

## TONBRIDGE AND MALLING BOROUGH COUNCIL

## CONSTITUTION

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(Draft: April 2018)

(This part requires formatting issues to be addressed)



## MEMBERS' CODE OF CONDUCT

*(Adopted by Council on 10 July 2012)*

<b>Preamble</b>	
(1)	The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
(2)	The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 4.
(3)	This Preamble and Annex 4 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
(4)	If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
(5)	In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you: <ul style="list-style-type: none"> <li>(a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of becoming, or being re-elected or re-appointed, a Member or Co-opted Member of the Authority;</li> <li>(b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of you becoming aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;</li> <li>(c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;</li> <li>(d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days of disclosing it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;</li> <li>(e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;</li> <li>(f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.</li> </ul>
(6)	Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

<b>THE CODE</b>	
<b>1.</b>	<b>Interpretation</b>
In this Code:	
<b>“Associated Person”</b> means (either in the singular or in the plural):	
(a)	a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
(b)	any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
(c)	any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
(d)	any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
(e)	any body in respect of which you are in a position of general control or management:
	(i) Exercising functions of a public nature; or
	(ii) Directed to charitable purposes; or
	(iii) One of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
<b>“Authority”</b> means Tonbridge and Malling Borough Council.	
<b>“Authority Function”</b> means any one or more of the following interests that relate to the functions of the Authority:	
(a)	housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease;
(b)	school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
(c)	statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;

(d)	an allowance, payment or indemnity given to members of the Authority;
(e)	any ceremonial honour given to members of the Authority;
(f)	setting council tax or a precept under the Local Government Finance Act 1992.
<b>“Code”</b> means this Code of Conduct.	
<b>“Co-opted Member”</b> means a person who is not an elected member of the Authority but who is a member of:	
(a)	any committee or sub-committee of the Authority, or
(b)	represents the Authority on, any joint committee or joint sub-committee of the Authority; and
(c)	who is entitled to vote on any question that falls to be decided at any Meeting.
<b>“Disclosable Pecuniary Interest”</b> means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:	
(a)	your interest; or
(b)	an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.
<b>“Interests”</b> means Disclosable Pecuniary Interests and Other Significant Interests.	
<b>“Meeting”</b> means any meeting of:	
(a)	the Authority;
(b)	the executive of the Authority;
(c)	any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.
<b>“Member”</b> means a person who is an elected member of the Authority and includes a Co- opted Member.	

<p><b>“Other Significant Interest”</b> means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:</p>	
(a)	<p>may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than the majority of: -</p>
	<p>(i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or</p>
	<p>(ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority’s area; or</p>
(b)	<p>relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;</p>
<p>and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.</p>	
<p><b>“Register of Members’ Interests”</b> means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.</p>	
<p><b>"Sensitive Interest"</b> means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.</p>	
<b>2.</b>	<b>Scope</b>
<p>You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority.</p>	
<b>3.</b>	<b>General Obligations</b>
(1)	<p>You must, when using or authorising the use by others of the resources of the Authority:</p>
	<p>(a) act in accordance with the Authority’s reasonable requirements; and</p>
	<p>(b) ensure that such resources are not used improperly for political purposes (including party political purposes).</p>
(2)	<p>You must not:</p>
	<p>(a) bully any person;</p>

	<p>(b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;</p>
	<p>(c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;</p>
	<p>(d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:</p>
	<p>(i) you have the written consent of a person authorised to give it; or</p>
	<p>(ii) you are required by law to do so; or</p>
	<p>(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or</p>
	<p>(iv) the disclosure is:</p> <ul style="list-style-type: none"> <li>- reasonable and in the public interest; and</li> <li>- made in good faith and in compliance with the reasonable requirements of the Authority;</li> </ul>
	<p>(e) prevent another person from gaining access to information to which that person is entitled by law;</p>
	<p>(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;</p>
	<p>(g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.</p>
<b>4.</b>	<b>Registering Disclosable Pecuniary Interests</b>
(1)	You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
(2)	In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.

(3)	Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.										
<b>5.</b>	<b>Declaring Interests</b>										
(1)	Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.										
(2)	<p>Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest (and you are aware that you have such an interest) in any matter to be considered, or being considered, at the Meeting, you must:</p> <table border="1" data-bbox="276 887 1422 1480"> <tr> <td data-bbox="276 887 355 958">(a)</td> <td data-bbox="363 887 1422 958">disclose the Interest; and</td> </tr> <tr> <td data-bbox="276 958 355 1149">(b)</td> <td data-bbox="363 958 1422 1149">explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6 – Sensitive Interests - , below); and unless you have been granted a dispensation:</td> </tr> <tr> <td data-bbox="276 1149 355 1261">(c)</td> <td data-bbox="363 1149 1422 1261">not participate in any discussion of, or vote taken on, the matter at the Meeting; and</td> </tr> <tr> <td data-bbox="276 1261 355 1406">(d)</td> <td data-bbox="363 1261 1422 1406">withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and</td> </tr> <tr> <td data-bbox="276 1406 355 1480">(e)</td> <td data-bbox="363 1406 1422 1480">not seek improperly to influence a decision about that business.</td> </tr> </table>	(a)	disclose the Interest; and	(b)	explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6 – Sensitive Interests - , below); and unless you have been granted a dispensation:	(c)	not participate in any discussion of, or vote taken on, the matter at the Meeting; and	(d)	withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and	(e)	not seek improperly to influence a decision about that business.
(a)	disclose the Interest; and										
(b)	explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6 – Sensitive Interests - , below); and unless you have been granted a dispensation:										
(c)	not participate in any discussion of, or vote taken on, the matter at the Meeting; and										
(d)	withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and										
(e)	not seek improperly to influence a decision about that business.										
(3)	<p>Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:</p> <table border="1" data-bbox="276 1664 1422 1995"> <tr> <td data-bbox="276 1664 355 1776">(a)</td> <td data-bbox="363 1664 1422 1776">notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and</td> </tr> <tr> <td data-bbox="276 1776 355 1928">(b)</td> <td data-bbox="363 1776 1422 1928">not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and</td> </tr> <tr> <td data-bbox="276 1928 355 1995">(c)</td> <td data-bbox="363 1928 1422 1995">not seek improperly to influence a decision about the matter.</td> </tr> </table>	(a)	notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and	(b)	not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and	(c)	not seek improperly to influence a decision about the matter.				
(a)	notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and										
(b)	not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and										
(c)	not seek improperly to influence a decision about the matter.										



(4)	<p>Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:</p> <table border="1" data-bbox="276 443 1422 667"> <tr> <td data-bbox="276 443 355 555">(a)</td> <td data-bbox="363 443 1422 555">not participate in any discussion of, or vote taken on, the matter at the Meeting; and</td> </tr> <tr> <td data-bbox="276 555 355 667">(b)</td> <td data-bbox="363 555 1422 667">withdraw from the Meeting room in accordance with the Authority's Procedure Rules.</td> </tr> </table>	(a)	not participate in any discussion of, or vote taken on, the matter at the Meeting; and	(b)	withdraw from the Meeting room in accordance with the Authority's Procedure Rules.
(a)	not participate in any discussion of, or vote taken on, the matter at the Meeting; and				
(b)	withdraw from the Meeting room in accordance with the Authority's Procedure Rules.				
<b>6.</b>	<b>Sensitive Interests</b>				
(1)	Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.				
(2)	You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.				
(3)	The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.				
<b>7.</b>	<b>Gifts and Hospitality</b>				
(1)	You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.				

(2)	Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.										
(3)	You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.										
(4)	The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.										
<b>8.</b>	<b>Dispensations</b>										
(1)	The General Purposes Committee or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).										
(2)	<p>A dispensation may be granted only if, after having had regard to all relevant circumstances, the General Purposes Committee or the Monitoring Officer (where authorised) considers that:</p> <table border="1" data-bbox="274 1330 1420 1982"> <tr> <td data-bbox="274 1330 354 1514">(a)</td> <td data-bbox="360 1330 1420 1514">without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or</td> </tr> <tr> <td data-bbox="274 1514 354 1662">(b)</td> <td data-bbox="360 1514 1420 1662">without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or</td> </tr> <tr> <td data-bbox="274 1662 354 1774">(c)</td> <td data-bbox="360 1662 1420 1774">granting the dispensation is in the interests of persons living in the Authority's area; or</td> </tr> <tr> <td data-bbox="274 1774 354 1921">(d)</td> <td data-bbox="360 1774 1420 1921">without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or</td> </tr> <tr> <td data-bbox="274 1921 354 1982">(e)</td> <td data-bbox="360 1921 1420 1982">it is otherwise appropriate to grant a dispensation.</td> </tr> </table>	(a)	without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or	(b)	without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or	(c)	granting the dispensation is in the interests of persons living in the Authority's area; or	(d)	without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or	(e)	it is otherwise appropriate to grant a dispensation.
(a)	without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or										
(b)	without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or										
(c)	granting the dispensation is in the interests of persons living in the Authority's area; or										
(d)	without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or										
(e)	it is otherwise appropriate to grant a dispensation.										

