommends that members record certain events in a register, even though these do not trigger the requirements to register gifts and hospitality in the Code of Conduct.

Recording events in the voluntary register aids transparency and may assist a member faced with an allegation of a breach of the Code of Conduct.

### **Voluntary Register**

To help protect members, the Standards and Audit Committee approved a voluntary register. Members can record any gifts or hospitality (of whatever value) they (or their relatives) accept or refuse. It may help to have a written record if anyone should challenge your actions later.

You can also record in this register any gifts or hospitality you give to other people - so the circumstances are clearly set down if anyone questions it later.

This voluntary register should be used only for gifts or hospitality you give, accept or refuse in your capacity as a member of the council (though you can record other gifts or hospitality if you think there could be doubt).

You should remember that anything you write in this voluntary register will be open to public inspection and will appear on the Council's website, along with the formal part of the register for gifts and hospitality over £50.

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<sup>1</sup> Standards Committee 15<sup>th</sup> July 2003

## **ADVICE TO MEMBERS - CODE OF CONDUCT - COUNCILLORS' ATTENDANCE AT MEETINGS**

Non-attendance at meetings reflects badly on the councillor and can harm the reputation of the Council. Non attendance is made worse when no apology for absence is made.

Such absence:

- Destroys confidence in a councillor as elected representative
- Shows neglect of a councillor's duty
- Shows a disregard for constituents

The 1972 Local Government Act says a member not attending **any** Council or committee meeting for a continuous period of 6 months is disqualified from being a councillor unless the Cabinet approves the reason for the absence. Such approval can be limited in time or open (in which case the approval ends when the reason no longer applies).

The Code of Conduct includes seven General Principles. One of these is that members should be accountable to the public for their decisions. Another says members should show leadership. They must act in a way that achieves best value for residents and maintains public confidence.

On election, all councillors make a Declaration of Acceptance of Office saying that "*I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.*" This may impose a moral duty to attend meetings as part of the duties of a councillor, but does not impose a specific legal duty to do so, and there is no specific legal sanction to enforce this Declaration. However the fact that the Declaration has been made may be relevant to show whether there is a breach of the Code of Conduct.

The Standards and Audit Committee accepts that councillors have work and other commitments and that it would be unreasonable to expect them to attend every council or committee meeting. However the committee urges councillors to make every effort to attend meetings, particularly those involving non-councillor constituents or members of the public. Where attendance is not possible, an apology should be made, including if the meeting has to be left before it ends

The Standards and Audit Committee approved <sup>2</sup> the yearly publication of records of councillors' attendance at most formal meetings of council bodies, with a note stating as follows:

*This record should not be taken as the only measure of the amount of any councillor's activities - their work also includes:*

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<sup>2</sup> 17<sup>th</sup> December 2007

- *day to day help for the people who live or work in their Ward*
- *listening to and representing the views of those people*
- *going to other less formal meetings and discussions*
- *representing the council and promoting Chesterfield locally and regionally (especially for councillors such as the Mayor, Deputy Mayor and Cabinet members)*

*The Standards and Audit Committee thinks councillors should attend as many of these formal meetings as they can, but also recognises that councillors have other commitments. These include, for some councillors, commitments as members of other local authorities or other public bodies, as well as private commitments.*

## **ADVICE TO MEMBERS - CODE OF CONDUCT - COMMERCIAL AND OTHER LOBBYING OF MEMBERS**

For the Council to be open, accessible, and responsive to the needs of the public, it needs to encourage appropriate participation by organisations and individuals.

Some organisations and individuals will make their views known directly to individual councillors. You may be lobbied by a wide range of people including individuals, organisations, companies and developers. As a general rule, it is an essential element of the democratic system that any individual should be able to lobby the Council or a councillor. However, particular considerations apply when you are dealing with approaches about commercial, planning or licensing matters.

Commercial firms sometimes approach councillors direct, seeking business or contracts with the council. To avoid any suggestion that a councillor may be giving firms a competitive advantage or disadvantage, these approaches should always be passed on to an appropriate officer. The approach will then be dealt with at officer level. In some cases (for example, approaches about major local economic development proposals) officers may then involve key members in informal meetings with a firm on a need to know basis.

There are special dangers for councillors who are lobbied about planning matters. Detailed rules about this are in the Code of Conduct on Planning Matters in this Part.

You might be approached by a voluntary body seeking a grant of funds from the council. The Standards and Audit Committee's view is that a councillor should generally be able to discuss such requests. Unlike contractors or suppliers, such bodies do not usually operate in a commercially competitive environment. However you should take care not to commit the council to any decision. If you are then involved in a formal decision on the request you should be open about any prior discussions and if necessary consider whether to disclose an interest.

You should be careful about hospitality from anyone (whether a firm, individual or voluntary body) which is offered either before or after a council decision or contract. The Code of Conduct says a member must not allow financial or other pressures to deter you from acting in the best interest of constituents, the borough or the good governance of the Council. It also says you must not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence the way you perform your duties.. Some firms will not realise that the Code applies to you, and you may have to politely decline such offers.

However:

- In general, you may attend official hospitality authorised by the council;

- Gifts or hospitality worth more than £50 which are accepted must be registered with the Monitoring Officer as Non-Pecuniary Interests under Schedule 2 of the Code of Conduct unless accepted strictly on behalf of the Council (such as many gifts to the Mayor).
- You may (but do not have to) record with the Monitoring Officer gifts or hospitality worth up to £50 or offers of gifts or hospitality which you have refused.

## **ADVICE TO MEMBERS AND OFFICERS - CODES OF CONDUCT - TREATING OTHERS WITH RESPECT**

This advice is for all councillors and service managers to help them in their work together. Relations between councillors and employees are good and this reminder of some rules is to help to keep them so.

The **Members' Code of Conduct** says a councillor must always treat people with respect, including the organisations and public you engage with and those you work alongside.

Our **protocol on member/officer relations** (agreed with the Unions) goes into more detail. Councillors and employees should show mutual trust, respect and courtesy in all meetings and contacts. They should avoid criticising each other in public forums and in situations where embarrassment might be caused. It is easy for officers (especially junior officers) to be overawed and feel at a disadvantage.

Our **anti-harassment and bullying policy** commits both members and officers to a standard of individual and corporate behaviour that is respectful, courteous and just. All employees and members are entitled to a harassment and bullying free working environment. Harassment and bullying are not condoned at any level.

**Employment law** says that where any councillor clearly harasses or bullies an employee, the employee can resign and claim constructive unfair dismissal. The council could suffer financial loss in this sort of case. There is a legal duty to provide a reasonable congenial working environment.

Sometimes councillors need to speak to employees in a clear and forthright way. If it is necessary to do this, it must be done in such a way as to show respect and not to break these rules.

Breaches of the rules can be dealt with in various ways: by the Monitoring Officer, by Standards and Audit Committee or by the Chief Executive in discussion with the Leader of the Council.

The protocol on member/officer relations and the **Code of Conduct for Employees** make it clear that mutual respect between employees and councillors is essential to good local government. Both should observe standards of mutual courtesy and respect and neither should seek to take unfair advantage of their position or seek to exert undue influence on the other in any circumstances.

## **DISCLOSABLE PECUNIARY INTERESTS AT FULL COUNCIL MEETINGS**

### **1 Summary**

When you are at a council meeting you should leave the chamber if there is any question or discussion about an item in which you have a disclosable pecuniary interest. But you don't need to leave where the council is only receiving or noting such an item (marked with a star (asterisk) in the minute book)

This guide also covers other situations at council meetings.

### **2 Members' Code of Conduct**

The Members' Code of Conduct says you must not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest as defined by law (set out in Schedule 1 of the Code of Conduct).

### **3 Council meetings**

**If I have declared a disclosable pecuniary interest at a cabinet, committee or scrutiny meeting, what should I do at the next full council meeting?**

**Do I have to leave the chamber when the council deals with a matter in which I have a disclosable pecuniary interest?**

The answers depend on how the council meeting deals with the matter - it can:

- Note or receive cabinet or committee minutes without a question being asked;
- Hear a question and answer about a starred (\*) cabinet or committee minute;
- Consider or approve minutes that are not starred;
- Discuss reports about strategies or reports from scrutiny bodies
- Hear answers to questions from the public or from members under special council procedures (e.g. questions on prior written notice).

### **4 Noting or receiving minutes of committees or cabinet (\* starred items)**

At the council meeting, the Chief Executive reads out the dates and page numbers of these meetings, and the Mayor will ask if any member has a question on the minutes.<sup>3</sup>

If there is **no question** about an item where you have a disclosable pecuniary interest, you don't need to say anything and **you can stay in the chamber**.

If there **is a question**, you should declare any disclosable pecuniary interest you have in the item questioned, leave the chamber for that question and answer and wait outside. Someone will tell you when you can come back in.

Our advice is to leave so you can avoid any chance of breaking the Members' Code of Conduct, but the final decision on what to do is yours.

### **What if the question and answer are nothing to do with my disclosable pecuniary interest?**

It is safer to leave because you can't be sure what will be said. The point is - what would people think if you stayed?

### **What about a non-pecuniary interest?**

There's no need to declare it unless not previously registered and you can stay in the chamber.

## **5 Considering or approving cabinet, committee or panel minutes (un-starred items)**

With these, the council isn't just noting the minutes - it's considering or approving them. So whether or not there is a question you should leave the chamber for any item where you have a disclosable pecuniary interest.

The Chief Executive reads out page numbers of the minutes. You should declare any disclosable pecuniary interest you have in any item in those minutes and leave the chamber for that item, which will be taken separately from the others.

### **Why should I leave even when the council meeting just approves or considers a minute without any question or discussion?**

Because the Code says you must not participate in any discussion of, vote on, or discharge any function related in any manner to your disclosable pecuniary interest and the Constitution says you must leave in such circumstances, even though there may be no discussion, the council is

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<sup>3</sup> For Planning, Appeals and Regulatory and Licensing Committees, Employment and General and Standards and Audit Committee minutes, **prior notice** of the question has to be given under the Council Procedure Rules (Standing Orders).



technically deciding whether to approve a minute. This is the difference between the council:

- noting or receiving a minute (starred \* item) and
- approving or considering it.

