

# Notice of Meeting

---

## Governance and Audit Committee

**Monday, 10th February, 2014 at 5.00 pm**  
in Council Chamber Council Offices  
Market Street Newbury

Date of despatch of Agenda: Thursday, 30 January 2014

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Andy Day / Moira Fraser on (01635) 519459 / (01635) 51904

e-mail: [aday@westberks.gov.uk](mailto:aday@westberks.gov.uk) / [mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)

Further information and Minutes are also available on the Council's website at [www.westberks.gov.uk](http://www.westberks.gov.uk)



**Agenda - Governance and Audit Committee to be held on Monday, 10 February 2014**  
(continued)

**To:** Councillors Jeff Beck (Chairman), Paul Bryant, Sheila Ellison, Tony Linden, Geoff Mayes, Julian Swift-Hook (Vice-Chairman) and Quentin Webb  
**Substitutes:** Councillors Peter Argyle, Brian Bedwell, Gwen Mason and Tony Vickers

---

# Agenda

<b>Part I</b>	<b>Page No.</b>
1. <b>Apologies</b> To receive apologies for inability to attend the meeting (if any).	
2. <b>Minutes</b> To approve as a correct record the Minutes of the meeting of this Committee held on 25 November 2013.	1 - 8
3. <b>Declarations of Interest</b> To remind Members of the need to record the existence and nature of any Personal, Disclosable Pecuniary or other interests in items on the agenda, in accordance with the Members' <a href="#">Code of Conduct</a> .	
4. <b>Interim Internal Audit Report 2013/14 (GA2815)</b> <i>Purpose: To provide an update of the results of internal audit work for the first half of 13-14.</i>	9 - 20
5. <b>Amendments to the Constitution - Scheme of Delegation (C2770)</b> <i>Purpose: To review and amend sections of the Scheme of Delegation in light of legislative changes.</i>	21 - 92
6. <b>Changes to the Constitution - Part 13 Codes and Protocols (C2771)</b> <i>Purpose: To review and amend sections of Part 13 (Codes and Protocols) i.e. Appendices A (West Berkshire Code of Conduct for Planning), D (Gifts and Hospitality: A Code of Conduct for Councillors), E (Procedure for Local Determination of Allegation) and G (West Berkshire Code of Conduct for Licensing) in light of legislative changes, policy changes and recent government guidance.</i>	93 - 138

Andy Day  
Head of Strategic Support

**Agenda - Governance and Audit Committee to be held on Monday, 10 February 2014**  
*(continued)*

If you require this information in a different format or translation, please contact  
Moira Fraser on telephone (01635) 519045.



This page is intentionally left blank

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

## **GOVERNANCE AND AUDIT COMMITTEE**

### **MINUTES OF THE MEETING HELD ON MONDAY, 25 NOVEMBER 2013**

**Councillors Present:** Peter Argyle (Substitute) (In place of Sheila Ellison), Jeff Beck (Chairman), Paul Bryant, Tony Linden, *Geoff Mayes*, *Julian Swift-Hook* (Vice-Chairman) and Quentin Webb

**Also Present:** David Holling (Head of Legal Services) and Moira Fraser (Democratic and Electoral Services Manager)

**Apologies for inability to attend the meeting:** Councillor Sheila Ellison

#### **PART I**

##### **16. Minutes**

The Minutes of the meeting held on 2 September 2013 were approved as a true and correct record and signed by the Chairman.

##### **17. Declarations of Interest**

There were no declarations of interest received.

##### **18. Amendments to the Constitution - Parts 4, 7 and 13 (C2728)**

David Holling introduced the report which set out some proposed changes to Part 4 (Council Rules of Procedure), Part 7 (Regulatory and Other Committees Rules of Procedure) and Part 13 (Codes and Protocols) in light of recent legislative and policy changes and to accord with recently issued government guidance.

Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group was to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance stated that there would be an annual review of the operation of the Constitution. A timetable had therefore been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers had been involved in revising specific parts of the Constitution. This report proposed amendments to Parts 4 (Council Rules of Procedure), 7 (Regulatory and Other Committees Rules of Procedure) and 13 (Codes and Protocols) of the Constitution as set out within the report.

The following key changes had been made to the various sections of the Constitution.

###### **Part 4 Council Rules of Procedure**

The Use of Electronic Devices (4.6.2) was aligned with the proposed Social Media Protocol which would also be discussed at the December 2013 Council meeting.

Paragraph 4.13.7 (Amendments to Motions) was amended to take on board the request made by the Portfolio Holder for Finance about making information available on amendments proposed at the annual budget meeting.

Appendix A was amended to take cognisance of the guidelines issued by Central Government on broadcasting meetings.

## GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES

### Part 7 Regulatory and Other Committees Rules of Procedure

Information pertaining to the various meetings covered by this part of the Constitution had been standardised.

The Use of Electronic Devices (7.2.5) had been aligned with the proposed Social Media Protocol which would also be discussed at the December 2013 Council meeting.

Reference to authority to appoint Members to Outside Bodies had been removed as this function had been delegated to the Leader of the Council.

Reference to Urgency Sub-Committee had been removed as this committee no longer formed part of the Council's governance structure.

Appendix A was amended to take cognisance of the guidelines issued by Central Government on broadcasting meetings.

### Part 13 Codes and Protocols

This Part of the Constitution had been aligned to the revisions to the Members' Code of Conduct which would also be discussed at the December 2013 Council meeting.

The Officer's Code of Conduct had been updated to align it with changes to a number of HR Policies and to provide additional clarity to this section of the Constitution. This section had also had the text changed in respect of gifts and hospitality to align it with current working practices.

Appendix B (Protocol for Decision Making by Individual Executive Member) had been amended to align it with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Appendix C (Procedure Rules for Dealing with Representations) had been amended at the September 2013 meeting.

Appendix H (Members Code of Conduct) would also be discussed at the December 2013 meeting.

Appendices D and E would be amended at the March 2014 Council meeting once they had been considered by the Standards Committee.

Appendices A, G and J would be amended at the March 2014 Council meeting once they had been considered by the Governance and Audit Committee.

Appendices F and I would be amended at the May 2014 Council meeting once they had been considered by the Governance and Audit Committee.

The following additional changes set out in the table below were also requested at the meeting:

Item/ Ref	Page	Amendment
Item 4 - Amendments to the Constitution (Para 4.6.2)	21	Delete the words 'seek the consent of' and replace with 'inform' in the first paragraph.
Item 4 - Amendments to the Constitution (Para 4.6.2)	21	Delete the words 'The Chairman of the relevant meeting will have absolute discretion to prevent the use of devices if such use is deemed to be disrupting the meeting.' In the second paragraph. This paragraph needs to be aligned to paragraph 4.15. (Behaviour of Members)  This should be replaced with 'If at a Council meeting, a Member's use of an electronic communication device is causing proceedings to be disrupted any Member may move that the Member should desist from using the device. If the motion is

## GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES

		seconded it should be put to the vote without discussion.'
Item 4 - Amendments to the Constitution (Para 4.6.2)	21	Insert the word 'so' between 'do' and 'in' in the first sentence of the last paragraph.
Item 4 - Amendments to the Constitution (Para 4.8.3)	23	That the word Gambling Act in the final paragraph be written using a capital 'G'
Item 4 - Amendments to the Constitution (Para 4.9.12 (p))	25	That a Member named under Rule 4.6.2 (Electronic Communication Devices) be prevented from further using their electronic communication device at the meeting or leave the meeting.
Item 4 - Amendments to the Constitution (Para 4.12.2)	27	Delete the word fax and search remainder of the documents to ensure all references removed.
Item 4 - Amendments to the Constitution (Para 4.13.7)	30	In the first line of the last paragraph replace the word 'substantive' with the word 'substantial'.
Item 4 - Amendments to the Constitution (Part 4 Appendix A)	36	If approved this will be replaced with Appendix A as set out on page 187
Item 4 - Amendments to the Constitution (Para 7.1.1 & 7.1.2)	43	Delete the words 'or the Local Development Framework'
Item 4 - Amendments to the Constitution (Para 7.2.5)	45	Align the text to the wording on 4.6.2
Item 4 - Amendments to the Constitution (Para 7.2.5)	46	Insert the word 'so' between 'do' and 'in' in the first sentence of the last paragraph.
Item 4 - Amendments to the Constitution (Para 7.3.4)	48	Delete the words 'or the Local Development Framework'
Item 4 - Amendments to the Constitution (Para 7.3.1)	48	Insert 'and licensing' after the word 'planning' in the second line of the bold text
Item 4 - Amendments to the Constitution (Para 7.8)	51	Delete the first sentence and in the second sentence replace the word 'Commission' with the word 'Committee'. Remove any similar text to the first sentence from the rest of the Constitution.
Item 4 - Amendments to the Constitution (Para 7.13.4)	55	Remove the reference to U.S. Formatting and insert a bullet point next to 'Adjoining Ward Member(s).'
Item 4 - Amendments to the Constitution (Para 7.13.7)	56	Delete the words 'or the Local Development Framework'
Item 4 - Amendments to the Constitution (Para 7.14.2)	56	Amend the first sentence to read 'The procedure set out below shall apply in respect of each item where any of the following persons are present:'
Item 4 - Amendments to the Constitution (Para 7.14.3)	57	In the fourth bullet point delete all the text from e.g. onwards
Item 4 - Amendments to the Constitution (Part 7 Appendix A)	59	If approved this will be replaced with Appendix A as set out on page 187
Item 4 - Amendments to the Constitution (Para 13.1.10)	70	Make a reference to the fact that posts referred to in paragraph 13.1.10 are politically restricted
Item 4 - Amendments to the Constitution (Para	70	Replace the heading 'Role of Group Executives' with 'Politically Restricted Roles'

## GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES

13.1. 11		
Item 4 - Amendments to the Constitution (Para 13.3.4)	74	In the fourth bullet point the word 'spokesperson' should be written with a small 's'.
Item 4 - Amendments to the Constitution (Para 13.3.7)	75	Replace the word 'has' with 'have' in the second line of the third paragraph and the last line of the fourth paragraph.
Item 4 - Amendments to the Constitution (Para 13.4.1)	76	The word conduct in the last paragraph should be written with a capital 'C'.
Item 4 - Amendments to the Constitution (Para 13.4.8)	78	Replace the word 'should' with the word 'must'.
Item 4 - Amendments to the Constitution (Para 13.5.4)	80	Add an 's' onto the word 'cost' in the last line of the second paragraph
Item 4 - Amendments to the Constitution (Para 13.5.5)	81	Replace the word 'They' with 'The Head of Service' in the second line of the final paragraph on this page
Item 4 - Amendments to the Constitution (Para 13.5.6)	82	Replace 'scp' with 'spinal column point'
Item 4 - Amendments to the Constitution (Para 13.5.10)	83	In the first sentence of the second paragraph delete the word 'they'.
Item 4 - Amendments to the Constitution (Para 13.5.11)	84	Delete the first paragraph.
Item 4 - Amendments to the Constitution (Para 13.5.12)	84	The second paragraph insert an apostrophe into the word 'employees' in the last line
Item 4 - Amendments to the Constitution (Para 13.5.13)	85	Replace the word 'should' with the word 'must' in all four paragraphs.
Item 4 - Amendments to the Constitution (Appendix B item 5)	102	Replace the word 'happy' with 'content'

A number of these changes were to correct typographical errors. Members also requested that, in respect of the use of electronic devices at meetings, they would need to inform the Chairman of their intent to use them rather than to seek permission. Members also requested that the policy in respect of disruption of meetings be aligned to the procedures for dealing with disorderly conduct at meetings rather than giving the Chairman the authority to ask Members to desist from using the devices. Members requested that once the Audit and Accountability Bill was enacted that a form of wording be inserted on agendas setting out that Members were permitted to use electronic devices in meetings.

Members adjourned the meeting to consider tabled comments from the Trade Unions in respect of the proposed changes to the protocol relating to filming and recording of meetings (Appendix A to Parts 4 and 7 of the Constitution).

The Trade Unions requested that the notice period of three days be extended to five. The Committee after considering this request determined that it should remain at three days, notwithstanding the five day period for submission of information to Planning Committees, for the following reasons:



## **GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES**

- The agenda would be issued five clear working days before the meeting and a five clear day notice period would not give all parties the opportunity to have had access to the agenda;
- The current notice period was one day and therefore extending it to five days could be viewed as being excessive;
- This would all be subject to the outcome of the Audit and Accountability Bill once it was enacted.

The Trade Unions also requested that relevant Officers be informed of the request to record the meeting and the Committee agreed that this would be a useful addition to the Protocol.

The Committee noted the Trade Unions request for those persons who were authorised to record meetings to clearly identify themselves and the Committee therefore proposed that the following be included in the protocol 'Such persons will be issued with a written authorisation and will be asked to identify themselves to the Chairman or Vice-Chairman before the start of the meeting. The Chairman will advise such persons about the appropriate location to make recordings from.'

The Trade Unions also raised concerns that members of the public attending meetings, but not speaking, might also wish not to be recorded. The Committee therefore suggested that the wording in the Protocol be amended to read 'Members of the public who have given notice of their wish to speak at any public meeting and members of the public present at the meeting shall be advised of the request to record the meeting and shall be able to decide to "opt out" of being recorded. This information will be relayed to the person wishing to record the meeting.'

Members agreed to recommend the report, subject to the inclusion of the agreed amendments, to Full Council for approval.

**RESOLVED that the amended report would be considered by Full Council on 12 December 2013.**

### **19. Revised Code of Conduct for Members (including a Social Media Protocol) (C2737)**

The Committee considered a report (Agenda Item 5) which asked Members to discuss and if appropriate agree any recommended changes to the Members' Code of Conduct following the scheduled review by the Standards Committee and to consider the introduction of an associated Social Media Protocol for Members.

David Holling introduced the changes required to the Members' Code of Conduct. West Berkshire Council's Code of Conduct for Councillors had been adopted by Full Council at its meeting on 10<sup>th</sup> May 2012 and came into effect from 1<sup>st</sup> July 2012. The new processes had been in place for a year and, as suggested in the original report, the Code had been reviewed by a Task Group of the Standards Committee to reflect on its effectiveness. Following that review a number of changes were therefore set out in the document attached to the report.

Blogging and social networking had become increasingly popular and was an effective method for Councillors to interact with their parishioners. However, it was not clear whether such activities were covered by the Code of Conduct and therefore a Social Media Protocol had been drafted to ensure that the use of online media was well received.

The following changes to the existing Code of Conduct had been proposed by the Standards Committee Task Group:

## GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES

- The scope of when the Code was applicable should be reviewed and if appropriate clarified;
- Footnotes pertaining to the Bribery Act 2010 and the Local Authority Code of Publicity should be inserted;
- The terms “you must” and “you must not” to be inserted into the Code relating to the obligations of Members;
- The level at which gifts and hospitality should be declared to be reviewed and if appropriate amended.

A number of amendments were also proposed to the existing procedures which included an assumption that hearings should take place in public and the ability for an Advisory Panel to refer an investigation back to the investigator if appropriate.

David Holling stated that the report had been considered by the Standards Committee where it had been agreed that the level at which gifts and hospitality should be declared should remain at the current value of £25. The Standards Committee were supportive of the Social Media Protocol.

The following amendments to the document were also agreed at the Governance and Audit meeting:

Item 5 Revised Code of Conduct for Members (Para 1.1)	195	Replace the text in the third line 'It is effective from' with 'It came into effect on'
Item 5 Revised Code of Conduct for Members 3(d)	197	The words disclosable pecuniary interests should be written with a capital at the start of each word.
Item 5 Revised Code of Conduct for Members (Para 4.1.1)	197	Insert the word 'of' at the end of the first paragraph and insert semicolons after items (b) and (c) and a full stop at the end of (c).
Item 5 Revised Code of Conduct for Members (Para 7.1)	201	In the third line replace the word 'of' with 'or' after the word 'receipt'.
Item 5 Revised Code of Conduct for Members (Para 2.2 (i))	206	Insert a hyphen into the word 'decision-making'
Item 5 Revised Code of Conduct for Members (Para 2.2 (iv))	207	Delete the words 'They suggest that'.
Item 5 Revised Code of Conduct for Members (Para 3.1)	207	Insert the word 'the' before 'Standards Committee'.
Item 5 Revised Code of Conduct for Members (Para 3.)	207	Insert the words 'these are' after the words 'are objective and' and replace the 'a' before Standards Committee with the word 'the'.
Item 5 Revised Code of Conduct for Members (Para 5 (ii))	208	Insert a comma after 'If appropriate' in the first sentence
Item 5 Revised Code of Conduct for Members (Para 5 (iv))	208	Delete the word 'the' before 'Monitoring Officer'.
Item 5 Revised Code of Conduct for Members (Para 5 (ix))	209	The word 'Act' should not be deleted
Item 5 Revised Code of Conduct for Members (Flowchart)	211	Insert the word 'relevant' in front of the word 'committee' under sanction 2

## GOVERNANCE AND AUDIT COMMITTEE - 25 NOVEMBER 2013 - MINUTES

Social Media Protocol	215	You should not: (d) spell the word 'council' with a capital 'C'.
Social Media Protocol	216	Align the text with that in paragraph 4.6.2

Members agreed to recommend the report, subject to the inclusion of the agreed amendments, to Full Council for approval.

**RESOLVED that** the report would be considered by Full Council on 12 December 2013.

*(The meeting commenced at 5.00pm and closed at 7.20pm)*

**CHAIRMAN** .....

**Date of Signature** .....

This page is intentionally left blank

# Agenda Item 4.

<b>Title of Report:</b>	<b>Interim Internal Audit Report - 2013-14</b>
<b>Report to be considered by:</b>	Governance and Audit Committee
<b>Date of Meeting:</b>	10 February 2014
<b>Forward Plan Ref:</b>	GA2815

**Purpose of Report:** To provide an update of the results of internal audit work for the first half of 13-14.

**Recommended Action:** To note the report.

**Reason for decision to be taken:** Part of the governance framework

**Other options considered:** None

**Key background documentation:** Internal Audit Reports

The proposals will also help achieve the following Council Strategy principle:

**CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Alan Law - Tel (01491) 873614
<b>E-mail Address:</b>	alaw@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	23 January 2014
Contact Officer Details	
<b>Name:</b>	Ian Priestley
<b>Job Title:</b>	Chief Internal Auditor
<b>Tel. No.:</b>	01635 519253
<b>E-mail Address:</b>	ipriestley@westberks.gov.uk

## Implications

**Policy:** none

**Financial:** none

**Personnel:** none

**Legal/Procurement:** none

**Property:** none

**Risk Management:** none

**Corporate Board's Recommendation:** Report to proceed to Management Board for consideration.

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input checked="" type="checkbox"/>

## **Executive Summary**

---

### **1. Introduction**

- 1.1 The purpose of this report is to provide an interim report to the Governance and Audit Committee as required by the Code of Practice for Internal Audit in Local Government.
- 1.2 The report highlights the results of internal audit work on the Council's systems and procedures and provides assurance on the Council's internal control framework.

### **2. Proposals**

- 2.1 The work carried out by internal audit demonstrates that the Council's main financial systems are very sound.

### **3. Equalities Impact Assessment Outcomes**

- 3.1 This item is not relevant to equality.

### **4. Conclusion**

- 4.1 The Council's overall internal control framework remains robust.

# Executive Report

---

## 1. Introduction

- 1.1 The Public Sector Internal Audit Standards, as adapted by CIPFA's "Local Government Application Note" requires the Chief Internal Auditor to make a formal report annually to the Council.
- 1.2 In addition to the formal annual report the Chief Internal Auditor provides an interim report to the organisation in the course of the year. The interim report aims to address emerging issues in respect of the whole range of areas to be covered in the formal annual report. This report provides an interim view looking at the first 6 months of the year.

## 2. Opinion on the "Internal Control Framework"

- 2.1 No fundamental weaknesses were identified in Council's internal control framework through the work carried out by Internal Audit. Where audit work identified weaknesses then management action has been taken to resolve issues identified. Overall the internal control framework remains robust.
- 2.2 The following table summarises the results of the audit work where an opinion was given, and this demonstrates that the key financial systems are very robust.

Type	Very weak	Weak	Satisfactory	Well Controlled	Very Well Controlled
Key Financial System	0	0	0	3	2
Other systems	0	0	3	1	0

- 2.3 The following summarises the results of follow up work. This table demonstrates that the Council has responded effectively where weaknesses have been identified.

Type	Unsatisfactory	Satisfactory
Key Financial System	0	4
Other systems	0	3

## 3. Performance of Internal Audit

- 3.1 Delivery of the audit plan is within target in the current year. The team is fully staffed at present.

---

## Appendices



Appendix A - Internal Audit work in progress  
Appendix B - Work completed in the first half of 13-14

### **Consultees**

---

**Local Stakeholders:** N/a  
**Officers Consulted:** Corporate Board  
**Trade Union:** N/a

This page is intentionally left blank

**1) CURRENT AUDITS**

Directorate/Service	Audit Title	Current Position of Work	Audit Plan Year
Corporate	National fraud Initiative	Ongoing	2012/13
Corporate	Capital Programme /Project Management Methodology	Draft issued	2012/13
Corporate	Community Infrastructure Levy	Being Reviewed	2013/14
Corporate	Mileage Claims	Being Reviewed	2013/14
Corporate	Income Spot Checks	3 visits Undertaken – drafts issued	2013/14
Corporate	Corporate Fraud Review	Testing	2013/14
<b>Resources</b>			
Finance	Procurement Cards	Draft issued	2012/13
Finance	Commercial Rents	Being Drafted	2012/13
Customer Services	Accounts Payable	Draft issued	2012/13
Customer Services	Payroll	Draft issued	2012/13
Customer Services	Car Loans and Car Leasing	Testing	2012/13
ICT. and Corporate Services	I.T. Helpdesk	Draft Issued	2012/13
Strategic Support	Service Planning/ and Performance Management	Testing	2013/14
Strategic Support	Equality Impact Assessments	Being drafted	2013/14
Finance	MTFS	Testing	2013/14
Finance	Treasury Management	Testing	2013/14
Finance	V.A.T	Being Reviewed	2013/14
ICT	Printer Rationalisation (Post implementation	Testing	2013/14

	Review)		
--	---------	--	--

<b>Communities</b>			
Children's Services	Payment to Carers	Draft issued	2012/13
Education Services	School Census Processes	Being Reviewed	2012/13
Care Commissioning, Housing and Safeguarding	Appointeeship/Deputyship Administration	Draft issued	2012/13
Adult Social Care	Phoenix Resource Centre	Being Reviewed	2013/14
Adult Social Care	Personal Budgets Direct Payments	Being Reviewed	2013/14
Children's Services	Supervision Checks	Background	2013/14
<b>Environment</b>			
Culture and Environmental Protection	Clean and Green Agenda	Draft issued	2012/13
Highways and Transport	Structural Maintenance and Engineering	Draft issued	2012/13
Highways and Transport	Traffic Management	Testing	2013/14
Culture and environmental Protection	Trading Standards – Joint Arrangements	Testing	2013/14

**2) CURRENT ADVISORY REVIEWS/OTHER WORK**

<b>Directorate/Service</b>	<b>Audit Title</b>	<b>Current position of work</b>
ICT	Audit Manager carrying out the Assurance Role for the Superfast Broadband Project	Ongoing

**3) CURRENT FOLLOW-UPS**

<b>Directorate/Service</b>	<b>Audit title</b>
<b>Resources</b>	
Strategic Support	Civil Contingencies
Customer Services	NNDR
Customer Services	Accounts Payable
ICT	Disaster Recovery
ICT	I.T. Security
Finance	Treasury Management
<b>Communities</b>	
Care Commissioning, Housing and Safeguarding	Homelessness
Children's Services	York House
Adult Social Care	Occupational Therapy Pooled Budget
<b>Environment</b>	
Highways and Transport	Car Parks
Highways and Transport	Highways Term Contract
Planning and Countryside	Development Control
Culture and Environmental Protection	Licensing
Culture and Environmental Protection	Libraries Income

This page is intentionally left blank

1) **COMPLETED AUDITS**

Directorate/Service	Audit Title	Date Audit finalised	Overall Opinion
<b>Resources</b>			
Strategic Support	Corporate Complaints	22/05/2013	Satisfactory
Human Resources	Recruitment	22/05/2013	Satisfactory
Finance	Treasury Management	31/07/2013	Well Controlled
Finance	General ledger	25/09/2013	Very Well Controlled
Finance	Insurance	13/06/2013	Satisfactory
Customer Services	Accounts Receivable	03/06/2013	Well Controlled
Customer Services	Housing Benefits	07/06/2013	Very Well Controlled
Customer Services	NNDR	31/07/2013	Well Controlled
Customer Services	Council Tax	07/08/2013	Well Controlled
<b>Communities</b>			
<b>Environment</b>			

**NOTE**

The overall opinion is derived from the number/significance of recommendations together with using professional judgement. The Auditor's judgement takes into account the depth of coverage of the review (which could result in more issues being identified) together with the size/complexity of the system being reviewed.

2) **COMPLETED ADVISORY REVIEWS**

Directorate/Service	Review Title	Date Review completed
None undertaken during this period		

3) **COMPLETED FOLLOW-UPS**

<u>Directorate/ Service</u>	<u>Audit Title</u>	<u>Date follow up finalised</u>	<u>Overall Opinion of Report</u>	<u>Opinion – Implementation progress</u>
<b>Resources</b>				
Legal Services	Legal Services	26/09/2013	Satisfactory	Satisfactory
Customer Services	NNDR	31/07/2013	Well Controlled	Satisfactory
Customer Services	Council Tax	07/08/2013	Well Controlled	Satisfactory
Customer Services	Housing Benefits	07/06/2013	Very well Controlled	Satisfactory
Strategic Support	Management of the Council's Website Content and Utilisation	05/07/2013	Satisfactory	Satisfactory
Finance	General Ledger	25/09/2013	Very Well Controlled	Satisfactory
ICT/Education	Facilities Management	24/09/2013	Satisfactory	Satisfactory
<b>Communities</b>				
<b>Environment</b>				



# Agenda Item 5.

<b>Title of Report:</b>	<b>Amendments to the Constitution - Scheme of Delegation</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	4 March 2014
<b>Forward Plan Ref:</b>	C2770

**Purpose of Report:** To review and amend sections of the Scheme of Delegation in light of legislative changes.

**Recommended Action:** To discuss the amendments and any additional changes required prior to the report being discussed at Full Council.