(3)	A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
(4)	Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.



## THE SEVEN PRINCIPLES OF PUBLIC LIFE

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

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

**INTEGRITY:** You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

**ACCOUNTABILITY:** You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

**OPENNESS:** You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen 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.

**HONESTY:** You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

**LEADERSHIP:** Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

## ANNEX 5

### Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:		
<b>“the Act”</b>	means	the Localism Act 2011
<b>“body in which the relevant person has a beneficial interest”</b>	means	a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest
<b>“director”</b>	includes	a member of the committee of management of an industrial and provident society
<b>“land”</b>	excludes	an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income
<b>“M”</b>	means	a member of the relevant authority
<b>“member”</b>	includes	a co-opted member
<b>“relevant authority”</b>	means	the authority of which M is a member
<b>“relevant period”</b>	means	the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1), or section 31(7), as the case may be, of the Act
<b>“relevant person”</b>	means	M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).
<b>“securities”</b>	means	shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Interest	Description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations Consolidation Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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.</p>



**PROTOCOLS TO THE CODE OF CONDUCT**

The following protocols have been adopted by the Council as supplementary to the Members' Code of Conduct. The Joint Standards Committee has responsibility for overseeing compliance with these protocols and any allegations of failure to meet the requirements of these protocols must be made in writing to the Monitoring Officer.

The protocols are:

Protocol A	Member attendance at training
Protocol B	Gifts, Benefits and Hospitality
Protocol C	Use of Council Resources by Members
Protocol D	Requirements of the Council relating to the disclosure of confidential material
Protocol E	Members' Planning Code of Good Practice
Protocol F	Members' Licensing Code of Good Practice



## **PROTOCOL A: MEMBER ATTENDANCE AT TRAINING**

A1.1 Where the council provides training for members –

- (a) in relation to ethical standards in general or to the council's code of conduct in particular;
- (b) in relation to the determination of planning applications;
- (c) in relation to the work of the Council as licensing authority;
- (d) in any other matters where the council designates the training as mandatory for the member to attend; or
- (e) to enable you to comply with an instruction requiring you to undergo training pursuant to a decision of the Joint Standards Committee

you must not fail to attend the training without reasonable excuse.

A1.2 Where you do not attend the training specified in sub-paragraphs A2.1(b) or (c) of this protocol you may not participate in the determination of planning applications or the business of the licensing authority (as the case may be) until such time as you have attended alternative training approved by the General Purposes committee.

A1.3 Unless the General Purposes committee grants a dispensation, where you do not attend the training specified in sub-paragraph A2.1 (e) of this protocol you may not participate in any business of the council until such time as you have attended an alternative training approved by the General Purposes committee. A dispensation under this paragraph may relate to all of the council's business or to such part of it as may be specified. In considering an application for a dispensation, the General Purposes committee shall have regard to the reasons why the requirement was initially imposed.



## **PROTOCOL B: GIFTS, BENEFITS AND HOSPITALITY**

### **B1. Meaning of "gifts" and "hospitality"**

- B1.1 The words "gifts", "benefits" and "hospitality" have wide meanings and no conclusive definition is possible. Gifts, benefits and hospitality include:
- (a) the gift of any goods or services;
  - (b) the opportunity to acquire any goods or services free of charge or at a discount or at terms not available to the general public;
  - (c) the offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event on terms not available to the general public.
- B1.2 Common gifts include pens, diaries, calendars and other business stationery, key rings, articles of clothing, books, flowers, bouquets and promotional items.
- B1.3 Common hospitality includes lunches, dinners or refreshments.

### **B2. General caution**

- B2.1 The fundamental principle must always be that any offer of a gift, benefit or hospitality should be treated with great care. Your prime duty as a member is to ensure that there is no conflict of interest in the performance of your duties. You should treat with caution any gift, benefit or hospitality that is made to you personally. Your personal reputation and that of the council can be seriously jeopardised by the inappropriate acceptance by you of a gift, benefit or hospitality.
- B2.2 You should consider carefully all the circumstances surrounding the offer of a gift, benefit or hospitality. The scale, amount of the offer and the potential frequency and source are relevant factors. Also, you should be sensitive to the timing of the offer in relation to any business of the council which may affect those making the offer.
- B2.3 You should avoid hospitality in situations where you, or you accompanied by members of your family, would be the only guests.
- B2.4 You may have to estimate the value of the gift, benefit or hospitality. Where possible, you should use as a guide the charge which other members of the public would pay to purchase the gift or receive the hospitality.

B2.5 The decision for you in every case is whether or not it is appropriate to accept any gift, benefit or hospitality that might be offered to you, having regard to how it might be perceived by an ordinary member of the public. No hard and fast rules can be laid down to cover every circumstance as to what is appropriate or inappropriate. To refuse may cause misunderstanding or offence; however, to accept may give rise to impropriety or conflict of interest. In any case of doubt, you should discuss the circumstances with the monitoring officer.

B2.6 Where the decision whether to accept hospitality is left to your judgement, you need to ask yourself some common sense questions: for example:

- is there a benefit to the council in your accepting the invitation;
- is the entertainment lavish, on a scale which you could not personally afford;
- whether you are accepting too much hospitality from the same source;
- if your position is prominent, whether just your attendance at an event might be open to interpretation as a signal of support.

### **B3. Code of Conduct requirements**

B3.1 The members' code of conduct requires you to register in the Register of Interests maintained by the monitoring officer, any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits or hospitality from the same or an associated source, with an estimated cumulative value of £100 or more which are received and accepted by you (in any one calendar year), in the conduct of the business of the Council, the business of the office to which you have been elected or appointed (for example as mayor or deputy mayor) or when you are acting as representative of the Council. You must also register the source of the gift, benefit or hospitality.

B3.2 You must register the gift, benefit or hospitality within 28 days of its receipt/acceptance, using the form provided by the monitoring officer for the purpose.

B3.3 Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure set out in paragraph 5 of the Code of Conduct will apply.

B3.4 You must continue to disclose the existence and nature of the gift, benefit or hospitality etc at relevant Council meetings, for three years from the date you first registered the gift, benefit or hospitality.

B3.5 Where any gift, benefit or hospitality (no matter the value) is accepted, the donor should always be advised that acceptance will not confer any advantage for that donor in his/her dealings with the Council.

#### **B4. Gifts and hospitality below the £100 threshold**

B4.1 You are encouraged to register with the monitoring officer, any gift, benefit or hospitality you receive which you estimate to be below the £100 threshold, but there is no obligation to make a disclosure at a Council meeting of the source of the gift, benefit or hospitality. Remember – it is in your interests always to register a gift, benefit or hospitality if it could be perceived as something given to you because of your position.

#### **B5. What to avoid**

B5.1 In deciding whether it is appropriate to accept any gift, benefit or hospitality, you must apply the following principles:

- do not accept a gift, benefit or hospitality as an inducement or reward for anything you do as a member: if you have any suspicion that the motive behind the gift, benefit or hospitality is an inducement or reward, you must decline it. 'Reward' includes remuneration, reimbursement and fee.
- do not accept a gift, benefit or hospitality of significant value or whose value is disproportionate in the circumstances.
- do not accept a gift, benefit or hospitality if you believe it will put you under any future obligation to the provider as a consequence.
- do not solicit any gift, benefit or hospitality and avoid giving any perception of doing so.
- do not accept a gift, benefit or hospitality, if acceptance might be open to misinterpretation. Such circumstances will include gifts and hospitality:
  - (i) from parties involved with the Council in a competitive tendering or other procurement process.
  - (ii) from applicants for planning permission and other applications for licences, consents and approvals.
  - (iii) from applicants for grants, including voluntary bodies and other organisations applying for public funding.
  - (iv) from applicants for benefits, claims and dispensations.
  - (v) from parties in legal proceedings with the Council.

- B5.2 It is a criminal offence corruptly to solicit or receive any gift, reward or advantage as an inducement to doing or forbearing to do anything in respect of any transaction involving the Council. The onus would be on you to disprove corruption in relation to the receipt of a gift, benefit or hospitality from a person holding or seeking to obtain a contract from the Council.
- B5.3 Cash or monetary gifts should always be refused without exception and the refusal notified to the monitoring officer.

It is a well-established and recognised rule that no Councillor or other public servant should accept gifts, hospitality, or services from anyone, which would or might appear to place him or her under an obligation.

If you are in doubt about what is proper, there are three particular things you should bear in mind;

- **DO** err on the side of caution. If the thought of the acceptance of the gift, benefit or hospitality becoming public makes you uncomfortable, do not accept;
- **DO** consult the monitoring officer if you are still unsure;
- **DO** consider if you decide to go ahead to record with the monitoring officer that you have addressed the issue of propriety and setting out your reasons for believing that your actions comply with this Protocol.