The advice is for you to leave when the council is approving or considering, but the final decision on what to do is yours.

## **6 Reports about strategies or reports from scrutiny bodies**

Here the Council is making decisions like in a committee meeting. As in such a meeting you should declare and leave the chamber for a disclosable pecuniary interest.

## **7 Questions from the public or from members under special council procedures**

You will have to think whether you need to declare a disclosable pecuniary interest in these - you won't always know what the question will be about, or whether you will have an interest. You should declare any interest as soon as you realise you have one - you can do this at any time during the council meeting.

## **8 Other Points**

### **Should I declare disclosable pecuniary interests when the Chief Executive asks for declarations of interests just after the start of the council meeting?**

Yes, because this is to enable you to declare these interests as soon as possible, but you can also declare them at any time in the meeting that you realise that they arise.

But you needn't declare disclosable pecuniary interests in items the council is just noting or receiving (starred \* in the minute book)

If there is a question about one of these later in the meeting, you may have to declare or leave (see 4 above).

If you forget to declare an interest at the beginning of the council meeting, you can still declare it later, before the item is reached.

The record in the minute book will remind you if you previously declared an interest at cabinet or committee. But you might have an interest that isn't recorded in the minute book - because you weren't on the cabinet or committee, or you weren't there, or because your interest arose after the committee or cabinet met.

**What about interests that aren't recorded in the minute book?**

It is your responsibility to declare disclosable pecuniary interests. They can arise at any time - for example you may not have had an interest when you dealt with a cabinet or committee item, but you might have one later when that item is discussed at full council - your circumstances might have changed.

If you think you have a "new" interest like this you should declare it as soon as you can at any time during the council meeting.

**Can I get advice about interests during a meeting?**

The Monitoring Officer, his Deputy or the Chief Executive will advise on interests. It is better to get advice privately and before the meeting if you can. The Mayor could adjourn the meeting for you to take advice privately but it is better not to hold up the meeting.

**What if I am a Cabinet Member or Committee Chair and I have to answer a question or respond about an item where I have a disclosable pecuniary interest?**

The Leader, Deputy Leader or another Cabinet Member may answer for you. For committee items, the vice chair or another committee member may answer.

**CHESTERFIELD BOROUGH COUNCIL**

**CODE OF CONDUCT ON PLANNING MATTERS**



## **Chesterfield Borough Council Code of Conduct on Planning Matters**

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## **Chesterfield Borough Council Code of Conduct on Planning Matters**

### **1.0 Introduction - Members' Interests in Planning Applications**

- 1.1 Members of the Planning Committee have received training on planning matters and the determination of planning applications. Planning decisions must be made on the basis of material planning considerations. The proper time for making any such decisions is at the meeting of the Planning Committee when all material matters are before members. An application must be dealt with at every stage in a transparently open and fair way.
- 1.2 The decision on whether or not to declare an interest in a planning matter is ultimately for the individual member.
- 1.3 This Code is designed to assist members in deciding whether they have an interest to declare prior to taking part in a decision on a planning matter, and to set out appropriate courses of action in particular circumstances. It is additional to other guidance applying to or adopted by the Council.
- 1.4 The sources of this Code include
- The **Council's Members Code of Conduct**
  - Ombudsmans' Reports,
  - the **Nolan Report**,
  - the July 1998 White Paper **Modernising Local Government**,
  - the Local Government Association's publication **Probity in Planning**,
  - the Local Government Association's publication **Probity in Planning (Update)**,
  - the Royal Town Planning Institute's **Code of Professional Conduct**,
  - District Audit's **Developing Probity in Planning - A Bulletin for Planning Authorities**
  - relevant legal cases,
- 1.5 It is difficult for a Code to deal with every situation which may arise. Ultimately it is for the individual Councillor to consider whether there is danger of bias arising from any particular course of action.
- 1.6 This Code of Practice is additional to the Members' Code of Conduct. Members are referred to the Code, particularly the sections on disclosable pecuniary interests, which should always be borne in mind and acted on, if appropriate, when planning matters are being considered. This Code of Practice is not formally part of the Code of Conduct, but is intended to be consistent with it and to apply many of its general provisions in detail to the work of the Planning Committee.

- 1.7 In any case of doubt appropriate advice should be obtained as soon as possible. The Monitoring Officer, Deputy Monitoring Officer, or the solicitor advising the Planning Committee can advise. It may be preferable to take advice before the meeting begins.
- 1.8 References to a planning application in this Code are equally applicable to other planning matters; for example planning enforcement matters, or planning policy matters.
- 1.9 While this Code is particularly aimed at members of Planning Committee, it also applies to members of the full Council on any occasion that the Planning Committee, in exceptional circumstances, passes matters up to it.
- 1.10 Much of this Code also applies to officers, though officers who are members of the Royal Town Planning Institute are additionally bound by their own code of professional conduct. All Council Officers are bound by the Council's Code of Conduct for Employees (included later in this Part).

## **2.0 Training on Planning Matters**

- 2.1 All members of Planning Committee are required to receive training on planning and conduct matters prior to being involved in the work of the committee.

## **3.0 Consequences of a failure to declare an interest**

- 3.1 Members must consider all the material planning considerations before them with open minds (and be seen as having open minds) at the time of determination of the application.
- 3.2 While it is for the individual member to decide whether there is an interest to declare, the potential consequences of a failure to declare an interest should always be borne in mind: personal bias, or indication of a closed mind or a factor which reasonably suggests that the application was predetermined can have serious consequences for

- the member,
- the planning decision and
- the Council.

## **Standards and Audit Committee**

- 3.3 Failure to observe the Planning Code could result in a complaint about a member to:
  - the Council's Standards and Audit Committee for a breach of this Planning Code or

- the Standards and Audit Committee for a breach of the Code of Conduct or
- another enforcing body (e.g. police or Ombudsman)

### **Court Action**

- 3.4 Failure to declare an interest could result in the decision being judicially reviewed by the courts (on the application by someone aggrieved) and revoked. The cost to the Council of defending a decision in the court is substantial.

### **Planning Appeal**

- 3.5 There is a right of appeal against refusal of planning permission, and the failure of a councillor to declare an interest could be used in support of a case by the appellant that there has been an unreasonable refusal of planning permission; this could have consequences for the outcome of the appeal, and might result in a costs award (for the cost of the appeal) against the Council.

### **Complaints Procedure and Ombudsman**

- 3.6 Failure to declare an interest could also lead to a complaint being made through the Council's complaints procedure, to the Member of Parliament or to the Local Government and Social Care Ombudsman.
- 3.7 The Ombudsman generally takes a wider view of what interests should be declared than the courts. The Ombudsman has power to recommend a financial payment if there is a finding of maladministration which leads to injustice. The Ombudsman can criticise councils and criticise (though no longer name publicly) individual councillors where the wrong impression has been created by the councillor's actions even though no injustice has, in fact, occurred. Therefore it is always best to err on the side of caution.

### **Monitoring Officer and Chief Financial Officer**

- 3.8 In addition the Monitoring Officer and the Chief Financial Officer have responsibilities which might result in them taking action. The Monitoring Officer is under a duty to prepare a report to the authority where the Ombudsman has conducted an investigation.

## **4.0 Declaring an Interest – General Procedure**

- 4.1 Members must withdraw from the meeting and take no part in the debate or decision where required by the Code of Conduct and the Constitution. However there are additional circumstances set out in this Planning Code where a member should withdraw. These relate to when the member may be considered to be biased on a matter or to

have predetermined views. While a member can be predisposed to a particular view their mind must not be closed on the matter.

- 4.2 The nature and existence of your interests (as defined by the Members' Code of Conduct) in the matter should be disclosed.
- 4.3 Such interests can include those of yourself, your spouse or partner. Disclosable pecuniary interests should also have been registered in the register of members' interests under the Code of Conduct.
- 4.4 If your interest is not a disclosable pecuniary interest (see next paragraph) or one relating to bias and pre-determination you can stay and vote on the item, unless you need to withdraw to comply with the Planning Code.
- 4.5 If you have a disclosable pecuniary or bias/pre-determination interest you should withdraw from the meeting and take no part in the debate or decision. If there is a site visit you should not attend.
- 4.6 There is no special form of words for disclosing an interest, however should declare the *existence* and *nature* of any interest. Any declaration of interest should be made before consideration of the matter; there is a special item on the Agenda at the beginning of each Planning Committee to enable you to declare any interest.
- 4.7 If you have a disclosable pecuniary or bias/pre-determination interest or need to withdraw for another reason connected with the Planning Code you should not remain in the meeting, or return (as a member of the public) while the item is under consideration, unless you are remaining in a representational capacity (see Paragraph 12(g)). You will be called back in to the meeting once the item has been dealt with.
- 4.8 When you have withdrawn under either code, but the matter is only part considered at the meeting, you should not attend on any subsequent occasion where the same item is under consideration again. It may be appropriate for you to declare the interest again.
- 4.9 There are exceptions to the general rule about the consequences of having a disclosable pecuniary interest (see the Members' Code of Conduct), and in certain circumstances dispensations might be granted in advance by the Standards and Audit Committee.
- 4.10 If you have declared an interest and withdrawn from the meeting any written representations you have made on the matter will usually be referred to the Committee for consideration.
- 4.11 However, while any material planning considerations raised by you will be taken into account in the decision on the matter (as will material considerations raised by other parties making representations) your representations must be treated in the same way as any other



representations; no special weight shall be attached to your representations by the Committee as a result of your position as a member of the Committee.