**Reason for decision to be taken:** To ensure that the Council has adjusted the scheme in light of legislative changes

**Other options considered:** None

**Key background documentation:** None

The proposals will help achieve the following Council Strategy principles:

**CSP7 - Empowering people and communities**

**CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy principles by:

Ensuring that the Constitution is up to date

## Portfolio Member Details

<b>Name &amp; Telephone No.:</b>	Councillor Gordon Lundie - Tel (01488) 73350
<b>E-mail Address:</b>	glundie@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	Councillors Lundie and Beck emailed on the 20.01.14

## Contact Officer Details

<b>Name:</b>	Moira Fraser
<b>Job Title:</b>	Democratic and Electoral Services Manager
<b>Tel. No.:</b>	01635 519045
<b>E-mail Address:</b>	mfraser@westberks.gov.uk

## Implications

<b>Policy:</b>	Will require changes to the Constitution
<b>Financial:</b>	None – will be undertaken within existing resources.
<b>Personnel:</b>	None
<b>Legal/Procurement:</b>	Will require the Constitution to be updated
<b>Property:</b>	None
<b>Risk Management:</b>	None

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input checked="" type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>
Report is to note only		<input type="checkbox"/>

# Executive Report and Summary

---

## 1. Introduction

- 1.1 Following an internal audit of the Management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.2 A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to Part 3 of the Constitution, the Scheme of Delegation.
- 1.3 In addition there is a constitutional requirement for the Leader of the Council to present to the Council a written record of delegations they have made for inclusion in Part 3 of the Constitution.
- 1.4 The Scheme of Delegation summarises which part of the decision-making process (e.g. the Council, Executive, the Area Planning Committees, Licensing Committee/Sub-Committee, the Standards Committee and the Personnel Committee) is responsible for which function. This Scheme also sets out the extent to which the powers and duties of the Council are delegated to Officers.
- 1.5 All Directors and Heads of Service have been asked to advise of any changes they require to the Scheme of Delegation to ensure that the Council's Constitution is as up to date as possible. The report proposes a small number of changes for the Council to consider. These are set out below.
- 1.6 The following key changes have been made to the document by Officers:
  - (1) *Head of Highways and Transport*
    - (a) Paragraph 3.12.2, fifth bullet point – insert the words ‘including de-minimus arrangements;
    - (b) Paragraph 3.12.3, last bullet point – insert the words ‘and current guidance’;
    - (c) Amend the text in 3.12.7 pertaining to the Land Drainage Act 1991;
    - (d) Amend the text in 3.12.13 in relation to the Flood and water management Act 2010.
    - (e) Insert text in new paragraph 3.12.10 in relation to the Goods Vehicles (Licensing Operators) Act 1985.
  - (2) *Head of Culture and Environmental Protection*
    - (a) Removal of reference to legislation that was no longer relevant or that had been superseded.
  - (3) *Head of Strategic Support*

- (a) Insertion of a paragraph at 3.9.5 delegating authority to the Head of Service to deal with Assets of Community Value.

(4) *Head of Legal Services*

- (a) Insertion of a paragraph under the heading miscellaneous (3.13.4) which will allow the Monitoring Officer to make minor amendments and corrections to the Constitution;
- (b) Insert a new paragraph 3.13.12 (Localism Act 2011) to align the procedures for dealing with complaints made under the Standards regime with the Scheme of Delegation.

## **2. Proposals**

- 2.1 It is proposed that the revised Scheme of Delegation be approved.

## **3. Equalities Impact Assessment Outcomes**

- 3.1 This item is not relevant to equality.

## **4. Conclusion**

- 4.1 The report is a required update to take cognisance of legislative changes.

## **Appendices**

---

Appendix A – Part 3 of the Constitution (Scheme of Delegation)

## **Consultees**

---

**Local Stakeholders:** Not consulted

**Officers Consulted:** All Heads of Service and Corporate Directors

**Trade Union:** Not consulted

# West Berkshire Council Constitution

## Part 3

### Scheme of Delegation

#### Document Control

Document Ref:	WB/P&C/MF/2008-11	Date Created:	May 2007
Version:	10.1	Date Modified:	September 2013
Revision due			
Author:	Moira Fraser – Democratic and Electoral Services Manager		
Owning Service	Strategic Support		

#### Change History

Version	Date	Description	Change ID
2	June 2008	Updated to incorporate new legislation and to apply the scheme to officers in two services	
2.1	Dec 2008	Paragraph 3.15.1	
3	Dec 2010	Entire document revised to align functions following Senior Management Review and to make amendments in line with changes to legislation	
4	October 2011	Entire document revised	
5	March 2012	Entire document revised to align functions following Senior Management Review and to make amendments in line with changes to legislation. Approved at Council meeting on 1 March 2012.	
6	May 2012	Changes arising from the introduction of the Localism Act	
7	Sept 2012	Added Paragraph 3.14.23	
8	December 2012	Amended Paragraph 3.13.2	
9	July 2013	Added Head of Public Health and Wellbeing (Paragraph 3.17)	
10	September 2013	Typos corrected in 3.8.2 and 3.8.5. Additional paragraph inserted in 3.8.6 and new section 3.8.10 added. Additions made to 3.15.3 and paragraph 3.15.5 amended.	
10.1	November 2013	Local Development Plan renamed Development Plan	
11	March 2014	<u>Amendments to under the head of Legal Services insert provisions pertinent to the Localism Act 2011, and permit the Executive officer to make minor amendments to the</u>	



Version	Date	Description	Change ID
		<a href="#"><u>Constitution. Insert provisions under the Goods vehicles (Licensing of Operators) Act 1985. Changes to paragraphs 3.3.3. (final bullet point), 3.12.2, 3.12.3, 3.12.7, 3.12.14 and 3.15.3</u></a>	

# West Berkshire Council Constitution

---

Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:  
<http://www.opsi.gov.uk/legislation/uk>

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact Moira Fraser on 01635 519045 who will be able to help.



West Berkshire  
C O U N C I L

## Contents

3.1	Delegation of Functions.....	1
3.1.1	Introduction .....	1
3.1.2	Table 1- Responsibility for Local Choice Functions.....	1
3.1.3	Table 2 - Responsibility for Council Functions (Schedule 1 of the Functions Regulations).....	4
3.1.4	Table 3 - Summary of Licensing Authority functions in accordance with the Licensing Act 2003 (except where delegated below).....	7
3.1.5	Table 4 - Summary of Executive Functions .....	8
3.2	Officers' Scheme of Delegation.....	9
3.2.1	Scope of Scheme .....	9
3.2.2	Consultation .....	10
3.2.3	Conditions of Delegation .....	10
3.2.4	Overall Limitations .....	11
3.3	General Delegation to Corporate Directors/Heads of Service...	12
3.3.1	Equipment .....	12
3.3.2	Legal Matters .....	12
3.3.3	Human Resources.....	12
3.3.4	Tenders/Contracts.....	14
3.3.5	Emergencies .....	14
3.3.6	Delegation to Specific Directors .....	14
3.4	Schedule of Proper Officer Appointments.....	16
3.4.1	Delegations to Heads of Service .....	20
3.5	Head of Finance .....	20
3.5.1	Designation .....	20
3.5.2	Responsibility .....	20
3.5.3	Finance General.....	20
3.5.4	Loans and Borrowing .....	21
3.5.5	Valuation .....	21
3.5.6	Housing Benefits .....	21
3.5.7	Local Government Finance Act 1988 .....	21
3.5.8	Council Tax (Administration and Enforcement) Regulations 1992 .....	22



3.5.9	Council Tax (Administration and Enforcement) Regulations 1992 and Schedule 4 Local Government Finance Act 1992 .....	22
3.5.10	Council Tax (Situation and Valuation of Dwellings) Regulations 1992.....	22
3.5.11	Council Tax (Reductions for Disabilities) Regulations 1992.....	22
3.5.12	Local Authorities (Calculation of Council Tax Base) Regulations 1992.....	22
3.5.13	Matters Relating to Children and Young Persons .....	22
3.5.14	Local Government (Miscellaneous Provisions) Act 1976 .....	23
3.5.15	Housing Act 1985 .....	23
3.5.16	Property Matters .....	23
3.5.17	Insurance .....	<del>23</del> 24
3.5.18	Human Resources .....	<del>23</del> 24
3.6	Head of Children’s Services .....	<del>23</del> 24
3.6.1	General.....	<del>23</del> 24
3.6.2	Support to Children and Families in their Own Home .....	25
3.6.3	Child Protection .....	<del>25</del> 26
3.6.4	Accommodation, Care, Fostering and Adoption .....	26
3.6.5	Home Care Services: Financial Matters.....	27
3.7	Head of Adult Social Care.....	<del>27</del> 28
3.7.1	Residential and Nursing Home Accommodation.....	<del>27</del> 28
3.7.2	Disability .....	<del>27</del> 28
3.7.3	Home Care Services: Financial Matters.....	28
3.7.4	Carers .....	<del>28</del> 29
3.8	Head of Care Commissioning, Housing and Safeguarding....	<del>28</del> 29
3.8.1	Housing Act 2004 .....	<del>28</del> 29
3.8.2	Housing Grants, Construction & Regeneration Act 1996 .....	<del>28</del> 29
3.8.3	Local Government and Housing Act 1989, Part VIII .....	29
3.8.4	Housing Act 1988 – Part I.....	29
3.8.5	Gypsy Sites.....	<del>29</del> 30
3.8.6	Housing Act 1996 (as amended by the Homelessness Act 2002).....	<del>29</del> 30
3.8.7	Home Energy and Conservation Act 1995.....	<del>29</del> 30
3.8.8	Future Development Sites .....	<del>29</del> 30
3.8.9	Sites with Existing Planning Permission .....	30
3.8.10	Energy Act 2011 .....	<del>30</del> 34

3.9	Head of Strategic Support .....	<del>3034</del>
3.9.1	General .....	<del>3034</del>
3.9.2	Local Government Act 1972 .....	<del>3034</del>
3.9.3	Civil Contingencies Act 2004.....	<del>3034</del>
3.9.4	Electoral Matters .....	<del>3132</del>
3.10	Head of Customer Services .....	<del>3132</del>
3.10.1	Registration of Births, Deaths and Marriages.....	<del>3132</del>
3.11	Head of ICT and Corporate Support.....	<del>3132</del>
3.12	Head of Highways and Transport.....	32
3.12.1	Agreements .....	32
3.12.2	Transport.....	32
3.12.3	Miscellaneous .....	<del>3233</del>
3.12.4	Road Traffic Regulations Act 1984.....	<del>3435</del>
3.12.5	Berkshire Act 1986 .....	<del>3536</del>
3.12.6	Highways Act 1980.....	<del>3536</del>
3.12.7	Land Drainage Act 1991.....	<del>3637</del>
3.12.8	Reservoirs Act as Amended by the Flood and Water Management Act 2010 .....	<del>3637</del>
3.12.9	Environmental Protection Act 1990 .....	<del>3637</del>
3.12.10	Traffic Management Act 2004 .....	<del>3738</del>
3.12.11	Clean Neighbourhoods and Environment Act 2005.....	<del>3738</del>
3.12.12	Other Powers –Consultation Provisions .....	<del>3738</del>
3.12.13	Flood and Water Management Act 2010.....	<del>3738</del>
3.13	Head of Legal Services .....	38
3.13.1	General .....	38
3.13.2	Local Government Act 1972 .....	<del>3839</del>
3.13.3	Local Government (Miscellaneous Provisions) Act 1976: .....	<del>3839</del>
3.13.4	Miscellaneous .....	<del>3839</del>
3.13.5	Commons Registration.....	39
3.13.6	Licences .....	39
3.13.7	Highways Act 1980.....	<del>3940</del>
3.13.8	Notices and Orders in relation to Highways and Public Rights of Way .....	<del>3940</del>
3.13.9	Berkshire Act 1986 .....	<del>4044</del>

3.13.10	Road Traffic Regulation Act 1984 .....	<u>4044</u>
3.13.11	Town and Country Planning General Development Order 1998.....	41
3.13.12	Property Matters .....	<u>4142</u>
3.14	Head of Planning and Countryside .....	<u>4142</u>
3.14.1	Countryside including Rights of Way functions .....	<u>4142</u>
3.14.2	Highways Act 1980 and Town and Country Planning Act 1990.....	<u>4243</u>
3.14.3	Agreements relating to Public Rights of Way.....	43
3.14.4	Miscellaneous relating to Public Rights of Way .....	<u>4344</u>
3.14.5	Berkshire Act 1986 .....	<u>4445</u>
3.14.6	Planning.....	<u>4445</u>
3.14.7	Town and Country Planning Act 1990.....	<u>4546</u>
3.14.8	Planning (Listed Buildings and Conservation Areas) Act 1990	<u>4647</u>
3.14.9	Other Powers – Technical, Legal and Consultation Provisions .....	<u>4648</u>
3.14.10	Minerals .....	<u>4748</u>
3.14.11	Environmental Protection Act 1990 (as amended by Environment Act 1995) .....	<u>4849</u>
3.14.12	The Building Act 1984.....	<u>4849</u>
3.14.13	Local Government Miscellaneous Provisions Act 1976 .....	<u>4950</u>
3.14.14	Environmental Protection (Controls on Injurious Substances) Regulations 1993.....	<u>4950</u>
3.14.15	Local Government (Miscellaneous Provisions) Act 1982.....	<u>4950</u>
3.14.16	Clean Air Act 1993.....	<u>4950</u>
3.14.17	The Building Regulations 2010.....	<u>4950</u>
3.14.18	The Building (Local Authority Charges) Regulations 1998.....	<u>4950</u>
3.14.19	Wildlife Heritage Sites and Regionally Important Geological and Geomorphological Sites.....	<u>4950</u>
3.14.20	Party Walls Act 1996.....	<u>4954</u>
3.14.21	Planning and Compulsory Purchase Act 2004.....	<u>4954</u>
3.14.22	The Building (Local Authority Charges) Regulations 2010 – Scheme of Charges .....	<u>4954</u>
3.14.23	The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 .....	<u>4954</u>
3.15	Head of Culture and Environmental Protection .....	<u>5051</u>
3.15.1	Waste Management.....	<u>5054</u>

3.15.2	General .....	<u>5054</u>
3.15.3	Exercise of Powers under Legislation .....	<u>5054</u>
3.15.4	Clean Neighbourhoods and Environment Act 2005.....	<u>5556</u>
3.15.5	Authorisation .....	<u>5556</u>
3.15.6	Culture General.....	<u>5556</u>
3.16	Head of Education Services .....	<u>5557</u>
3.16.1	General .....	<u>5557</u>
3.16.2	Admissions .....	<u>5657</u>
3.16.3	Attendance at School .....	<u>5658</u>
3.16.4	Special Educational Needs .....	<u>5758</u>
3.16.5	School Term Dates.....	<u>5759</u>
3.16.6	Name of School.....	<u>5759</u>
3.16.7	Curriculum.....	<u>5759</u>
3.16.8	Staffing – in respect of Nursery Schools .....	<u>5759</u>
3.16.9	Staffing – in respect of Primary, Secondary and Special Schools .....	<u>5859</u>
3.16.10	All Educational Establishments .....	<u>5860</u>
3.16.11	Finance .....	<u>5860</u>
3.16.12	Provision of Information Concerning Individual Performance of Pupils .....	<u>5960</u>
3.16.13	Governance.....	<u>5960</u>
3.16.14	Miscellaneous .....	<u>5964</u>
3.16.15	Post 16 Years - Education and Training provision .....	<u>5964</u>
3.17	Head of Public Health and Wellbeing .....	<u>5964</u>
3.17.1	General .....	<u>5964</u>
3.17.2	Health of the Population .....	<u>5964</u>
3.17.3	General .....	<u>6064</u>
3.17.4	Dental Health .....	<u>6064</u>
3.17.5	Health of Prisoners.....	<u>6064</u>
3.17.6	Weight Measurement .....	<u>6062</u>
3.17.7	Violent Offenders.....	<u>6062</u>
3.17.8	Health Protection.....	<u>6062</u>
3.17.9	Health Improvement.....	<u>6062</u>
3.17.10	Health Care Public Health .....	<u>6062</u>

## 3.1 Delegation of Functions

### 3.1.1 Introduction

This section of the Constitution summarises which part of the decision-making process is responsible for which function. Further detail is set out in paragraph 3.2 (Officer's Scheme of Delegation) of this Constitution.

The aim is to show which functions are the responsibility of the Council, the Area Planning Committees, Licensing Committee/Sub-Committee, the Standards Committee and the Personnel Committee and which are the responsibility of the Executive. This section also clarifies which functions are the responsibilities of the Executive to a specified extent.

The allocation of functions follows the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, and as subsequently amended, referred to in the tables that follow as 'The Function Regulations'.

The information is set out in tabular form as follows:

Table 1 – Responsibility for Local Choice Functions

Table 2 – Council Functions

Table 3 – Licensing Authority Functions

Table 4 – Executive Functions

### 3.1.2 Table 1- Responsibility for Local Choice Functions

Function	Decision-Making Body	Membership	Delegation of Function
Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Regulations 2000	Executive	Executive Leader plus 9 other Members	Some highway-related functions under the Berkshire Act 1986 are delegated to the Head of Highways and Transport or other Heads of Service, depending on the function concerned. See Scheme of Delegation
The determination of an appeal against any decision made by or on behalf of the Authority	Council (Appeals Panel)	Dependent on nature of appeal: Home/ School Transport = 3 Members Housing/Council Tax Benefit = 3 Members	These functions will not be further delegated.
The appointment of Review Boards under regulations under Subsection (4) of Section 34 (Determination of Claims and Reviews) of the Social Security Act 1998	Council	All Members	These functions will not be further delegated.

<b>Function</b>	<b>Decision-Making Body</b>	<b>Membership</b>	<b>Delegation of Function</b>
The making of arrangements pursuant to Sub-section (1) of Section 67 of, and Schedule 18 to, the 1998 Act (Appeals against the Exclusion of Pupils)	Council (School Appeals Panel)	3 or 5 independent Members	These functions will not be further delegated.
The making of arrangements pursuant to Section 94(1) and (4) of, and Schedule 24 to, the 1998 Act (Admissions Appeals)	Council (School Appeals Panel)	3 or 5 independent Members	These functions will not be further delegated.
The making of arrangements pursuant to Section 95(2) of, and Schedule 25 to, the 1998 Act (children to whom Section 87 applies: appeals by Governing Bodies)	Council (Appeals Panel)	3 or 5 independent Members	These functions will not be further delegated.
The making of arrangements under Section 20 (Questions on Police Matters at Council meetings) of the Police Act 1996 for enabling questions to be put on the discharge of the functions of a Police Authority	Council	All Members	These functions will not be further delegated.
The making of appointments under paragraphs 2 to 4 (Appointment of Members by Relevant Councils) of Schedule 2 (Police Authorities established under Section 3) to the Police Act 1996	Leader of the Council	All Members	These functions will not be further delegated.
Any function related to contaminated land	Licensing Committee	14 Members	Functions delegated to the Heads of Culture and Environmental Protection, in accordance with the Scheme of Delegation
The discharge of any function relating to control of pollution or the management of air quality	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection in accordance with the Scheme of Delegation
The serving of an Abatement Notice in respect of a statutory nuisance	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection in accordance with the Scheme of Delegation

Function	Decision-Making Body	Membership	Delegation of Function
The passing of a resolution to which Schedule 2 of the Noise and Statutory Nuisance Act 1993 should apply in the Authority's area	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection in accordance with the Scheme of Delegation
The inspection of the Authority's area to detect any statutory nuisance	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection in accordance with the Scheme of Delegation
The investigation of any complaint as to the existence of a statutory nuisance	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection in accordance with the Scheme of Delegation
The obtaining of information under Section 330 of the Town and Country Planning Act 1990	District/Area Planning Committees	12 Members	Functions delegated to the Head of Planning and Countryside in accordance with the Scheme of Delegation
The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	District/Area Planning Committees	12 Members	Functions delegated to Heads of Service in accordance with the Scheme of Delegation
The making of agreements for the execution of highway works	District/Area Planning Committees	12 Members	Functions delegated to Head of Highways and Transport in accordance with the Scheme of Delegation
The appointment of any individual: a) to any office other than an office in which they are employed by the Authority; b) to any other body than: i) the Authority; ii) a Joint Committee or Sub-Committee of two or more Authorities; or c) to any Committee or Sub-Committee of such a body, and the revocation of any such appointment	Executive (for <b>major and district-wide appointments specified appointments</b> )  Individual Decision Scheme (for local appointments)	Executive Leader plus 9 other Members <b>Members of the relevant Wards</b> <b>Leader of the Council</b>	These functions will not be delegated further.

Function	Decision-Making Body	Membership	Delegation of Function
The making of agreements with other Local Authorities for the placing of staff at the disposal of those other Authorities	Executive	Executive Leader plus 9 other Members	Function delegated to Chief Executive where an emergency situation exists

### 3.1.3 Table 2 - Responsibility for Council Functions (Schedule 1 of the Functions Regulations)

Functions	Committee	Membership	Delegation of Functions
Functions relating to elections	Council	All Members	Some of these functions are delegated to the Returning Officer as set out in the Scheme of Delegation
Functions relating to the name and status of areas and individuals	Council	All Members	These functions will not be further delegated
Power to make, amend, revoke or re-enact bylaws	Council	All Members	These functions will not be further delegated
Power to promote or approve local or personal Bills	Council	All Members	These functions will not be further delegated
Functions relating to pensions, etc	Council	All Members	These functions will not be delegated further except for requests for the early release of pensions (subject to the financial implications of each request being approved through the Executive decision making process) which are delegated to the Personnel Committee
Miscellaneous functions. Duty to approve Authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be)	Governance and Audit	7 Members	These functions will not be further delegated
Duty to make arrangements for proper administration of financial affairs, etc.	Council	All Members	Function delegated to Section 151 Officer as set out in the Scheme of Delegation
Power to amend the Council's Constitution	Council	All Members	These functions will not be further delegated – <b>although the Head of Legal</b>

Formatted: Font: 10 pt



Functions	Committee	Membership	Delegation of Functions
			<u>Services acting as Monitoring Officer may make minor amendments to the Constitution in order to ensure that legislative provisions are current and any typographical or other errors are corrected</u>
Power to appoint Officers for particular purposes (appointment of 'Proper Officers')	Personnel Committee	5 Members	These functions will not be further delegated
Duty to designate an Officer as the Head of the Authority's Paid Service and to provide staff	Personnel Committee	5 Members	These functions will not be further delegated
Duty to designate an Officer as the Monitoring Officer, and to provide staff	Personnel Committee	5 Members	These functions will not be further delegated
Power to make Standing Orders as to contracts	Council	All Members	Function delegated to the Head of Finance and to the Head of Legal Services as set out in the Scheme of Delegation
Power to make payments or provide other benefits in cases of maladministration, etc.	Council	All Members	This function is delegated to the appropriate Head of Service for payments / benefits up to the value of £2,500
Functions relating to Town and Country Planning and Development Control	District/Area Planning Committees	12 Members	Functions are delegated to the appropriate Area Planning Committee (Eastern and Western). Where their proposed resolutions are deemed by the Development Control Manager to have a significant impact on the implementation of the policies and proposals in the Local Development Plan, these will be referred to the District Planning Committee. Functions delegated to the Head of Planning and Countryside as set out in the Scheme of Delegation. Some functions are

<b>Functions</b>	<b>Committee</b>	<b>Membership</b>	<b>Delegation of Functions</b>
			delegated to the Head of Planning and Countryside in consultation with the Head of Legal Services as set out in the Scheme of Delegation.
Powers relating to the Planning and Compulsory Purchase Act 2004	Area Planning Committees	12 Members	Functions delegated to the Head of Planning and Countryside as set out in the Scheme of Delegation
Licensing and registration functions	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection as set out in the Scheme of Delegation
Power to make closing order in respect of take-away shops	Licensing Committee	14 Members	Functions delegated to the Head of Culture and Environmental Protection as set out in the Scheme of Delegation
Functions relating to health and safety (except those relating to the Council as an employer)	Licensing Committee	14 Members	Functions delegated to the Chief Executive and / or the Head of Culture and Environmental Protection as set out in the Scheme of Delegation
Duty to keep and maintain a register of commons	Area Planning Committees	12 Members	Functions delegated to the Head of Legal Services as set out in the Scheme of Delegation
Duty to keep definitive maps and statement under review	Area Planning Committees	12 Members	Functions delegated to the Head of Planning and Countryside as set out in the Scheme of Delegation
Powers relating to the preservation of important hedgerows	Area Planning Committees	12 Members Members for the relevant Wards	Functions delegated to the Head of Planning and Countryside as set out in the Scheme of Delegation
Functions relating to public rights of way	Individual Decision Scheme	Members for the relevant Wards	Functions delegated to the Heads of Planning and Countryside in consultation with Head of Legal Services as set out in the Scheme

Functions	Committee	Membership	Delegation of Functions
			of Delegation
Powers relating to the preservation of trees	Area Planning Committees	12 Members	Functions delegated to Head of Planning and Countryside as set out in the Scheme of Delegation
Power to appoint staff and to determine the terms and conditions on which they hold office (including procedures for their dismissal)	Council	All Members	Powers to appoint staff at Head of Service level and above delegated to the Personnel Committee by means of an Appointments Panel. Appointments below Head of Service level are delegated to the Chief Executive or the relevant Head of Service
As set out in Article 9 of this Constitution	Standards Committee	6 Councillors (only one of whom may be a Member of the Executive) 2 non-voting co-opted Parish Councillors	These functions will not be further delegated

**3.1.4 Table 3 - Summary of Licensing Authority functions in accordance with the Licensing Act 2003 (except where delegated below)**

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for a Premises Licence (Section 18(3))		If a representation is made	If no representation is made
Application for a Personal Licence (Section 120(7))		If a representation is made	If no representation is made
Application for a Personal Licence with unspent convictions		All cases	
Application for Premises Licence/Club Premises Certificate (Section 18(3) and 72(3))		If a representation is made	If no representation is made
Application for provisional statement (Section 31(3))		If a representation is made	If no representation is made
Application to vary Premises Licence/Club Premises Certificate (Sections 35(3) and		If a representation is made	If no representation is made

Matter to be dealt with	Full Committee	Sub-Committee	Officers
85(3))			
Application to vary designated Personal Licence (Section 39(3))	If Police representation is made	If Police representation is made	All other cases
Request to be removed as a designated Personal Licence holder			All cases
Application for transfer of Premises Licence (Section 44(5))	If Police representation is made	If Police representation is made	All other cases
Application for interim Authorities (Section 48(3))	If Police representation is made	If Police representation is made	All other cases
Application to review Premises Licences/Club Premises Licence (Sections 52(2) or (3) and 88(2) or (3))		All cases	
Decision on whether a complaint is irrelevant, frivolous or vexatious			Officer in consultation with the Chairman and Vice-Chairman of the Licensing Committee or other appropriate appointed Members for this purpose.
Decision to object when Local Authority is a consultee and not the lead Authority			All cases
Determination of a Police representation to a temporary event notice (Section 105(2))		All cases	
Rights of Entry to investigate Licensable activities (Section 179)			Licensing Officers

### 3.1.5 Table 4 - Summary of Executive Functions

Responsibility	Member-ship	Delegation of Functions	Onward limits on delegations
Executive	Executive Leader plus 9 Members	The formulation, review and monitoring of the Budget and Policy Framework, including consultation with relevant Committees, members of the public and interested parties, and the submission of recommendations for amending the Budget and Policy Framework of the Council	This function will not be delegated

Responsibility	Member-ship	Delegation of Functions	Onward limits on delegations
Executive	Executive Leader plus 9 Members	<p>The implementation of the approved Budget and Policy Framework, except in relation to those functions set out in Tables 1 and 2 of Part 3 of this Constitution which are shown as the responsibility of the Council or its Committees.</p> <p>This will include the management, control and supervision of :</p> <p>measures to promote the economic, environmental and social wellbeing of the District</p> <p>the development and review of plans and strategies to support the Council's Budget and Policy Framework and statutory responsibilities</p> <p>the Council's own financial and property resources</p> <p>Revenue Services and Benefits administration</p> <p>Support Services</p> <p>Library and Information Services</p> <p>Education Services and the promotion of Lifelong Learning</p> <p>Social Services and Health</p> <p>Environmental Services including planning, countryside, public protection and highway services</p>	<p>Functions will be delegated to the Chief Executive, Corporate Directors and Heads of Service in accordance with the Scheme of Delegation</p> <p>Functions delegated to the Head of Paid Service (Chief Executive in accordance with Scheme of Delegation and in consultation with Members of the Joint Consultative Panel)</p>
Executive	Executive Leader plus 9 Members	Representing the Council and the District to the public, other organisations and agencies, both within the District and at a regional / national level	This function will, in part, be delegated to the Chief Executive under the Scheme of Delegation

## 3.2 Officers' Scheme of Delegation

### 3.2.1 Scope of Scheme

This Scheme sets out the extent to which the powers and duties of the Council shall be delegated to Officers. It encompasses both existing legislation and any future re-enactment or addition to it.