## **B6. Gifts and hospitality which need not be registered**

- B6.1 There are some circumstances where you may accept gifts and hospitality without the need to register the gift, benefit or hospitality. Some situations will require the exercise of your personal judgement. You should always be cautious when additional services, privileges or advantages are offered, which might be related to your position as a member. Remember - always register a gift, benefit or hospitality if it could be perceived as something given to you because of your position.
- (i) official hospitality such as a civic reception or a working/business lunch in council-owned premises or hosted elsewhere, by a partner organisation of the council.
  - (ii) civic hospitality provided by another public authority.
  - (iii) refreshment in connection with any meeting in the course of your work as a member, for example tea, coffee and other normal beverages and refreshments.
  - (iv) meals or refreshments funded by other public sector partners, as part of joint working/collaboration.
  - (v) meals or refreshments provided as part of a ceremony or event to promote/or launch a project or initiative.



- (vi) meals or refreshments provided at design/progress meetings, by a consultant, contractor or advisor who is already appointed by the council for that project, scheme or initiative.
- (vii) drinks or other refreshment in the normal course of socialising arising consequentially from council business e.g. inclusion in a round of drinks after a meeting.
- (viii) tickets for sporting, cultural and entertainment events which are sponsored or promoted by the council or bodies to which you have been appointed by the council, and the tickets are offered in relation to that sponsorship or promotion.
- (ix) Small, low-value gifts, such as pens, calendars, diaries, flowers and other mementos and tokens.
- (x) gifts and hospitality arranged and paid for wholly by your own political party.
- (xi) gifts and hospitality not related or connected with your membership of the council i.e. received by you outside the performance of your functions as a member.
- (xii) gifts and hospitality you may receive from family and friends e.g. birthday presents that are not related to your position as a member.
- (xiii) gifts given to the council that you accept formally on the council's behalf and are retained by the Council and not by you personally, for example a picture for display in the Mayor's Parlour.
- (xiv) gifts given as prizes at exhibitions, conferences, seminars etc. as part of a free raffle or draw.
- (xv) gifts and hospitality which you do not accept (refer to the guidance in para. 8 of this Protocol).
- (xvi) gifts which you donate to the Mayor's charity, subject to you indicating this intention to the donor of the gift.
- (xvii) gifts known to be available to all members of the council e.g. badges and ties bearing the Council's coat of arms.
- (xviii) souvenirs and gifts from other public bodies intended as personal gifts, for example arising from town-twinning and other civic events.
- (xix) hospitality known to be available to all members of the council, for example refreshments at the council's Annual Meeting
- (xx) hospitality ancillary to the council business being conducted, such as an overnight stay for an 'away – day with a partner organisation of the council'.
- (xxi) hospitality ancillary to attendance at conferences, seminars and courses where the hospitality is corporate, rather than personal.
- (xxii) hospitality ancillary to attendance at functions where you represent the council (opening ceremonies, public speaking events, conferences).
- (xxiii) hospitality ancillary to attendance as Mayor or Deputy Mayor, at charity events, garden parties, fetes, schools, concerts etc.
- (xxiv) trips in the United Kingdom or abroad which are paid for by the council or which involve reciprocity of payment with other local authorities, government bodies/departments or outside bodies/organisations, together with any hospitality associated with such visits and available to all participants e.g. twinning visits.

## **B7. Gifts and hospitality declined**

- B7.1 There is no requirement to register gifts and hospitality offered but declined. However, as a matter of good practice, it would be advisable to inform the monitoring officer. When gifts or hospitality are declined, the offeror should be courteously but firmly informed of the procedures and standards operating within the council.

## **B8. Reporting of inappropriate gifts and hospitality offered**

- B8.1 It is a criminal offence for a person corruptly to give or offer any gift, reward or advantage as an inducement or reward to you for doing or forbearing to do anything as a member of the council. You must immediately report to the monitoring officer any circumstances where an inappropriate gift, benefit or hospitality has been offered to you. You may thereafter be required to assist the Police in providing evidence.

## **PROTOCOL C: USE OF COUNCIL RESOURCES BY MEMBERS**

### *Introduction*

C1.1 The purpose of this protocol is to provide a guide to the use of Council resources by members. It is intended to supplement the existing Member Code of Conduct and provide additional guidance on the general obligation set out at paragraph 3, which states

3(1) You must, when using or authorising the use by others of the resources of the Authority:

- (a) act in accordance with the Authority's reasonable requirements; and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

C1.2 This protocol provides advice as to what constitutes 'reasonable requirements' and what constitutes 'improper' use of council resources by elected Members. If Members are unsure about anything in this protocol they should contact the Monitoring Officer.

### **Resources provided to members – general provisions**

C1.3 The Council provides a range of facilities to support members, such as stationery, photocopying, printing, telephone, and e-mail address and IT equipment (which includes any access to the Council's systems via any on-site or remote access link), to enable members to carry out their duties as a councillor. You must make sure that you use the Council's resources for proper purposes only. In addition, when using the Council's resources you must have regard to the Local Authority Code of Publicity and the members' code of conduct.

C1.4 The Council is prohibited from publishing any material of a party political nature and you should ensure that when using or authorising the use by others of the Council's resources such resources are not used for purely political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Council or of the office to which you have been elected or appointed. You may, therefore, use Council resources and facilities for political purposes in connection with the following business:

- (a) holding ward surgeries;
- (b) dealing with correspondence from members of the public;
- (c) communicating group activities;
- (d) meetings between group members.

- C1.5 Your use of Council resources must not extend to political parties more generally.
- C1.6 The Council has agreed to *de minimis* usage that would otherwise be contrary to this protocol, but which is so small in extent that a reasonable person knowing all the facts would take the view that it should not be thought of as included in what is being controlled, prohibited or otherwise included in this protocol.
- C1.7 Your use of any Council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes and support of any political party or group activity, elections and campaigning, is likely to amount to a breach of the members' code of conduct.
- C1.8 During the election period (which runs from the date of publication of the notice of election to the close of the polls) you must not use your Council e-mail address in any ward newsletters which contain election or campaigning material.
- C1.9 Provided that the use of Council resources is not purely in connection with political purposes and there is no cost to the Council or any liability for the Council arising from its use for secondary purposes, it is a matter for each individual member whether or not they use it for private and family purposes. You will, however, need to take into account any additional costs that may arise from extending software licences and the replacement of equipment (excluding marginal shortening of the life of items of equipment, for example from modest use of a printer) and any impact your use may have on, for example, service warranties and agreements. You must also take into account security issues related to confidential information and the processing and disclosure of information under the Data Protection Act 1998.

### **Use of resources – Council logo**

The Council's logo is only available for use in connection with Borough Council business. It shall not be downloaded, adapted modified or used other than on the approved letterhead.

### **Use of resources – Freedom of Information & Data Protection**

The Freedom of Information Act/ Environmental Information Regulations apply to public authorities and not to elected Members. However, there is still potential for Members' communications to fall within the scope of a request for information. This may occur, for example,

- (a) Where the communications relate to the official business of the Council – such communications are potentially subject to the disclosure provisions of the Freedom of Information Act/ Environmental Information Regulations regardless of whether they are held in an official or personal email account,

text messages or any other form of media;

- (b) When Members are in dialogue with Council officers – as the record of the communication is held by the Council, it may be disclosable upon request under the Freedom of Information Act/ Environmental Information Regulations

Members are reminded that they should not be using personal email addresses for Council business as it also increases the risk that confidentiality may be breached as the Council cannot guarantee the security of external systems. In such circumstances the Member(s) themselves will be responsible and liable for any data breach.

All Council Members will be registered with the Information Commissioner's Officer as Data Controllers in their own right.

### **Use of resources – Information Security**

Councillors are required to comply with any Council policies regarding the use of IT facilities.

In particular, if you are supplied with a Council computer, tablet or other electronic device (e.g. phone) and internet connection facilities, you must comply with the Council's IT Security Policies.

You are under an obligation to ensure that any secondary use of IT equipment supplied by the Council is acceptable and appropriate and that such use does not contravene the members' code of conduct and protocols, the Computer Misuse Act 1990, the Data Protection Act 1998 or any other relevant legislation.

### **Use of resources – Social Media**

Improper use of social media and mobile devices could be used as grounds for challenging a contentious decision, or result in complaints of breaching the Councillors Code of Conduct, for a failure to show respect for others or bringing the Council or the office of councillor into disrepute.

Popular social media platforms include Facebook, Twitter, LinkedIn, YouTube, Instagram and blogs (web logs). Types of mobile devices include smart-phones, tablets and laptops.

Councillors may use these and other platforms in their official capacity, but should remember that the public may still perceive them as acting in that capacity even when that is not their intention.