## **5.0 Views of Constituents**

- 5.1 The Nolan Committee recognised that there is the need to balance between the need for members to listen and be responsive to the views of constituents and the need to ensure that planning decisions are properly made.
- 5.2 You should be careful not to jeopardise your impartiality or integrity. You must be seen to be acting reasonably and fairly to all the parties concerned. While it is best that an opinion on the merits of the application should not be expressed prior to the committee meeting in such a way as to imply that your mind is made up, the Localism Act 2011 clarified that this will not necessarily be fatal to a decision. This is especially relevant at site and other meetings, when lobbyist may put pressure on you for indication of support. See also below on Site Visits.
- 5.3 In some cases it may be difficult or inappropriate not to express an opinion; if so it needs to be made clear that all the arguments have yet to be heard and the evidence seen before a final view is formed. It should be made clear that only the Planning Committee (or the Officers with delegated powers ) have the power to take decisions; lobbyists should always be advised to put their views in writing so that they can be brought to the Committee's attention in the report or (if a late representation) orally by the planning officer presenting the report.
- 5.4 It is always necessary to balance constituents' interests against those of the whole local community; local opposition or support is not sufficient to determine a planning application without valid and substantiated planning reasons. Similarly the number of letters received objecting to or supporting an application, or the number of signatures on a petition, while an indication of public feeling, is not sufficient to determine an application.

## **6.0 Phone Calls and Meetings**

- 6.1 If a meeting with objectors or applicants is likely to be contentious, it is advisable for a note to be taken at the time of what is said. If possible an officer should attend a meeting. Such notes can be vital in any later appeal, High Court case or ombudsman or complaint about a member.

## **7.0 Pre-Application and Pre-Determination Discussions**

- 7.1 Members may occasionally be present at pre-application and pre-determination discussions. Discussions between an applicant and the Council can benefit both parties and were encouraged by the Audit

Commission<sup>4</sup>, and are encouraged by the Local Government Association and National Planning Forum<sup>5</sup>. However such discussions should not become, or be seen as part of a lobbying process. Any discussions should take place within clear guidelines.

- 7.2 It should always be made clear at the outset that such discussions will not bind a council or the councillor to making a particular decision and that any views expressed are personal and provisional.
- 7.3 Advice should be consistent and based on the development plan and material considerations. Planning policies should be interpreted consistently by planning officers. Officers taking part in discussions should make it clear whether or not they are the decision maker.
- 7.4 A written note should be kept of any meetings and the contents of the note confirmed to those present. At least one officer should attend any meeting and a follow up letter is advisable.
- 7.5 Advice must not be partial or seen to be, otherwise a subsequent report could be seen as advocating a particular outcome

## **8.0 Site Visits**

8.1 Site visits can cause delay to the planning process and are only used when a substantial benefit to the planning process can result. Their purpose is to enable committee members to see the application site, its physical features and the context in which it is set, to visualise the proposed development, and to assess its impact on the locality.

8.2 Site visits are held where:

- the impact of the development is particularly difficult to visualise, or
- Planning Committee requests it, or
- There is good reason why the comments of applicant and objectors cannot be adequately expressed in writing, or
- the right to address the Committee has been requested (where objectors have raised issues relating to impact and amenity), or
- the proposal is particularly contentious

Site visits requested by Ward Councillors will not usually be appropriate unless one of the above factors also applies

8.3 Site visits are part of the meeting of the Planning Committee, If you intend to declare a disclosable pecuniary interest or bias/predetermination interest and withdraw from the meeting on the

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<sup>4</sup> 'Building in Quality' paragraph 56

<sup>5</sup> See National Planning Forum advice note on the Development Team Approach

matter the subject of the site visit you should not attend the site visit. If your interest is not one of these you may attend the site visit.

- 8.4 It is always advisable to attend any site visit as only Planning Committee members who attend the site visit will be permitted to remain at the meeting to consider the item the subject of the visit; it is important that all members considering the matter have the same information before them.
- 8.5 Councillors should either travel to the site at the same time as (or with) the planning officer attending the visit or meet the officer on site. If present at the site before the visit begins particular care should be taken to follow the advice in paragraph 8.10 below. Hospitality or lifts should not be accepted from applicant or objector as this could be seen to show favour. Reasonable adjustments will be made for councillors unable to attend a site visit due to a disability.
- 8.6 Officers will have arranged the visit in advance with relevant parties. There is no right to enter on private land without permission of the owner, and if permission is not given the site will have to be viewed from eg public highway. Similarly third parties cannot enter on private land unless invited.
- 8.7 Site visits can be held either with, or without, objectors and applicants present. Site visits are best restricted to members viewing the proposed development and its environs assisted by officers; they are not for further representations to be made by applicant, supporters or objectors (while occasionally it may be appropriate for them to be asked to point out important or relevant site features they should not be encouraged to express opinions).
- 8.8 The public right to address Planning Committee does not arise until the item is reached on the agenda in accordance with Planning Committee's procedures.
- 8.9 The purpose and format of the site visit will be explained at the beginning of the visit by the planning officer and site visit procedures explained by the Chair or the planning officer (particularly that representations are not to be made). A note should be taken of the names of those attending. If applicant and objectors are present a representative of each should be invited to accompany the visit.
- 8.10 You should not discuss the merits of the application as the proper time for this is in the Committee room after presentation of the officers report and any representations. Nor should you express an opinion on the merits of the application as it might imply that your mind is made up. Even comments on the scenery or locality could be perceived as a comment on the appropriateness of the proposal.
- 8.11 As it is always necessary to balance constituents' interests against those of the whole local community; local opposition or support is not

sufficient to determine a planning application without valid and substantiated planning reasons; the number of people attending a site visit objecting to or supporting an application, while an indication of public feeling, is not sufficient to determine the outcome of an application.

## **9.0 At Planning Committee**

- 9.1 If you are not present during part of the presentation of the report or the discussion of an item, thought should be given to whether a part should be taken in the debate and decision; a key point might have been missed and a member of the public may not think justice has been done.
- 9.2 Under Standing Order 37 as the public have a right to address Planning Committee (subject to the Committee's Public Speaking protocol) you also have a right to address the Committee notwithstanding that you have a disclosable pecuniary interest. However, you must leave the room after making representations and answering questions.

## **10.0 Decisions Contrary to/Different to Officer Recommendation**

- 10.1 If the Planning Committee makes a decision contrary to officer recommendation a detailed minute of the committee's reasons should be made and a copy placed on the application file. Officers should also be given the opportunity to explain any consequences of the decision prior to it being taken. The courts have taken the view that such reasons must be clear and convincing.<sup>6</sup>
- 10.2 Any conditions which Planning Committee wishes to add or amend should be drafted by an officer and in straightforward cases agreed by the Planning Committee at the same meeting, in more complex cases the decision on the wording of the condition should either be delegated to an officer to decide or if necessary brought back by that officer for approval at a subsequent meeting of Planning Committee or Planning Sub Committee.

## **11.0 After Planning Committee**

- 11.1 If you take part in a decision of Planning Committee you should not publicly say or do anything afterwards which might be seen as indicating that your mind was closed on the matter, or that you had a declarable interest in the matter, at the time the decision was made.<sup>7</sup> However Section 25 of the Localism Act 2011 says that prior indication of a view on a matter shall not amount to predetermination.

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<sup>6</sup> LGA

<sup>7</sup> Inserted by Standards Committee 3<sup>rd</sup> March 2000

## **12.0 Specific Examples**

12.1 The following are specific planning-related issues that may arise; the list of situations is not exhaustive, and the facts of the particular case should always be considered.

### **(a) You are the Applicant**

This is a clear case of a bias. You must not get involved in any stage of the determination process nor lobby in any way. Any lobbying is likely to be a breach of the Members' Code of Conduct. An interest should be declared at the earliest opportunity and the councillor must withdraw from the meeting.

### **(b) You own the land the subject of an Application by another person**

This situation could occur, for example, where you are selling your house or land. As (a) above.

### **(c) You are a Friend, Relative or Agent of the Applicant**

As (a) above. Councillors who act as agents for people pursuing a planning matter should play no part in the decision-making process for that proposal.

### **(d) You are a customer/supporter of the Applicant**

In some circumstances close involvement with the applicant should lead to a declaration of an interest, or withdrawal under the rules in this Planning Code.

For example: As a result of an Ombudsman case involving Liverpool City Council a member holding a season ticket for Chesterfield Football Club games or regularly attending matches should declare an interest and not take part in a matter concerning the football club<sup>8</sup>.

The same Ombudsman's decision commented that occasional visits to, for example, a particular shop may be an insignificant interest, but that regular patronage may well give rise to an interest which is significant and should be declared.

This decision was made under the old national Code of Conduct.

### **(e) You live next to, or close to, the Application Site**

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<sup>8</sup> The Ombudsman said that such support "engenders a particularly intense type of loyalty"; the Ombudsman's view has been upheld by the High Court and Court of Appeal.

In such circumstances you should declare a disclosable pecuniary interest, and not take part in the debate.

Any personal concerns about the application should be made in writing (making clear that the concerns are expressed as a member of the public) to the Group Leader Development Management or expressed through another Councillor.

**(f) The Applicant is your Business Competitor**

The courts have held that the mere fact of being a business rival to the applicant (e.g. the applicant is a builder and the councillor is a builder) will not necessarily disqualify a Member from sitting on the planning committee. However, a failure to declare an interest may result in maladministration and a breach of the Members' Code if it is a disclosable pecuniary interest (see the Members' Code), and it is usually advisable to declare an interest and withdraw from the meeting.

**(g) You are Ward Councillor**

Special care is necessary when there is an application within your own ward.

You should remember at all times when on the Planning Committee that you must act in the interest of the wider community, and not just the interests of your own locality or particular individuals.

While you may listen to constituents and report their concerns to committee, you should always advise them to put their concerns in writing to the Development Management and Conservation Manager. This is so that these concerns can be summarised in the report on the application.

You can place yourself in a difficult position if you publicly support a particular view of constituents, either before the meeting or by speaking on their behalf at Planning Committee. This is because you could be seen as having a closed mind when the application is considered by the Planning Committee. If you show firm support, the proper course of action is for you to explain your position at Committee and not to vote on the matter.

Special considerations apply when a constituent wants you to act as their representative. Sometimes it may be difficult to distinguish between reporting concerns and making representations and you may consider it is more appropriate for another ward councillor (one not on Planning Committee) to make such representations, so you can still vote on the application.