Powers designated to a Head of Service under this Scheme of Delegation shall immediately transfer to a successor Head of Service following a transfer of any functions as a result of a restructuring of Council Services.

The Scheme operates under Sections 101 and 151 of the Local Government Act 1972 and all other powers under which the Council exercises its functions.

The Scheme places an obligation on Officers to keep Members properly informed of action arising within the scope of these delegations.

For the purposes of Section 101 of the Local Government Act 1972 the Council may authorise an Officer of the Authority to commission and monitor work for and on behalf of the Council by people who are not Officers of the Authority. Such people will be bound by this Scheme and the obligations contained in it at all times when they are engaged on Council business.

The term “Officer” means any Employee/Manager/Director employed by West Berkshire Council.

### **3.2.2 Consultation**

In exercising delegated powers, Officers shall consult other Officers as appropriate and shall have regard to any advice given. Consultation in areas of financial, legal, personnel and property will be of paramount importance which includes the Council’s strategic partners.

Officers shall liaise closely with the Executive on executive functions and the Chairmen of the Area Planning Committees and District Planning Committee or Chairman of the Licensing Committee on regulatory functions and Group Spokesmen before exercising delegated powers in relation to any matter which is likely to be regarded as politically sensitive or contentious.

Officers shall inform the local Ward Member(s) when they exercise any delegated powers affecting their Ward and when the matter is likely to be regarded as politically sensitive or contentious.

It shall always be open to an Officer to consult the Executive, the Area Planning Committees, the Licensing Committee or the Leader before the exercise of delegated powers; or not to exercise delegated powers but to refer the matter to the Executive, the District Planning Committee the Area Planning Committees or to Council for decision.

### **3.2.3 Conditions of Delegation**

By this Scheme, and subject to the limitations and reservations contained in it:

- (a) Council authorises the Officers identified personally to exercise the powers specified herein; and
- (b) powers delegated to Directors and Heads of Service may be exercised by any other duly authorised Officer on their behalf.

If any case where the Officer given general authorisation to act considers that a new departure in policy is likely to be involved or if the implications are such that they consider, after consulting the Chief Executive, that

reference should be made to Members, the matter shall be referred to the Executive or the relevant Area Planning -Committees for consideration.

Exercise of delegated powers by Sub-Committees or Officers does not, by virtue of Section 101(4) Local Government Act 1972, prevent the Executive the Council or its Committees from exercising those functions or powers.

Powers delegated to Heads of Service may be exercised by the appropriate Corporate Director or the Chief Executive.

(Note: Directors and Heads of Service need to ensure that substantial matters dealt with under delegation are recorded.)

### 3.2.4 Overall Limitations

#### Matters not Delegated

The Scheme does not delegate to Officers any matter:

- reserved to full Council by Standing Orders;
- reserved to the Executive or a Committee by the Scheme;
- withdrawn from delegation by the Scheme; and
- which may not by law be delegated to an Officer.

#### General Requirements

Any exercise of delegated powers shall comply with:

- any statutory restrictions;
- Rules of Procedure as contained in the Constitution;
- Policies and Plans approved by full Council, the Executive or the Council's committees; and
- Codes and Protocols.

#### Exercising Delegated Powers

In exercising delegated powers, Officers shall have regard to any report by the Head of the Paid Service or the Monitoring Officer under Sections 4 and 5 of the Local Government and Housing Act 1989 or Section 66 of the Local Government Act 2000 or of the Officer designated under Section 114 of the Local Government Finance Act 1988.

#### Financial Powers

Any decision taken under this Scheme must be made within the approved Revenue and Capital Budgets, subject to any discretion allowed by the Financial Rules of Procedure.

Acceptance of quotations and tenders must be in accordance with the Contract Rules of Procedure.

#### Legal Powers

Officers are authorised to appear, institute proceedings prosecute and defend on behalf of the Council proceedings before a Magistrates' Court, County Court or similar tribunal in the first instance where the matters fall within the remit of their service unit. Officers are not authorised to exercise

any of the powers delegated under this paragraph of any other legal proceedings (such powers being reserved to the Head of Legal Services).

### **3.3 General Delegation to Corporate Directors/Heads of Service**

#### **3.3.1 Equipment**

- Purchase of vehicles, plant and equipment for which expenditure has been approved subject to any policy for standardisation.
- Hire of plant as may be necessary for special works subject to inclusion of costs of hire within the approved estimates of the works.
- Disposal of surplus plant equipment and materials.

#### **3.3.2 Legal Matters**

- Service of requisitions for information as to ownership of any property under statutory powers.
- Signature of licences, notices etc.
- Authority to apply for planning permission in respect of small projects and minor modifications to projects subject to a report on the action taken being submitted to the Executive.
- To grant, renew, refuse or cancel any authorisation that may be required under the Provisions of the Regulation of Investigatory Powers Act 2000 insofar as it affects their service area. This function may be delegated to third tier Officers but may not be delegated further.

#### **3.3.3 Human Resources**

- To agree temporary posts provided costs are contained within service staffing budgets (in accordance with West Berkshire Council's Conditions of Service).
- Employment of consultants to advise on specialist aspects of work within the relevant Service Area
- Advertisement of staff vacancies within establishment (in accordance with the Council's recruitment procedures).
- To fill a post without advertisement (in consultation with the Service Head, Human Resources and appropriate Trade Unions).
- Appointment of staff to posts below second tier.
- Determination of starting point within grade.
- To sign job offers and/or contract of employment for:
  - Corporate Director appointments (by Chief Executive)
  - Heads of Service appointments (by Chief Executive or responsible Corporate Director)
  - Other employee appointments (Corporate Director, Head of Service or Officer delegated by one of these)



- To agree flexible contracts, including job share, homeworking and term-time working (in consultation with Corporate Director, Head of Human Resources and appropriate Trade Unions).
- Confirmation of appointments on completion of probationary period.
- Exercise of the discretion contained within the National Conditions for sick payment entitlements.
- Approval of car purchases and car leases in accordance with West Berkshire Council's Conditions of Service and the Council's relevant policies (in consultation with the Head of Finance).
- Extension of industrial accident pay (in consultation with the Head of Finance).
- Approval of application of West Berkshire Council Service Related Additional Payments Scheme (in consultation with the Head of Human Resources).
- Approval of variations to Council payment schemes (in consultation with the Head of Human Resources and where appropriate with employees representatives).
- To implement the Council's disciplinary and grievance procedures in accordance with West Berkshire Council's Conditions of Service.
- To sign contracts for external employment services within approved budgets (with agreement of Corporate Director or Officer delegated by one of these).
- Authorising attendance of Officers at professional, administrative and educational meetings, conferences and courses.
- To determine new organisation structures below Head of Service level provided that:
  - the changes do not affect more than 5 posts in any one restructuring;
  - there are no resultant redundancies;
  - the change is with the agreement of existing staff; and
  - the change can be contained within service budgets.
- To make ex-gratia payments in respect of claims not exceeding £1,000 in respect of damage or injury resulting from the actions of clients looked after by the District Council both in relation to young people and adults. (See under Head of Strategic Support for ex-gratia payments for maladministration.)
- General organisation of services within policy laid down by Council.
  - ~~To approve compensation and other payments to all current and former employees of the Council by way of a compromise agreement /COT3 in conjunction with the relevant Head of Service to an amount not exceeding £10,000. For amounts over £10,000 to approve compensation in conjunction with the relevant Head of Service, Head of Finance and Head of Legal Services. To approve compensation and other payments to all current and former employees of the Council (other than employees in maintained schools who are covered by section 37 of the Education Act 2002) by way of a settlement agreement in consultation with the relevant Head of Service to an amount not exceeding £10,000. For amounts over~~

£10,000 to approve compensation in consultation with the relevant Head of Service, Head of Finance and Head of Legal Services.

### 3.3.4 Tenders/Contracts

- General supervision and progressing of contracts.
- Execution of work and invitation for and acceptance of tenders for recurring or non-recurring items provided for in the approved annual revenue estimates and estimates for the General Housing Repairs Fund, except items reserved by the Executive for further approval.
- Acceptance of tenders for demolition works approved by the Executive or Full Council.
- Acceptance, renewal and variation of maintenance contracts for installed equipment within the approved estimates.

### 3.3.5 Emergencies

If the Council needs to act urgently in any matter including, without limitation, complying with the Major Incident Plan or taking any action under new legislation of powers, the Chief Executive may authorise any action taken or expenditure occurred as necessary. A Corporate Director may act in the place of the Chief Executive where the Chief Executive is unwell, unobtainable or where there is no Chief Executive in post. The Chief Executive, or Corporate Director as appropriate, may delegate responsibility to a Head of Service or other nominated Officer where it is considered appropriate.

### 3.3.6 Delegation to Specific Directors

#### (a) Communities

- To give consent to the marriage of a young person in care pursuant to Section 3 of the Marriage Act 1949 as amended by the Family Law Reform Act 1969.
- To exercise the powers of the Council under paragraph 20 of Schedule 2 of the Children Act 1989 in relation to the death of children looked after by local authorities.
- To exercise the functions of the Council under Part VII of the Children Act 1989 in relation to the provision of accommodation by voluntary organisations.
- To approve the registration of children's homes under Part VIII of the Children Act 1989 in accordance with the Children's Homes Regulations 1991.
- To agree Service Level Agreements/Joint Arrangements with other agencies in respect of the provision of joint leisure, cultural and information services
- To respond to and determine responses to recommendations made at any stage of the Social Services statutory complaints processes and other complaints procedures operated within Social Care Services, including application of financial redress, as considered appropriate by the Corporate Director or Head of Service, in consultation with the relevant Portfolio Member, within the framework of the Local Government Ombudsman Good Practice Remedies (March 2003) document, Financial Rules of Procedure, and where necessary, in consultation with the Monitoring Officer.

- To respond to and determine responses to recommendations made at any stage of the Social Services statutory complaints processes and other complaints procedures operated within Social Care Services, including application of financial redress, as considered appropriate by the Corporate Director or Head of Service, in consultation with the relevant Portfolio Member, within the framework of the Local Government Ombudsman Good Practice Remedies (March 2003), Revised in 2005 document, any relevant guidance from the Department of Health, Financial Rules of Procedure, and where necessary, in consultation with the Monitoring Officer.
- To appoint Officers to act as Approved Mental Health Professionals under the Mental Health Act 2007.
- Caravan Act 1968
- Local Government and Housing Act 1989, Part VIII
- Housing Act 1985
- Housing Act 1996 - Parts VI and VII
- Housing Grants, Construction & Regeneration Act
- Housing Act 1988 – Part II
- Gypsy Sites
- Housing Act 1985:
  - Determination of rents of new properties in line with rents of other Council properties.
  - All matters pertaining to rent collection and the recovery of arrears.
  - Service of Notices to secure possession where there are arrears of rent.
  - Service of Notice to Quit on tenants of Council dwellings. The Head of Care Commissioning, Housing and Safeguarding can also undertake this function.
  - Allocation of pitches on Council owned caravan sites.
  - Applications for emergency housing accommodation from persons threatened with eviction.
  - Decisions on all matters relating to the Council's conditions of tenancy in relation to the Council's statutory housing function.
  - Assessing current and future need for affordable housing and demand for market housing

**(b) Environment**

The Corporate Director (Environment) [or in their absence the Head of Culture and Environmental Protection] in consultation with the Section 151 Officer and Monitoring Officer and the Portfolio Holder for Waste matters may make changes to the Integrated Waste Management contract regarding operational matters in order to achieve improvements to the quality and efficiency of the service provided by the Contractor.

Any such decision shall be recorded in writing on an agreed Decision Form signed by all consultees in order to provide a recognised audit trail of all such decisions and to ensure Member consultation.

The financial limits set out in the constitution will provide the basis of any financial assessment of the benefit or otherwise of any amendment to the operational requirements of the contract and under the above process will require approval by the Section 151 Officer.

The Corporate Director (Environment) retains the option to refer any matter to the Executive having assessed the potential risk to the Council and impact on service provision to the public.

**(c) Chief Executive**

The Power to approve new and revised HR policies and procedures is delegated to the Chief Executive. The Chief Executive may decide to refer particular HR policies and procedures to the Personnel Committee rather than exercise the delegation.

### 3.4 Schedule of Proper Officer Appointments

Sect	Function	Exercised by
<b>The following Officers have been appointed Proper Officer for the purposes of the under-mentioned provisions of the Local Government Act 1972:</b>		
83	Witness and receipt of declarations of acceptance of office	The Chief Executive or Head of Legal Services
84	Receipt of declarations of resignation of office	The Chief Executive or Head of Legal Services
86	Declaration of a vacancy	The Chief Executive or Head of Legal Services
88(2)	Convening of meeting of Council to fill a casual vacancy in the office of Chairman	Head of Strategic Support
89(1)(b)	Receipt of notice of casual vacancy from two local government electors	The Chief Executive or Head of Legal Services
151	Officers having responsibility for the administration of the Council's financial matters	Head of Finance or deputy appointed in writing
210(6) & (7)	Charity functions of holders of offices with existing authorities transferred to holders of equivalent office with new authorities or, if there is no such office, to Proper Officers	Head of Legal Services
212(1) & (2)	Proper Officer to act as local registrar for Land Charges Act	Head of Strategic Support

Sect	Function	Exercised by
	1925	
225(1)	Proper Officer for the depositing with the Independent Adjudicator the list of politically restricted posts under Section 2(4) of the Local Government & Housing Act 1989	Chief Executive
225(1)	Deposit of Documents	Head of Legal Services
228(3)	Accounts of 'any Proper Officer' to be open to inspection by any <b>M</b> member of the authority	Head of Finance
229(5)	Certification of photographic copies of documents	Appropriate Director or Head of Services from which the document originates
234	Authentication of all documents on behalf of the Council	Appropriate Director or Head of Service from which the document originates
	Sealing of all documents on behalf of the Council	Head of Legal Services or his deputy authorised in writing.
236(9)	To send copies of byelaws for Parish records	Head of Legal Services
	To receive copies of byelaws and deposit them with public documents of <b>P</b> parish or community	Head of Legal Services
238	Certification of Byelaws	Head of Legal Services
248	Keeping a Roll of Freeman	Head of Strategic Support
Sch. 12 Para 4(2)(b) & 4(3)	Signature of summonses to Council meetings	Head of Strategic Support
	Schedule 12 Receipt of notices regarding Para 4(3) address to which summons to meetings is to be sent	Head of Strategic Support
Sch. 14 Para 25(7)	Certification of resolutions under Para 25 of Schedule 14	Head of Planning and Countryside
Sch. 16 Para 28	Receipt on deposit of lists of protected buildings (Sections 146(6) and (7) of the Town & Country Planning Act 1990	Head of Planning and Countryside
Section 41 - Local Government		Head of Strategic

<b>Sect</b>	<b>Function</b>	<b>Exercised by</b>
(Miscellaneous Provisions) Act 1976:	Certification of minutes and resolutions	Support
Representation of the People Act 1983 as follows:		
Section 8 - Registration Officer and the Deputy Registration Officer under Section 8 of the Act		Chief Executive
Section 35 - Returning Officer for elections		Chief Executive
Local Government Act 1972:		
Section 115(2) - Receipt of money due from Officers		Head of Finance
Section 146 (1) (a) Declarations and certificates with and (b) regards to securities		Head of Finance
To ensure that the Council's policies on Data Protection and Freedom of Information are complied with.		Head of Strategic Support
Any reference to any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any Instrument made before 26th October 1972, which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council.		Chief Executive Corporate Directors
The provisions of Section 191 of the Local Government Act 1972 - Functions with respect of Ordnance Survey		Head of Planning and Countryside
Any reference in any enactment passed before or during the 1971/72 session of Parliament, other than the Local Government Act 1972, or in any Instrument made before 26th October 1972, to the Public Health Inspector of a District or Borough Council which, by virtue of any provision of the said Act, is to be construed as a reference to the Proper Officer of the Council.		Head of Culture and Environmental Protection
For the purpose of: - Marriage Act 1949 - Registration Services Act 1953		Head of Legal Services with Superintendent Registrar as deputy

Sect	Function	Exercised by
- Local Registration Scheme - Provisions relating to new governance of the Registration Services		
Local Government Act 1972 as amended:		
Section 100B(2)	Circulation of Reports and Agendas	Head of Strategic Support
Section 100B(7)	Supply of Papers to the Press	
Section 100C(2)	Summaries of Minutes	
Section 100F	Members' Right to Papers	
Section 100d(1)(a) & Section 100D(5)(a)	Compilation of Lists Background Papers and Identification of Background papers.	
Designated Officer as 'Head of Paid Service' under the provisions of the Local Government and Housing Act 1989		Chief Executive
Designated Officer as 'Monitoring Officer' under the provisions of the Local Government and Housing Act 1989		Head of Legal Services or deputy appointed in writing by the Monitoring Officer.
Signing and authorising all property valuations on behalf of the Council		Head of Finance
Carrying out the various statutory duties required under the Weights and Measures Acts 1963 and 1985 and/or any regulations or amendments made there-under on behalf of the Council.		The most senior qualified Trading Standards Officer as approved and appointed by the Head of Culture and Environmental Protection
Nominating representatives for the purpose of the Local Government Pension Scheme (Internal Dispute Resolution Procedure) Regulations 1997.		Head of Finance (Section 151 Officer)
<b>In the event of any Officers appointed as Proper Officer being absent or otherwise unable to act, the following Officers have been authorised to act as Proper Officers in their place:</b>		
For the Chief Executive		Appropriate Corporate Director

Sect	Function	Exercised by
	For the Head of Legal Services	Team Leaders within Legal Services with relevant knowledge
	For the Head of Finance	Appropriate Corporate Director
	Others	Appropriate Corporate Director

### 3.4.1 Delegations to Heads of Service

The following delegations are granted to the Heads of Services set out in section 3.5 to 3.16 below.

## 3.5 Head of Finance

### 3.5.1 Designation

The Head of Finance will be the Council's designated Section 151 Officer under the Local Government Act 1972.

### 3.5.2 Responsibility

The Head of Finance provides strategic support on commissioning to the Council.

The Head of Finance provides strategic financial advice to the Council.

### 3.5.3 Finance General

- Local Government Finance Act 1992 S17 and Local Government Finance Act 1988 Schedule 4A.
- The power to opt to tax certain properties for VAT purposes (in consultation with Head of Legal Services).
- Determination of the appropriate rate of interest which may be charged, under Section 24 of the Health and Social Services and Social Security Adjudications Act 1983, on any sum charged on or secured over an interest in land under Section 22 of the Act (in consultation with the Corporate Director (Communities))
- Decisions to write off arrears in the case of bankruptcies and liquidations once the Council has proved the debt.
- Declaration of the Local Rate of Interest on Mortgage Advances on the basis that all mortgages are treated as if they are advances under the Housing Act 1985 and subject to decisions being reported to the Executive (in consultation with Head of Care Commissioning, Housing and Safeguarding).
- Agreement as to reduction in rateable value.
- Investment of surplus funds.
- Writing off debts as irrecoverable up to an amount not exceeding £5,000 and exceeding £5,000 in cases where the debtor has been declared bankrupt.



- Rating (Disabled Persons) Act 1978: Section 2 - Granting of rebates to institutions.
- To make any necessary changes to the Constitution consequent upon amendments to the European thresholds on Procurement (see Contract Rules of Procedure).
- To accept terms and conditions attached to any Government grants (e.g. s31 grant for Major Schemes)

#### **3.5.4 Loans and Borrowing**

- Raising of loans in sterling to meet the capital requirements of the Council for such amounts and on such terms as are considered necessary.
- Borrowing in sterling from banks up to a prescribed limit by way of overdraft.
- Raising and repayment of temporary loans in sterling.

#### **3.5.5 Valuation**

- Service on Valuation Officer of Notice of Objection to any proposals for alteration of the Valuation List.
- Making proposals for the alteration of the Valuation List or for the inclusion of particular properties in the Valuation List.

#### **3.5.6 Housing Benefits**

- Housing Benefits General Regulations 1987 - Regulations 79 and 81. Council Tax Benefits (General Regulations 69-70).
- Housing Benefit Regulations 11 (Unsuitable Accommodation) 69(8) (Additional Amount of Benefit in Exceptional Cases), 20 (Benefit by Reference to Another Person's Income). Housing Benefits Regulations 61 (3)(4) (Exceptional Hardship Payments).

#### **3.5.7 Local Government Finance Act 1988**

- Sections 89, 91, 92, 97 and 98 - Establishment and Maintenance of Funds.
- Section 134 - Consultation with representatives of National Non-Domestic Ratepayers. (Exercised by the Chief Executive).
- Schedule 9 - Notifications to Valuation Officer.
- Section 41 Publication of Draft NNDR list.
- Sections 27, 73 and 77 - Supply of Information to Secretary of State.
- Section 42A compilation and maintenance, in accordance with section 42B, of a rural settlement list

*(Note: this relates solely to the provisions for rate relief for certain types of property in rural settlements having populations of less than 3,000)*

- Sections 5, 95(1)-(3), 95(5)-(9), 97 and 107 - Statutory Calculations.

### **3.5.8 Council Tax (Administration and Enforcement) Regulations 1992**

All Local Authority powers/duties contained within regulations except those within Sections 25 and 26 (discounts).

### **3.5.9 Council Tax (Administration and Enforcement) Regulations 1992 and Schedule 4 Local Government Finance Act 1992**

- Representing the Council at all proceedings in connection with the collection of Council Tax.
- All Local Authority powers/duties contained within the Regulations.

### **3.5.10 Council Tax (Situation and Valuation of Dwellings) Regulations 1992**

All Local Authority powers/duties contained within the Regulations.

### **3.5.11 Council Tax (Reductions for Disabilities) Regulations 1992**

All Local Authority powers/duties contained within the Regulations.

### **3.5.12 Local Authorities (Calculation of Council Tax Base) Regulations 1992**

- Regulations 3 to 5 - calculation of the amount of a billing authority's council tax base for the purposes of the calculation of its council tax.
- Regulation 6 calculation of a billing authority's council tax base for a part of its area for the purposes of the calculation of its council tax similarly to the way in which the council tax base is to be calculated for the whole of a billing authority's area under regulations 3 to 5.
- Regulation 7 the calculation of the council tax base of the area or part of the area of a billing authority for the purposes of the calculation of a major precepting authority's council tax and the amount payable by a billing authority to a major precepting authority, based on the rules set out in regulations 3 to 6.

*(Note: the power to delegate to officers is contained in section 67 of the Local Government Finance Act 1992 as amended by s.84 of the Local Government Act 2003)*

### **3.5.13 Matters Relating to Children and Young Persons**

- Where requested by the Head of Legal Services, to take joint action to take out letters of administration with or without the will annexed for:
- the estate of parents or any other person where there is a beneficial interest for children or young persons for whom the Council has parental rights under provisions of the Children Act 1989, or any other statutory provision affecting children and young persons;
- the estates of children or young persons who die whilst in the care of the Council;
- and to administer such estates in the manner directed by the appropriate probate registry.