Councillors should:

- (a) consider whether they need to set appropriate privacy settings for any blog or networking site – especially if it is a private, non-political blog;
- (b) keep an eye out for defamatory, untrue or obscene posts from others and remove them as soon as possible to avoid the perception that they condone such views;
- (c) be careful about any connection with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- (d) ensure they use Council facilities appropriately and comply with the Acceptable Use of ICT Equipment and Systems Policy ;
- (e) be aware that by publishing information that they could not have accessed without their position as a councillor, they will be seen as acting in their official capacity;
- (f) be careful about being too specific or personal if referring to individuals; and
- (g) be aware that the libel laws cover blogs, social media and other forms of digital content publication.

Councillors should not:

- (a) place images or text on their site from a copyrighted source (for example extracts from publications or photos) without permission
- (b) post comments that they would not be prepared to make face to face;
- (c) refer in a blog to any information identified by the Council as confidential or exempt;
- (d) disclose information given to them in confidence by anyone or information acquired by them which they believe or are aware is of a confidential nature;
- (e) publish personal data of individuals except with express written permission to do so;
- (f) give the impression that they are expressing the views of the Council where it is not appropriate to do so; and
- (g) if they are involved in determining planning or licensing applications or other quasi- judicial decisions, publish anything on their blog that might suggest they do not have an open mind about a matter they are involved in determining.

## **PROTOCOL D: REQUIREMENTS OF THE COUNCIL RELATING TO THE DISCLOSURE OF CONFIDENTIAL MATERIAL**

D1.1 Paragraph 3(2)(d) of the Members' Code of Conduct provides that you must not disclose confidential information, except in the circumstances specified in the code. Paragraph 3(2)(d) refers to circumstances where the disclosure is:

- (a) with the written consent of the person authorised to give it; or
- (b) required by law; or
- (c) made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (d) reasonable and in the public interest; and made in good faith and complies with any reasonable requirements of the council.

The purpose of this protocol is to specify the council's requirements with which you are required by the code to comply.

D1.2 Confidential information is defined in the code as "information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature".

D1.3 The Members' Code of Conduct does not define 'good faith', but a disclosure made in good faith shall, for the purposes of this protocol, be deemed to mean a disclosure made in the reasonable belief that the information disclosed is substantially true and disclosed without malice or a view to gain.

D1.4 The Members' Code of Conduct does not define what is in the "public interest" but, for the purposes of this protocol, a disclosure is deemed to be in the public interest if a member of the public with knowledge of the relevant facts would reasonably regard it as appropriate for you to disclose the information, having regard to:

- the seriousness of the matter disclosed; and
- the likelihood of any malpractice or impropriety continuing or being likely to occur in the future.

D1.5 As a first step, you should ask the chief officer concerned to confirm whether the information which you have is "substantially true" and, if so, why the information is treated as confidential. There may be legal reasons for this, such as a duty to keep the information confidential imposed by law. Or it may be that disclosure might compromise the financial or business affairs of the Council or a contractor or supplier. Your enquiry will be judged against the restrictions imposed upon the release of information under the Freedom of Information Act 2000, Environmental Information Regulations 2004 or other

relevant statutory provisions and you will be sent a full written explanation as to whether the information can be disclosed and, if not, the reasons why it should not be disclosed.

- D1.6 If, having completed this process, you are not satisfied with the reasons why information should not be disclosed and are still of the view that it is in the public interest for the information to be disclosed, you should raise the matter with the leadership of your political group and with the Chief Executive.
- D1.7 Only once you have completed this process and you have not been given proper reasons why the information should not be disclosed should you then consider making such a disclosure.



## **PROTOCOL E: MEMBERS` PLANNING CODE OF GOOD PRACTICE**

### **E1. Introduction**

E1.1 This Code has been prepared using the advice in the Local Government Association's guidance note on good planning practice for councillors and officers dealing with planning matters – Probity in planning (April 2013)

E1.2 This code of good practice applies to councillors at all times when they are involved in the planning process. This includes when you are:

- acting as a member of an area planning committee;
- taking part in a debate on a planning application or other development control matter in another area planning committee;
- acting as a member of the full Council when it is determining a planning application or other development control matter;
- involved in informal meetings e.g.with officers or public and consultative meetings
- involved outside the committee on a planning application or other development control matter, including planning enforcement matters or site specific issues.

and use of the expression "planning committee" should be taken to refer to the forum for any of these activities.

This code also applies to members when dealing with site-specific issues in connection with the Local Plan.

E1.2 The aim of this code is to ensure that

- in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way.
- You must make planning decisions openly and impartially with sound judgment and for clear and justifiable reasons.
- Development is managed in the public interest

E1.4 The Human Rights Act 1998 has implications for the planning system and creates enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

E1.5 This code is intended to minimise the prospect of legal or other challenges to planning decisions. However, non-compliance without good reason can be taken into account in investigations into possible maladministration or may have implications for the standing of councillors and the council as a whole. It could also lead to a complaint to the Monitoring Officer against an individual member.

## **E2. Relationship with the members` code of conduct**

E2.1 This planning code of good practice is designed for Members when discharging planning functions of the Council. Whilst it interprets the Members' Code of Conduct with respect to planning matters it is subordinate to the Members' Code of Conduct and in the event of any inconsistencies arising between this code and the Members' Code of Conduct, the Members' Code of Conduct shall prevail..

## **E3. Declaration of interests**

E3.1 The members` code of conduct places requirements on councillors as to the notification and declaration of their interests and participation in the business of the council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Advice can always be sought from the Monitoring Officer or one of the Council's solicitors as to whether an interest may exist; however ultimate responsibility for compliance rests with individual councillors. E3.2 You can have an interest in a planning application in a number of different ways. It may, for example, be an application which relates to property in which you or your partner have a direct interest e.g. as owner. Alternatively, it may be an application which may reasonably be regarded as affecting the financial position of yourself and/ or an Associated Person e.g. a member of your family and where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice of the public interest. These interests are defined in the code of conduct as Disclosable Pecuniary Interests (DPIs) and Other Significant Interests (OSIs).

E3.3 If you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Council, then you

- must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;
- not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or general purposes committee as appropriate);
- withdraw from the meeting room whenever it becomes apparent that the matter is being considered

- not seek to improperly influence a decision about that business.

E3.4 If you have an Other Significant Interest in any business of the Council then you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must

- a. not participate in any discussion of, or vote taken on, the matter at the Meeting; and
- b. withdraw from the Meeting room in accordance with the Council's Procedure Rules.

E3.5 You should also make known any DPI or OSI at informal meetings or discussions including those held with officers or other councilors and third parties.

#### **E4. "Pre-determination" (fettering discretion) and "apparent bias"**

E4.1 In addition to taking appropriate action in relation to DPIs and OSIs, Members of the Area Planning Committees need to avoid bias or predetermination or any appearance of bias or predetermination before taking a decision on a planning application.

E4.2 If you have taken a firm view on a planning matter, or if it appears that you have made up your mind before the formal consideration of a planning application, it may appear to a member of the public that you may have formed what is called a "pre-determined view" on the matter – this used to be described as having "fettered one's discretion". .

E4.2 In some circumstances you might reasonably appear to a member of the public to have a pre-determined view on an application, by reason of comments made or close contact with an applicant or representor, even though this is not the case. This is described as "apparent bias" and may put you in the same position as one who has fettered their discretion. It is important to remember that it is the public's perception which is important here.

E4.3 If you have fettered your discretion and then take part in the decision, that will put the council at risk of a finding of maladministration. It could also lead to legal proceedings to challenge the decision on grounds of there being a danger of bias or pre-determination or a failure to take into account all factors enabling the proposal to be considered on its specific merits. It may also give

rise to a complaint to the council's Monitoring Officer.

E4.4 As long as you do not have an interest, and have not fettered your discretion, you can still act as a ward councillor and address the committee in the usual way: if you have an interest the rules at paragraph E3.3 above will apply.

E4.5 Areas in which you need to give particular consideration are set out below.

### ***Lobbying By Other Councillors***

E4.6 If you lead, represent or are a member of a group whose primary purpose is to lobby in support or against a planning application, you may have fettered your discretion. Depending on your involvement, you may also have an interest. This may be so, even if you were appointed to the body by the Borough Council.

E4.7 The position in paragraph E4.6 is distinct from membership of general interest groups which reflect your area of interest, for example the RSPB, the Ramblers' Association or a local historical society (unless you have a position of control or management in the organisation. However, you should still disclose the existence of an interest

where appropriate. If, at the time of declaring that interest you are able to say that you were not involved in preparing that representation and have reserved your judgement, then you will not have fettered your discretion. However, if you cannot say so, you will have fettered your discretion.