Where you take the view that it would be inappropriate to vote for the above reasons and have explained your position, the Local

Government Association has advised that arrangements should be made for the ward councillor to make representations on behalf of their constituents. You will be given the opportunity to make representations after the report has been presented and before any member of the public who has arranged to speak to the Committee. To ensure fairness you will be subject to the same procedure as them.

**(h) You have been Lobbied by the Applicant or Opponents to the Application**

As (g) above, and paragraph 4.0

**(i) You sit as a Parish/Town Councillor and have already considered the matter at a meeting of the Parish/Town Council**

*Brimington Parish Council and Staveley Town Council are consulted on planning applications, and the applications are considered at meetings of the Councils.*

While, under the Members Code, a councillor's membership of outside bodies such as parish councils is an exception to the general requirement to withdraw, if a councillor has taken a firm view at the parish council on a particular planning matter it might be difficult to demonstrate at Planning Committee that he or she had an open mind. The exception would only operate in the planning context if the councillor had scrupulously avoided forming a fixed view on the issue in advance.

As the Councillor must not have a closed mind at the time of determination by the Planning Committee and there should be no perception that his or her mind is closed Councillors should not campaign for a particular outcome of an application at Parish/Town Council level (whether or not they vote on it) and then go on to take part in the decision on the application at the Planning Committee.

A councillor will have to choose whether to form a view at an early stage of the process and campaign for or against but be excluded from the final decision-making; or reserve judgement until all views have been considered and only then form a view.

**(j) (not used)**

**(k) You are a Member of the Cabinet, a Cabinet Member, or Member of a Scrutiny Body and an aspect of the matter has already been considered**

There are situations where the Council is involved in a planning matter from another perspective; for example the Council may own land, or

may have agreed to sell or dispose of land which is the subject of a planning application.

If the Cabinet or Cabinet Member has been involved with a matter which has some direct connection with the planning matter, it will usually be advisable for that Cabinet Member to withdraw from the Planning Committee item under this Code; for example:

- Where a major land sale has been agreed by the Council, the grant of planning permission prior to disposal might benefit the value of the land.
- Financial assistance to proposed development has been approved by the Council and the development is the subject of a planning application.

A member of Planning Committee who sat on Cabinet when planning policies, relevant to the application under consideration, were agreed should not usually have to declare an interest.

The work of the Scrutiny Bodies will involve detailed examination of matters being considered; it may be inappropriate for a member of a panel to sit on the Planning Committee when an application connected to a matter under investigation is before it.

**(l) You are, or are part of a group, campaigning for a particular outcome of the Application**

A Councillor who is, or is a member of a group, campaigning for a particular outcome of an application or who has become closely involved publicly, either for or against the application, should withdraw from the debate. This is because

- membership or close involvement indicates that the Member has a closed mind on the matter.

The member may be unlikely to have a disclosable interest under the General Members' Code.

Similarly members of the Planning Committee should in general avoid organising support for or opposition to a planning application, and avoid lobbying other councillors.

**(m) Views of Political Groups**

While planning applications can be discussed at Group meetings, members of the Planning Committee should always be free to make their own decision on the application and cannot be directed how to vote. However, because Group meetings are not open to the public, there is always the risk of an accusation of predetermination of the



application; this can only be fully avoided if planning matters are not discussed at Group, or only in clearly defined circumstances.

Imposition of a whip means that material planning considerations may be overridden or not considered with an open mind at the time of consideration of the application by the Planning Committee. Therefore a whip should not be imposed on a planning matter.

**(n) Lobbying fellow Councillors or Officers**

Fellow councillors should not be lobbied on planning issues because this could be misconstrued by outsiders.

Officers should not be pressurised to make a particular recommendation or no recommendation at all; the Council and the Planning Committee is entitled to unbiased and carefully considered professional opinion.

However this does not mean that a councillor has any less rights than a member of the public in seeking to explain and justify their own planning proposal to an officer in advance of consideration by Planning Committee.

**(o) Appointment on Outside Bodies**

You are to consider at Planning Committee a matter relating to another public authority in which you hold a position of general control or management, or a body to which you have been appointed by the Council

While these situations are exceptions to the requirement to withdraw under the Members Code, if you have taken a firm view on the matter at the other body it would be difficult to show that you had an open mind at Planning Committee. The exemption would only operate in the planning context if the councillor had scrupulously avoided forming a fixed view on the issue in advance. The advice in (l) is also relevant here

**13.0 Public Representations at Planning Committee**

Members of the public wishing to make representations may address the Planning Committee in respect of applications. There are specific procedures as to how this right may be exercised.

**(a) Can you use the procedure to address the Committee ?**

You might be asked (or wish) to speak to Planning Committee under the system on behalf of a member of the public (or a group) wanting to make representations, or you might want to make representations as you are campaigning about the application.

As a member of Planning Committee you should not usually make or agree to make such representations to Planning Committee (whether or not you have declared an interest in the matter); This is because a third party might feel that the Committee might be inclined to attach more weight to representations made by one of its own members.

**(b) Councillors not on Planning Committee**

Councillors who are not members of Planning Committee may make representations to Planning Committee under the system.

However it is usually not appropriate for a member of Cabinet to make representations to Planning Committee in this way; this is because a third party might feel that the Committee might be inclined to attach more weight to representations made by a member of Cabinet.

**(c) Material Considerations and Fairness**

When making representations, Councillors or members of the public may sometimes raise matters which are not material planning considerations. You should remember at all times that any right of the public to address the committee must be balanced with the need to determine applications lawfully.<sup>9</sup> Decisions of the Committee should not take account of matters which are not material planning considerations.

You should always ensure that the system is applied fairly to both those making representations against a proposal and those making representations in favour of it.

**14.0 Gifts and Hospitality**

You are reminded that the General Members Code has provisions about registration of gifts and hospitality and provisions about not allowing financial pressures compromise your role or placing you under improper obligations to others.

**15.0 Applications by Councillors**

Such applications can easily lead to suspicions of impropriety and this Code already advises at paragraph 12.1 (a) to (c) why a councillor should not play a part in the determination of his or her own applications or those of close friends or relatives. Similar procedures apply to prevent officers

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<sup>9</sup> i.e. in accordance Section 54A of the 1990 Act which states “Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise”.

in the planning department processing their own applications or those of friends or relatives.

So that any such application, or Council Development, is dealt with in an open way it should be brought to the attention of the Monitoring Officer (who will keep a record of it) and referred to the Planning Committee (even if delegated to an officer) .

## **16.0 Council Development**

While some applications are delegated to the Group Leader Development Management to determine, all significant proposals will be referred to Planning Committee.

Applications by the Council for planning permission (or those made by the County Council to this Council) must be treated in exactly the same way as any other application.

## **17.0 Review of Decisions**

The Group Leader Development Management will, where appropriate, arrange reviews of planning matters decided by the Council. This is to enable the Committee to assess the quality of the decisions, to improve the quality and consistency of decision making, strengthen public confidence in the planning system and help with reviews of policy.

However planning applications should always be decided on their individual merit and Planning Committee should not make policies which fetter its discretion. Though government planning advice is placing increased stress on design matters, planning policy as contained in the development plan is not a function of the Planning Committee (though it has the opportunity to comment on it).

## SUMMARY OF SOME OTHER RULES AFFECTING MEMBERS' CONDUCT

### Related Party Transactions<sup>10</sup>

The Code of Practice on Local Authority Accounting requires the Council to disclose material transactions with related parties.

A related party transaction is the transfer of assets or liabilities or the performance of a service to or for a related party irrespective of whether a charge is made.

A transaction is material not only in relation to its significance for the authority, but also in relation to its significance for the related party. The requirement to disclose does not extend to common transactions such as Council Tax, Housing Benefit and Rents.

A related party includes members of the Council, senior officers and members of their close family or household, and partnerships, companies, trusts or other entities in which the individual or a member of his or her close family or household has a controlling interest.

Examples of related party transactions which should be disclosed are:

- The Council leases a commercial property to the partner of an Officer
- The Council buys land from a member of the Council
- A contract is awarded to a firm owned by the son/daughter of a member or Officer.

A form for disclosure of these transactions is available from the Chief Accountant.

The requirement to disclose these transactions is additional to the requirement for members to register or declare interests under the code of conduct.

### Disqualifications for election and holding office as member of local authority<sup>11</sup>

Under section 80 of the Local Government Act 1972, a person shall be disqualified for being elected or being a member of the council if he or she:

- is in the paid employment of the council or certain other bodies associated with the Council, or
- has been adjudged bankrupt, or made a composition or arrangement with creditors; or has within five years before the day of election or

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<sup>10</sup> Applies to officers as well as members

<sup>11</sup> This is a summary only of the law, and certain exceptions may apply

- since election has been convicted of any offence and has had passed on him/her a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
- is disqualified from membership following proceedings for electoral malpractice or under the “surcharge” laws (Audit Commission Act 1998).

Under section 1 of the Local Government and Housing Act 1989 a person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he or she holds a **politically restricted post**<sup>12</sup> under that local authority or any other local authority in Great Britain.

### **Insider Dealing – Criminal Justice Act 1993<sup>13</sup>**

The award of a large contract or planning permission to a publicly quoted company or a decision to take legal proceedings against such a company may affect its share price<sup>14</sup>. A member who knows in advance about such action needs to avoid committing the offence of insider dealing.

A member having such information because of his office as a member, (before the information has been made public) may commit this offence if: the information would be likely to have a significant effect on the price of such shares if the information were made public and the member:

- buys or sells those shares, or
- encourages another person to buy or sell them, or
- discloses the information (otherwise than in the proper performance of his or her duties as a member) to another person

The offence may also be committed without revealing any confidential information if another person is encouraged to act in an inappropriate way.