- Jointly with the Head of Legal Services to accept money or other gifts from third parties for and on behalf of children or young persons in care and to hold or convert such money or gifts on their behalf and to their benefit.
- Local Government Act 1972 Schedule 13 Paragraph 5 - Issue of money bills.

#### **3.5.14 Local Government (Miscellaneous Provisions) Act 1976**

- Section 30 – to forgo payment of advances of remuneration paid to deceased employees (in consultation with the Head of Legal Services).
- Section 40 – powers and duties relating to register kept of persons entitled to instruments relating to loans to a Local Authority.

#### **3.5.15 Housing Act 1985**

- Applications from tenants to carry out external or internal improvements or alterations to Council dwellings, subject to compliance with Building Regulations and Planning requirements.
- Applications ~~from~~ tenants for the erection of garages, sheds, hardstanding etc., subject to conformity with Building Regulations and Planning requirements. Decisions on all matters relating to Council's conditions of tenancy.
- Applications for consent to transfer existing mortgages into joint names of Mortgagor and other members of the Mortgagor's family.
- Authority to write off amounts of up to £50 in respect of rent arrears.
- Implementation of Court Orders for Possession of Council houses. (Head of Legal Services as instructed by Head of Finance)
- Institution of proceedings for possession of mortgaged houses. (Head of Legal Services as instructed by Head of Finance in consultation with Head of Finance). Decision to 'buy back' Council houses under terms of pre-emption clause.

#### **3.5.16 Property Matters**

- Making proposals to the Valuation Office Rating List.
- Agreement to reductions affecting Council-owned property.
- An agreement of compulsory purchase and home loss payment claims up to £15,000.

#### **3.5.17 Insurance**

All insurance arrangements and settlement of claims.

#### **3.5.18 Human Resources**

Application of market shift to a post within approved establishment in case of difficulties in recruitment.

### **3.6 Head of Children's Services**

#### **3.6.1 General**

- Within the provisions of Part III of the Children Act 1989 and the National Health Service and Community Care Act 1990, to arrange for the purchase

and provision of appropriate care services to those persons assessed as having needs that fall within the Council's agreed priorities, subject always to appropriate Contract and Financial regulations, the approved policies and estimates of the Council and the proper identification of appropriate suppliers.

- To grant applications for and impose conditions of registration of child minding and day-care for young people under the Children Act 1989.
- To revise and cancel registration.
- To vary the conditions of registrations.
- To set up arrangements for the hearing of representations and complaints in accordance with Section 26 of the Children Act 1989 and the National Health and Community Care Act 1996.
- To make provision for the accommodation of children in secure accommodation in accordance with Section 25 of the Children Act 1989.
- To approve and sign applications for passports for children and young persons in the care of the Council.
- To arrange for a child in care to live abroad subject to the approval of a Court in accordance with paragraph 19 of Schedule 2 of the Children Act 1989.
- To approve the applications of children and young persons in the care of the Council who wish to join HM Forces.
- To exercise the functions of the Council under Part VI of the Children Act 1989 in relation to the provision of accommodation for children in community homes.
- To arrange interest free loans to foster parents to provide accommodation for children and young people in care by extending their present homes or to purchase larger homes, the amount of the outstanding loan to be reduced by the way of a special allowance for as long as they care for foster children.
- To approve the institution of adoption proceedings by foster parents.
- To set up an adoption panel in accordance with Regulation 56 of the Adoption Agencies Regulations 1983 and to make such decisions and notifications as to the adoption of children as are specified in those regulations.
- To exercise the functions of the Council under Sections 85 and 86 of the Children Act 1989 in relation to the children accommodated by health and education authorities or in residential care homes or mental nursing homes.
- To assess the contributions to be paid towards board and lodging by working children in accordance with the currently agreed formulae, provided that the amount remaining for weekly personal pocket money and clothing allowance should not be less than the amount currently approved under the payment of foster care allowances.
- To waive charges or make additional allowances where the child has exceptional circumstances, such as apprenticeship and heavy travelling expenses.
- To increase the contribution of children in lodgings in appropriate circumstances in order to help to assimilate the heavier cost of lodging after leaving care.

- To approve request for young people in care to reside outside the UK for the purpose of training, work experience or work opportunities.

### **3.6.2 Support to Children and Families in their Own Home**

- To exercise the powers of the Council under Section 7 of the Children Act 1989 to report to the Court on the welfare of children in private proceedings.
- To exercise any functions of the Council relating to Orders with respect to children in family proceedings under Part II of the Children Act 1989.
- To exercise the powers of the Council under Section 16 of the Children Act 1989 to provide advice, assistance and befriending under the terms of a Family Assistance Order.
- To exercise the functions of the Council under Section 17 and Part I of Schedule 2 of the Children Act 1989 to safeguard and promote the welfare of children in need including financial assistance within current budgetary limits.
- To guarantee to housing associations, district councils and private landlords, and to authorise the payment of any rent accruing due from tenants in those cases where the Council has asked the housing associations or private landlord to retain the tenants in their houses whilst efforts are made by Council's Officers to rehabilitate them in cases coming within the provision of Section 17 of the Children Act 1989.
- Approve arrangements for the financial and other support of young people formerly looked after by the Council and by others under Section 24 of the Children Act 1989 within current budgetary limits.
- In accordance with procedures agreed in writing in advance, with the Head of Finance, to vary the assessment scale in respect of financial contribution by a parent or young person to any service provided by the Council under Part III of the child in question. (Note: The assessment scale is never varied but the amount that is paid is covered by the delegated power to waive charges see above).

### **3.6.3 Child Protection**

- To exercise the functions of the Council in relation to the duty to make investigations as necessary to decide whether action should be taken to safeguard or promote the welfare of children in accordance with Section 47 of the Children Act 1989.
- To take such action as is necessary under Section 31 of the Children Act 1989 to bring a child or young person before a Court where there are grounds for bringing care proceedings.
- To present an application to a Court for the variation or discharge of any care order or supervision order in accordance with Section 39 of the Children Act 1989.
- To present an application to a Court for a Child Assessment Order, an Emergency Protection Order or a Recovery Order under Part V of the Children Act 1989.

### 3.6.4 Accommodation, Care, Fostering and Adoption

- To provide accommodation for children in need in pursuance of the Council's duty under Section 20 to 23 of the Children Act 1989.
- To exercise the functions of the Council to undertake parental responsibility for children who are the subject of Care Orders and to make arrangements for reasonable contact with parents and others in accordance with Sections 33 and 34 of the Children Act 1989.
- To allow children who are the subject of a care order to reside at home in accordance with Section 23 (5) of the Children Act 1989, subject to the Accommodation with Parents Regulations 1991.
- To make contributions towards the maintenance of children placed with a person as a result of a Residence Order in accordance with paragraph 15 of Schedule 1 of the Children Act 1989.
- To approve payment of the legal expenses of applicants for a Residence Order or other Section 8 Orders in respect of children in care to the extent that they are not met by Legal Aid Fund.
- To change the names of children who are the subject of a care order in favour of the Council, subject to the requirements of Section 33 of the Children Act 1989.
- To appoint an independent visitor for a child where appropriate in accordance with paragraph 17 of Schedule 2 of the Children Act 1989.
- To guarantee apprenticeship and similar deeds under paragraph 18 of Schedule 2 of the Children Act 1989.
- To approve the payment of the legal expense of prospective adoptive parents for children who are being placed for adoption by the Council as an Adoption Agency.
- To grant allowances to persons who have adopted children in accordance with Section 57 of the Adoption Act 1976 and regulations which may be issued by the Secretary of State.
- To take in such action as may be necessary to implement the payment of the various foster care allowances for the time being approved by the Council within current budgetary limits, and in consultation with the Head of Finance, to increase the allowances annually in accordance with the scales recommended by the National Foster Care Association.
- To sanction payment of the cost of the initial clothing and equipment required by children looked after by the Council who are placed in boarding schools and other establishments within current budgetary limits.
- To approve applications to go on school expeditions, including expeditions abroad, of children looked after by the Council including expenditure on equipment and pocket money within the current budgetary limits.
- To make payments within limits set by the appropriate Corporate Director from time to time to promote contact between parents and children looked after by the Council in accordance with paragraph 16 of Schedule 2 of the Children Act 1989.

- To exercise the powers of the Council under Part III of Schedule 2 of the Children Act 1989 relating to contributions towards the maintenance of children looked after by local authorities.
- To exercise the powers conferred on the Council under Part IX of the Children Act 1989 in respect of arrangements for the care of privately fostered children.
- To make decisions to exempt persons from the usual fostering limit in accordance with paragraph 4 of Schedule 7 of the Children Act 1989.

### **3.6.5 Home Care Services: Financial Matters**

- In accordance with procedures approved in advance by the Head of Finance to waive the assessment charges for any services to clients in circumstances where it is essential for the family for social and/or medical reasons and to record every case requiring such action in a register to be provided for this purpose.
- In accordance with procedures agreed in writing in advance, with the Head of Finance, to vary or waive the charges for any service provided by the Council under Part III of the Children Act 1989 and Community Care legislation where failure to do so would adversely affect the welfare of the child/ or adult in question.

## **3.7 Head of Adult Social Care**

### **3.7.1 Residential and Nursing Home Accommodation**

To authorise and approve the maintenance costs for the admission of any person to any residential or nursing home accommodation.

### **3.7.2 Disability**

- To authorise the following facilities for any registered disabled person, within the approved budget and within approved policies:
- attendance at a centre providing appropriate development opportunities;
- the provision of special facilities;
- minor alterations and adaptations to premises including the installation of appropriate equipment, the works to be supervised by the appropriate professional staff;
- contribute, where assessed as appropriate, to the cost of adaptations to premises where the client is not eligible for a grant.
- Within the approved policies and estimates of the Council to discharge the duties towards people with disabilities imposed upon the Council by the National Assistance Act 1948, and the Chronically Sick and Disabled persons (Services Consultation and Representation) Act 1986.
- To act as Deputy in all matters in which it is appropriate for the Council to act and in accordance with any Court Orders made by the Court of Protection.
- To accept a guardianship application and to exercise the powers of Guardianship under ss.7-10 of the Mental Health Act 1983.



- To exercise the functions of the nearest relative under the powers contained in the Mental Health Act 2007 in all matters in which it is appropriate for an Officer of the Council so to act.
- To exercise the functions as laid out in the Deprivation of Liberty Safeguards guidance April 2009

### **3.7.3 Home Care Services: Financial Matters**

- In accordance with procedures approved in advance by the Head of Finance to waive the assessment charges for any services to clients in circumstances where it is essential for the family for social and/or medical reasons and to record every case requiring such action in a register to be provided for this purpose.
- In accordance with procedures agreed in writing in advance, with the Head of Finance, to vary or waive the charges for any service provided by the Council under Part III of the Children Act 1989 and Community Care legislation where failure to do so would adversely affect the welfare of the child/ or adult in question.
- Within the provisions of the National Health Service and Community Care Act 1990, to arrange for the purchase and provision of appropriate care services to those persons assessed as having needs that fall within the Council's agreed priorities, subject always to appropriate Contract and Financial regulations, the approved policies and estimates of the Council and the proper identification of appropriate suppliers.

### **3.7.4 Carers**

Within the approved policies and estimates of the Council to discharge the powers and duties towards carers imposed upon the Council by the Carers (Recognition and Services) Act 1995.

## **3.8 Head of Care Commissioning, Housing and Safeguarding**

### **3.8.1 Housing Act 2004**

- To develop and implement strategies to bring empty homes back into use, including the use of empty Dwelling Management Orders
- To make use of planning and housing powers to address poor housing

### **3.8.2 Housing Grants, Construction & Regeneration Act 1996**

- To give grants and loans for the repair / improvement of housing in accordance with national guidance and locally published policies.
- To award mandatory, and where appropriate discretionary, Disabled Facilities Grants for the purpose of aids and adaptations for eligible people, in accordance with national guidance and local published policies.
- To act as a Director of the Flexible Homes Improvement Limited, on behalf of West Berkshire Council, for the purpose of administering loans for the repair / improvement of housing within the Flexible Home Improvement Loans sub-region



### **3.8.3 Local Government and Housing Act 1989, Part VIII**

- To offer grants for the improvement and/or repair of housing.
- To determine applications for Housing Association Grant with regard to the purchase of properties in the second-hand market for occupation by homeless families in accordance with the special homelessness initiative subject to the contribution on any one unit not exceeding £50,000.
- Determination of application for individual DIYSO Housing Association Grant.
- Implementing rent reviews in accordance with valuers' instructions.

### **3.8.4 Housing Act 1988 – Part I**

- Carry out repairs to units of temporary accommodation in accordance with Housing Sub-Committee Minute 39 (03.02.98).
- Action under Section 157 of the Housing Act 1985 re: Repurchase of ex-Council House Stock on Rural Areas.

### **3.8.5 Gypsy Sites**

- To commission professional services in relation to gypsy sites under the Caravan Sites Act 1988.
- To undertake an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to the district and to prepare a strategy in respect of meeting those needs, in accordance with the Housing Act 2004
- To apply annual increases to charges on gypsy sites in line with the rent increases applied by West Berkshire Council managing the site to its own tenants.

### **3.8.6 Housing Act 1996 (as amended by the Homelessness Act 2002)**

To publish an allocations scheme and develop policies to offer choice to applicants in the allocation of housing

To exercise the duties conferred on the Council under Part VII of the Housing Act 1996 in relation to homelessness.

### **3.8.7 Home Energy and Conservation Act 1995**

To promote energy efficient homes including administering grants for energy efficiency

### **3.8.8 Future Development Sites**

The Head of Care Commissioning, Housing and Safeguarding, in consultation with the Head of Planning and Countryside, be given delegated authority to determine the mix of types of affordable housing (that is to say the ratio of shared ownership to rented or a financial contribution instead that is to be varied, based on individual site/community needs) to be provided on future development sites, in line with adopted planning policies, and that this process form part of any pre-application or general application negotiations undertaken as part of the development control function.

The Head of Care Commissioning, Housing and Safeguarding be given delegated authority to determine the level of affordable housing financial contribution in line with current policy.

### **3.8.9 Sites with Existing Planning Permission**

The Head of Care Commissioning, Housing and Safeguarding be authorised to negotiate with developers variations in the mix of types of affordable housing specified in Section 106 Agreements to be provided on specified sites, following consultation with the Head of Legal Services, the Head of Planning and Countryside, and in line with adopted planning policies

### **3.8.10 Energy Act 2011**

To act as a Shareholder Signatory for the Green Deal Community Interest Company on behalf of West Berkshire Council, for the purpose of recruiting and managing approved local contractors, undertaking targeted marketing and carrying out Green Deal Plans and EPC's, receiving government funding to deliver ECO in the District and for hard to treat homes ie solid walls and providing an advice and guidance service for local residents on energy efficiency and Green Deal issues.

## **3.9 Head of Strategic Support**

### **3.9.1 General**

Power under Section 92 of the Local Government Act 2000 to direct the appropriate Corporate Director or Head of Service in consultation with the relevant Portfolio Member, to make ex-gratia payments up to £2,500 or to provide other benefits to remedy complaints, within the framework of the Local Government Ombudsman Good Practice Remedies (March 2003) document, and Financial Rules of Procedure, and where necessary in consultation with the Monitoring Officer.

### **3.9.2 Local Government Act 1972**

- Section 225(1) – to receive and retain documents deposited.
- Schedule 12 Paragraph 4(2)(a) – to publish the time and place, within five clear working days, of the Council meeting.
- Schedule 12 Paragraph 4(2)(b) – to sign the summons to attend the Council meeting
- Schedule 12 Paragraph 4(3) – to receive notices regarding addresses to which summons to meetings are to be sent.
- Schedule 14 Paragraph 25(7) – to certify copies of resolutions for the purposes of legal proceedings.
- Section 248 – to retain a roll of Freeman

### **3.9.3 Civil Contingencies Act 2004**

The Civil Contingencies Act, 2004 provides a single framework for civil protection in the United Kingdom. Part 1 of the Act and supporting regulations and guidance (Emergency Preparedness) establishes a clear set of roles and responsibilities for those involved in emergency

preparation and response at the local level. The Act divides local responders into two categories, imposing a different set of duties on each.

Those in Category 1, are those organisations at the core of the response to most emergencies (e.g. emergency services, local authorities, NHS bodies). Category 1 responders are subject to the full set of civil protection duties. They will be required to:

- Assess the risk of emergencies occurring and use this to inform contingency planning;
- Put in place emergency plans;
- Put in place Business Continuity Management arrangements;
- Put in place arrangements to make information available to the public about civil protection matters and maintain arrangements to warn, inform and advise the public in the event of an emergency;
- Share information with other local responders to enhance co-ordination;
- Co-operate with other local responders to enhance co-ordination and efficiency; and
- Provide advice and assistance to businesses and voluntary organisations about business continuity management (Local Authorities only).

Category 1 and 2 organisations will come together to form Local Resilience Forums (based on ~~P~~olice areas) which will help co-ordination and co-operation between responders at the local level.

### 3.9.4 Electoral Matters

Designation of Polling Places (in consultation with Ward Members).

### **3.9.5 Localism Act 2011 - Part 5 Chapter 3 - Assets of Community Value**

To delegate to the Head of Strategic Support the management of the Assets of Community Value provisions (Community Right to Bid) in accordance with Part 5, Chapter 3 of the Localism Act 2011.

## 3.10 Head of Customer Services

### 3.10.1 Registration of Births, Deaths and Marriages

- To grant or refuse applications for the approval of premises under the Marriage Act 1949 (as amended) and the Marriage (Approved Premises) Regulations 1995 and to revoke any approval which has been granted.
- To determine, in consultation with the Head of Finance, and from time to time vary, the fees payable for the granting or refusal of applications for the approval of said premises.

## 3.11 Head of ICT and Corporate Support

Local Government (Miscellaneous Provisions) Act 1982 - Section 38 – Use of spare capacity of computers of Local Authorities.

## 3.12 Head of Highways and Transport

### 3.12.1 Agreements

- To enter into agreements with other public authorities for the provision of services and the recoument of charges.
- To enter into agreements relating to placing etc of certain apparatus in or under a highway pursuant to the New Roads and Street Works Act 1991.
- To enter into agreements providing for contributions by developers towards the cost of highway improvements, transportation schemes, or other development to be carried out by the Council.

### 3.12.2 Transport

- West Berkshire Council is a designated body for the issuing of Section 19 Bus Permits in accordance with the Transport Act 1985 and changes introduced by the Local Transport Act 2008
- To make payments towards the provision of cross boundary public transport services which are the subject of service subsidy agreements entered into by adjoining authorities and which serve the District.
- In consultation with the Head of Legal Services to exercise the powers of the Council under Public Passenger Vehicle Act 1981 including the submission of objections to applications for the grant of the operator's licences under Section 14A.
- To exercise the power of the Council under Section 7 of the Transport Act 1985 to request the Traffic Commissioners to make, vary or revoke traffic regulations conditions affecting local services or to hold an inquiry prior to determination of such conditions.
- To enter into public transport service subsidy agreements under the provisions of the Transport Act 1985 where they are exempt from the tendering requirements in that Act, including de-minimus arrangements.
- To lodge holding objections regarding proposals by operators for withdrawals of or alterations to rail services, or the fares and charges therefore, where it is anticipated that extra Council expenditure would result.
- To serve a 42 day Notice of Deregulation provided that such response is made within existing policy.
- To make objections to applications for Vehicle Operators Licences under Sections 12 to 14 of the Goods Vehicles (Licensing of Operators) Act 1995

### 3.12.3 Miscellaneous

- To agree contributions to regional water authorities' surface water drainage schemes calculated on the proportion of highway "run-off" to that from other areas, including related matters such as contributions towards the cost of cleansing village ponds, and to make payments to any minor drainage scheme of any type where they are satisfied that highways will benefit.
- To extinguish public rights of way (stop up) and dispose of land not exceeding 500sq m no longer required for highway purposes.

- In consultation with the Head of Legal Services to accept dedications of land donated to the Council for highway purposes.
- To approve and protect development and improvement lines.
- To exercise the Council's powers in relation to cycle tracks under the Cycle Track Act 1984.
- To construct and/or light cycle tracks.
- To alter or remove any cycle tracks.
- To settle compensation claims in respect of drainage or sewerage schemes on behalf of the Council (in consultation with Head of Legal Services).
- To take all necessary action to safeguard the interests of the Council in relation to applications by water undertakings for orders or schemes under the legislation operated by such undertakings.
- In the exercise of the functions of the Council as Highway Authority, to advise on the highway aspects of development control.
- To demolish property acquired for road schemes in advance of requirements subject always to due regard to planning considerations or consent as appropriate.
- To arrange for the temporary use of land for the dumping or storing of highways materials or equipment.
- To erect traffic signs and to arrange wayleaves for their erection on private property.
- To adopt streets constructed to specification.
- To plan and carry out highway improvements not requiring planning permission subject to consultation with the appropriate Executive Member and Ward Members. If the purchase of land is necessary then delegated authority (for land up to the value of £300,000) from the Head of Legal Services will be required.
- To fix contributions to private street works and charges apportioned in flank and rear frontages in accordance with the Council's approved policy.
- To apply for planning permission for the purposes of Regulation 3 of the Town and Country Planning General Regulations 1992.
- To approve and licence (including charging any appropriate fees for doing so):
  - the placing of structures within highway limits;
  - the laying maintenance and inspection of pipes, cables or other lines over or under highways;
  - the erection of stiles, gates or cattle grids and enforcement and maintenance of stiles and gates under Sections 146 and 147 of the Highways Act 1980;
  - arrangements for motor vehicles and cycle trails;
  - the construction of a building over any part of a highway.
  - the placing of tables and chairs on the public highway.
- To exercise the Council's powers including the giving of formal notices:

- to prohibit horses, cattle or vehicles entering on ornamental gardens within the highway;
- to pipe or culvert and fill up roadside ditches;
- to require the execution of works to prevent soil or refuse from land from falling or being washed on to a street;
- to take action in relation to any obstruction of or damage to or nuisance to the highway or users thereof;
- to exercise the Council's powers and duties under Part III of the New Roads and Street Works Act 1991 (other than the institution of legal proceedings);
- to require the removal of obstructions to sight lines at corners and to remove unauthorised signs on any part of the highway;
- to require the removal, lopping and cutting of trees or hedges overhanging or near to a highway;
- to take action in relation to any obstruction of or damage to or nuisance to the highway or users thereof.
- To carry out:
  - minor temporary repairs in private streets required to remove danger to persons or vehicles;
  - emergency works of any kind whether or not provision has been made in the estimates, where justified in their opinion (and that of the Head of Legal Services), by the scale of the potential legal liability.
- To respond to consultations from the Department for Transport, and others pursuant to Sections 247, 248, 251 and 253 of the Town and Country Planning Act 1990.
- Selection of sites for street seats.
- Approval of requests for street closures or for making orders for the prevention of obstructions in the street during public processions etc in accordance with Section 21 of the Town Police Clauses Act 1847.
- Approval of applications for permission to hold events in Council car parks.
- Approval of requests to waive car parking charges in the period leading up to Christmas.
- To implement highway maintenance and improvement works in accordance with approved budgets and to agreed service standards in accordance with the Highways Act 1980 [and current guidance](#).

#### **3.12.4 Road Traffic Regulations Act 1984**

- To exercise powers under Sections 14(1) and 16(a) for works and events (respectively) on the public highway.
- To post temporary notices for traffic management under Section 14(2).
- Where a Committee, the Executive or Council have already approved in principle an experimental traffic order to exercise powers under the Act to advertise that order and subsequently implement it provided no objections are received. Where an order is implemented, the Ward Members will be advised.

- Where a Committee, the Executive or Council have already approved in principle any traffic order (for speed limits, prohibitions of movement, weight limits, etc.) to exercise powers under the Act to advertise that order and subsequently implement it provided no objections are received. Where an order is implemented, the Ward Members will be advised.

### **3.12.5 Berkshire Act 1986**

- Section 4 - to recover expenses reasonably incurred in fencing or lighting a source of danger or obstruction to persons or vehicles using a highway from the owner or other person responsible for the danger or obstruction.
- Section 5 - to specify modifications to plans sections and particulars submitted by a landowner in support of a private street works scheme.
- Section 8 - to affix to any building or structure in or having a frontage to or construction over any road in the District a traffic sign or any apparatus required for illumination forming part of any sign.

### **3.12.6 Highways Act 1980**

- Section 38 - For the construction and dedication of new streets to standards laid down by the Highway Authority.
- Section 41 – To exercise powers in respect of the duty to maintain highways.
- Sections 64 and 69 - Provision of planting within the highway by the Local Authority (in consultation with Head of Planning and Countryside).
- Sections 64 and 96 - To enter into agreements for the maintenance and planting of land within highways limits and to authorise other authorities.
- Section 65 - To exercise the Council's powers under this Section of the Act.
- Section 100 - To exercise powers relating to highway drainage.
- Section 132 - To exercise powers relating to unauthorised markings on highways.
- Section 134 - To grant extensions to the statutory periods of reinstatement of footpaths and bridleways.
- Sections 141 and 142 - Determination of applications for licences to plant on the public highway and removal of unauthorised planting (in consultation with Head of Planning and Countryside).
- Section 144 - To exercise powers relating to the erection or consent to erection of flagpoles, pylons or structures on highways for the purpose of displaying decorations.
- Section 154 - To exercise powers relating to the service of notices requiring the cutting or felling of trees etc. that overhang or are a danger to roads or footpaths.
- Sections 165 and 166 - Serving of Notices in respect of dangerous forecourts and land adjacent to the public highway.
- Section 169 - To exercise powers relating to the control of scaffolding or other structure on or over the highway.



- Section 170 - To exercise powers relating to the control of mixing mortars, cement or other bound materials on the highway.
- Section 171 - To exercise powers relating to the control of deposits of building materials or excavations within the highway.
- In consultation with the Head of Finance to issue licences and fix and collect fees in relation to the following matters governed by the Highways Act 1980:
  - Mixing of Mortar - Section 170;
  - Construction of bridges - Section 176;
  - Placing of rails, beams etc on highways - Section 178;
  - Construction of cellars under streets -Section 179;
  - Control of openings into cellars etc under streets and pavement lights and ventilators - Section 180.
- Section 184 - To exercise powers relating to the service of notices that the Council proposes to construct a vehicle crossing over the footway.
- Section 219 - To exercise powers relating to the service of notices under the Advance Payments Code.
- Section 256 - To enter into agreements to exchange land to straighten or adjust boundaries.