E4.8 You should not lobby other councillors regarding their views on planning applications. Nor should you, outside of the planning committee meeting, try to persuade other councillors how to vote.

E4.9 You should not decide, or discuss, how to vote on planning applications at political group meetings or other meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on planning applications. The use of a political whip to seek to influence the outcome of a planning application is likely to be regarded as maladministration.

### ***Lobbying of Councillors by other persons***

E4.10 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward councillor, another councillor or a member of a planning committee. However where you are a member of a planning committee which will determine the application, lobbying can lead to a challenge to your integrity and impartiality. This can, in turn, affect the validity of a planning decision.

E4.11 Councillors are entitled to have a view on planning proposals submitted or to be submitted to the Council. The simple expression of a prior view does not preclude you from taking part in the decision making process. If you decide that you wish to participate in the determination of a planning application you should explain to persons lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality and your ability to participate in the decision if you give a firm statement of how you intend to vote or such a firm point of view that it amounts to the same thing. For the avoidance of doubt you will not have fettered your discretion:

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by acting as a vehicle for the expression of views as a ward councillor

providing that you have not committed yourself to vote in accordance with those views and that you are not acting as an advocate for a particular viewpoint.

E4.12 When you participate in a planning decision, your overriding duty is to the community as a whole and not just to people in your ward. As decisions need to be taken impartially you must not improperly favour, or appear to improperly favour, any person, company, group or locality.

E4.13 You should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the monitoring officer know if you feel that you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application. It may be wise, and in your own best interests, to make a written notification to the monitoring officer that a gift, benefit or hospitality has been offered and refused.

E4.14 It is good practice to:

- forward copies of lobbying correspondence to the Director of Planning, Housing and Environmental Health
- advise the Director of Planning, Housing and Environmental Health of any offers of planning gain or constraint on development made to them;
- comply with guidance on lobbying or attending presentations or discussions set out this protocol.

## **E5. Contact with applicants, developers and objectors**

E5.1 You should refer those who approach you for assistance on planning, procedural or technical matters to the relevant officers.

E5.2 The following rules should be applied in respect of presentations about planning proposals:

- you should not attend private planning presentations unless you have taken advice from one of the Council's solicitors as to the appropriateness of attending. Officers should be present with councillors in any pre-application meetings.
- A written note should be made of all meetings. A note should also be taken of any phone conversations and relevant emails recorded for the file. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file.
- Questions should be limited to those necessary to clarify your understanding of proposals.
- Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the Borough Council's position is co-ordinated.
- It must be remembered that the presentation is not a part of the formal planning process. The presentation is a form of lobbying and councillors who will be determining the application should avoid expressing views on how they will vote.

## **E6. Site inspections**

E6.1 A Members site inspection can be carried out where an application is to be determined by an Area Planning Committee. The Committee Chairman, in consultation with the Head of Planning, will normally identify the need for any site inspections in advance of meetings of the Committee. Otherwise, only exceptionally should an item be deferred for a site inspection and it should only take place if voted for by a majority of the Area Planning Committee.

E6.2 A Councillor who believes a site inspection is necessary in a particular case, having careful regard to the criteria below, is encouraged to contact the Head of Planning as soon as possible. A Councillor making such a request should state under which of the four criteria below the Inspection is requested and also provide supporting justification. The Head of Planning will then consult with the Chairman of the Area Planning Committee regarding the request for the site inspection. The same justification is required should the Head of Planning believe a site inspection is necessary.

E6.3 A Members' Site inspection should only be used where the benefit of doing so is clear and substantial. The decision to hold a site inspection must fit at least one of the following criteria:

- i. Particular site factors are so significant in terms of weight attached to them, relative to other factors, and that a site inspection would be the only way to assess those factors.
- ii. It is essential in order to reach a view on an application that the specific and particular characteristics of the site need to be viewed on the ground in order to assess the broader material impact of the proposal
- iii. The proposal raises specific matters in respect of site characteristics, the importance of which can only be established by means of a site inspection
- iv. The proposal is of such a major or strategic scale that a site inspection is essential to enable members to be fully familiar with all site-related matters of fact

E6.4 The purpose of a site inspection is solely for Planning Committee Members to view the site and its surroundings and to relate the application proposals to the site. Officers will explain the submitted drawings. Neither the applicant, their agent nor any supporters or objectors should take part. Where an applicant or land owner and/or their agent have to be present to allow access to the site, the visiting Members should stand away from him or her (or if necessary, politely ask the applicant or owner to stand away) and should not engage in any discussions.

E6.5 One representative from the Parish Council, in whose area the site is located, may attend the site inspection. The Parish Council representative may observe proceedings, but should not take part or engage in any discussions. The relevant Parish Council will be notified in advance of the date and time the site inspection is scheduled to take place and should advise Committee Services if they wish a representative to be present. Access to the site by the Parish Council representative is at the discretion of the landowner.



Members should avoid any discussion of the merits of the case on site, on the journey to/from the site, or anywhere other than the subsequent Committee meeting when the application is reported for determination. No decision will be taken on site. The application will normally be considered at the next ordinary meeting of the Area Planning Committee.

## **E7. Contact with officers**

- E7.1 General guidance is given in the protocol on member/officer relations in Part 5 of the Constitution and that is not repeated here.
- E7.2 You should not put pressure on officers for a particular recommendation or decision, nor do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity. However this does not prevent you from asking questions or submitting views to a relevant officer.
- E7.3 Officers must act in accordance with the officers' code of conduct in Part 5 of the Constitution and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result, the planning officers' views will be presented on the basis of their overriding professional obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the committee or its members.

## **E8. Planning applications made by councillors and officers and council development**

### **Applications submitted by councillors and officers**

- E8.1 It is perfectly legitimate for planning applications or development plan proposals to be submitted by councillors and officers. However, proposals to the council by councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is therefore vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
- E8.2 Councillors and officers who submit proposals should notify the monitoring officer of the proposal, play no part in its processing or determination and not seek to improperly influence a decision about such proposals..
- E8.3 All such proposals shall be subject to the relevant statutory public consultation requirements. Where objections have been raised, the application shall be decided by the relevant area planning committee and not dealt with by officers under delegated powers.

- E8.4 The relevant requirements set out in the Members' Code of Conduct regarding participation and voting at meetings must be observed e.g. a councillor with a DPI may not participate in the consideration of the matter and may therefore not speak. Such councillors will need to have a representative speak on their behalf.
- E8.5 Members considering an application to be determined by committee must, of course, consider whether the nature of any relationship with the member or officer submitting the planning application requires the declaration of a DPI or OSI.
- E8.6 Serving councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do must play no part in the decision making process for that proposal. Particular arrangements may need to be made in respect of councillors whose business is, or includes, the making of planning applications on behalf of others.

### **Applications submitted by the Council**

- E8.7 Proposals for development submitted by the Council must be treated no differently to any other application.
- E8.8 Occasionally some councillors e.g. Cabinet Members, may through their other roles outside of an Area Planning Committee, have been committed to or involved in a development proposal by the Council. In such circumstances, where such an item comes to be considered at an Area Planning Committee the councillor concerned must consider whether they have had a degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer.

## **E9. Decision-Making**

- E9.1 Under the Council's Constitution, most decisions on planning matters are delegated to the Director of Planning, Housing and Environmental Health except in certain circumstances set out in the table of delegations. One of those circumstances is where a member for the relevant ward in which the application site falls, or the relevant planning committee chairman or vice-chairman has, with reasoned justification, required that the application be determined by the relevant planning committee. In those cases, it is imperative that members state clearly their justification (in planning terms) for requiring an application to be reported to the planning committee. In every case, members are advised to frame their comments in such a way as not to give any appearance of pre-determination in respect of the matter. Any comments you have made will be included in the public register and may have to be disclosed to the public under the Freedom of Information Act or Environmental Information Regulations.

## E9.2 When you have to make a planning decision you must:

- come to meetings with an open mind and demonstrate you are open minded;
- comply with section 54A of the Town and Country Planning Act 1990 and make decisions only in accordance with the development plan unless material considerations indicate otherwise;
- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire debate including any officer introduction/presentation;
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- request further information if you consider that there is insufficient information before the committee upon which to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendations or the development plan, identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of any appeal or other challenge.

## E10. Training

E10.1 You should not participate in decision-making meetings dealing with planning matters unless you have attended any prescribed training.