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<sup>12</sup> A politically restricted post means broadly statutory, chief and deputy chief officers, officers exercising delegated powers, officers regularly giving advice to committees or to the Cabinet or who regularly speak to the media on behalf of the Council, or officers paid at or above a prescribed level (currently SCP 44 which was £29,847 in 2001/02). Exemptions from some of these classifications can be applied for to the Standards and Audit Committee. The Government is to review the definition of political restriction under its 2008 White Paper "Communities in Control"

<sup>13</sup> Applies to officers as well as members. The Act makes it an offence for an individual who has information as an insider to deal on a regulated market or through or as a professional intermediary in securities whose price would be significantly affected if the inside information were made public. It is also an offence to encourage insider dealing, and to disclose inside information with a view to others making a profit or avoiding a loss. No offence is committed unless there is some connection with the United Kingdom which includes dealing on a regulated market which has been identified as being regulated in the United Kingdom.

<sup>14</sup> These are examples only and not an exhaustive list of possible events.

## **Members with Arrears of Council Tax<sup>15</sup>**

Any member who is two months or more in arrears with council tax payments<sup>16</sup> must declare that fact<sup>17</sup> and must not vote at any meeting where decisions are being taken which might affect the calculation of council tax. Any member affected by this rule in a meeting may still speak at the meeting on the matter.

This restriction applies to Council Committees and sub-committees and to meetings of the Cabinet and its sub-committees. It also applies to individual Cabinet Member decisions – a Cabinet Member affected must not exercise any decision making power or take any action which is affected by this restriction.<sup>18</sup>

This requirement covers a wide range of financial items – for example any decision which involves incurring expenditure which is not provided for in the budget for a particular year, or a decision to forego income. Examples of other items could be:

- Decisions on growth items or savings
- Decisions on supplementary estimates
- Decisions on long term contracts

Failure to declare and voting when under these restrictions are criminal offences, for which the Director of Public Prosecutions may take action.

It is a defence for a member to prove that he/she did not know that he/she was two months in arrears, or that the matter in question was for consideration at the meeting.

## **Prohibition on Members Representing the Council in Negotiations with Workforce<sup>19</sup>**

The Council must make sure that members representing the Council in negotiations about the terms and conditions of the workforce are not either:

- Local government employees, or
- Officials in or employed by a trade union which contains local authority employees in its membership

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<sup>15</sup> Section 106, local Government (Finance) Act 1992.

<sup>16</sup> Only the statutory dates for payment are relevant for calculating arrears, and any private arrangements for repayment are ignored. (*DPP v Burton and others 1995 The Times 8<sup>th</sup> June*)

<sup>17</sup> A positive declaration is required – silence and abstention, or leaving the room is not sufficient.

<sup>18</sup> Regulation 28 c of The Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001.

<sup>19</sup> S.12 Local Government and Housing Act 1989

“Negotiations” could include being a member of a committee approving conditions of service generally.

## **"Surcharge"**

Sections 17 and 18 of the Audit Commission Act 1998 repeated earlier statutory powers for district auditors to surcharge illegal expenditure on the members or officers responsible for incurring it.

The Government proposed to follow the recommendation of the Committee on Standards in Public Life to introduce restitution. It said *“Restitution of financial loss should remain a possibility, but only where the councillor or council employee has gained personally at the expense of the taxpayer, when a compensation order should be available as a means of restoring ill-gotten gains to the Council”*.

Parts of section 17 and all of section 18 of the Audit Commission Act 1998 have now been repealed.

The government intended to introduce a new offence of **"misfeasance in public office"** to replace the **"surcharge"** laws.<sup>20</sup>

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<sup>20</sup> The Joint Committee on the Draft Corruption Bill 2002-03 considered the common law offence of “misconduct in public office” in their report. They found that: The draft Bill does not contain a statutory offence of ‘misuse of public office’. The Committee on Standards in Public Life (under Lord Nolan) published a consultation paper in July 1997 recommending a new statutory offence of ‘misuse of public office’ **as a replacement for surcharges on councillors**. This issue was not mentioned in the Law Commission report of 1998. Meanwhile the common law offence of ‘misconduct in public office’ has been revived in recent years as a means of prosecuting police officers in particular. There is also, in civil law, the tort of ‘misfeasance in public office’. The Law Commission has proposed a statutory offence of misconduct in the context of new fraud legislation. The Director of Public Prosecutions said: “I can see great advantage for public servants in having a misconduct offence which was statutory rather than dredged up from the Middle Ages”. Transparency International (UK) said: “A separate offence committed by a public official or servant could be a useful tool for upholding public integrity in cases where to mount a full corruption prosecution would present insuperable difficulties eg the corruptor is beyond the jurisdiction”.

However, they concluded: The draft Bill does not seem to us the appropriate vehicle for giving a statutory definition of misconduct in public office. At the request of the Government, the Law Commission published in a consultation paper *Reforming Bribery* in November 2007. This was a comprehensive review of the options for legislation. It proposed broadening the offence of bribery to avoid the need for an agent to betray a principal as in current legislation. The offence would be committed by someone who offers an advantage to another as a reward for breaching a trust, or breaching a duty to act impartially or in the best interests of another person. The person soliciting or taking the advantage would also be guilty and agreeing to use one’s influence to persuade someone else to breach a duty would also be an offence of bribery. The Commission also proposed a new offence of bribing a foreign public official. Consultation closed in March 2008 and the Commission published a final report, with draft bill in November 2008..The Government published its Draft Bribery Bill on 25 March 2009. It does not include proposals for a statutory offence of misconduct in public office.





# Protocol on Member/Officer Relations<sup>21</sup>

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## 1 Introduction

- 1.1 The purpose of this protocol is to guide Councillors, co-opted members and officers of the Council in their relationships with one another. The third report on the Committee on Standards in Public Life, chaired by Lord Nolan, recommended that *"Every local authority should have its own written statement or protocol governing relations between members and officers"*.
- 1.2 The Protocol seeks to reflect the principles underlying the respective standards of conduct for Councillors and officers which are contained in separate Codes of Conduct. It seeks to cover issues arising from the close working relationship which is needed between Members and officers if high quality services are to be delivered and if mutual confidence between Members and employees is to be maintained.
- 1.3 This Protocol does not seek to cover every eventuality but does seek to strengthen the good working relationships which already exist, to clarify any possible areas of doubt which may exist and to offer advice as to how any difficulties might arise without recourse to the more formal Grievance Procedure or Harassment and Bullying Policy.

## 2 General Principles

- 2.1 The Council has adopted a Code of Conduct that is based on the LGA model and which contains statutory and discretionary requirements. Principle number 4(9) and (10) are particularly relevant to Member/Officer Relationships is reproduced below:

A Member's conduct must particularly address the statutory principles of the Code of Conduct by:

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<sup>21</sup> Note: the Constitutions Direction requires councils to include this protocol in their constitutions if they have one. This Protocol was approved by Standards Committee on 11<sup>th</sup> April 2002, by the full council on 24<sup>th</sup> April 2002, and so far as it affects employees was approved at a meeting of the JCC on 25<sup>th</sup> April 2002.

(9) *Valuing...colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government*

(10) *Always treating people with respect...*

2.2 If Member/officer relationships are to be conducted in a positive and constructive way it is important that both parties should observe standards of mutual courtesy and respect. Neither party should seek to take unfair advantage of their position or seek to exert undue influence on the other party in any circumstances.

### **3 Roles & Responsibilities**

#### **3.1 Members**

3.1.1 All Members are required by law or by this Constitution to:

- (a) Comply with the Members' Code of Conduct;
- (b) comply with the rules in this Constitution including Financial Regulations; and
- (c) comply with all relevant statutory provisions.

3.1.2 Councillors may have a number of complex roles including politician, policy maker, representative and constituent advocate. It is not the role of the Councillor to involve themselves in the day to day management of Council services.

- Councillor - in this capacity Councillors will usually belong to particular groupings represented on the Council and will express political values and support the policies of the group to which they belong.
- Policy Maker - Members may have personal, individual or collective responsibility depending on their role for the local authority organisation and its activities. They set the direction of the Council; are responsible for ensuring that adequate management arrangements are in place; develop and allocate the Council's physical, financial and human resources and monitor the performance, development, continuity and overall well-being of the organisation.
- Ward Member - in this capacity Councillors interpret and express the wishes of the electorate, advocate on behalf of constituents and seek to account for service priorities, allocation of resources and ultimate performance of the Council. Councillors may also be appointed to outside bodies and the role can vary from representing the views of the Council to acting according to individual judgement.

### 3.1.3 Members, collectively, therefore need to:

- Determine vision and values and ensure staff commitment.
- Ensure standards are properly established and monitored.
- Link service and corporate objectives.
- Seek best value in service provision
- Enable local people to resolve problems and issues faced by the community.
- Ensure community needs are fed into strategy formulation and service provision.
- Develop and support community leadership.

### 3.1.4 The Mayoralty

The Mayor has a representative role on behalf of the Council and the Borough to local residents and those who work or study in the Borough. The position is non-political and this must be reflected when invitations to functions are accepted. It is reasonable for the Mayoralty to be supportive of local business, but the Office should not be abused with regard to commercial promotions. The Mayor should not use his or her Office, nor Council officers, to by-pass recognised systems of working.

## 3.2 Officers

3.2.1 Officers are employed by, and serve, the whole Council. They advise the Council, its Cabinet and Committees, and are responsible for ensuring that the decisions of those bodies as well as decisions delegated directly to officers are effectively implemented. All are required to be politically neutral (except those exempted by the Local Government and Housing Act 1989)<sup>22</sup> and all are required to abide by the Borough Council's Code of Conduct for Employees.

3.2.2 Officers are responsible to their line manager and ultimately their service manager. Service managers have professional responsibilities and accountabilities to the Chief Executive who has responsibilities for the proper management of the Authority's staff. Some service managers have specific statutory responsibilities as well.

3.2.3 The Chief Executive, Executive and Finance Directors, Service Directors, Service managers and other senior officers will inevitably need to work closely with members of the Majority Group or Groups if there is to be effective policy development and decision-making. This relationship has to function without in any way compromising the ultimate responsibility of officers to the Council as a whole. This

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<sup>22</sup> As part of the fiduciary duty of authorities owed to their ratepayers etc. officers have a legal duty to protect the public interest - *if an order be made on a county treasurer to pay expenses wholly disconnected with county matters, it would be his duty to disobey it.* (R. v Saunders 1854)

relationship also has to have due regard to such technical, professional, financial and legal advice that officers can legitimately provide to individual members and other political groups on the Council.