### 3.12.7 Land Drainage Act 1991

- ~~To exercise powers relating to drainage otherwise than in connection with a main river or the banks of such a river.~~
- ~~Section 18 – To exercise powers relating to the drainage of small areas.~~
- ~~To exercise powers to require works for maintaining the flow of a watercourse including serving of notices. As amended by the Flood and Water Management Act 2010~~
  - ~~To grant consent for any works on ordinary water courses.~~
- To exercise the Council's powers and duties under the Land Drainage Act 1991 and any secondary legislation made there under and including any amending or updating to this legislation.
- \_\_\_\_\_

### 3.12.8 Reservoirs Act as Amended by the Flood and Water Management Act 2010

To exercise the Council's powers and duties under the Reservoirs Act 1975 and the Flood and Water Management Act 2010.

### 3.12.9 Environmental Protection Act 1990

To exercise powers including serving of notices in respect of statutory nuisance relating to drainage.



### **3.12.10 Goods Vehicles (Licensing of Operators) Act 1985**

In consultation with the head of legal Services and the head of Planning and Countryside to submit objections to the Traffic Commissioner on behalf of the Council.

### **3.12.103.12.11 Traffic Management Act 2004**

- To act as the Traffic Manager in accordance with the requirements of the Traffic Management Act 2004.
- To exercise powers in relation to road and street works co-ordination and related matters.

### **3.12.113.12.12 Clean Neighbourhoods and Environment Act 2005**

To exercise powers in relation to Part 2 (Section 3-8) of Clean Neighbourhoods and Environment Act 2005.

### **3.12.123.12.13 Other Powers –Consultation Provisions**

All consultations on Transport issues (with the exception of those deemed significant and requiring referral to the Executive/Select Committee) be delegated to the Head of Highways and Transport in consultation with the Leader, appropriate Portfolio Holder and Opposition Spokesperson.

### **3.12.133.12.14 Flood and Water Management Act 2010**

- ~~Section 7 – to act as Lead Local Flood Authority for West Berkshire;~~
- ~~Section 9 – to exercise the Council's duty to develop, maintain, apply and monitor a strategy for local flood risk management within West Berkshire;~~
- ~~Sections 14 & 15 – to exercise the Council's power to request information in connection with the Authority's flood risk management functions;~~
- ~~Section 19 – To exercise the Council's duty to investigate flood incidents, publish the results and notify the relevant risk management authorities.~~
- ~~Section 21 – To exercise the Council's duty to maintain a register of structures or features which (in the opinion of the authority) are likely to have a significant effect on a flood risk in its area;~~
- ~~Section 30, Schedule 1 – To exercise the Council's power to designate structures and features that affect flooding (in consultation with the Head of Legal Services);~~
- ~~Section 32, Schedule 3:~~
  - ~~Authority to create a SuDs Approval Body for the determination of Sustainable Drainage applications on new developments;~~
  - ~~Determination of Sustainable Drainage applications (in consultation with the Head of Planning and Countryside);~~
  - ~~Charge fees for the approval, inspection and adoption of Sustainable Drainage systems;~~

- ~~To exercise the Council's duty to adopt Sustainable Drainage systems as detailed in part 17 of schedule 3.~~

To exercise the Council's powers and duties under the Flood and Water Management Act 2010 and any secondary legislation made there under and including any amending or updating to this legislation.

### **3.13 Head of Legal Services**

#### **3.13.1 General**

- Institution and defence of any legal proceedings in the name of the Council.
- This role also manages corporate procurement activity and provides advice and support to the Council on procurement and the development and delivery of efficiency programmes.
- Sealing of all documents on behalf of the Council

#### **3.13.2 Local Government Act 1972**

- Section 85 - Authority be delegated to the Monitoring Officer to allow the Monitoring Officer to approve applications in writing from absent Councillors in exceptional circumstances (such as serious illness, extended work commitments abroad or extended service in the Forces) subject to consultation with Group Leaders. Any applications for extended absence would be limited to two three month periods only and in the event of disagreement between the Group Leaders, the application would be determined by a Special Meeting of the Governance and Audit Committee.
- Section 229(5) - Certification of photographic copies of documents.
- Section 234(1) and (2) - Authorisation of documents.

#### **3.13.3 Local Government (Miscellaneous Provisions) Act 1976:**

Section 29 - Application to High Court for repayment of monies paid into Court under Sub-Sections 76 or 85 Land Clauses Consolidation Act 1945 or Section 9 or Schedules 2 and 3 of the Compulsory Purchase Act 1965.

#### **3.13.4 Miscellaneous**

- To take all necessary steps to take out letters of administration with or without the will annexed either alone or jointly with the Head of Finance for:
- the estates of parents or any other person where there is a beneficial interest for children or young persons for whom the Council has parental rights under provisions of the Children Act 1989, or any other statutory provision affecting children and young persons;
- the estates of children or young persons who die whilst in the care of the Council;
- and to administer such estates in the manner directed by the appropriate probate registry.
- To exercise the Council's powers to be a Trust Corporation.
- To act for all Trading Standards Officers authorised as Inspectors.

- To authorise the issue of official certificates of search of the Council's Land Charges Register.
  - The Head of Legal Services acting as Monitoring Officer may make minor amendments to the Constitution in order to ensure that legislative provisions are current and any typographical or other errors are corrected.

### **3.13.5 Commons Registration**

To exercise the Council's powers and duties in relation to Commons and Towns and Village Greens.

### **3.13.6 Licences**

- Following approval of applications by the Head of Planning and Countryside, to issue waste disposal site licences or management licences (including notices of modification) incorporating suitable conditions.
- To make objections to applications for Vehicle Operator's Licence under Sections 12 to 14 of the Goods Vehicles (Licensing of Operators) Act 1995.

### **3.13.7 Highways Act 1980**

*(All powers under this Act to be exercised in consultation with the Head of Highways and Transport and to be exercised also in consultation with the Head of Planning and Countryside where relating to a Public Rights of Way.)*

- To enter into Wayleave and Drainage easements
- To enter into public path creation agreements under Section 25 of the Highways Act 1980 except where a capital payment by the Council is involved.
- To enter into agreement under Section 38 of the Highways Act 1980 for the construction and dedication of new streets.
- Under the provisions of Section 135 of the Highways Act 1980 to make Orders to allow for excavation or other engineering operations reasonably necessary for the purpose of agriculture.
- To enter into highway maintenance agreements with adjacent Authorities in the interests of operational efficiency under Section 8 of the Highways Act 1980.

### **3.13.8 Notices and Orders in relation to Highways and Public Rights of Way**

*(All powers to be exercised in consultation with the Head of Highways and Transport or the Head of Planning and Countryside in respect of Public Rights of Way.)*

- Head of Planning and Countryside to be able to serve Notices, in consultation with the Head of Legal Services
- To exercise the Council's powers including the giving of formal notices:
- to require the removal of obstructions to sight lines at corners and to remove unauthorised signs on any part of the highway;

- to require the removal, lopping and cutting of trees or hedges overhanging or near to a highway;
- to take action in relation to any obstruction of or damage to or nuisance to the highway or users thereof.
- to serve notices in respect of obstructions and other nuisances and to take enforcement action as required.
- To make and confirm orders for the diversion or extinguishment of footpaths or bridleways proposed by the Head of Planning and Countryside.
- To make and confirm orders for the modification of the Definitive Map and Statement under Sections 53, 53B, 55, 57 and 57A Wildlife and Countryside Act 1981 as proposed by the Head of Planning and Countryside.
- To accept in respect of property blighted by approved schemes blight and purchase notices, and to serve counter notices of objections under the town and country planning and land compensation legislation, and to authorise payment on the execution of works to any person who appears to be entitled to the same under the legislation in force from time to time (in consultation with the appropriate Corporate Director or Head of Service)
- To sign, on behalf of the Council, application requests for any direction and for any restriction to access to public open access land or related matters, in accordance with the Countryside and Rights of Way Act 2000.

### **3.13.9 Berkshire Act 1986**

*(All powers under this Act to be exercised in consultation with the Head of Highways and Transport).*

- Pursuant to Section 7 of the Berkshire Act 1986, to make application to the County Court for an order vesting former highway land in the highway authority.
- Pursuant to Section 9 of the Berkshire Act 1986, to recover from the person responsible the cost of making good damage caused to a grass verge or footway of a highway by any person carrying on building operations or delivering goods to premises in the course of trade.

### **3.13.10 Road Traffic Regulation Act 1984**

- To exercise the Council's powers under the Road Traffic Regulation Act 1984 to restrict or prohibit vehicular and pedestrian movements as necessary to facilitate the holding of a "relevant event" when it is considered that an order under the Town Police Clauses Act 1847 is inappropriate (in consultation with the Head of Highways and Transport).
- To advertise proposals to make orders for traffic management other than temporary orders under Section 14(1) of the Road Traffic Regulation Act 1984 as substituted by the Road Traffic (Temporary Restrictions) Act 1991 and to subsequently make the orders where no objections to those proposals are received.
- To make temporary orders for traffic management under Section 14(1) of the Road Traffic Regulation Act 1984 as substituted by the Road Traffic (Temporary Restrictions) Act 1991

### **3.13.11 Town and Country Planning General Development Order 1998**

- To exercise the Council's powers under the Town and Country Planning General (Development Management Procedure) England Order 2010, on the instructions of the Head of Planning and Countryside, subject to the conditions below:
- Article 4: the making, service and confirmation of directions restricting permitted development;
- Part 6: Determination whether planning permission is required following notification of agricultural development
- The delegations relating to Stop Notices and Article 4 Directions above shall be exercised subject to the following:
- The action shall be taken after consultation with the Chairman or in their absence the Vice-Chairman of the District Planning Committee and appropriate Ward Members, if available.
- The action taken shall be reported to the next meeting of the appropriate Area Planning Committee.
- In exercising these powers the Officers shall have regard to the urgency of the action which is required.
- Subject to circumstances, the Officers may report the matter to the appropriate Area Planning Committee for decision where it is prudent to do so.
- The creation of charges on property, in appropriate circumstances, in accordance with Section 22 of the Health and Social Services and Social Security Adjudications Act 1983 as amended (in consultation with the Corporate Director, (Communities)).

### **3.13.12 Localism Act 2011**

The Head of Legal Services acting as Monitoring Officer (or their nominated representative) in consultation with an Independent Person pursuant to the localism Act 2011 and its associated Regulations shall ensure that an Initial Assessment of any complaint in respect of councilors' (district, town or parish) behavior in relation to the Code of Conduct is determined in accordance with the complaints procedure adopted by the Council.

### **3.13.12.3.13 Property Matters**

- Agreements for easements and wayleaves to an unlimited value.
- Agreement for leases and licences up to a value of £100,000 per annum.
- Agreement to purchases and sales of land up to consideration of £300,000.
- Surrenders.
- Lifting of all restrictive covenants up to a value of £300,000.

## **3.14 Head of Planning and Countryside**

### **3.14.1 Countryside including Rights of Way functions**

- Management of Recreation Facilities where these are public open spaces.

- Admission and exclusion of public to recreation facilities and premises (also Head of Cultural Services).
- Letting of recreation facilities and premises (also Head of Cultural Services).
- To carry out powers in relation to The Hedgerow Regulations 1997.
- To grant a licence and associated consents for the annual Michaelmas Fair.
- To exercise powers in relation to the Clean Neighbourhoods and Environment Act 2005.
- To exercise the powers and duties of the Council (in consultation with the Head of Legal Services), in relation to public rights of way, including the making and service of Notices and Orders, under the following primary legislation, and any secondary legislation made thereunder, including amendments or updates to the legislation.

Countryside Act 1968

Countryside and Rights of Way Act 2000

Criminal Damage Act 1971

Environmental Protection Act 1990

Highways Act 1980

Land Drainage Act 1991

Local Government (Miscellaneous Provisions Act) 1976

National Parks and Access to the Countryside Act 1949

Natural Environment and Rural Communities Act 2006

New Roads and Street Works Act 1991

Rights of Way Act 1990

Town and Country Planning Act 1990

Wildlife and Countryside Act 1981

- To enter into maintenance agreements in relation to Public Rights of Way, where appropriate, and in consultation with the Head of Legal Services
- To approve and protect development and improvement lines.
- The exercise (in consultation with the Head of Legal Services), of the common law duty to 'seek, prevent and remove obstructions' (Bagshaw vs Buxton Local Board of Health 1875).

### **3.14.2 Highways Act 1980 and Town and Country Planning Act 1990**

- To enter into agreements and make creation orders, where appropriate, and in consultation with ~~w~~Ward ~~M~~Members, for the creation of new public rights of way
- To extinguish rights of way, where appropriate, and in consultation with ~~w~~Ward ~~M~~Members
- To divert public rights of way, where appropriate, and in agreement with ~~w~~Ward ~~M~~Members.

- To enter into maintenance agreements, where appropriate, and in consultation with **wWard M**members.

### **3.14.3 Agreements relating to Public Rights of Way**

- To enter into agreements with other public authorities for the provision of services and the recoument of charges.
- To enter into agreements relating to placing etc of certain apparatus in or under a highway pursuant to the New Roads and Street Works Act 1991.
- To enter into agreements providing for contributions by developers towards the cost of highway improvements, transportation schemes, or other development to be carried out by the Council.

### **3.14.4 Miscellaneous relating to Public Rights of Way**

- To extinguish public rights of way (stop up) and dispose of land not exceeding 500sq m no longer required for highway purposes.
- In consultation with the Heads of Legal Services and Highways and Transport:
- to accept dedications of land donated to the Council for highway purposes.
- In the exercise of the functions of the Council as Highway Authority, to advise on the highway aspects of development control.
- To arrange for the temporary use of land for the dumping or storing of highways materials or equipment.
- To keep the definitive maps and statement under review
- To plan and carry out highway improvements not requiring planning permission subject to consultation with the appropriate Executive Member and Ward Members.
- To approve and licence (including charging any appropriate fees for doing so):
- the placing of structures within highway limits;
- the erection of stiles, gates or cattle grids and enforcement and maintenance of stiles and gates under Sections 146 and 147 of the Highways Act 1980;
- arrangements for motor vehicles and cycle trails;
- To exercise the Council's powers including the giving of formal notices:
- to pipe or culvert and fill up roadside ditches;
- to take action in relation to any obstruction of or damage to or nuisance to the highway or users thereof;
- to require the removal of obstructions to sight lines at corners and to remove unauthorised signs on any part of the highway;
- to require the removal, lopping and cutting of trees or hedges overhanging or near to a highway;
- to take action in relation to any obstruction of or damage to or nuisance to the highway or users thereof.



- To respond to consultations from the Department of Transport, Environment and the Regions and others pursuant to Sections 247, 248, 251 and 253 of the Town and Country Planning Act 1990.
- To implement highway maintenance and improvement works in accordance with approved budgets and to agreed service standards in accordance with the Highways Act 1980.

### 3.14.5 Berkshire Act 1986

- Section 32 – To ensure access for the Fire ~~Brigade~~ Authority in planning applications.
- Section 33 – To ensure the provision of means of escape from fire in certain buildings.
- Section 35 – To ensure adequate fire and safety precautions in public buildings.
- Section 36 – To ensure adequate safety precautions in relation to vehicle parking in buildings.
- Section 37 – To ensure adequate fire precautions in storage buildings over 7,000m<sup>3</sup>.
- Section 38 – To ensure adequate fire precautions in high buildings.

### 3.14.6 Planning

- Subject to the conditions set out below, the determination, granting or refusal of Notifications and Applications for permission, certification approval or consent relating to developments and works.
- Subject to the conditions set out below, the approval or refusal of items reserved or conditioned by any permission, approval or consent.
- Subject to the conditions set out below, the determination of applications for advertisement consent.
- In respect of applications determined by the District Planning Committee or relevant Area Planning Committees and subject to the conditions set out below and consultation with the Ward Members, the acceptance of minor amendments to schemes already permitted, approved or consented to.
- Subject to the conditions set out below, the giving of observations on consultations and enquiries received from service or government departments, local authorities and other bodies relating to minor development. The issue of approvals or the making of formal observations concurring with other local authorities, Crown bodies or government departments where they accord with Council policy.
- Prior to determination of submitted application, the acceptance of amendments to submitted application for permission approval or consent.

#### Conditions

The delegations set out above shall be exercised subject to the following:

- The Area Planning Committees shall reserve the authority to determine any type or class of application.



- The Council may modify or revoke the scheme of delegation at any time.
- An application may be referred to the appropriate Area Planning Committee for determination by:
  - the relevant Area Planning Committee Chairman; or
  - a Member for the Ward to which the application relates;
  - a Member for a Ward adjoining the Ward to which the application relates.
- the Head of Planning and Countryside or the Development Control Manager
- Members who wish to ‘call-in’ an item to be discussed at an Area Planning Committee will be required to complete the agreed proforma which must be submitted either in hard copy by letter or fax or electronic copy via e-mail. The consent of the Chairman of the appropriate Area Planning Committee, or if unavailable, the Vice-Chairman, is required.

*(Note: If the Chairman or, if unavailable, the Vice-Chairman, does not give consent then the application will not be referred to a Planning Committee.)*

The Officers will refer for determination to the appropriate Area Committee any application, including:

- Where the application is a major one or there are five or more objections and it is submitted by, or on behalf of West Berkshire Council, or where the land in question is owned by the Council if there are five or more objections or if the application is a major one;
- those submitted by or on behalf of a member of staff of Planning,
- those submitted by or on behalf of a West Berkshire Council Member, if there are five or more objections or if the application is a major one;
- those recommended for approval, for which a petition of objection has been received of at least 20 signatories;
- those recommended for approval, for which at least 10 letters of objection have been received;
- those applications not considered prudent by the Development Control Manager to be determined under delegated authority.

Prior to determination of submitted applications, the acceptance of amendments to submitted applications for permission, approval or consent.

### **3.14.7 Town and Country Planning Act 1990**

Subject to the conditions at paragraph 3.14.6 (Planning) above, to exercise the powers and duties of the Council under the Town and Country Planning Act 1990 and any secondary legislation made thereunder, and including any amendments or updates to the legislation, including but not limited to the following powers:

- Determination of applications as to whether Planning Permission is required.
- Response to Purchase Notices.
- The serving and enforcement of Planning Contravention Notices.

- The issuing, service and enforcement of Enforcement Notices including action in default when required.
- The service and enforcement of Stop Notices.
- The service and enforcement of Breach of Condition Notices.
- Injunctions restraining breaches of planning controls.
- The issue of Lawful Use or Development Certificates.
- The making and enforcement of Tree Preservation Orders and the determination of applications for consent in respect of such Orders.
- The service of Notices in relation to untidy land and consequent action to secure compliance.
- Enforcement against breaches of Advertisement Regulations.
- To carry out powers in relation to Part VIII and Part X of the Town and Country Planning Act 1990.

#### **3.14.8 Planning (Listed Buildings and Conservation Areas) Act 1990**

Subject to the conditions at paragraph 3.14.6 above (Planning), to exercise the powers and duties of the Council under the Planning (Listed Buildings and Conservation Areas) Act 1990 and any secondary legislation made thereunder, and including any amendments or updates to the legislation, including but not limited to the following powers:

- The service of Building Preservation Notices.
- Enforcement in respect of unauthorised works to listed buildings.
- The issuing and service of Listed Building Enforcement Notices.
- The issuing and service of Urgent Works Notices and execution of works as contained in the Notice.
- Authority to take Direct Action, under the Planning and Compensation Act 1991, to carry out works under an Enforcement Notice.
- To request further information, evidence or plans under the provisions of Article 4 of the Town and Country Planning (Development Management Procedure) Order 1995 and Article 4 of the Town and Country Planning (Applications) Regulations 1998, and subsequent amendments, where details submitted with an application are considered inadequate or incomplete.
- The issue of approvals or the making of formal observations concurring with other local authorities, Crown bodies or government departments, where they accord with Council policy.

#### **3.14.9 Other Powers – Technical, Legal and Consultation Provisions**

- Authority to sign Decision Notices regarding the granting or refusal of planning permissions, consents or approvals.

- Authority to enter into Legal Agreements to secure planning obligations for the provision of mitigation where unacceptable harm would otherwise result as a consequence of development
- To respond to requests under Regulation 5 of the Town and Country Planning (Environmental Impact Assessment (England and Wales)) Regulations 1999 for a view as to whether an environmental statement is considered necessary in connection with a particular development proposal and to establish the scope of any such assessment.
- To determine whether or not to issue an Article 4 Direction upon notification of a developer's intention to exercise any permission for mineral operations granted by virtue of the Town and Country Planning (General Permitted Development) Order 1995, as amended.
- To express the Council's view on planning applications in respect of former County Matters referred by local authorities outside the District for development which would not prejudice the Council's planning policies.
- All consultations on Planning issues (with the exception of those deemed significant and requiring referral to the Executive/Select Committee) be delegated to the Head of Planning and Countryside in consultation with the Leader, appropriate Portfolio Holder and Opposition Spokesperson.

### **3.14.10 Minerals**

- Consultations on Mineral Safeguarding Areas.
- Complying with the requirements of the Environmental Impact Assessment Regulations 1999:
  - Screening Opinions (Part II Section 5)
  - Scoping Opinions (Part IV Section 10)
- Provision of information in respect of compilation of Environmental Statements notification of consultees of intention to compile an Environmental Statement and the need to supply information for this purpose. (Part IV Section 12). Also advertising.
- Responding to notifications under the General Permitted Development Order 1995:
  - mineral exploration (Part 22, Class B of Schedule 2);
  - the removal of material from mineral workings (Part 23, Class B and C of Part 19 of Schedule 2)
- Review of mineral planning applications under the Environment Act 1995:
  - deciding the dates by which applications for development must be made;
  - determining applications for postponement of the review date.
- Serving aftercare non-compliance notices in relation to permissions for mineral workings and waste disposal sites (in accordance with Schedule 5 of the Town and Country Planning Act 1990 and para. 69 of MPG7).
- Responding to adjoining local authorities on consultations on:
  - minerals and waste disposal consultations;
  - their minerals and waste plans.

### **3.14.11 Environmental Protection Act 1990 (as amended by Environment Act 1995)**

To consider and make representations on proposals referred to the Council by the Environment Agency on the issuing of Waste Management Licences.

### **3.14.12 The Building Act 1984**

- Sections 1, 8 and 16 – Determination of applications for Building Regulation Consent; applications for dispensation from, or relaxation of, Building Regulation requirements.
- Section 10 – Advertisement of proposed dispensation.
- Section 15 – To consult the Fire Authority concerning dispensations.
- Section 18 – Building over/close to Thames Water sewers.
- Section 19 – Short-lived materials.
- Section 20 – Unsuitable materials.
- Section 21 – Provision of drainage.
- Section 24 – Fire exits.
- Section 25 – Water supply.
- Section 32 – Lapse of Building Regulations approval.
- Section 33 – Tests for conformity.
- Sections 35 and 36 – Prosecution of offences (and removal of offending work) under the Building Regulations.
- Sections 47-54 – Monitoring of building work supervised by approved inspectors.
- Section 57 – Prosecution of offences by approved inspectors.
- Section 71 – Exits and entrances to public buildings.
- Section 72 – Means of escape from certain high buildings.
- Section 73 – Raising of chimneys.
- Section 74 – Rooms below subsoil water level.
- Section 76 – Defective premises
- Sections 77 and 78 – Notices and action in respect of dangerous buildings and structures.
- Section 79 – Ruinous and dilapidated buildings and neglected sites.
- Section 80 – The power to prosecute in respect of failure to give notice of intention to demolish
- Section 81 – Notices in respect of demolition.
- Section 95 – Power to enter premises.
- Section 96 – Provisions as to entry.
- Section 107 – Recovery of expenses.
- Fix charges for Building Regulation Fees.

**3.14.13 Local Government Miscellaneous Provisions Act 1976**

- Section 16 – The serving of Requisition of Information Notices.
- Section 23 and 24 – Authorisation of action and service of Notices to make trees safe and recovery of costs from owner or occupier.
- Section 25 and 26 – Serving of Notices and subsequent action to provide protection to the public from dangerous excavations on private land to which the public has access.

**3.14.14 Environmental Protection (Controls on Injurious Substances) Regulations 1993**

Sections 5 & 6 – Prohibiting the use of timber containing Pentachlorophenol.

**3.14.15 Local Government (Miscellaneous Provisions) Act 1982**

- Section 17 – Power of entry.
- Section 29 – Protection of buildings.

**3.14.16 Clean Air Act 1993**

Section 16 – Height of chimneys.

**3.14.17 The Building Regulations 2010**

Section 16 – Laying open uninspected work.

**3.14.18 The Building (Local Authority Charges) Regulations 1998**

Section 3 – Fix charges for Building Regulation fees.

**3.14.19 Wildlife Heritage Sites and Regionally Important Geological and Geomorphological Sites**

To make decisions on recommendations from the Berkshire Nature Conservation Forum in relation to the designation, re-designation or change to boundaries of Wildlife Heritage Sites and Regionally Important Geological and Geomorphological Sites in accordance with the Planning Policy Guidance Note No.9, in consultation with the Portfolio and Shadow Portfolio Holders.

**3.14.20 Party Walls Act 1996**

To be the Appointing Officer under the Party Walls Act 1996.

**3.14.21 Planning and Compulsory Purchase Act 2004**

To exercise the Council's powers and duties under the Planning and Compulsory Purchase Act 2004.

**3.14.22 The Building (Local Authority Charges) Regulations 2010 – Scheme of Charges****3.14.23 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000**

To exercise responsibility for accepting or rejecting a request for a local listing unless the proposed listing receives 10 letters of objection or the

local Ward Member or adjoining Ward Member requests that the listing be determined by the appropriate Area Planning Committee.