## **PROTOCOL F: MEMBERS` LICENSING CODE OF GOOD PRACTICE**

### **G1. Introduction**

- G1.1 This protocol is intended to apply the principles contained in the Members' code of conduct, together with the statutory provisions relating to members' conduct contained in the Human Rights Act 1998, the Licensing Act 2003 and the Gambling Act 2005, to members' licensing responsibilities and to support and maintain the observance of high standards of ethical conduct. This protocol applies to the actions of the licensing authority and, for the purposes of this protocol; the term "licensing authority" means the Licensing and Appeals Committee or a panel of the committee, as appropriate.
- G1.2 The aim of this protocol is to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Members must make decisions openly and impartially, with sound judgment and clear and justifiable reasons, and in compliance with any legal provisions.
- G1.3 The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives defined in the legislation. In addition, the licensing authority must have regard to any statutory guidance issued by the Secretaries of State for Transport and for Culture, Media and Sport and the Gambling Commission.
- G1.4 Provisions of this protocol which apply only to members of the licensing authority are marked by a thick black line in the right-hand margin.
- G1.5 This protocol also applies to other members at times when involving themselves in the licensing process, both in formal meetings of the licensing authority and in less formal occasions, such as meetings with officers or the public and consultative meetings.

### **G2. Relationship with the members` code of conduct**

- G2.1 The members` code of conduct must always be complied with and the rules in that code must be applied before considering this protocol.
- G2.2 This protocol is not intended to form a part of the adopted members` code of conduct, but is a separate document, which is both supportive of the members` code and a source of expanded guidance in the particular area of licensing.

### **G3. Licensing proposals and interests under the members' code of conduct**

G3.1 As a member, your interest in a licensing matter may take a variety of forms:

- as a member of the executive having responsibility for licensed premises in the council's ownership or for licensable activities promoted by the council;
- as a member of another organisation or body that is applying to the licensing authority for a licence or is conducting a licensable activity;
- as an employee of a responsible authority, as defined in the legislation;
- as a person who lives, or who has business premises, in the vicinity of licensed premises or an application site;
- as a member of a lobby group or campaigner;
- as the applicant for, or holder of, a licence or the provider of a licensable activity;
- as a member or officer of a registered club;
- as a supplier of goods or services to an applicant, a licence holder or a club.

G3.2 The members' code of conduct places requirements on councillors as to the notification and declaration of their interests and participation in the business of the council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Advice can always be sought from the Monitoring Officer or one of the Council's solicitors as to whether an interest may exist; however ultimate responsibility for compliance rests with individual councillors.

G3.3 You can have an interest in a licensing application in a number of different ways. It may, for example, be an application which relates to property in which you or your partner have a direct interest e.g. as owner. Alternatively, it may be an application which may reasonably be regarded as affecting the financial position of yourself and/ or an Associated Person e.g. a member of your family and where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice of the public interest. These interests are defined in the code of conduct as Disclosable Pecuniary Interests (DPIs) and Other Significant Interests (OSIs).

G3.4 If you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Council, then you

- must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;
- not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or general purposes committee as appropriate);
- withdraw from the meeting room whenever it becomes apparent that the matter is being considered
- not seek to improperly influence a decision about that business.

G3.5 If you have an Other Significant Interest in any business of the Council then you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose.

Having made your representations, given evidence or answered questions you must

- a. not participate in any discussion of, or vote taken on, the matter at the Meeting; and
- b. withdraw from the Meeting room in accordance with the Council's Procedure Rules.

G3.6 You should also make known any DPI or OSI at informal meetings or discussions including those held with officers or other councilors and third parties.

#### **G4. "Pre-determination" (fettering discretion) and "apparent bias"**

G4.1 You should not fetter your discretion, and therefore your ability to participate in licensing decision making, by making up your mind (or clearly appearing to have made up your mind) as to how you will vote on any application prior to its formal consideration at a hearing and before hearing the evidence and representations on all sides. You should particularly think how what you do or say might be viewed by an external interest or lobby group.

G4.2 Fettering your discretion in this way, and then taking part in the decision, will put the licensing authority at risk of a finding of maladministration and of legal challenge on the basis of a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

#### **G5. Contact with applicants and interested parties**

G5.1 You should refer those who approach you for assistance on licensing, procedural or technical matters to the relevant officers.

G5.2 You should not be involved in formal meetings with applicants or groups of objectors or become involved in any organisation one of whose primary purposes is to promote or oppose licensing proposals.

G5.3 If you are, or are likely to be, a member of a hearing panel, you should explain to those who may be attempting to lobby you that you cannot listen to what they want to say as this will prejudice your impartiality and, therefore, your ability to participate in the decision-making process. It is good practice to advise them to contact a ward councillor, who may be able to speak on their behalf at the hearing.

G5.4 It is good practice to:

- forward copies of lobbying correspondence to the Director of Central Services and Monitoring Officer, although correspondence received outside the relevant time period cannot be taken into account;
- comply with guidance on lobbying or attending presentations or discussions set out in this protocol.

G5.5 If you are not a member of a hearing panel, you should not feel constrained in receiving an approach from an applicant or objector and, having considered the information that they have supplied, to agree to speak or make representations on their behalf at a hearing.

## **G6. Lobbying by other Councillors**

G6.1 You must not lobby other councillors regarding their views on licensing applications. Nor should you, outside of the context of the hearing, try to persuade other councillors how to vote.

G6.2 You should not decide, or discuss, how to vote on licensing applications at political group meetings or other meetings, or lobby other members to do so. Political group meetings should never dictate how members should vote on licensing business.

## **G7. Training**

G7.1 You should not participate in decision-making meetings dealing with licensing applications or reviews unless you have attended any prescribed training: this is a legal requirement and cannot be waived.



## **PROTOCOL F: MEMBERS` LICENSING CODE OF GOOD PRACTICE**

### **F1. Introduction**

- F1.1 This protocol is intended to apply the principles contained in the Members' code of conduct, together with the statutory provisions relating to members' conduct contained in the Human Rights Act 1998, the Licensing Act 2003 and the Gambling Act 2005, to members' licensing responsibilities and to support and maintain the observance of high standards of ethical conduct. This protocol applies to the actions of the licensing authority and, for the purposes of this protocol, the term "licensing authority" means the Licensing and Appeals Committee or a panel of the committee, as appropriate.
- F1.2 The aim of this protocol is to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Members must make decisions openly and impartially, with sound judgment and clear and justifiable reasons, and in compliance with any legal provisions.
- F1.3 The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives defined in the legislation. In addition, the licensing authority must have regard to any statutory guidance issued by the Secretaries of State for Transport and for Culture, Media and Sport and the Gambling Commission.
- F1.4 Provisions of this protocol which apply only to members of the licensing authority are marked by a thick black line in the right-hand margin.
- F1.5 This protocol also applies to other members at times when involving themselves in the licensing process, both in formal meetings of the licensing authority and in less formal occasions, such as meetings with officers or the public and consultative meetings.

### **F2. Relationship with the members` code of conduct**

- F2.1 The members` code of conduct must always be complied with and the rules in that code must be applied before considering this protocol.
- F2.2 This protocol is not intended to form a part of the adopted members` code of conduct, but is a separate document, which is both supportive of the members` code and a source of expanded guidance in the particular area of licensing.

### **F3. Licensing proposals and interests under the members' code of conduct**

- F3.1 As a member, your interest in a licensing matter may take a variety of forms:
- as a member of the executive having responsibility for licensed premises in the council's ownership or for licensable activities promoted by the council;

- as a member of another organisation or body that is applying to the licensing authority for a licence or is conducting a licensable activity;
- as an employee of a responsible authority, as defined in the legislation;
- as a person who lives, or who has business premises, in the vicinity of licensed premises or an application site;
- as a member of a lobby group or campaigner;
- as the applicant for, or holder of, a licence or the provider of a licensable activity;
- as a member or officer of a registered club;
- as a supplier of goods or services to an applicant, a licence holder or a club.

F3.2 The members` code of conduct places requirements on councillors as to the notification and declaration of their interests and participation in the business of the council in light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Advice can always be sought from the Monitoring Officer or one of the Council's solicitors as to whether an interest may exist; however ultimate responsibility for compliance rests with individual councillors.

F3.3 You can have an interest in a licensing application in a number of different ways. It may, for example, be an application which relates to property in which you or your partner have a direct interest e.g. as owner. Alternatively, it may be an application which may reasonably be regarded as affecting the financial position of yourself and/ or an Associated Person e.g. a member of your family and where a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice of the public interest. These interests are defined in the code of conduct as Disclosable Pecuniary Interests (DPIs) and Other Significant Interests (OSIs).

F3.4 If you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Council, then you

- must notify the Monitoring Officer of the existence and nature of the interest (if not already notified) as soon as you become aware of this;
- not participate in any discussion of, or vote taken on, the matter at a meeting (unless you have obtained a dispensation from the Monitoring Officer or general purposes committee as appropriate);

- withdraw from the meeting room whenever it becomes apparent that the matter is being considered
- not seek to improperly influence a decision about that business.

F3.5 If you have an Other Significant Interest in any business of the Council then you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must

- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
- (b) withdraw from the Meeting room in accordance with the Council's Procedure Rules.

F3.6 You should also make known any DPI or OSI at informal meetings or discussions including those held with officers or other councilors and third parties.