#### **4 Mutual Respect & Courtesy**

- 4.1 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between members and officers.
- 4.2 A balance between formality and informality in member-officer relations needs to be struck. There are dangers in over-emphasising informality, just as unnecessary formality is unduly restrictive. It would appear sensible that in all decision-making arenas, formal relationships need to be maintained. More informal relations however, may be appropriate in Scrutiny Bodies, outside bodies and some ad hoc committees.
- 4.3 It is very important that both members and officers remember their respective obligations to enhance the Council's reputation and avoid criticism of members, or officers, in public forums and in situations where embarrassment might be caused. If an officer is in breach of this requirement some form of disciplinary action will result. If a member is in breach then the matter may be referred by the Monitoring Officer to the Standards and Audit Committee.
- 4.4 It is an inevitable consequence of political life that there may be occasions on which a member feels bound publicly to criticise the Council. However, before doing so, it is important that the member has taken adequate steps to verify the accuracy of the facts upon which such criticism is based.

#### **5 Undue Pressure/Bullying**

- 5.1 In their dealings with officers (especially junior officers) members need to be aware that it is easy for officers to be overawed and feel at a disadvantage. Such feelings can be intensified where members hold official and/or political office.
- 5.2 A member should not apply undue pressure on an officer either to do anything that he or she is not empowered to do or to undertake work outside normal duties or office hours. Particular care needs to be taken in connection with the use of Council property and services.
- 5.3 Similarly, an officer must neither seek to use undue influence on an individual member to make a decision in their favour nor raise personal matters to do with their job nor make claims or allegations about other staff.

- 5.4 Any act against an individual may be regarded as a form of bullying, intimidation or harassment if it is intended to influence unfairly that person's actions, thoughts or deeds. While no policy statement can give guidance on every instance where such behaviour may occur the Council is committed to promoting standards of behaviour which reflect the proper, professional, working relationship which should exist between members and officers at all times and to ensure normal standards of courtesy and behaviour between individuals. It is unacceptable for members or senior officers to seek to take unfair advantage of their position within the organisation. A separate document outlining the Borough Council's Harassment and Bullying policy sets out, in more detail, the issues discussed above.
- 5.5 Cabinet Members/Chairs of Committees will routinely be consulted as part of the process for preparing reports. However, it must be recognised that in many situations a service manager, or another officer authorised by him or her, will be under a duty to submit a report on a particular matter. Similarly, an officer will always be fully responsible for the contents of any reports submitted in his or her name. Although Cabinet Members/Chairs may make suggestions as to the content of reports the report is the officer's and any amendments can only be made by officers. However Cabinet Members do have the option of writing comments on reports before they go to Cabinet (see Cabinet Procedure Rules). Any issues which cannot be resolved as a result of discussion between a Cabinet Member/Chair should be referred to the Chief Executive for resolution.

## **6 Familiarity**

- 6.1 It is important that there should be close working relationships between Councillors and officers in certain instances, for example between Cabinet Members and the relevant Officer. However, such relationships should never be allowed to become so close, or appear to be so close as to bring into question the officer's ability to deal impartially with other members and other parties.
- 6.2 Close personal familiarity between individual members and those officers with whom they come into regular contact can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, e.g. personal details.
- 6.3 Such familiarity could also cause embarrassment to other members and/or other officers and even give rise to suspicions of favouritism.
- 6.4 For the above reasons close personal familiarity should be avoided.

## **7 Correspondence**

- 7.1 Care should be taken by officers when dealing with correspondence (including email) from members. Where it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of blind copying” must not be employed.
- 7.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister, other politicians and constituents) for a letter to appear over the name of a member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out over the name of a Member.

## **8 Involvement of Ward Councillors**

- 8.1 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the electoral ward or electoral wards affected should as a matter of course be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the local member(s) should be notified at the outset of the exercise.
- 8.2 Councillors will, wherever practicable, also be notified of any formal visits by the Mayor or Deputy Mayor of the Council to Borough Council sites or establishments in a Councillor's electoral ward.
- 8.3 Officers must at all times keep Members fully informed about any issues which they consider to be significant and which affect their electoral wards or bodies on which they represent the Authority.

## **9 Public Relations & Press Releases**

- 9.1 Officers are responsible for the preparation of Borough Council press releases which will often contain quotations (within the limits of the Local Government Act 1986) of statements by the Leader, the relevant Cabinet Member or Chair of Committee whose service is involved and from the Mayor or Deputy Mayor about civic or ceremonial events. Such press releases are issued on behalf of the Council and it would not, therefore, be appropriate when repeating quotations from Members to indicate their party political affiliation nor to attribute policies or initiatives to the ruling group.
- 9.2 Similar considerations apply to the Borough Council newspaper, ‘Your Chesterfield. The timing and content of this is controlled by an editorial team who must ensure that the content reflects a corporate point of view.

## 10 Officer Advice to Political and Party Groups

- 10.1 There is statutory recognition for political groups and party groups are a well established feature of modern local government. It is common practice, particularly for party groups, to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to the deliberations by both political and party groups.<sup>23</sup>
- 10.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Cabinet Member, Chair or Spokesperson prior to a Committee meeting to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, it is an important principle that such support is available to all political groups.
- 10.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:
- (a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed;
  - (b) political group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council

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<sup>23</sup> *We can see nothing improper today in Council officers attending political meetings of a group of Council members if invited to do so. Their presence does not convey assent to party political views but gives the opportunity to hear the germination and development of ideas which, particularly if they are the ideas of the majority party, may develop into council policy. That knowledge will both alert them to issues which they may ultimately have to address professionally and, in some cases, afford an opportunity ... "to give a steer" as to the practicality and propriety of ideas before they become policy. Equally, it is entirely appropriate for officers to provide councillors, of majority and minority parties, with information about their local authority and its inhabitants which is available to the officers and which can be supplied at modest cost. What officers should not do, however, is imperil their independence by political partiality, suppress their professional views in the face of contrary political pressure, or lend support to policies of a party-political or sectional-serving character which are not in the interest of the authority's council-tax payers as a whole.*

(Porter v Magill etc. Divisional Court 96 LGR 157)

decisions and it is essential that they are not interpreted or acted upon as such;

- (c) similarly, where officers provide information and advice to a political group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Cabinet or relevant Committee when the matter in question is considered; and
- (d) Members often seek officers' assistance in drafting resolutions or amendments which they wish to move at a meeting. It is proper for an officer to advise on the wording of such a proposal to ensure it is accurate, practical and lawful but there can be no inference that the officers supports the substance or merits of the proposition.

10.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a political group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Members' Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.

10.5 Officers must respect the confidentiality of any political or party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group. It follows that whilst there is no reason why other such groups should not be aware that a Group has sought and received officer advice or be inhibited from requesting officer support themselves no political point should be made of that fact.

10.6 Any particular cases of difficulty or uncertainty in this area of officer advice to political or party groups should be raised with the Chief Executive who will discuss it with the relevant group leader(s).

## 11 **Unresolved Issues**

11.1 Any unresolved issues under this Protocol should be referred to the Leader of the Council and the Chief Executive for decision, who in turn may refer the issue to the Borough Council's Standards and Audit Committee for determination.

## 12 **Conclusion**

12.1 Mutual understanding, openness on sensitive issues and basic respect are the greatest safeguards of the integrity of the Council, its Members and officers.



# Employees' Conduct

*In March 2018 the Council adopted a new Code of Conduct for Employees. This replaced a code that had been in place since 2004 (when the government issued a draft code of conduct) and before. The government's own proposals for a statutory code of conduct for employees have not progressed since 2005.*

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## SECTION 1: GENERAL GUIDING PRINCIPLES POLICY STATEMENT

The public is entitled to expect the highest standards of conduct and behaviour from all employees who work in local government. The role of local government employees is to support the council in achieving its objectives, developing and implementing policies and delivering services to the local community.

The code of conduct describes minimum expected standards that protect the integrity of both employees and the council; underpinning the code of conduct is a set of values that are vital to the council's success. The values help us to maintain and improve how we work with each other, our partners and customers.

The council has four values that underpin the code of conduct and standards expected from employees: -:

- *Customer focused*: Delivering great customer service, meeting customer needs
- *Can do*: Striving to make a difference by adopting a positive attitude
- *One council, one team*: Proud of what we do, working together for the greater good
- *Honesty and respect*: Embracing diversity and treating everyone fairly.

### SCOPE

The policy shall apply to all council employees which includes work experience placements and those on working on behalf of the council e.g. contractors, consultants, agency staff and volunteers.

### PRINCIPLES

The code of conduct translates the values into standards and behaviours which employees are required to demonstrate whilst performing their duties. It also provides safeguards for employees and gives them mechanisms by which they are able to provide a professional service of which they and the council can be proud, whilst creating a respectful and positive working environment.

The code of conduct provides clear guidance to ensure that employees are aware of their responsibilities in relation to conduct and behaviour and the consequences of failing to observe those responsibilities.

This code of conduct forms part of every employee's contract of employment and all employees should read and understand this code. Breaches of the code of conduct will lead to an investigation, the results of which may lead to disciplinary action and, if serious, could lead to dismissal.

The 7 principles of public life, known as the **Nolan principles**, apply to anyone who works as a public office-holder. This includes people who are

elected or appointed to public office, nationally and locally, and all people appointed to work in local government. The 7 principles are:

1. **Selflessness** - holders of public office should act solely in terms of the public interest.
2. **Integrity** - holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity** - holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. **Accountability** - holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. **Openness** - holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty** - holders of public office should be truthful.
7. **Leadership** - holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **SECTION 2: PROCEDURE**

### **Standards of behaviour**

The council expects certain standards of behaviour from its employees. You should ensure that:

- You treat colleagues, customers and members of the public with dignity and respect;
- You are committed to delivering quality services at all times working within the council's policies and procedures;
- You communicate openly and honestly with colleagues;
- You carry out your duties in the best interests of our customers and the council;
- Your conduct is not discriminatory to others;
- You do not use offensive or abusive language or behaviour;
- You do not use your council position to influence or benefit yourself, family or friends from the provision of council services.
- You arrive for work punctually, appropriately dressed and fit to carry out your duties (this includes wearing your identity badge and items of personal protective clothing that are supplied to you);
- You take reasonable care of your own health and safety and others that may be affected by your work activities.