### **3.15 Head of Culture and Environmental Protection**

#### **3.15.1 Waste Management**

The Head of Culture and Environmental Protection shall be authorised to enforce and administer the following primary legislation and any secondary legislation made thereunder and this includes any amendments to or updating of the legislation set out below:

- Anti Social Behaviour Act 2003
- Clean Neighbourhoods and Environment Act 2005
- Control Of Pollution Act 1974
- Control of Pollution (Amendment) Act 1989
- Environment Act 1995
- Environmental Protection Act 1990
- European Communities Act 1972
- Refuse Disposal (Amenity) Act 1978

#### **3.15.2 General**

- To grant a licence and associated consents for the annual Michaelmas Fair.
- The day-to-day management of the Council portfolio of land and buildings, including lease renewals, assignments and rent reviews, subject to the concurrence of the appropriate Heads of Service and/or Corporate Director.

#### **3.15.3 Exercise of Powers under Legislation**

The Trading Standards Manager shall be authorised to enforce and administer the following primary legislation and any secondary legislation made thereunder and this includes any amendments to or updating of the legislation set out below. This authorisation shall also apply to matters set out in the agreement between West Berkshire District Council by Wokingham Borough Council dated 2<sup>nd</sup> June 2010:

Administration of Justice Act 1970

~~Agriculture (Miscellaneous Provisions) Act 1968~~

Agricultural Act 1970

Animal Health Act 1981

Animal Welfare Act 2006

Anti Social Behaviour Act 2003

Cancer Act 1933

Charities Act 1992

Children and Young Persons Act 1933

Children and Young Persons (Protection from Tobacco) Act 1991

Chiropractors Act 1994

Clean Air Act 1993  
Clean Neighbourhoods and Environment Act 2005  
Companies Act 2006  
Consumer Credit Act 1974  
Consumer Credit Act 2006  
Consumer Protection Act 1987  
Copyright Designs and Patents Act 1988  
Courts and Legal Services Act 1990  
Criminal Justice Act 1988  
Customs & Excise (Management) Act 1979  
Development of Tourism Act 1969  
Education Reform Act 1988  
~~Energy Act 1976~~  
~~Energy Conservation Act 1981~~  
Enterprise Act 2002  
Environmental Protection Act 1990  
Estate Agents Act 1979  
European Communities Act 1972  
Explosives Act 1875  
Explosives Act 1923  
~~Fair Trading Act 1973~~  
Farm and Garden Chemicals Act 1967  
Fireworks Act 1951  
Fireworks Act 2003  
Food and Environment Protection Act 1985  
Food Safety Act 1990  
Forgery and Counterfeiting Act 1981  
Fraud Act 2006  
Hallmarking Act 1973  
Health and Safety at Work etc. Act 1974  
Intoxicating Substances (Supply) Act 1985  
Knives Act 1997  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Malicious Communications Act 1988

Medicines Act 1968  
Motor Cycle Noise Act 1987  
~~Motor Vehicles (Safety Equipment for Children) Act 1991~~  
National Lotteries etc Act 1993  
Olympic Symbols etc. (Protection) Act 1995  
Osteopaths Act 1993  
Performing Animals (Regulation) Act 1925  
Petroleum (Consolidation) Act 1928  
Petroleum (Transfer of Licences) Act 1936  
Poisons Act 1972  
Prices Acts 1974  
~~Property Misdescriptions Act 1991~~  
Proceeds of Crime Act 2002\*  
Protection from Harassment Act 1997  
Public Health Act 1936-1984  
Regulatory Enforcement and Sanctions Act 2008  
Road Traffic Act 1988  
Road Traffic Act 1991  
Road Traffic (Foreign Vehicles) Act 1972  
Road Traffic Regulation Act 1984  
Scotch Whisky Act 1982  
Solicitors Act 1974  
Sunbeds (Regulation) Act 2010  
Tattooing of Minors Act 1969  
~~Telecommunications Act 1984~~  
Theft Act 1968  
~~Theft Act 1978~~  
~~Timeshare Act 1992~~  
Tobacco Advertising and Promotion Act 2002  
Tobacco Products Duty Act 1979  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Unsolicited Goods and Services Act 1971 and 1975  
Vehicles (Crime) Act 2001  
Video Recordings Act 1984 and 2010  
Violent Crime Reduction Act 2006



Weights and Measures Act 1985

*\* Note: Financial Investigators are authorised by a body delegated under the Proceeds of Crime Act*

The Environmental Health and Licensing Manager shall be authorised to exercise the powers and duties of the Council under the following primary legislation and any secondary legislation made there under and include any amending or updating the legislation set out below. This authorisation shall also apply to matters set out in the agreement between West Berkshire District Council by Wokingham Borough Council dated 10 January 2012

**Environmental Health and Licensing**

Animal Boarding Establishments Act 1963

Berkshire Act 1980

Breeding of Dogs Act 1973

Breeding of Dogs Act 1991

Building Act 1984

Caravan Act 1968

Caravan Act 1985

Caravan Sites and Control of Development Act 1960-1985

Chronically Sick and Disabled Persons Act 1970

Cinema Act 1968-1985

Clean Air Acts 1956-1993

Clean Neighbourhoods and Environment Act 2005

Control of Pollution Act 1974

Crime and Disorder Act 1997

Criminal Justice and Public Order Act 1994

Dangerous Dogs Act 1991

Dangerous Wild Animals Act 1976

Disabled Persons Act 1981

Dogs (Fouling of Land) Act 1996

Environment Act 1995

Environmental Protection Act 1990

Factories Act 1961

Food Safety Act 1990

Gambling Act 2005

Guard Dogs Act 1975

Health and Safety at Work etc. Act 1974

Health Act 2006

Home Safety Act 1961  
Housing Acts 1957, 1985, 1996, 2004  
Housing Grants, Construction and Regeneration Act 1996  
Land Compensation Act 1973  
Late Night Refreshment Houses Act 1969  
Licensing Act 2003  
Local Government (Miscellaneous Provisions) Act 1976  
Local Government (Miscellaneous Provisions) Act 1982  
Local Government Acts 1953-1989  
Local Government and Housing Act 1989  
National Assistance (Amendment) Act 1951  
National Assistance Act 1948  
Noise Act 1996  
Noise and Statutory Nuisance Act 1993  
Offices, Shops and Railway Premises Act 1963  
Pesticides Act 1996  
Pet Animals Act 1951  
Pollution, Prevention and Control Act 1999  
Prevention of Damage by Pests Act 1949  
Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002  
Public Health (Control of Disease) Act 1984  
Public Health Acts 1936, 1961  
Radioactive Substances Act 1993  
Rag Flock Act 1961  
Regulation of Investigatory Powers Act 2000  
Riding Establishments Act 1964/1970  
Scrap Metal Dealers Act 1964/ 2013  
Safety of Sports Grounds Act 1975  
Slaughter of Poultry Act 1967  
Slaughterhouses Act 1974  
Sunday Trading Act 1994  
Theatres Act 1968  
Town Police Clauses Acts 1847-1889  
Transport Act 1980  
Water Acts 1945-1989  
Water Industries Act 1991

Zoo Licensing Act 1981

### **3.15.4 Clean Neighbourhoods and Environment Act 2005**

To exercise powers in relation to the Clean Neighbourhoods and Environment Act 2005.

#### **3.15.5 Authorisation**

The Head of Culture and Environmental Protection shall be authorised:

- to authorise any other Officer to exercise any of the powers granted under this scheme where this is necessary for the exercise of their day to day duties;
- to appoint the Council's Chief Weights and Measures Inspector;
- to act as the Council's Proper Officer for the purposes of any enactment passed before or during the 1971/72 session of Parliament other than the Local Government Act 1972 or in any other instrument made before 26th October 1972, which refers to the post of Public Health Inspector.

The Trading Standards Manager and the Environmental Health and Licensing Manager shall be authorised to:

- to authorise Officers for the purpose of enforcement and administration of the legislation listed;
- to institute legal proceedings or authorise other Officers to institute legal proceedings in respect of those matters set out in 3.15.3

#### **3.15.6 Culture General**

- Local Government (Miscellaneous Provisions) Act 1982, Section 41 - Action considered appropriate in relation to property found in buildings or premises administered by Cultural and Environmental Protection Services.
- Letting of recreation facilities and premises (also Head of Planning and Countryside).
- Admission and exclusion of public to recreation facilities and premises (also Head of Planning and Countryside).
- Acquisition of items under Museum acquisition scheme.
- Administer Archive Service on behalf of all six Unitary Authorities in Berkshire.
- To act in conformity with the Public Libraries and Museums Act 1964, as amended, and the Local Government and Housing Act 1989 and the policies of the Council.
- To manage public libraries in conformity with the Public Libraries and Museums Act 1964 (as amended) and the Local Government and Housing Act 1989 and the policies of the Council.

### **3.16 Head of Education Services**

#### **3.16.1 General**

The Head of Education Services shall be authorised to exercise the powers and duties of the Council under the following primary legislation and any secondary legislation made there under and including any amending or updating to this legislation:

Education Act 1962  
 Further Education Act 1985  
 Education Reform Act 1988  
 Further and Higher Education Act 1992  
 Education Act 1996  
 School Inspections Act 1996  
 Education Act 1997  
 School Standards and Framework Act 1998  
 Special Educational Needs and Disability Act 2001  
 Education Act 2002  
 Education Act 2005  
 Education and Inspections Act 2006  
 Education and Skills Act 2008  
 Apprenticeships, Skills, Children and Learning Act 2009

### **3.16.2 Admissions**

- To consult annually with governing bodies about admission arrangements as required by Section 88 of the School Standards and Framework Act 1998.
- To keep Standard Numbers under review and to implement any necessary changes, where these are agreed by the governing body.
- To respond to any proposals from governing bodies to increase Standard Numbers.
- To set admission limits which exceed the Standard Number where this is considered appropriate.
- To administer arrangements for admissions to nursery schools and classes in accordance with policies agreed by the Local Education Authority.
- To administer arrangements for the admission of individual pupils to primary and secondary schools including designated areas and other relevant factors and to present the case on behalf of the Authority to admission appeal panels.

### **3.16.3 Attendance at School**

- To ensure that appropriate transport arrangements are made in accordance with the Authority's policies.
- To authorise home to school transport outside existing policy, in exceptional circumstances.
- To exercise the powers and duties of the Authority in respect of children excluded from school and to make arrangements for the continuing education of pupils who are excluded or otherwise unable to attend school.
- To authorise any proceedings necessary to enforce legal action relating to the non-attendance of pupils at school, or education other than at school.
- To undertake the powers and duties of the Authority under Section 36 of the Children Act 1989 regarding Education Supervision Orders.

- To consult annually on admission arrangements prior to determination as required by Section 88(e) of the SSFA (School Standards and Framework Act) 1998.

#### **3.16.4 Special Educational Needs**

- To arrange for children to be assessed in accordance with the requirements of the Education Act 1996 to determine the special educational provision which should be made for them and to maintain and review statements of special educational need in accordance with any regulations concerning these.
- To represent the Authority at statutory appeal tribunals in connection with the assessment of special educational needs.
- To ensure that the requirements of any statutory Codes of Practice, or other regulations are complied with.
- To determine and authorise the payment of boarding awards, grants towards tuition fees and expenses at schools where fees are payable, major and further education awards, maintenance allowances and tuition fees for correspondence courses and requests for the refund of grants in accordance with the policy of the Council.
- To determine applications for assistance towards travelling expenses from further education students over the age of 21 who apply on grounds of hardship within the Council's approved scheme.
- To approve the payment of recoupment charges for pupils and students at out of District establishments.

#### **3.16.5 School Term Dates**

In the case of the Local Education Authority (LEA), Voluntary Controlled and Special Schools, including residential schools, to determine school term dates after consultation with the Consultative Panel for Teachers.

#### **3.16.6 Name of School**

To approve the name of a school proposed by the governors.

#### **3.16.7 Curriculum**

- In accordance with arrangements approved by the Secretary of State under Section 409 of the Education Act 1996, to investigate complaints concerning alleged failures of schools to comply with the LEA's curriculum policy statement and the National Curriculum, including the requirements for religious education and collective worship.
- To determine whether application should be made to the Secretary of State to direct that an LEA-maintained school be authorised to conduct curriculum experiments outside the National Curriculum.
- To provide on behalf of the Authority any information which the Secretary of State may by regulation require.

#### **3.16.8 Staffing – in respect of Nursery Schools**

- To advise the Governing Body and/or the Selection Panel as to the shortlisting of candidates for Headship in accordance with the provisions of the Education Act 1996.

- To make arrangements for all other staffing appointments, subject to the provision of the Articles of Government.
- Subject to the Articles of Government and the disciplinary procedures applicable in each specific case, to authorise disciplinary action as appropriate.
- To approve appointments for additional teaching staff and to grant special allowances within the scheme approved by the Council.
- To approve applications for leave of absence for teachers to attend courses exceeding three months.

### **3.16.9 Staffing – in respect of Primary, Secondary and Special Schools**

- To appoint persons elected by Governing Bodies to fill vacant posts in schools, unless the person so recommended does not meet the staff qualification requirements applicable to the appointment.
- In the case of Aided Schools, to exercise any advisory rights relating to the appointment of Headteachers, Deputy Headteachers or other teaching or ancillary staff conferred by agreement or legislation.
- To nominate persons for consideration to fill vacancies in other teaching posts in schools where Governing Bodies have notified their intention to fill those vacancies.
- To appoint persons selected by Governing Bodies as their Clerks.
- To implement decisions of Governing Bodies of schools relating to the determination of potential dismissals and any subsequent appeals against such dismissals which are in the Authority's power to determine.

### **3.16.10 All Educational Establishments**

- To exercise the powers of the Local Education Authority in respect of the Licensed Teacher Scheme.
- To exercise the powers and duties under the Education (School Teacher Appraisal) (England) Regulations 2000.

### **3.16.11 Finance**

- To design and keep under review the Authority's Scheme of Delegation in accordance with the Authority's policies and any statutory requirements.
- To approve loans for any education project within the policy of the Council which provides for loans.
- To determine applications for financial assistance from staff in accordance with any schemes approved by the Council.
- Acceptance of tenders and authority to sign, or authorise the sealing of contracts, for works and/or services for schools funded other than by the Council (or where the funding is in whole or in part passported through the Council).

### **3.16.12 Provision of Information Concerning Individual Performance of Pupils**

- In accordance with Section 537 of the Education Act 1996, to provide performance information as specified.
- In accordance with Section 38 of the Education Act 1997, to provide such information to the Chief Inspector as may be prescribed.

### **3.16.13 Governance**

- Appointment of local education authority governors: in accordance with Section 19 of the Education Act 2002 and relevant regulations to appoint and dismiss local education authority governors.
- Training and support of governors: in accordance with Section 22 of the Education Act 2002, to provide information for governors and necessary training.

### **3.16.14 Miscellaneous**

- To establish, alter or discontinue any LEA maintained school in accordance with the SSFA 1998.
- To approve instruments of Government for all LEA maintained schools in the District in the future and to review or vary such instruments of Government (including nursery schools) as may be required by the Governors or the LEA.
- To consider and determine a complaint (not falling within 3.15.7 above) made against a LEA maintained school following conclusion of the School's complaints procedures.
- To make provision for the day-care of pre-school children and provision for out-of-school and holiday care and activities as appropriate in accordance with the duties and powers of the Council under Section 18 of the Children Act 1989.
- To approve minor amendments to the Council's Code of Conduct regarding the use of Fixed Penalty Notices for school non-attendance.

### **3.16.15 Post 16 Years - Education and Training provision**

To exercise the powers and duties of the Council under the Apprenticeships, Skills, Children and Learning Act 2009 acting in conjunction with the Head of Service (Adult Social Care) and/or the Head of Children's Services as and when appropriate

## **3.17 Head of Public Health and Wellbeing**

### **3.17.1 General**

The Director of Public Health, working through the Head of Public Health and Wellbeing, has delegated authority for those matters which they are required to be responsible for under the National Health Service Act 2006 (as amended by the Health and Social care Act 2012).

### **3.17.2 Health of the Population**

The duty imposed upon the Council to "take such steps as it considers appropriate for improving the health of the people of its area".

**3.17.3 General**

Any public health functions of the Secretary of State which he requires local authorities to discharge on his/her behalf.

**3.17.4 Dental Health**

Dental health functions for which the Council has responsibility

**3.17.5 Health of Prisoners**

The duty to co-operate with the prison service to secure and maintain the health of prisoners.

**3.17.6 Weight Measurement**

The Council's duties set out in Schedule 1 of the National Health Act 2006, which include medical inspection of pupils, **including** the weighing and measuring of pupils **and the provision** of children sexual health services.

**3.17.7 Violent Offenders**

Arrangements for assessing the risks posed by violent and sexual offenders.

**3.17.8 Health Protection**

To include the provision of screening and immunisation programmes, sexual health services, infectious disease control and emergency planning.

**3.17.9 Health Improvement**

To include Children's public health, adult healthy lifestyles (drug and alcohol misuse, campaigns to prevent cancer and long term conditions, dental public health and local initiatives to reduce deaths as a result of seasonal mortality) and the wider determinants of public health such as housing, planning, and education.

**3.17.10 Health Care Public Health**

The provision of specialist public health advice to Clinical Commissioning Groups (CCGs) in the following areas which will be the subject of the "core offer":

- (a) production of the Joint Strategic Needs Assessment;
- (b) reviewing service provision and providing advice to CCGs to reduce health inequalities;
- (c) advising Clinical Commissioning Groups on priorities based on appropriate data; and
- (d) procuring services and advising on the cost effectiveness of interventions.



# Agenda Item 6.

<b>Title of Report:</b>	<b>Changes to the Constitution – Part 13 Codes and Protocols</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	4 March 2014
<b>Forward Plan Ref:</b>	C2771

## Purpose of Report:

To review and amend sections of Part 13 (Codes and Protocols) i.e. Appendices A (West Berkshire Code of Conduct for Planning), D (Gifts and Hospitality: A Code of Conduct for Councillors), E (Procedure for Local Determination of Allegation) and G (West Berkshire Code of Conduct for Licensing) in light of legislative changes, policy changes and recent government guidance.

## Recommended Action:

1. To agree the amendments and any additional changes required prior to the report being discussed at Full Council.
2. To agree that the changes will come into effect on the 05 March 2014.

## Reason for decision to be taken:

To ensure that the Council has adjusted the scheme in light of legislative and policy changes.

## Other options considered:

Not to agree the changes

## Key background documentation:

None

The proposals will help achieve the following Council Strategy principles:

- CSP7 - Empowering people and communities**
- CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy principles by:

Ensuring that the Constitution is up to date

<b>Member Details</b>	
<b>Name &amp; Telephone No.:</b>	Councillor Jeff Beck
<b>E-mail Address:</b>	jbeck@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	Councillor Beck emailed 20.01.14

Contact Officer Details	
<b>Name:</b>	David Holling/ Andy Walker
<b>Job Title:</b>	Monitoring Officer/ S151 Officer
<b>Tel. No.:</b>	01635 519422/ 01635 519433
<b>E-mail Address:</b>	<a href="mailto:dholling@westberks.gov.uk">dholling@westberks.gov.uk</a> / <a href="mailto:awalker@westberks.gov.uk">awalker@westberks.gov.uk</a>

## Implications

<b>Policy:</b>	Will require changes to the Constitution
<b>Financial:</b>	None – will be undertaken within existing resources.
<b>Personnel:</b>	None
<b>Legal/Procurement:</b>	Will require the Constitution to be updated
<b>Property:</b>	None
<b>Risk Management:</b>	None

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

<b>Is this item subject to call-in?</b>	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input checked="" type="checkbox"/>

# Executive Report and Summary

---

## 1. Introduction

- 1.1 West Berkshire Council's Code of Conduct for Councillors was adopted by Full Council at its meeting on 10th May 2012 and came into effect from 1st July 2012. A scheduled review of the Code of Conduct and the underpinning processes was undertaken in the second half of 2013 by both the Standards Committee and the Governance and Audit Committee. The ensuing amendments were adopted at the December 2013 Council meeting.
- 1.2 It is therefore now necessary to re-write Appendix E (Procedure for Local Determination of Allegations) to reflect the revised governance arrangements and procedures for dealing with complaints made against district, town and parish councillors.
- 1.3 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.4 A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to sections of Part 13 (Codes and Protocols) namely: Appendices A (West Berkshire Code of Conduct for Planning), D (Gifts and Hospitality: A Code of Conduct for Councillors), E (Procedure for Local Determination of Allegations) and G (West Berkshire Code of Conduct for Licensing) in light of legislative changes, policy changes and recent government guidance.
- 1.5 The existing protocol for planning (Appendix A) and the protocol for dealing with gifts and hospitality by Members (Appendix D) have had to be substantially re-written and therefore the tracked changes have not been shown.
- 1.6 Appendices D and E were considered by the Standards Committee on the 13 January 2014 and they proposed a few minor amendments to Appendix D. The Standards Committee recommended approval of the two Appendices.

## 2. Part 13 Codes and Protocol – Appendix A (West Berkshire Code of Conduct for Planning)

- 2.1 The following key changes have been made to the document by Officers:
  - (a) To align this Part of the Constitution with the revisions to the Members Code of Conduct (Appendix H to part 13 of the Constitution) and the Officers' Code of Conduct as set out in Part 13 of the Constitution.
  - (b) To amend the Code in light of the Localism Act 2011 and the document issued by the Local Government Association entitled "Probity in Planning". Two particular areas of the Localism Act are relevant to this Code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for Councillors to play an active part in

local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Councillors and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.

### **3. Part 13 Codes and Protocol – Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors)**

3.1 The following key changes have been made to the document by Officers:

- (a) The document has been substantially re-written with a view to making it easier to read and to ensure it accords with the revised requirements for declaring interests, gifts and hospitality set out in the Localism Act 2011.
- (b) A number of discussions have taken place on the threshold for declaring gifts and hospitality. The Standards Committee have recommended retention of the current £25.00 limit on the basis that Councillors are familiar with this limit.
- (c) The amended protocol takes into consideration changes required following the enactment of the Bribery Act 2010 which came into force on the 01 July 2011 which creates offences of 'bribing another person' or 'being bribed'.
- (d) The revised protocol also gives examples of when it might be appropriate to accept gifts and hospitality.

3.2 The Standards Committee requested that the following additional amendments be made to the document:

- (a) In relation to Rule 1 that required Councillors to seek authorisation from the Monitoring Officer prior to accepting any gifts and hospitality be amended so that it only applied to hospitality.
- (b) the second bullet point under the heading 'gifts which are more likely to be considered acceptable' be extended to include 'training' and 'working meetings'
- (c) a reference to gifts or hospitality received by Councillor's spouses/ partners be included in the introduction.

### **4. Part 13 Codes and Protocol – Appendix E (Procedure for Local Determination of Allegations)**

4.1 The appendix had been re-written to take into account the revised arrangements pertaining to the Standards Regime adopted at the 01 July 2012 and reviewed at the December 2013 meeting.

4.2 It was noted that the number of complaints received by the Standards Committee remained relatively low and to date no hearings had taken place under the new

system. It might therefore be necessary to reconsider the latter stages of the procedure in light of any operational difficulties experienced once a hearing had taken place.

## **5. Part 13 Codes and Protocol – Appendix G (West Berkshire Code of Conduct for Licensing)**

5.1 The following key changes have been made to the document by Officers:

- (a) The document has been amended with a view to making it easier to read.
- (b) The document has been amended to reflect the changes that have recently been made to the Code of Conduct for Councillors, the Code of Conduct for Officers and changes to the protocol associated with gifts and hospitality.
- (c) The Localism Act 2011 amended requirements in relation to interests that have to be declared and this has been reflected in the document.

References to the Standards Board and the old national Code of Conduct have been changes to reflect the current Standards regime.

## **6. Proposals**

6.1 It is proposed that the amendments to Part 13 Appendices A, D, E and G of the Council's Constitution be approved.

## **7. Equalities Impact Assessment Outcomes**

7.1 This item is not relevant to equality.

## **8. Conclusion**

8.1 The report is a required update to take cognisance of legislative and policy changes. For the avoidance of doubt the changes will come into effect on the 05 March 2014.

## **Appendices**

---

Appendix A – Appendix A - West Berkshire Code of Conduct for Planning  
Appendix B – Appendix D – Gifts and Hospitality: A Code of Conduct for Councillors  
Appendix C – Appendix E – Procedure for Local Determination of Allegations  
Appendix D – Appendix G – West Berkshire Code of conduct for Licensing

## **Consultees**

---

**Local Stakeholders:** Standards Committee

**Officers Consulted:** Andy Day, Sarah Clarke, Moira Fraser, Finance and Governance Group, David Pearson, Derek Carnegie, Gary Rayner, Brian Leahy, Paul Anstey and Corporate Board

**Trade Union:** Not consulted to date

This page is intentionally left blank

## Appendix A

---

### ***West Berkshire Code of Conduct for Planning*** **December 2012**

---

#### **1. Introduction**

- 1.1 This Code of Conduct is intended to guide the procedures by which Councillors and Officers of the Council deal with planning matters and to set standards of probity and conduct which the people of West Berkshire can expect of them.
- 1.2 As Planning affects peoples' lives and private interests, it can be very contentious. It is, therefore, important that members of the public understand the system and have confidence in its integrity and transparency, and that Councillors and Officers, involved in the 'planning' process, avoid impropriety or even the suspicion of impropriety.
- 1.3 The role of Councillors on any planning committee involves balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision making and compliance with the planning process and adopted policies. A transparent open process is therefore essential.
- 1.4 The role of Officers within the planning process is also vital and is covered in this protocol.
- 1.5 If Councillors need any guidance on any matter under this Code, they should seek it from the Monitoring Officer but it is the Councillor's responsibility to comply with the Code.

#### **2. Relevant Legislation**

- 2.1 The conduct of both Officers and Councillors in Local Government needs to be of the highest standing. The Nolan Committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Councillors. In 2013 the Local Government Association provided updated guidance on "Probity in Planning" and the Localism Act 2011 has created a new Standards regime with a more local focus.
- 2.2 This Code has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this Code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for Councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind.

- 2.3 Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Councillors and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 2.4 This Code of Conduct forms part of the Council's Constitution. This Code is available to the public and is on the Council's website. It will supplement the Councillors adopted Code of Conduct (Appendix H to Part 13 of the Constitution).
- 2.5 The governance structures and rules of procedure for the Area and District Planning Committees are set out in Part 7 (Regulatory and Other Committees Rules of Procedure) of the Constitution.