#### **F4. "Pre-determination" (fettering discretion) and "apparent bias"**

F4.1 You should not fetter your discretion, and therefore your ability to participate in licensing decision making, by making up your mind (or clearly appearing to have made up your mind) as to how you will vote on any application prior to its formal consideration at a hearing and before hearing the evidence and representations on all sides. You should particularly think how what you do or say might be viewed by an external interest or lobby group.

F4.2 Fettering your discretion in this way, and then taking part in the decision, will put the licensing authority at risk of a finding of maladministration and of legal challenge on the basis of a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

#### **F5. Contact with applicants and interested parties**

F5.1 You should refer those who approach you for assistance on licensing, procedural or technical matters to the relevant officers.

F5.2 You should not be involved in formal meetings with applicants or groups of objectors or become involved in any organisation one of whose primary purposes is to promote or oppose licensing proposals.

F5.3 If you are, or are likely to be, a member of a hearing panel, you should explain to those who may be attempting to lobby you that you cannot listen to what they want to say as this will prejudice your impartiality and, therefore, your ability to participate in the decision-making process. It is good practice to advise them to contact a ward councillor, who may be able to speak on their behalf at the hearing.

F5.4 It is good practice to:

- forward copies of lobbying correspondence to the Director of Central Services and Monitoring Officer, although correspondence received outside the relevant time period cannot be taken into account;
- comply with guidance on lobbying or attending presentations or discussions set out in this protocol.

F5.5 If you are not a member of a hearing panel, you should not feel constrained in receiving an approach from an applicant or objector and, having considered the information that they have supplied, to agree to speak or make representations on their behalf at a hearing.

## **F6. Lobbying by other Councillors**

F6.1 You must not lobby other councillors regarding their views on licensing applications. Nor should you, outside of the context of the hearing, try to persuade other councillors how to vote.

F6.2 You should not decide, or discuss, how to vote on licensing applications at political group meetings or other meetings, or lobby other members to do so. Political group meetings should never dictate how members should vote on licensing business.

## **F7. Training**

F7.1 You should not participate in decision-making meetings dealing with licensing applications or reviews unless you have attended any prescribed training: **this is a legal requirement and cannot be waived.**

# OFFICERS' CODE OF CONDUCT

## Introduction

The public is entitled to expect the highest standards of conduct from all employees of Tonbridge & Malling Borough Council.

## Status of the Code

The Code has been adopted by the Council following consultation with employee representatives. In the absence of a satisfactory explanation any significant breach of it is likely to be treated as a serious disciplinary matter.

## Who the code is aimed at

The Code applies to all of the Council's employees.

Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than it will others. The Code is intended to cover all employees under a contract of employment although employees engaged on temporary contracts may in some circumstances be excluded from its provisions. Such employees should check with their Chief Officer if they are in any doubt about particular situations. Activities carried out by employees acting as members of companies or voluntary organisations should be subject to the minimum standards within this Code.

## 1. Standards

- 1.1. Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, without fear of recrimination, to bring to the attention of their Chief Officer or the Chief Executive any deficiency in the provision of service. Employees must report to their Chief Officer or Chief Executive any impropriety or breach of procedure. Advice in confidence, about what might be "reportable" and to whom, can be obtained from the Audit & Counter Fraud Manager or Personnel Manager.

## 2. Disclosure of information

- 2.1. It is generally accepted that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. Your Chief Officer will tell you the rules and practices which relate to the disclosure of information in your Service. Enquiries from the media should normally be referred to your Chief Officer unless he/she has delegated responsibility for dealing with particular matters to another officer.

- 2.2. Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the authority should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.
- 2.3. Employees should be aware of and observe the 8 principles of the Data Protection Act 1984 with regard to personal information about individuals which is (or is intended to be) stored on computer. These principles are not complicated and simply require employees to exercise a reasonable standard of care when dealing with this personal information. Employees should obtain the information fairly and keep it up to date; hold it and use it only for the registered purposes; disclose it only to those organisations and individuals that have a legal right or are registered as having a need to know that information; not obtain or hold information unless it is necessary for the registered purposes; and take reasonable security measures to prevent access to, or loss of, the information. Employees should refer to their own Service guidelines and/or manager for more information, where applicable.

### **3. Political neutrality**

- 3.1. Employees serve the authority as a whole. It follows they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 3.2. Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.
- 3.3. Nothing in this section is intended to compromise the right of employees to join and take part in the activities of political parties, other than as set out for politically restricted posts in the Local Government and Housing Act 1989. You will have been informed by letter or via your contract of employment whether your post is politically restricted.

### **4. Relationships**

#### *4.1. Councillors:*

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to councillors and senior managers and all are there to carry out the authority's work. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

#### 4.2. *The Local Community and Service Users:*

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

#### 4.3. *Contractors:*

All relationships of a business or private nature with external contractors, or potential contractors, should be made known to your Chief Officer. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

- 4.4. Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to their Chief Officer.

### **5. Appointment and other employment matters**

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

### **6. Outside commitments**

- 6.1. Most employees have contracts which require them to obtain written consent to take any outside employment. You should be clear about your contractual obligations and ensure you follow the appropriate procedures for obtaining consent to take outside employment.
- 6.2. Employees should be aware that any intellectual property created in the course of their employment remains in the ownership of the Authority. Intellectual property comprises inventions and original/creative writings and drawings.

## **7. Personal interests**

- 7.1. Employees must declare to their Chief Officer any non - financial interests that they consider could bring about conflict with the authority's interests.
- 7.2. Employees must declare to their Chief Officer any financial interests which could conflict with the authority's interests.
- 7.3. Employees should declare to their Chief Officer membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.

## **8. Equality issues**

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

## **9. Separation of roles during tendering**

- 9.1. Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 9.2. Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 9.3. Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 9.4. Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform their Chief Officer and withdraw from the contract awarding processes.
- 9.5. Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **10. Corruption**

- 10.1. Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.



## **11. Use of financial resources**

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

## **12. Hospitality**

- 12.1. Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. It should be properly authorised by your chief officer. All offers of gifts or hospitality, whether accepted or refused, should be recorded in the hospitality book kept in the Chief Executive's office using the prescribed form.
- 12.2. When hospitality has to be declined the offer or should be courteously but firmly informed of the procedures and standards operating within the authority.
- 12.3. Employees should not accept significant personal gifts from contractors and outside suppliers, although you may keep insignificant items of token value such as pens, diaries, etc.
- 12.4. When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality.
- 12.5. Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the authority gives consent in advance and where the authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees should ensure that the authority meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

## **13. Sponsorship - giving and receiving**

- 13.1. Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 13.2. Where the authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to their Chief Officer of any such interest. Similarly, where the authority through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.



## **PROTOCOL ON MEMBER/OFFICER RELATIONS**

### **1. Introduction**

The Council's Constitution provides for the adoption of a protocol on member/officer relations. .

Given the variety and complexity of member and officer relations, this protocol does not seek to cover everything or to be prescriptive in its application. General guidance is offered on some of the issues which most commonly arise or cause concern. It is hoped, therefore, that the approach which this protocol adopts, will serve as a guide to dealing with other issues that may arise from time to time.

This protocol seeks to encourage best practice and to promote greater clarity and certainty between the various relationships. If any member is unsure about any matter, he/she should contact the relevant Chief Officer and/or the Monitoring Officer for appropriate advice and assistance. If there is any disagreement in the interpretation of this protocol, the opinion of the Monitoring Officer will prevail, in accordance with the Council's Constitution.

The Joint Standards Committee and the Monitoring Officer may issue general guidance on the members' Code of Conduct. Members and officers should, therefore, keep abreast of such issues and respect each other and not do anything to bring the Council, their offices or professions into disrepute.

### **2. Principles underlying member-officer relations**

The relationship between members and officers generally is characterised by mutual trust, respect and courtesy. These are essential for good local government and serve to enhance local democracy member and officer relations are based upon the principles set out in this protocol.

Members must respect an officer's professional opinion on any Council business matter. They should not do anything that compromises, or which is likely to compromise the Council's position on any matter or the impartiality of officers or those who work for, or on behalf of the Council. In particular, members will be in breach of the members' Code of Conduct if they instruct any officer to change his/her professional advice or take any action which the officer considers to be unlawful or illegal or which could amount to maladministration or breach any relevant Codes of Conduct (including professional codes of conduct).

Officers, being employees of the Council, must always act in the best interests of the Council as a whole, and must give wholly impartial advice. Officer support to Political Groups must not extend beyond providing information and advice in relation to Council business (not Party politics/business). It is good practice for Party political discussions and decision-making to take place in the absence of officers, in order to avoid any suspicion of impropriety or misunderstanding.

### ***Legal issues***

Members of the Council do not, as elected members, have any special immunity from civil or criminal wrongs that they may commit against fellow members, officers or members of the public. Members must abide by the Council's adopted members' Code of Conduct and ensure they do not, for example, defame another person. During the course of their normal duties for the Council, members only have a qualified (not absolute) protection against prosecution or civil action.