### **Political neutrality**

As a council employee, you service the council as a whole. You must serve all councillors not just the controlling group and make sure you respect their

individual rights and follow the protocol on member/officer relations. You must not allow your personal or political opinions to interfere with your work or your behaviour as a council employee.

The council is required by the Local Government and Housing Act 1989 to maintain a list of politically restricted posts. If you are employed in a restricted post you will have been notified of this in your contract of employment which prevents you from having any active political role either in or outside the workplace. It means you are disqualified from being elected or holding office as a member of this council. You are also disqualified from standing or holding office with this council if you hold any paid office or employment with a local or joint authority on which this council is represented.

### **Social media**

Social media websites are useful tools for communicating and engaging with the public. You must make sure that your use of, and participation in, social media websites does not bring the council into disrepute, or breach their obligations under relevant legislation or council policies. While this media has many benefits it also presents risks to you and the council, particularly due to its widespread use outside of work and the fact that social media can blur the boundary between work and personal life.

You should take care to use social media, whether for work purposes or personal use, in a manner that is consistent with the terms and conditions of your employment e.g. you should not post content that breaches confidentiality, contains inappropriate comments about colleagues or customers, is abusive or hateful or would potentially cause embarrassment or detrimentally affect the reputation of the council. In addition, where appropriate, you should identify that any views expressed are your own and not those of their employer. You should think carefully about what you publish even outside of work because inappropriate use could lead to disciplinary action.

You are also reminded of the expected behaviours required when posting on aspire and other public forums and that you agree to the following rules:

- Contributions must not be inappropriate e.g. must not be abusive, offensive, harassing, defamatory, threatening, obscene, profane, sexually orientated, unlawful, an invasion of someone's privacy or in breach of any council policy.
- Please respect others: read what you write before you post it and think if anyone else could misinterpret it and find it offensive or of a personal nature.

Please refer to the policy on use of ICT by employees for further information which contains detailed provisions on the use of the council's ICT facilities for both council related activities and personal use and the standards of behaviour expected from employees in relation to their use. Failure to adhere to such guidance may result in the individual being subject to disciplinary procedures.

### **Use of e-mail**

Council e-mail accounts should only be used for work-related correspondence and you should follow the policy on use of ICT by employees. You should be aware that the sending/exchanging of excessive numbers of personal e-mails during working time is not acceptable and may be dealt with under the council's disciplinary procedure. You may not use council e-mail for personal commercial purposes e.g. e-bay, or the supply of goods and services.

### **Internet usage**

You should only access sites or services that are appropriate to your work, occasional personal use in your own time is permitted, but such use should be minimal and in no way infringe upon work time. You should be aware that excessive use of the internet for personal purposes may be dealt with under the council's disciplinary procedure.

The council does not allow its equipment to be used for intentionally accessing information of an unlawful, unethical and/or degrading nature, (e.g. pornography, paedophilia or terrorism). You should be aware that accessing such inappropriate information could constitute gross misconduct and therefore place your employment at risk.

### **Personal devices**

All personal devices e.g. mobile phones, tablets are the responsibility of the employee when on council property and working in designated customer service areas. Employees should not have their phones on them whilst in customer service areas, they should be kept with other personal items eg handbag. Employees must be mindful of moderation of tone, volume and language when using mobile phones on council premises.

It is an offence under the Road Traffic Act to use a handheld mobile phone whilst driving. Using a handheld mobile phone whilst driving on council business is not permitted.

### **Gifts and hospitality**

You must not compromise your position by appearing to accept, or accepting gifts/hospitality which might be considered by others to have influenced your decisions or actions on behalf of the council.

You may accept 'token' gifts from customers or contractors e.g. calendars, diaries, pens or chocolates. In no circumstances should you accept a monetary gift, (including gift vouchers).

You should only accept hospitality e.g. meals / refreshments, if there is a genuine need to impart information or to represent the council. You should also ensure that accepting the hospitality does not create a conflict of interest and is not likely to cause embarrassment to the council.

You should report the offer of gifts or hospitality, whether accepted or not, to your line

manager at the earliest opportunity.

The impression of improper influence can also arise if employees provide hospitality, especially to organisations seeking business. Any hospitality given should be appropriate and justified in the public interest.

### **Secondary employment**

An employee who wishes to take another job, before commencing the second job, has an obligation to declare details of the secondary employment to their line manager.

The council reserves the right, at any time, to discuss the situation if, in the line manager's reasonable view, the second job is having an adverse impact on the employee's performance, attendance, timekeeping or any other aspect of the employee's employment with the council. . Please refer to the policy on secondary employment for further details.

Employees are required to comply with the Working Time Regulations, including declaration of hours worked, breaks taken and taking of annual leave. Employees also have a duty to report any instances where their working pattern may result in a health and safety risk, either to themselves or others. For example an employee working a day shift with the council who then goes on to work a night shift with another employer. Employees have the right not to be subjected to any unlawful detriment by reporting any concerns under the regulations.

### **Fitness for duty**

Matters of employee sickness absence are dealt with in line with the Managing Attendance Policy however you should not present yourself for duty in an unfit state (e.g. through alcohol or drugs) and should remain in a fit state while on duty. Please refer to the drug and alcohol misuse policy for further details.

Drinking alcohol whilst on duty and the taking of recreational drugs for non-medicinal purposes is strictly prohibited. Only medication prescribed by your GP or purchased over the counter may be taken. You must make sure that you are fit for duty if on call or about to start work. You must be mindful of the effect your behaviour will have on the reputation of the council and disciplinary action will be taken against you if your ability is impaired by alcohol or drugs whilst on duty.

You have a duty to inform your line manager if you are taking any medication which interferes with the safe performance of your role. Your manager will then decide after discussion with yourself, and if necessary in consultation with Occupational Health, what work can safely be undertaken with due regard to your welfare.

You also have a duty to inform your doctor, if you drive or work with dangerous machinery, when they are prescribing medication. You should also refrain from over medicating while at work or if you are about to start work, with either prescribed or over the counter medicines by exceeding the recommended dosage.

You must report any concerns you may have about a colleague's or any other employee's fitness for duty to their manager. Such reports will be treated

confidentially and the manager will take appropriate action.

### **Conflict/disclosure of personal interests**

You must not allow personal interests to conflict with the council's business and you must not use your council position, facilities or equipment to benefit yourself, family, friends or a private company/interest.

You must register with your line manager any interest you/your spouse/partner has which may conflict with the council's interest. This includes any employment by, substantial shareholding in or membership of any external company or body which has, or may enter into a contractual relationship with the council or which is involved in campaigning or lobbying in respect of any council activity.

The same principles apply to work carried out through partnership arrangements. If you are involved in any type of partnership working with other agencies/companies and there appears to be a potential conflict of interest, you must also register this as described above.

Disclosure must be made as soon as it becomes evident there is or may be a conflict of interest. It may come to light in processes such as recruitment, tendering or during committee meetings. It must be declared immediately if you, a relative or friend has, or could be perceived as having, a personal interest in the process. Arrangements should be made to protect both the council and the employee's position.

You must also declare membership of any organisation not open to the public, which requires allegiance and which has secrecy about rules, membership or conduct.

### **Criminal charges**

You are responsible for informing your line manager immediately if you are charged, subject to legal proceedings or receive any criminal convictions and / or police cautions while employed by the council. Failure to do this will be dealt with in accordance with the council's disciplinary policy.

The council may take action against you if you are convicted of, or receive a caution for a criminal offence that involves one of the following types of behaviour:

- Violence
- Abuse including domestic abuse
- Sexual misconduct including being subject to sex offender/ sexual harm notification requirements and sexual risk orders
- Supplying and manufacturing drugs
- Drink-driving offences
- Fraud, corruption or bribery
- Serious offences involving dishonesty
- Hate crime
- Any serious criminal offences for which you receive a prison sentence.

You must not do anything in your personal conduct that may affect the public's confidence in you as an employee of the council or potentially bring the council into disrepute if it were to be in the public domain.

## **Disclosure of information**

All employees have an absolute duty to respect the confidentiality, integrity and availability of information they have access to in the course of their duties. This duty includes the legal obligations to comply with the Data Protection Act 1998, General Data Protection Regulation 2016 and the Freedom of Information Act 2000. Further advice and guidance can be found in the Data Protection policy.

## **Dress**

The council does not have a formal dress code. Employees who are required to wear a uniform or protective clothing to perform their duties will be provided with what is required and must wear this as instructed. Cultural dress is encouraged providing it does not become a health and safety risk within the working environment.

You should be mindful that the way you present yourself may reflect upon the council's reputation. You must dress in a manner that is appropriate to your role and has due regard to social acceptability, tidiness and personal hygiene.

## **Personal relationships**

You must not be involved in making decisions that directly affect your family, friends or anyone with whom you have a close personal relationship; for example, recruitment and selection processes, disciplinary processes, decisions relating to pay, or tender procedures.

### *Councillors*

Mutual respect between employees and councillors is essential. Close personal relationships between employees and individual councillors can damage this respect and prove embarrassing to other employees and councillors and should therefore be avoided.

### *Customers*

Employees in close contact with vulnerable customers must maintain professional relationship's at all times. Appropriate boundaries should be made clear from the outset whilst being sensitive to the customer's personal history and how that might affect the relationship. If you are working with children and vulnerable adults please refer to the Safeguarding children and vulnerable adults policy and procedures.

### *Employees*

During recruitment, candidates are required to declare any personal relationships they have with councillors or employees. You must inform your line manager immediately if you identify an applicant that you have, or could be seen to have, a close personal relationship with. Alternative management arrangements will be put in place, where possible, if a candidate is appointed who should be managed by, or will manage, a relative or someone with a close personal relationship.