### **3. Breaches of the Code**

- 3.1 A breach of this Code, while not usually amounting to a breach of criminal law, may adversely affect the reputation of the Council and the reputation of an individual Councillor. It could result in a decision being judicially reviewed or result in a complaint to the Local Government Ombudsman, or an allegation of a breach of the Code of Conduct.
- 3.2 Any alleged breach of this Code of Conduct will be investigated locally in accordance with the procedures associated with the Code of Conduct (see Appendix H to Part 13 of the Council's Constitution). It is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee if a breach of the Code of Conduct is alleged to have occurred.
- 3.3 Where any Officer is concerned, in an alleged breach of this Code, this will be investigated in accordance with the Council's disciplinary procedure.

### **4. Role and Conduct of Councillors and Officers**

- 4.1 Councillors and Officers have different, but complementary, roles in the planning process and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council that they work as an effective team.
- 4.2 Members of the Planning Committee have different roles to those of other Councillors. Councillors who are members of the Planning Committee determine the more significant and contentious planning applications received by the Council. In doing so these Councillors and nominated substitutes perform a quasi-judicial role and are required to consider all planning proposals against the wider public interest.
- 4.3 When considering planning applications Councillors need to ensure that only material planning considerations are taken into account. In reaching a decision Councillors should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where



they may appear to do so. In order to ensure that decisions are taken on planning grounds and are sound it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself.

- 4.4 Planning Committee Members must take steps to ensure that in their discharge of their Planning Committee duties the distinction between this role and their role as Ward Members is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset.
- 4.5 Officers are employed by the Council. Instructions may only be given to Officers by the Council, its Executive or a Committee or by way of delegated powers. Officers involved in the processing and determination of Planning matters must act in accordance with the Officers Code of Conduct (see Part 13 of the Constitution) and with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct and any other applicable guidance. Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves this position of impartiality.
- 4.6 It is not appropriate for Councillors to direct Officers to determine an application in a particular way. A Councillor must not use improperly their position as a member to confer on, or secure for himself or any other person, an advantage or disadvantage.
- 4.7 Councillors must not favour, or discriminate against, any person, company, group or locality nor put themselves in a position where they appear to do so.

## **5. Gifts and Hospitality**

- 5.1 Both Officers and Councillors must be cautious about accepting gifts and hospitality.
- 5.2 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution. Officers offered any gift or hospitality must treat the offer in accordance with paragraphs 13.5.2 (Gifts & Hospitality – General), 13.5.3 (Rules and Procedure for Gifts and Hospitality) and 13.5.4 (Hospitality) of the Council's Constitution.

## **6. Interests**

- 6.1 A Register of Councillors' interests is maintained by the Council's Monitoring Officer and is available for public inspection and is published on the Council's website.
- 6.2 Written details of Disclosable Pecuniary Interests must be provided to the Monitoring Officer within 28 days of election or appointment to office and any

changes to those interests must also be provided to the Monitoring Officer in writing within 28 days of the member becoming aware of such changes.

- 6.3 Where Councillors have a personal interest they must disclose to that meeting the existence and nature of that interest at the start of the meeting or when the interest becomes apparent. Councillors who have a personal interest in an item are permitted to take part in the discussion and vote on the item.
- 6.4 Where Councillors have a Disclosable Pecuniary Interest (DPI) they may attend a meeting either as a member of the committee and/or as a Ward Member but only for the purposes of making representations, answering questions or giving evidence relating to the business (provided the meeting is one where members of the public are allowed to make representations). They may not propose a motion, vote or take part in the decisions making process of the Committee. They must withdraw from the meeting before the vote is taken and their vacating the room will be noted in the Minutes of the meeting. It is for the individual Councillor to decide what the interest is. They may seek advice from the Monitoring Officer or from Legal Services but it is their decision. If advice is sought it should be sought as early as possible. It is therefore important that agenda are read in good time and that, if possible, advice is sought no later than the day before the meeting. It is better not to raise a query on interests in a public forum. By doing so, public perception may well lead to the conclusion that the interest is a DPI.
- 6.5 Members who have a DPI may, in certain circumstances, apply for a dispensation which would allow them to take part in discussions and vote on an item, The procedure for applying for and the granting of dispensations is set out in Appendix 2 to Appendix H (the Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.
- 6.6 Ward Members who have an interest (personal or DPI) in an item should ask for that interest to be recorded on the planning file. This is especially important where Ward Members seek permission to call the item to Committee.

## **7. Pre-Disposition or Pre-Determination**

- 7.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the Committee.
- 7.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the Committee reach a decision.
- 7.3 Members of the Planning Committee can have a predisposition to an initial view, where the Councillor is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.

- 7.4 A Councillor that has fettered their discretion and then takes part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 7.5 The Localism Act 2011 (Section 25) provides that a Councillor who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, in order to use this provision, it is important that a fair minded observer would consider that the Councillor was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 7.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Councillors taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing themselves one way or another before hearing all the arguments.
- 7.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Councillor decides to make a public statement, and either supports or opposes the application, it will be difficult for that Councillor to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Councillor should make an open declaration, in relation to their position and not vote on the determination of the application at Planning Committee.
- 7.8 The open declaration should be noted in the Planning Committee minutes. The Councillor will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward member, they can address the Planning Committee at the appropriate time in accordance with the Ward Member speaking arrangements (see paragraph 7.13 (Planning Applications)).
- 7.9 Ultimately it is the responsibility of the individual Councillor to ensure that, as a result of their stance in regard to a particular matter the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

## **8. The Role of the Executive Member**

- 8.1 Members of the Executive (also known as Portfolio Holders) may be on Planning Committees and may have an interest in an application because of their role on the Executive.
- 8.2 There may be occasions where the Council is sponsoring a development and an Executive Member may be seen as the chief advocate on the Executive.
- 8.3 In such circumstances the appropriate approach is that the Executive Member may argue for (or against) the development in the planning meeting during the debate but may not vote on the relevant application. It is recommended that the Executive Member advise the committee at the outset of the meeting of their position in respect of voting on the particular item.

## **9. Lobbying**

- 9.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Councillor, who is not on the Planning Committee to determine an application, wishes to support a particular viewpoint then that Councillor has a right to appear at the relevant Planning Committee and seek permission to address the meeting provided that they have registered to speak in accordance with paragraph 7.13.2 (Notifying Head of Service).
- 9.2 It is, however, important that Councillors protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality and potentially open the Council to challenge.

## **10. Ward Members**

- 10.1 Ward Members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Members bring strong community leadership, extensive local knowledge and an up to date understanding of current issues.
- 10.2 Planning Officers have to act impartially at all times, but will provide support and advice to Ward Members on planning matters in order for them to play this community leadership role. This will include the involvement of Ward Members in negotiations on planning obligations in appropriate circumstances.
- 10.3 Planning obligations negotiated under Section 106 of the Town and Country Planning Act, 1990 must be seen to mitigate the effects of development whilst recognising that each must comply with council planning documents, policies and guidance and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

- 10.4 To be lawful, a planning obligation must meet all of the following statutory tests. It must be:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.

(These apply to both future and existing Section 106 obligations and to CIL payments).

- 10.5 To this end, where the need for a planning obligation is anticipated by a Planning Officer, Ward Members will be consulted at an early stage of the pre-application and planning application process. The views of Ward Members on planning obligations will be sought electronically through weekly lists and shall be considered in any decision taken by the Planning Committee or by an Officer acting under delegated authority.

## **11. Only One Forum**

- 11.1 Members of the District Council may consider applications at Parish level and they form a view **on the basis of evidence available at that time**. At District level they may consider the same application but with additional information and advice from Officers, may well change their mind which indicates they come to that meeting with an 'open mind'.
- 11.2 It is suggested that Councillors who sit at parish or town level indicate to the meeting that while they have a personal interest by way of their membership of the Parish/Town Council as a Councillor, any comments made at the Parish/Town Council Meeting are made in relation to the information before them at that meeting. Councillors are not pre-judging the matter and will want to consider carefully all material likely to be available at district level. When the matter is considered by the District Planning Committee the Councillor will weigh up all the information at that time and consider the matter afresh.

## **12. Planning Applications by Councillors, Officers or the Council**

- 12.1 These can, by their very nature, arouse suspicions of impropriety. It is vital they are handled in a way that ensures there are no grounds for accusations of favouritism.
- 12.2 If it is a Council application it will be treated in the same way as a private developer in accordance with DoE Circular 19/92. This Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background. Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.
- 12.3 If it is a Development Control Officer application another planning team will deal with it. If the application falls within delegated powers and is made by any Officer of the Council, the Corporate Director, not the Head of Service, will exercise the delegated power (in consultation with the Monitoring Officer).

If it is a Councillor application they are entitled to speak to Officers both prior to and at Committee in the same way as any member of the public. They will have a Disclosable Pecuniary Interest and should refer to paragraph 5 above as to the process. However, they shall not seek improperly to influence the decision and shall play no part in the debate itself as a Councillor nor be able to vote. The Council's Monitoring Officer shall be informed of all applications by Councillors and Officers and will register such applications.

- 12.4 All Planning Officer and Councillor applications must go to Committee by virtue of paragraph 3.14.6 (Planning) of the Council's Constitution.

### **13. Planning Committee Briefings**

- 13.1 When considering a request for a briefing, the complexity of the proposal should be considered. Planning Committee briefings should be restricted to more complex proposals.
- 13.2 The Chairman of the Planning Committee must approve any request for a briefing in consultation with the Development Control Manager and the Monitoring Officer, or their representatives.
- 13.3 To avoid any perception of influence it is advisable that any briefing must take place at least three weeks before the meeting of the Planning Committee that will hear the application. Briefings should avoid discussion. The Chairman of the Committee will manage the briefing. Officers will be present to record proceedings.
- 13.4 Consideration should be given to inviting Ward Members, Parish Council representatives and other interested parties.

### **14. Discussions before Decision is made**

- 14.1 Councillors have a role to play in helping consultation between their constituents and developers. Such consultation can be a huge benefit to all parties but can easily be seen as part of a lobbying process by the applicant if care is not taken.
- 14.2 This section covers any discussions taking place before a decision is made not simply prior to the application being submitted. It does not affect discussions between Councillors and Officers nor does it impact on any pre-application planning advice provided by Officers under the adopted policy .
- 14.3 Any discussions should be on the basis that the Council will not be bound and that Councillor's views are personal and provisional.
- 14.4 Planning advice given by Officers should be consistent, based on the Development Plan and material considerations.
- 14.5 The Councillor's role is to feedback responses from the community. If invited to attend pre-committee discussions Councillors should speak first to the Planning Officer handling the application.
- 14.6 If such a meeting is held, a written note should be made of the meeting, particularly if contentious. At least one Officer should attend any such meetings and a follow up letter from the Councillor is advisable summarising the discussion.

- 14.7 If an Officer is unable to attend and the meeting has to go ahead the Councillor should make written notes and forward a copy of these to the Development Control Manager as soon as possible.
- 14.8 Councillors should also note that potentially contentious telephone discussions should also be recorded in writing, preferably immediately after the conversation so recollection is fresh and should be reported to the Monitoring Officer.
- 14.9 Where a meeting concerns a major development, it is preferable that the meeting takes place on Council premises and notes of discussions are made.

## **15. Site Visits**

- 15.1 Consistency on why they are held and how they are held is essential. To ensure site visits are seen as constructive and not as a lobbying device they should be well managed. The Chairman is responsible for ensuring everyone is clear as to the purpose of the visit and their respective roles.
- 15.2 The reasons for a site visit being necessary should be recorded in writing.
- 15.3 A site visit is usually only necessary where the impact of the proposed development is difficult to visualise from the plans and photographs
- 15.4 Site visits should be by the viewing committee with Officer assistance. If applicants, supporters or objectors are there, the applicants, supporters or objectors are free to make their points but the Chairman must not permit debate (which should take place at Committee) to take place at the site visit. Site visits are to look at the site not to discuss the merits of the application. They are designed to ensure Councillors can make a more informed decision at the Committee meeting.

## **16. The Committee Meeting Itself**

- 16.1 Five-minute slots within each application are allocated as a total for all parties wishing to address committee. This means all applicants, objectors, parish councils and supporters have a total of five minutes, which they may share as they wish. Adjoining parish councils also have an opportunity to speak. Where there is more than one adjoining Parish/Town Council speaking but requiring a fundamentally different outcome of either refusal or approval, the speakers will be allowed five minutes each; where the outcome required is fundamentally the same, the five Minutes will be shared by the speakers.
- 16.2 The Chairman of the meeting may extend the time slot if it is considered appropriate by the Committee in view of the large public interest in the matter but this must be by a vote of the Committee agreeing to suspend this provision of the constitution. All groups of speakers will then be permitted equal amounts of time to address the Committee.
- 16.3 The Committee may only ask those speaking for clarification of points raised. They may not ask any other questions nor may they effectively increase the time allowed by asking what would have been said if they had time.
- 16.4 No new information may be produced to Committee on the night (this does not prevent applicants or objectors raising new points verbally). If objectors or applicants wish to introduce new additional material they must provide such material to Planning Officers at least 5 clear working days before the meeting

(in line with the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002).

## **17. Decisions Contrary to Officer Recommendations and/or the Development Plan**

- 17.1 The general principle in planning is that where the Development Plan is up to date and relevant, planning applications should be determined in accordance with it unless material considerations indicate otherwise.
- 17.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.
- 17.3 Any application contrary to the Development Plan must be advertised as such. If such an application is to be approved the material considerations leading to this conclusion must be clearly identified.
- 17.4 If the committee decides to approve an application which is contrary to Officer advice Councillors must provide the reasons for the decision and a detailed minute of the reasons must be made. Copies of these minutes will be publicly available. Officers should be able to address committee and explain clearly the implications of the decision. Any decision contrary to the Development Plan in the opinion of the Development Control Manager or his designated nominee may be referred up to the District Planning Committee.

## **18. The Role of the Chairman**

- 18.1 Agenda management is vital to the smooth running of the meetings. The Chairman is key to this. Each Chairman will discuss with the appropriate Strategic Support, Legal and Planning Officer before the committee the items on the agenda and will query, where necessary, matters referred up and site visits called.

## **19. APPEALS AND INQUIRIES**

- 19.1 In the event that planning permission is refused either under delegated powers conferred on the Head of Planning and Countryside or by the Planning Committee, an applicant may exercise their right of appeal. Officers are responsible for preparing the Council's evidence for these appeals, and the vast majority of these are dealt with by written representations involving an exchange of statements. On occasions, specialist Counsel and consultant support is needed to supplement the evidence of Officers.
- 19.2 In the case of an applicant exercising their right to an informal hearing or a Public Inquiry Officers will be responsible for presenting the Council's evidence and attending to present that evidence. Councillors are at liberty to attend in their capacity as Ward Members and may be called to give evidence as a Ward Member. Members of the Planning Committee will not normally be required to attend to present the Council's case.



- 19.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations, Officers will normally prepare and present the evidence in their role as employee of the Local Planning Authority. It will be for the Head of Planning and Countryside to identify the Officers to prepare and present the evidence.
- 19.4 It should not be necessary for Members of the Planning Committee to become involved in preparing and presenting the case at appeal on an overturned decision, because the reasons for refusal and statements on relevant policies put forward by the Councillors in reaching their decision should be sufficient to defend the case. However, there may be some situations where in an inquiry a Councillor involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Head of Planning and Countryside considers this to be the case the Member will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.
- 19.5 In exceptional circumstances the Head of Planning and Countryside may not be able to prepare the Council's evidence to the hearing or inquiry because the Officer's earlier recommendation on the grounds of refusal is so prejudiced by the earlier advice given. In these circumstances a nominated Member of the Planning Committee together with an externally appointed consultant will need to present the Council's evidence.

## **20. Complaints**

- 20.1 Complainants alleging a breach of this protocol may direct their allegations to the Monitoring Officer.
- 20.2 To investigate complaints fully, record keeping should be complete and accurate.
- 20.3 Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors at a Planning Committee. Complaints pertaining to delegated decisions will be dealt with under the Council's Corporate Complaints Procedure.
- 20.4 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

## **21. Training**

- 21.1 All Members of the Planning Committee (including Substitutes) to receive appropriate training before being able to make formal decisions of the Committee and then to attend subsequent refresher training to remain on the Committee.

This page is intentionally left blank

# Appendix D

---

## Gifts and Hospitality: A Code of Conduct for Councillors

---

### Introduction

This Guidance is intended to complement the Council's Members' Code of Conduct. It offers guidance to Councillors with regard to best practice and the need to preserve integrity and demonstrate good governance. It has been written to protect both individual Councillors and the Council itself. The intention of the Guidance is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.

This protocol sets out Councillors' obligations to declare gifts and hospitality received in their capacity as Members of the Council and to provide guidance on those obligations. A breach of this protocol amounts to a breach of the Council's Code of Conduct and a complaint can be reported to the Monitoring Officer or the Standards Committee and dealt with in accordance with the Members' Complaints Procedure.

Where the spouse/partner of a Councillor is also a recipient of any gifts or hospitality the Councillor must ensure that this is also recorded by the Monitoring Officer in accordance with the agreed procedures.

This Code does not apply to the acceptance of any facilities or hospitality which may be provided to you by the Council.

### What are the rules?

1. Prior to accepting **any** hospitality with a value of **£25** or more, a Councillor must seek authorisation from the Monitoring Officer. Only once consent has been given should the Councillor take ownership.
2. You must register every individual gift or item of hospitality received that is over £25 in value.
3. Members should be aware of serial givers or repeat offers of hospitality as these may indicate a pattern of behaviour which may result in a breach of the Code of Conduct for Councillors.
4. Your registration of the gift or hospitality must be made *within 28 days of the date you received it*, by completing and sending the attached form to

- the Member Services Officer(s) (working on behalf of the Monitoring Officer).
5. You must declare the *value (or estimated value)* and details of the gift or hospitality received on the form, as well as whether the donor of the gift has or has had in the past or is likely to have in the future, dealings with the Council.
  6. You must declare, if the gift or hospitality has been accepted, the reason for that acceptance.
  7. The form must be signed by you *personally (an electronic copy will suffice)*.
  8. An invitation that appears over-generous should be declined; it could be seen as an inducement to affect a Council decision.
  9. Even if all Members, or a large number of them, received the same gift or were invited to the same event, they must each make *individual* notifications.
  10. Failure to comply with these rules is a breach of the Members' Code of Conduct and could lead to a complaint being reported to the Monitoring Officer or the Standards Committee.
  11. The press and public have the right to inspect your gift and hospitality declaration forms. The Register is also public via the Council's web site at **XXXX**. (follow link to 'Councillors' page). (You should have this in mind when completing declaration forms, as Officers cannot edit your comments.)

### **Should I accept gifts and hospitality?**

Registering gifts or hospitality received under the Code of Conduct does not automatically mean it is appropriate or sensible to accept them in the first place. The general test of caution is one of common sense. Would the public question the appropriateness of hospitality or gifts received by the Councillor? If you are concerned the acceptance could be misinterpreted you should decline it or declare it.

You must never solicit a gift or hospitality, or accept any gift or hospitality offered as an inducement or which puts you under any obligation. On the other side of the coin, Councillors often do not wish to cause offence by rejecting a gift or offer of hospitality.

Particular care should be taken in relation to gifts and hospitality offered by current or potential contractors for the Council. In certain cases the acceptance

of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any offer is intended as an inducement then the matter should be reported in accordance with established procedures.

The Bribery Act 2010, which came into force on 1 July 2011, creates offences of “bribing another person” (active bribery) and of “being bribed” (passive bribery). The offences consist of “promising, offering or giving” or “requesting, agreeing to receive or accepting an advantage (financial or otherwise)” in circumstances involving the improper performance of a relevant function or activity. In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust. There is a maximum penalty of 10 years imprisonment or an unlimited fine for these offences.

In considering whether to accept gifts or hospitality Members should have regard to the following general principles:

1. Never accept a gift or hospitality as an inducement or reward for anything which you do as a Councillor;
2. Only accept a gift if there is a commensurate benefit to the Council;
3. Never accept a gift or hospitality which might be open to misinterpretation;
4. Never accept a gift or hospitality which puts you under an improper obligation; and
5. Never solicit a gift or hospitality.

### **Must I register all gifts and hospitality which I receive or am offered?**

You must register any gifts or hospitality worth over £25 that you receive in connection with your official duties as a Member. Where the value of any gift or hospitality is under £25 you may wish to declare receiving it. You should register any offer of gift and/or hospitality over £25 which you have declined, since this protects both your position and that of the Council.

Only gifts and hospitality offered to you in your official capacity must be registered. Gifts and hospitality offered to you in your private capacity, of whatever value, should not be registered at all. You do not need to register gifts and hospitality which are not related to your role as a Member. However, you should always consider whether any gifts or hospitality could be seen as being connected with your public role as a Member.

### **What is the value of the gift/ hospitality?**

You may have to estimate how much a gift or some hospitality is worth. The form requires you to give an estimate of the value. It is suggested that you take a common sense approach, and consider how much you reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result you estimate that the value is greater than £25, then you should declare receipt.

Where hospitality is concerned, you can disregard catering on-costs and other overheads, e.g. staff and room hire. If the sandwiches or your meal, including drinks and alcohol, would cost £25 in a comparable establishment providing food of comparable quality, register it.

If you are not certain whether the value is under £25, the safest course is to register it and give an approximate value.

### **What about gifts of low value?**

There is no requirement to declare gifts of a value of less than £25. However, in order to be transparent, if you receive a series of related gifts in connection with your role as a Member which are all under £25, but together total above £25, then you should register them if they are from the same person. If the small gifts received from different persons are connected in some way, it is *good practice* to register them.

### **How do I register gifts and hospitality I receive?**

You must give the Member Services Officer(s) (working on behalf of the Monitoring Officer) written details about the gifts and hospitality you are offered using the standard form for this purpose. The best advice is to get into the habit of registering things as soon as possible, and if in doubt, register receipt. The appropriate form is available on the Council's website or from Strategic Support.

### **Which organisation do I make declarations to?**

As mentioned, anything received in your private capacity is not declarable. However, what is your "*official capacity*"? So far as the Council is concerned it is when you do any of the following -

- a) When acting as a representative of the Council;
- b) At briefing meetings with officers and members of the public;
- c) When corresponding with the authority other than in your private capacity.

### **How to deal with the issue of when things are received in different capacities or where there are overlapping roles:**

Only use the Council's gifts and hospitality registration declaration form for things received in your capacity as a West Berkshire District Councillor, and send it to the Member Services Officer(s) (working on behalf of the Monitoring Officer).

If you receive things in another capacity, i.e. arising from holding another public office, register in accordance with whatever code is in place for that other body. If a particular body does not actually require you to register anything, then you do not need to do anything in respect of the receipt of a gift or hospitality directly attributed to your role within that organisation.

If you cannot decide what capacity you received something in, provided you declare the gift/ hospitality *at least once* with the body that appears to be the most appropriate, you will have fulfilled your duties. The overriding purpose is public transparency.

### **What happens if I do not register a gift or hospitality?**

Failure to notify the Monitoring Officer of the receipt of a gift or hospitality is a breach of this protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer or Standards Committee which could result in the matter becoming the subject of an investigation.

### **Gifts which are more likely to be considered acceptable**

It is up to individual Members to decide whether or not to declare gifts and hospitality

The Council has however agreed that in appropriate circumstances members may choose to accept gifts and hospitality in the following circumstances:

- Civic hospitality provided by another authority;
- modest refreshments received in the ordinary course of duties as a councillor e.g. at formal meetings, training or working meetings or when in contact with constituents;
- Tickets for sporting or cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value i.e. below £25 which are branded with the name of the company or organisation making the gift (e.g. diaries, calendars etc);
- Modest souvenir gifts with a value below £25 from another public body given on the occasion of a visit by or to that body;
- Hospitality received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by officers rather than the Members who will be benefiting and hospitality should be commensurate with the nature of the visit; and

- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases you may wish to pass the gift to the Chairman's Charity.

Receipt of gifts and hospitality of this type is still subject to the requirements of the protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 in value. The appropriateness of acceptance should always be considered beforehand. It should also be noted that the mere fact that a gift or hospitality does not have to be notified under the protocol does not necessarily mean that it is appropriate to accept it.

### **Will the register be open to the public?**

Yes, the register is available to the public in the same way as the register of disclosable pecuniary interests is. It is open for inspection and also available on the Council's website.

Regular updates of declarations will be reported to the Standards Committee as part of the quarterly performance monitoring reports.

### **Further assistance**

It is each Member's own individual responsibility to observe this protocol, but the Monitoring Officer will help where possible. If you have any questions at all please contact the Monitoring Officer, Deputy Monitoring Officer(s) or the Democratic and Electoral Services Manager for advice and assistance.

---

## **Definitions**

"Gift or hospitality" includes:

- (i) the free gift of any goods or services
- (ii) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public.
- (iii) the opportunity to obtain any goods or services which are not available to the general public.
- (iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

Reference to the "value" or "cost" of any gift or hospitality are references to the higher of:

- (i) your estimate of the cost to the person or organisation of providing the gift or consideration;



- (ii) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the case sum, of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

This page is intentionally left blank

## Appendix E

---

### *Procedure for Local Determination of Allegations* **The Localism Act 2011**

---

#### **1. Introduction**

- 1.1 The procedure referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a District Councillor or parish/town councillor, where West Berkshire Council is the responsible authority. The purpose of the procedure is to ensure that every effort is made to deal with the complaint as smoothly as possible and to ensure that complaints are dealt with in accordance with the relevant legislation and within the agreed timescales. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.
- 1.2 Arrangements for dealing with complaints against councillors underwent significant changes following the introduction of the Localism Act 2011. West Berkshire Council's new arrangements came into effect on the 01 July 2012 and were reviewed in December 2013.
- 1.3 As part of the revised Standards regime all complaints are received by the Monitoring Officer who has delegated authority to take an initial decision on whether a complaint requires investigation, some other form of action, should be referred to the Director of Public Prosecution or the Police or whether no further action is required.
- 1.4 Within this procedure references to the "Monitoring Officer" also refers to their duly appointed representative(s).
- 1.5 Within this procedure references to the "Head of Strategic Support" also refers to their duly appointed representative(s).
- 1.6 The person making the complaint is referred to as the *complainant* and the District/Town or Parish Councillor being complained about is referred to as the *subject member*.