Any member of the public (including officers) can complain to the council's Monitoring Officer about an alleged breach of the members' Code of Conduct and can bring private civil litigation proceedings against an elected member. The appointed External Auditor can also take legal action against an individual member and the Council, as a whole, for any breaches of the law.

The Council's Media and Communications Team are responsible for co-ordinating the relations with the press and other media organisations on behalf of the Council. It is important, therefore, that all official communication relating to the Council (but not party political or private matters) is dealt with by this team, so as to ensure the proactive, effective and efficient management of the Council's public image, relations and interface.

### **3. Employer/employee issues**

Any dealings between members and officers should continue to be conducted with mutual trust, respect and courtesy, and neither party should seek to take an unfair advantage of his/her position. In particular, members should recognise and pay due regard to their role as an employer in their dealings with officers and avoid placing the Council at risk of formal employment challenge.

Members must, in particular, guard against generating a perception that they are putting inappropriate pressure on officers. Both members and officers must ensure that all communications between them (including written communications) are not likely to cause any embarrassment, lead to the breakdown of mutual trust, respect and courtesy in member/officer relations nor likely to bring the Council into disrepute.

In seeking advice and support, members should have due regard to the seniority of the officer with whom they are dealing and recognise that, whilst those officers owe an overriding duty to the Council as a whole, such duties are first expressed to their respective line managers and Chief officers and not to any individual member. For this reason, members should not give direct instructions to staff, unless they are duly authorised to do so by the Council's Constitution, ie members with individual decision making powers. If so authorised, instructions should, under normal circumstances, still be given to the relevant Chief Officer or head of section and not to a more junior officer.

### ***Equalities issues***

The Council has statutory duties with regard to equality issues and in accordance

with the members' Code of Conduct; members must also promote equality by not discriminating against others. Members and officers are bound by the provisions of the Human Rights Act 1998 which prohibit discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, including disability, age or sexual orientation.

### ***Officer conduct or capability issues***

Members should not raise matters relating to the conduct or capability of an officer (or of officers, collectively) at meetings held in public or in the presence of the media, as officers have no means of responding to the same in public. If any member considers that he/she has not been treated with the proper mutual trust, respect or courtesy or has any concern about the conduct or capability of an officer, he/she should raise the matter, in private, with the relevant Chief officer. Any concerns with regard to a Chief Officer should be discussed, in private, with the Chief Executive.

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

Members are required to consult with the Monitoring Officer and the Chief Financial Officer over any issues of legality, maladministration, financial impropriety or probity or where they have any doubt as to whether particular decisions are or were likely to be contrary to the Council's budget and policy framework or the law. Inappropriate or late consultation will not satisfy the need to consult those officers at the relevant time.

## **4. Overview and scrutiny committee**

The Council's Overview and Scrutiny Committee will seek the advice of:-

- (a) the Monitoring Officer, where they are concerned about the legality of a decision of the Executive or the record of a decision taken; or
- (b) the Monitoring Officer and other relevant Chief officers, where they consider a decision of the Executive might be contrary to the Council's policy framework.

The overview and scrutiny committee or sub-committee may require the Chief Executive and/or any senior officer to attend before it to explain in relation to matters within their remit. The appropriate "senior officer" shall be identified following consultation by the chairman of that committee with the Chief Executive.

When officers give evidence before the overview and scrutiny committee, questions will be confined, so far as is possible, to questions of fact and explanation of any professional opinion relating to policies and decisions. Officers must respond to questions from members in an open, constructive and helpful manner and must not

mislead or be economical with the truth.

Where he/she considers it appropriate, the chairman of the overview and scrutiny committee may ask a Chief officer to explain any advice given by them to members of the Executive and explain any decision the Chief officer may have taken in exercise of delegated powers. For the avoidance of doubt, any matter containing exempt or confidential information must be dealt with in private.

### ***Unacceptable or inappropriate behaviour***

The chairman of the overview and scrutiny committee shall ensure that members of the Executive and officers are not questioned (whether through the nature, tone or language used), in such a manner as could be considered by a reasonable person to be hostile, offensive, derogatory, harassing, bullying, victimising, discriminatory or otherwise unacceptable or inappropriate behaviour by a member. Unacceptable or inappropriate behaviour by a member may also constitute a breach of the members' Code of Conduct.

The chairman of the overview and scrutiny committee may refer to the Chief Executive any unacceptable or inappropriate behaviour on the part of an officer when giving evidence before the committee.

#### **4. Use of Council resources**

The only basis on which the Council can lawfully provide support services to members (e.g. computers, stationery, typing, printing, photo-copying, transport, etc.) is to assist them in the effective and efficient discharge of their duties and role as members of the Council. Such support services must, therefore be only used for Council business (see per paragraph 5 of the members' Code of Conduct). The same should never be used for or in connection with Party Political or campaigning activities or for private purposes. Accordingly, a member requiring use of Council facilities should not request an officer to provide such services.

#### **5. Access to information and the need to know**

Section 100F of the Local Government Act 1972 was introduced to give members rights in addition to those already enjoyed at common law. Section 100F makes it clear that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council, or a committee or a sub-committee of the Council, subject to confidentiality provisions, will be open to inspection by a member of the Council. These provisions are incorporated within the Constitution, primarily in the Access to Information Procedure Rules.

In all cases, however, if there appears to be confidential/ exempt information, by virtue of the other parts of the 1972 Act, there is still the discretion for the relevant proper officer to withhold the confidential/exempt information.

It is also a matter of fact as to whether or not the information is "in the possession or under the control of" the Council. The key issue to be determined is whether or not the information belongs to the Council or to another person. If it belongs to another person, officers will only release any confidential information after an appropriate consent to release such information has been obtained from the relevant person.

Officers will not, therefore, "hand over" their files to a member, without the officer being clear about the reasonableness of the request and the officer's ability to share the information in the file with a member. If any officer is unsure about a request for information, he/she must discuss the same with his/her Chief Officer and/or the Monitoring Officer.

### **Protocol on responding to external consultations**

1. A consultation should be regarded as any request from the Government, or bodies such as the Local Government Association, professional organisations, etc., for the Council to express an opinion on policy matters. It would, therefore, not include requests for purely technical or factual information.
2. The presumption should be that, if a response is appropriate all such consultations will be responded to at officer level, apart from those which, in the opinion of the chief officer, raise issues of significance for the Borough Council or where members are known to be concerned about a particular issue.
3. Before reporting to Cabinet on such a matter, the chief officer will seek confirmation from the relevant Cabinet Member that the matter should be so reported and whether all members should be made aware that the consultation has been received and where copies of the document can be inspected.
4. In circumstances where reporting such a matter to the cabinet would mean that the deadline for comments would be missed, the response should be agreed with the relevant cabinet member



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## **KENT ASSOCIATION OF LOCAL AUTHORITIES'**

### **PROTOCOL ON OVERVIEW AND SCRUTINY CO-OPERATION**

*(Adopted by KALA on 15 November 2001 and adopted by Cabinet on 6 March 2002)*

#### **Aim of the Protocol**

1. To ensure the Overview and Scrutiny Committees of all Kent local authorities can review issues of community interest effectively and with efficient use of all local authority staff resources.

#### **Principles**

2. All authorities should be supported in considering issues of community well-being wider than the responsibilities of their councils.
3. Authorities should work together to maximise the exchange of information and views, minimise bureaucracy and make best use of the time of Members and officers of local and other authorities.

#### **Procedures**

4. Authorities should seek to exchange information on programmes and results of reviews.
5. If an Overview and Scrutiny Committee wishes to review an issue in which another authority has a statutory role or in which evidence from the officers of another authority would be helpful, it should consult with that authority before commencing the review about:
  - the purpose of the review;
  - the areas of interest to the other authority;
  - the input that can be given by Members or officers of the other authority.
6. Consideration should be given to whether the issue is more appropriately discussed in another forum, for example a joint committee, or whether there is scope for joint action including the co-opting of Members of the other Authority onto the Overview and Scrutiny Committee for the purpose of the review.
7. Where a proposal is subject to a public consultation process, scrutiny is most helpful if conducted as part of that process eg allowing any findings and recommendations to be available in time to influence the final decision.

8. Subject to such prior consultation, Authorities will seek to respond positively to requests for information or for a Member or officer to attend meetings of Overview and Scrutiny Committees or for information.
9. While it is ultimately for each Authority to decide who it considers the most appropriate person(s) to speak on its behalf to an Overview and Scrutiny Committee, consideration will be given to meeting specific requests.
10. Dates and times of Member and officer attendance at Overview and Scrutiny meetings should be agreed with them.
11. Each Authority will nominate a contact officer for the operation of these procedures.