Close relationships that develop during the course of employment between employees must be declared by both parties to their manager. Alternative working arrangements will be put in place if it is likely to cause a conflict of interest.

### *Contractors/ third party*

If you are dealing with a contractor/ third party with whom you have previously had or currently have a close personal relationship, you should declare that relationship to your



manager.

### **Off duty**

Employees must not undermine public confidence in the council in any way. This means your behaviour, both in and out of work, must not jeopardise your employment, undermine the trust placed in you as a council employee or bring the council into disrepute. Although when you are off duty what you do is your personal concern, you must not allow work and private interests to conflict.

### **Personal use of council equipment**

The council provides work equipment for employees to use to carry out their duties. You must not use council facilities, equipment or vehicles for your own personal use unless you have been given advance approval.

You are responsible for the safekeeping and proper use of any equipment issued to you and must take reasonable steps to protect it from theft or damage e.g. do not leave equipment visible in an unattended car.

You are also responsible for ensuring that you process all information in accordance with the council's policies and that all confidential information is kept secure.

You are expected to achieve an acceptable level of performance of work in accordance with the requirements of your job, your contract, relevant work schedules and your hours. You are expected to comply with all procedures covering the work you undertake and not obstruct efficient working.

You must comply with all reasonable instructions from your manager. You have a right, and indeed an obligation, to seek clarification or question an instruction in an appropriate circumstance, but, having received clarification and/or confirmation of the instruction, you should follow the instruction as required by your manager. Any lingering concerns should be raised with a more senior manager.

This does not mean, however, that you would be expected to act in contravention of your statutory duties or professional codes and any apparent disagreement between a given instruction and a statutory duty or a professional code should be raised immediately with a more senior manager.

### **Timekeeping**

You are expected to comply with your starting and finishing time, including those for breaks. Repeated lateness without legitimate and acceptable reason is not acceptable and will be dealt with in accordance with the disciplinary policy.

If you have a recognised agreement with your manager then flexible working arrangements may be in place. The details of such arrangements will be confirmed specifically and documented by your manager. You are expected to act responsibly regarding any flexible working arrangements and not to abuse them. Flexible working arrangements will be reviewed regularly and they may need to change if the service necessitates the arrangement changing. Please refer to the flexible working policy for further details.

### **Reporting of complaints or incidents**

You are required to report in a timely manner any complaints about service delivery, any incident of unacceptable behaviour towards the public/ employees or malpractice which have been noted, reported or alleged. This includes concerns relating to safeguarding children and vulnerable adults. You should refer to the confidential reporting 'whistleblowing' policy, if appropriate.

Employees are required to assist in any investigations of any complaint, disciplinary, and/or criminal investigations, this may include attending meetings/hearings, giving evidence or providing written statements.

Any behaviour or actions, which hinder or delay investigations, will themselves be investigated and may result in disciplinary proceedings.

### **Health & Safety**

All employees have the responsibility to ensure that they take constant care in their work of the health, safety and welfare of themselves and others who may come into contact with them, or be affected by them, or their work, and that they do nothing to put this at risk. All employees have a duty to comply with the provisions of the corporate health & safety policy.

You are required to know, and to follow meticulously, general procedures such as the fire procedure, manual handling loads and the accident reporting procedure, and any other specific procedure relating to your work (e.g. procedures for safe handling of equipment, wearing of protective clothing and equipment such as masks or goggles, reporting notifiable diseases, reporting hazards, isolating and handling dangerous equipment, warning work in progress, hygiene etc.). Employees are personally responsible for ensuring that their practice is in accordance with the procedures laid down by the council. All employees have a responsibility for ensuring that incidents are reported in a correct and timely manner.

### **Support and guidance**

Further support and guidance on the code of conduct are available from your manager or HR.

## **APPENDIX A- DISCLOSURE OF INFORMATION HELD BY THE COUNCIL**

Information can be disclosed to third parties (e.g. other organisations or members of the public) if the information is publicly available under the Access to Information Act, Freedom of Information Act or other legislation. Difficulties arise where information which is not available for public inspection is requested by agencies such as Social Security, the Police, creditor organisations or individual members of the public. The following four categories. are relevant:

### **1. Specific Statutory Rights**

Certain bodies have a statutory right to inspect certain records. An example would be the DSS in relation to certain Council employee records. The right should be clearly stated in the request and checked if necessary before compliance.

### **2. Data Protection and Freedom of Information**

Advice should be sought from the Council's Data Protection Officer or the Head of Regulatory Law on what can be disclosed and to whom, under the Data Protection legislation or Freedom of Information Act.

Examples where data should be released are where:

- the information has to be given to an organisation because it has a legal right to require it (para. 1 above)
- the information must be made public by law
- information which if not released would prejudice:
  - prevention or detection of crime or,
  - apprehension or prosecution of offenders.

The Freedom of Information Act has several exemptions where information may not have to be disclosed, but in most cases a public interest must also be applied.

### **3 Breach of Confidence**

If information is not **personal data** (which can include written as well as automated information about people as from 24<sup>th</sup> October 2001), the Data Protection Act does not apply to it

Information obtained in circumstances where there is an express or implied duty of confidence, should not be released, unless any other rule applies, or unless the giver consents.

Whether information has been gained in confidence depends on the circumstances. However, disclosure of such information may be justified in the public interest. This is case law rather than statute law, and is less clear than the Data Protection Act. Similar considerations will, however, apply, e.g. as to the public interest in prevention or detection of crime.

Other possible common law factors are breach of copyright defamation, and negligence in dealing with inaccurate information which causes financial, physical or emotional harm

**4 European Convention on Human Rights.** Article 8.1 provides the right to respect for private and family life, home and correspondence

However, Article 8.2 provides that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of...public safety...the prevention of disorder or crime,...the protection of health or morals...or the protection of the rights and freedom of others.

In practice these exceptions reflect the exceptions which apply to data protection and breach of confidence. Please consult the Legal Section in particular cases where you are not clear on how these rules apply.

## **Appendix B: The Seven Principles of Public Life (Nolan)**

### **Selflessness**

*Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*

### **Integrity**

*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.*

### **Objectivity**

*In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

### **Accountability**

*Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.*

### **Openness**

*Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.*

### **Honesty**

*Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.*

## **Leadership**

*Holders of public office should promote and support these principles by leadership and example*

### **APPENDIX C OUTSIDE COMMITMENTS**

1. Employees should be aware that conflicts of interest can arise from their involvement in private work. You are reminded, therefore, that the National Conditions of Service (Green Book) state:

#### **2. Official Conduct**

*2.1 Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained.*

*2.2 Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers*

The following examples are intended to assist employees to assess likely areas of conflict.

- (1) consultancy work on computer software design
- (2) work study reviews/assistance with specifications for private contractors
- (3) active involvement with local pressure groups related to Council activities
- (4) assisting recruitment agencies or applicants for posts by providing information beyond that available to all applicants, or giving personal information about employees to credit agencies,
- (5) undertaking private conveyancing or legal work associated with house purchase/selling
- (6) part-time lecturing at evening classes - generally no conflict here provided the officer is undertaking the work in his/her private capacity and not as a representative of the Council, and that its extent does not result in poor work performance resulting from fatigue

The above list is not intended to be exhaustive. Should you be unsure about a particular activity, please raise the matter with your Section Head or Administrative Officer, as engagement in such activities could constitute gross misconduct.

### **APPENDIX D GIFTS AND HOSPITALITY – EMPLOYEE GUIDELINES**

1 This guidance is about gifts and hospitality which might be offered to you, or by you and linked with your job. Special rules apply to you as a Council employee, which do not apply to private firms. Some of these are legal or work rules, and others are to protect the good name of Councils, their Members and employees

## **2. GIFTS OFFERED TO YOU**

The general rule is

do not accept any gift offered to you from people you deal with or might deal with in future as part of your work. Even outside work beware of accepting gifts if there is a possibility that the giver might think the gift will help in dealing with the Council. Think about the impression given. The same applies to gifts offered in different ways. Instead of making a direct gift, a contractor could do some work for you and not send you a bill.

The only exceptions to this rule are:

“token” gifts of very small value, like calendars, diaries, pens marked with a company name, which might be sent as advertisements.

If there is any doubt in your mind about whether to accept, politely refuse. Acceptance could be seen as “improper” even if the motives are not. Remember that to accept a gift in some circumstances could mean you are committing a crime

If you get anything “out of the blue” other than the “token” items mentioned, report it to your Manager . S/he will decide whether the gift should be returned or forwarded to some charity (e.g. The Mayor’s Appeal) or other deserving cause.

## **3. Hospitality**

Guidance has to be general, because for some employees attending social events can be part of the job. To refuse hospitality would sometimes cause offence and could be against the interests or image of the Council. The main consideration is whether or not any impression of improper influence could be created.

The following are examples of when hospitality may be accepted, and when it should be refused:

A reasonable level of hospitality which is offered:

- By a person or organisation to an employee attending a pre-arranged formal meeting together with other employees and/or Members where there is no suggestion of improper influence
- By another Council or Government body.
- By way of working lunch to continue a business meeting, so long as the hospitality is not one of the “unacceptable” types listed below.
- As part of a formal function where an employee is representing the Council in his/her professional capacity.

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### **Unacceptable**

- Hospitality offered to an individual employee by a person or organisation seeking business or a decision from the Council.
- Personal invitations from representatives of companies seeking or having business with the Council.
- Extravagant hospitality inappropriate to the occasion.

### **4. Giving Hospitality**

The impression of improper influence can also arise if employees provide hospitality, especially to organisations seeking business. Any hospitality given should be appropriate and justified in the public interest.

### **5. Record**

A central written record should be kept showing brief details of:

- Gifts (other than “token” ones) received and how dealt with
- “Acceptable” hospitality given and received.
- Offers of “unacceptable” hospitality or gifts refused. The record need not be over-complicated or detailed, but will assist if there is any future query or doubt about gifts or hospitality.

End of Part 5