#### **2. Process for Dealing with Complaints – Initial Assessment**

- 2.1 A flowchart summarising the procedure that will be followed when a complaint is received is attached at Appendix A to this procedure.
- 2.2 Once the Monitoring Officer has received a formal complaint they need to

ensure that it is acknowledged within five working days of receipt.

2.3 All complaints must be submitted in writing (electronic submissions are acceptable). The Monitoring Officer also needs to ensure that the complaint complies with the Council's **Assessment Criteria** i.e.

- it is a complaint against one or more named councillors of the authority or an authority covered by West Berkshire Council as responsible authority;
- the subject member was in office at the time of the alleged conduct and the relevant Code of Conduct was in force at the time;
- the complaint, if proven, would be a breach of the Code under which the Councillor was subject at the time of the alleged misconduct.

2.4 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

2.5 A complaint can also be rejected if :

- the complainant fails to provide enough information to base a decision on;
- the subject member is no longer a Councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
- the complaint has been the subject of an investigation or other action relating to the Code of Conduct or the complaint has been the subject of an investigation by other regulatory authorities;
- the complaint is about something that happened so long ago that there would be little benefit in taking action now;
- the complaint is too trivial to warrant further action;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complainant appears to be submitting persistent or prolific complaints.

2.6 Following receipt of a complaint that meets the agreed Assessment Criteria the complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

2.7 A copy of the complaint will also be sent to the subject member (unless the complainant has asked to keep their identity confidential – see Requests for Confidentiality) for written comment. The subject member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.

2.8 Both the subject member and the complainant can consult one of the Council's Independent Persons directly to seek advice. The Council has therefore appointed two Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted the Independent

Person will not be involved in the decision making process.

- 2.9 The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the initial assessment process.
- 2.10 An Initial Assessment meeting will take place usually within 20 \*clear working days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting neither the subject member nor the complainant, nor members of the press or public will have the opportunity to attend or speak at the meeting. In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:
- no further action will be taken on the complaint;
  - some form of informal resolution will be sought;
  - the matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
  - the complaint will be investigated fully by an independent investigator.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

- 2.11 The subject member, complainant and if appropriate the Clerk to the relevant Town or Parish Council will be notified of the outcome of the Initial Assessment meeting usually within three clear working days of the meeting taking place. Details of the discussion will be included in an Initial Decision Notice which will be sent to the subject member, the complainant and the relevant parish or town clerk if appropriate.

### **3. Requests for Confidentiality**

- 3.1 In the interests of fairness and in compliance with the rules of natural justice, District, Town and Parish Councillors who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them.
- 3.2 Complainants do however have the right to request that their identity is not revealed to the subject member and the Monitoring Officer, in consultation with the Independent Person, may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity/confidentiality.

3.3 When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:

- the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));
- the complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;
- the complainant works closely with the subject member, and is therefore afraid of the consequences to their employment or of losing their job;
- there is a medical risk to the complainant's health if their identity is revealed and is this supported by medical evidence;
- the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or
- other exceptional circumstances?

3.4 When considering a request for confidentiality against these criteria the Monitoring Officer will also:

- balance the request for confidentiality against the substance of the complaint;
- consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation.

3.5 If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality they may decide to offer the complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member.

#### **4. Outcome of Initial Assessment – No Further Action**

4.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with

the Independent Person, decides that no further action should be taken on a complaint then this will be the end of the matter.

- 4.2 Under the previous regime if the complainant disagreed with this outcome they could appeal to the Review Sub-Committee of the Standards Committee. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant would be advised to seek independent legal advice about taking up this option.

## **5. Outcome of Initial Assessment – Informal Resolution or Other Action**

- 5.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that other action should be taken on the complaint the nature, format and timescales for this action needs to be articulated in the Initial Assessment Notice.
- 5.2 If other action is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as a further complaint.
- 5.3 Under the previous regime if the complainant or subject disagreed with this outcome they could appeal to the First Tier Tribunal of the Standards Board. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant or subject member would be advised to seek independent legal advice about taking up this option

## **6. Outcome of the Initial Assessment – Referred to the Director of Public Prosecution or the Police**

- 6.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that the matter needs to be referred to the Director of Public Prosecution or the Police both the subject member and the complainant and if appropriate the town or parish clerk will be informed.
- 6.2 The Monitoring Officer will pass to the Police or Director of Public Prosecutions any relevant evidence relating to the allegations received which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.
- 6.3 If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

## **7. Outcome of the Initial Assessment – Investigation by Appointed Person**

- 7.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.
- 7.2 The Monitoring Officer will usually appoint an external independent investigator to undertake an investigation on behalf of the Standards Committee. The Council will notify the complainant and subject member of the details of the investigator who will contact them to arrange an interview with them. In addition the investigator may wish to interview additional witnesses. All information provided to the Standards Committee already will be given to the investigator.
- 7.3 Once the investigation is concluded (preferably within three months of receipt of instruction) the investigator will be required to produce a written report setting out their findings. The Monitoring Officer, subject member, the complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.
- 7.4 The subject member and the complainant will be asked to complete a form articulating any areas of the report they disputed. All comments would need to be received within 10 clear working days\* of receipt of the draft report. The complainant will also be given an additional three days to comment on any of the subject member's comments on the draft report.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

## **8. Process for Dealing with Complaints – Advisory Panel**

- 8.1 The report, including the comments from the relevant parties, would initially be assessed by the Standards Committee's Advisory Panel. The Panel can refer the report back to the investigator where additional detail or clarity is required. The Monitoring Officer should ensure that the Panel meeting takes place within 20 clear working days\* of receipt of the final investigator's report, but must allow the relevant parties adequate time to consider and respond to the report.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

- 8.2 **No Evidence of Breach** – Where the investigator has concluded that there was no evidence of a breach of the Code of Conduct the Advisory Panel must consider if it concurs with the investigator's finding(s). If the Panel concurs that no breach has occurred the matter will be considered to be closed and relevant parties will be informed of the outcome within three clear working



days\* of the meeting. The Advisory Panel meeting is not a public meeting and there will be no requirement to publish any of the findings.

- 8.3 As this meeting is not a public meeting neither the subject member nor the complainant will have the opportunity to attend or speak at the meeting.
- 8.4 The Localism Act does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option. The complainant would need to seek independent legal advice about taking up this option.
- 8.5 If the Advisory Panel disagrees with the finding that no breach has occurred they can refer the complaint to the Standards Committee for determination. They should set out any issues they disputed and their recommendation can include an opinion on a suitable sanction should the Standards Committee concur with their opinion.
- 8.6 The relevant parties will be informed of the outcome within three clear working days\* of the Advisory Panel meeting.
- 8.7 **Evidence of Breach** – Where the investigator has concluded that there was evidence that a breach of the relevant Code of Conduct had occurred, the Advisory Panel must decide if it concurs with the investigator's finding.
- 8.8 The Advisory Panel must then make a recommendation to the Standards Committee. The recommendation must set out whether or not they concur with the investigator's findings, any issues they disputed and can include a recommendation setting out their opinion on a suitable sanction if they agree that a breach of the Code of Conduct has occurred. The relevant parties will be informed of the recommendation within three clear working days\* of the Advisory Panel meeting. As this meeting is not a public meeting neither the subject member nor the complaint will have the opportunity to attend or speak at the meeting and the findings will not be published.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

## **9. Arranging the Meeting of the Standards Committee**

- 9.1 The meeting of the Standards Committee must be held within 15 clear working days\* of the Advisory Panel meeting or as soon as practicably possible after the meeting. The Head of Strategic Support shall arrange a time and date for the Standards Committee to meet and consider the matter.
- 9.2 At least 5 clear working days\* before the date of the meeting of the Standards Committee, the Head of Strategic Support shall notify the subject member, complainant and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Committee at which the matter

will be considered.

- 9.3 At least 5 clear working days\* before the day of the meeting of the Standards Committee, the Head of Strategic Support will send to each member of the Standards Committee, to the subject member and the complainant and to the Monitoring Officer, a copy of the paperwork for the meeting. The paperwork will include the agenda for the meeting of the Committee, a copy of the investigator's report, a copy of any written statement in response to the report which has been received from the subject member, complainant and Independent Person and the recommendation from the Advisory Panel.
- 9.4 The Monitoring Officer may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until such time as the Head of Strategic Support makes the report available to the press and public or the Standards Committee agree that the press and public shall not be excluded from the meeting.
- 9.5 At the same time the Head of Strategic Support will write to the subject member and complainant and advise them that, at the commencement of the meeting, the Standards Committee will consider whether the press and public should be excluded from the meeting. There will be an assumption that the majority of hearings should take place in public.
- 9.6 All paperwork associated with the Standards Committee meeting will be subject to the Council's Access to Information Procedure Rules (see Part 8 of the Constitution).

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

## **10. Procedure at the Meeting**

### **10.1 Attendance of the Subject Member and Complainant**

- (i) The subject member and complainant may arrange to be accompanied at the meeting at their own expense by a solicitor, counsel or friend.
- (ii) Where the subject member or complainant opt to be accompanied at the meeting by a solicitor, counsel or friend they must notify the Monitoring Officer of their intention to do so at least three clear working days\* before the meeting.
- (iii) If the subject member or complainant are not present at the start of the meeting, the Committee shall adjourn to enable them to attend, unless they are satisfied that there is sufficient reason for their failure to attend, in which case the Committee may resolve to proceed in their absence. Where the Committee proceeds in their absence, the procedure for the meeting shall be adapted as necessary, giving any representative of the subject member or complainant who is present such rights as would otherwise be accorded to them.

## **10.2 Order of business**

The order of business at the meeting shall be as follows:

- (i) elect a person to preside if the Chairman or Vice-Chairman are not present;
- (ii) receive apologies for the inability to attend the meeting;
- (iii) approve the Minutes of the last meeting;
- (iv) receive any Declarations of Interest from Members;
- (v) consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;
- (vi) introduction of the Committee, Monitoring Officer (or their representative), Independent Person, independent investigator, the legal adviser to the Committee (if appropriate) the clerk, the subject member, complainant and any other witnesses present.
- (vii) any representation from the Monitoring Officer, or his representative and/or the subject member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Committee decides that it will not exclude press and public, the Clerk shall at this point provide copies of the agenda and reports to any members of the press and public who are present.
- (viii) consideration of the complaints in the order in which they have been received.

## **10.3 Speaking**

- (i) Presentation by the Monitoring Officer or the independent investigator of the investigator's report.
- (ii) Committee's questions to the Monitoring Officer/ independent investigator. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Monitoring Officer).
- (iii) The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the complainant and subject member have disputed.\*
- (iv) Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).
- (v) Opportunity for the complainant or their representative to raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (vi) Committee's questions to the complainant. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)

- (vii) The complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (viii) Committee's questions to the complainant's witnesses. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)
- (ix) Presentation by the subject member or their representative. They should only raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (x) Committee's questions to the subject member.
- (xi) The subject member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (xii) Committee's questions to the subject member's witnesses
- (xiii) The Committee may at any time seek legal advice from its legal advisor. Such advice will on all occasions be given in the presence of the subject member (or their representative) and complainant (or their representative).

*(\*Where the subject member or complainant seeks to dispute any matter not included in their written statement, the Monitoring Officer or clerk should draw this to the attention of the Committee. The Committee may then decide:*

- (a) not to admit the information but to proceed to a decision on the basis of the information contained in the report;*
- (b) to admit the dispute, but invite the Monitoring Officer to respond or recall any witness as necessary; or*
- (c) to adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.)*

#### **10.4 Making a Decision**

- (ix) At the conclusion of the presentation by the last speaker, the Chairman will ask the Monitoring Officer whether there was any matter raised during the course of meeting which was not addressed in the investigator's report or in the information submitted by the complainant or subject member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;
- (x) If no adjournment is requested, the Committee is then required to come to a decision as to whether the subject member has breached the relevant Code of Conduct. The Committee needs to satisfy themselves that they have sufficient information upon which to take that decision. In the event that they require additional information they may question the Monitoring Officer, the subject member, complainant or any witness

present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.

- (xi) The Committee will then adjourn into another room where they will consider in private session whether the subject member has acted in breach of the relevant Code of Conduct. Should they require any additional clarity they will raise matters with those present. Any advice will be sought from the clerk or legal advisor as to process or legislative provisions.
- (xii) At the conclusion of their consideration, the Committee will return and the Chairman will advise the complainant and the subject member of their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.
- (xiii) If the Committee conclude that the subject member has acted in breach of the Code of Conduct, the Committee will then hear representations from the Monitoring Officer and the subject member as to whether the Committee should take any action against the Councillor and what form any sanction should take. Members of the Committee may ask questions of the Monitoring Officer and the subject member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- (xiv) The Committee will then adjourn into another room where they will consider in private session whether to take any action in respect of the subject member and what form any sanction should take. The sanctions available to the Committee are set out in Appendix A to this procedure. The Committee will then return and the Chairman will advise the subject member of their decision as to whether any action would be taken and what sanctions, if any, would be applied and the reasons for those decisions.
- (xv) The Committee can also consider in open session whether there are any recommendations which the Committee should make to the authority of which the subject member is a member arising from their consideration of the allegation.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

## **11. Reporting of Decision of Standards Committee**

- 11.1 As soon as reasonably practicable (usually within three clear working days\*) after the Committee has made its determination in respect of an allegation, the Monitoring Officer shall take reasonable steps to give written notice of that determination and the reasons for such determination to the complainant, subject member, the investigator, Independent Person and if appropriate the relevant Parish/ Town Clerk.
- 11.2 Where the Committee determines that there has not been a breach of the Code of Conduct the notice shall:

(i) state that the Committee found that the subject member concerned had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and shall give its reasons for reaching that finding; and

(ii) not be published in summary in one or more local newspapers unless the subject member requests that it is.

11.3 Where the Committee determines that there has been a failure to comply with the Code of Conduct the notice shall:

(i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;

(ii) specify the details of the failure;

(iii) give reasons for the decision reached by the Committee; and

(iv) specify the sanction imposed if any.

(v) state that the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings (if appropriate).

11.4 Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:

(i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;

(ii) specify the details of the failure;

(iii) give reasons for the decision reached by the Committee.

*(\*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

## Appendix G

---

### *West Berkshire Code of Conduct for Licensing*

~~December~~ March 2014~~2~~

---

#### **1. Introduction**

- 1.1 The role of an elected Member on any Licensing Committee involves balancing the needs of both the community and the interests of individual constituents with those of the licensing trade, whilst making impartial decisions which comply with the Licensing Act 2003 and associated Regulations, the Gambling Act 2005 and associated Regulations and the Council's Licensing Policy.
- 1.2 An open and transparent process in the determination of licensing applications is essential. Decisions made on licensing applications can affect livelihoods and the quality of life in the community.
- 1.3 This Code is intended as a guide to Councillors, Officers and licensing applicants on the standard of behaviour expected throughout the process.
- 1.4 The Licensing Committee will consist of 14 Members, reflecting the political composition of the Authority and may not appoint Substitutes. The Licensing Committee will appoint as and when necessary a Sub-Committee to determine applications where representations have been received. The Sub-Committee shall comprise three Members drawn from the Membership of the Licensing Committee. A Substitute (who is a Member of the Licensing Committee) will be appointed for each Sub-Committee meeting.
- 1.5 If Councillors need any guidance on any matter under this Code, they should seek it from the Monitoring Officer but it is the Councillor's responsibility to comply with the Code

#### **2. The Council's Constitution**

- 2.1 This Licensing Code of Conduct forms part of the Council's Constitution. This Code is available to the public and is on the Council's website. The Licensing Code of Conduct has been approved by ~~full~~ Council for inclusion in the Constitution.
- 2.2 The Licensing Code of Conduct should be read in conjunction with the Council's Code of Conduct.
- 2.3 The governance structures and rules of procedure for the Licensing Committee is set out in Part 7 (Regulatory and Other Committees Rules of Procedure) of the Constitution.

#### **3. Breaches**

- 3.1 A breach of this Code, ~~will~~ ~~will~~ not usually amount to a breach of criminal law but it may adversely affect the reputation of the Council and the reputation of an individual Councillor. It could result in a decision being judicially reviewed

or result in a complaint to the Local Government Ombudsman, or an allegation of a breach of the Code of Conduct.

- 3.2 Any alleged breach of this Code will be investigated locally in accordance with the procedures associated with the Code of Conduct (see Appendix H to Part 13 of the Council's Constitution). It is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee if a breach of the Code of Conduct or Licensing Code of Conduct is alleged to have occurred.

~~Any alleged breach of this Licensing Code of Conduct will be referred to the Standards Board for England by the Monitoring Officer.~~

~~The Standards Board may decide to refer the case to the Council's own Standards Committee to investigate. Where this is done it is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee.~~

- 3.3 Where an Officer is concerned in an alleged breach of this code this will be investigated in accordance with the Council's corporate complaints or disciplinary procedure.

#### **4. Role and Conduct of Councillors and Officers**

- 4.1 Councillors and Officers have different, but complementary, roles in the licensing process and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council that they work as an effective team.

~~Councillors and Officers have different but complementary roles in the Licensing process.~~

- 4.2 Officers are employed by the Council. Instructions may only be given to Officers by the Council, its Executive or a committee or by way of delegated powers. The relationship between Officers and Councillors should be one of mutual trust, understanding and respect. It is not appropriate for Councillors to direct Officers to determine a licensing application in any particular way.

- 4.3 When considering licensing applications Councillors need to ensure that only the four licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm), in the case of the Licensing Act 2003 and (preventing gambling from being a source of crime or disorder being associated with crime or disorder or being used to support crime; ensuring that gambling is conducted in a fair and open way; protecting children and other vulnerable persons from being harmed or exploited by gambling) in the case of the Gambling Act 2005 are taken into account. In reaching a decision Councillors should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.

~~A Councillor must not use his position as a Member improperly to confer on, or secure for himself or any other person, an advantage or disadvantage (The Local Authorities (Model Code) Order 2001 as set out in the Council's Code of Conduct).~~



Councillors must not favour, or discriminate against, any person, company, group or locality nor put themselves in a position where they appear to do so.

## **5. Gifts and Hospitality**

5.1 Both Officers and Councillors must be cautious about accepting gifts and hospitality.

5.2 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution. Officers offered any gift or hospitality must treat the offer in accordance with paragraphs 13.5.2 (Gifts & Hospitality – General), 13.5.3 (Rules and Procedure for Gifts and Hospitality) and 13.5.4 (Hospitality) of the Council's Constitution.

## **6. ~~Declarations of Interest~~**

6.1 A Register of Councillors' interests is maintained by the Council's Monitoring Officer, is available for public inspection and is published on the Council's website.

6.2 Written details of Disclosable Pecuniary Interests (DPI) must be provided to the Monitoring Officer within 28 days of election or appointment to office and any changes to those interests must also be provided to the Monitoring Officer in writing within 28 days of the councillor becoming aware of such changes.

6.3 Where Councillors have a personal interest they must disclose to that meeting the existence and nature of that interest at the start of the meeting or when the interest becomes apparent. Councillors who have a personal interest in an item are permitted to take part in the discussion and vote on the item.

6.4 Where Councillors have a Disclosable Pecuniary Interest (DPI) they may attend a meeting either as a member of the committee and/or as a Ward Member but only for the purposes of making representations, answering questions or giving evidence relating to the business (provided the meeting is one where members of the public are allowed to make representations). They may not propose a motion, vote or take part in the decisions making process of the Committee. They must withdraw from the meeting before the vote is taken and their vacating the room will be noted in the Minutes of the meeting. It is for the individual Councillor to decide what the interest is. They may seek advice from the Monitoring Officer or from Legal Services but it is their decision. If advice is sought it should be sought as early as possible. It is therefore important that agenda are read in good time and that, if possible, advice is sought no later than the day before the meeting. It is better not to raise a query on interests in a public forum. By doing so, public perception may well lead to the conclusion that the interest is a DPI.

6.5 Members who have a DPI may, in certain circumstances, apply for a dispensation which would allow them to take part in discussions and vote on an item, The procedure for applying for and the granting of dispensations is set out in Appendix 2 to Appendix H (the Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

## **7. The Role of the Executive**

7.1 Members of the Executive may be on the Licensing Committee and have interests in an application because of their role on the Executive. There may be occasions where the Council is sponsoring a development and an Executive Member may be seen as the chief advocate on the Executive. In such circumstances the appropriate approach is that the Executive Member should not sit on the Licensing Sub-Committee hearing that application.

## **8. Lobbying**

8.1 Lobbying is a normal and proper part of the political process. Local concerns need a way of being aired and the most effective and suitable way is through the local elected representatives. However, lobbying can cause the impartiality and integrity of a Councillor to be called into question. Councillors must take care when being lobbied not to express an opinion that could be interpreted as indicating that they have made up their mind on the issue before they have seen and heard all the evidence.

8.2 Comments should be restricted to procedural advice and should always make clear that the decision can only be made after hearing all the relevant evidence and arguments at the Sub-Committee hearing or the Committee Meeting.

8.3 Apart from Ward Members (see paragraph 9.1), Councillors should avoid organising support for or against a licensing application. If they do organise such support they will disqualify themselves from sitting on the Licensing Sub-Committee that hears that application.

8.4 Members who sit on more than one relevant authority, and those who are included on membership of campaign or lobby groups, should also consider whether they have an personal or prejudicial interest. For example, if the decision of a Licensing Sub-Committee could have a direct impact on a lobby or campaign group whose primary purpose is to influence public opinion, then it is likely that the Member will have a prejudicial interest. ~~Members should consult the September 2004 edition of the Standards Board pamphlet "Lobby Groups, dual-hatted Members and the Code of Conduct" for further guidance or seek advice from the Monitoring Officer.~~

## **9.1. Ward Members**

9.1 If a Licensing Committee Member representing a wWard affected by a controversial application goes public in support of a particular outcome (which they may feel they have to do) then the Member may appear at the Sub-Committee meeting hearing the application, and argue their cause. They may not however sit on the Sub-Committee hearing the application.

*[Note: No Ward Member will be able to hear any licensing application for premises situated in their ward.]*

*Care will also be needed where the premises are near ward boundaries where it may be inappropriate for neighbouring Ward Members to be on the Sub-Committee hearing such applications.]*

## **102. Licensing Applications by Councillors, Officers or the Council**

**10.1** These can, by their very nature, arouse suspicions of impropriety. It is therefore vital that they are handled in a way that ensures there are no grounds for favouritism.

**10.2** If it is a Council application it will be treated in the same way as any private application.

**10.3** If the application is by a Licensing Officer or a member of their family, it will be dealt with by the Team Manager Licensing~~Senior Licensing Officer~~. If the application is connected to the Team Manager Licensing~~Senior Licensing Officer~~ then it will be dealt with under the direct supervision of the Head of Service. If it falls within delegated powers and relates to any Officer of the Council, the Corporate Director, not the Head of Service will exercise the delegated power (in consultation with the Monitoring Officer).

**10.4** -If it is an application by a Councillor, the Councillor is entitled to speak to Officers in the same way as any Member of the public. However, they shall not seek improperly to influence the decision and will clearly not be part of the Licensing Sub-Committee hearing that application. Councillors are advised to employ professionals to speak on their behalf at hearings involving their own applications.

**10.5** The Council's Monitoring Officer shall be informed of all applications by Councillors and Officers and will register such applications.

## **131. Discussions before Decision is Made**

**11.1** Councillors have a role to play in helping consultation between their constituents and the licensed ed and gambling trades. ing trade~~. ing trade~~. Consultation can be a huge benefit to all parties but can easily be seen as part of a lobbying process by the applicant if care is not taken. Since Ward Members will not be able to sit on any Licensing Committee or Licensing Sub-Committee hearing applications for premises in their own ~~w~~Ward, it is anticipated that lobbying would not normally affect those Members hearing any application.

**11.2** If any meeting between applicants and Councillors is held, a written note should be made of any such meeting. At least one Officer should attend such meetings and a follow-up letter is advisable summarising the discussion.  
Whenever possible the meetings should take place on Council premises.

**11.3** Councillors should also note that potentially contentious telephone discussions should also be recorded in writing, preferably immediately after the conversation, so recollection is fresh and should be reported to the Monitoring Officer.

~~Where any meeting concerns a major application, it is preferable that the meeting takes place on Council premises.~~

## **142. The Licensing Hearing itself**

**12.1** Ten-minute slots within each application are allocated as a total for all parties wishing to address the Sub-Committee. This means all objectors or supporters have a total of ten minutes per group, which they may share as they wish. Responsible authorities, where they wish to address the Sub-Committee, will also have ten minutes each. The Chairman of the meeting may extend the time slots if it is considered appropriate by the Sub-Committee in view of the large public interest in the matter but this must be by a vote of the Committee agreeing to suspend this provision of the Constitution.

**12.2** At the hearing, a party shall be entitled to:

- give further information ( subject to new information being submitted only with the agreement of all parties) and call any witness in support of their application, representations or notice ( as applicable);
- question any other party or witness through the Chairman;
- address the Sub-Committee.

**12.3** Members of the Sub-Committee may ask any question of any party or witness. However, care should be taken to ensure that questions are relevant to the application and the furtherance of the four-Licensing Objectives as stated in the Licensing Act 2003 and the Gambling Act 2005 in order to maintain the focus of the proceedings. Any other party may also ask questions but these should be directed through the Chairman and again should relate to the application and the four-Licensing Objectives. The procedure is not intended to be adversarial.

**12.4** No new documentary evidence may be produced to the Sub-Committee at the meeting unless all parties are agreed this is acceptable (this does not prevent applicants or objectors raising new points verbally). If objectors or applicants wish to introduce new additional material they should provide such material to Licensing Officers at least 5 clear working days before the meeting (in line with the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002).

## **153. Decisions Contrary to the Licensing Policy**

**13.1** The law requires that decisions will be in accordance with the Council's approved Licensing Policies.

**13.2** If the Sub-Committee decides a matter contrary to the Council's Licensing Policy then a detailed minute of the reasons must be made and a copy of those reasons placed on the application file. This will be required should an appeal be lodged to the Magistrate's Court.

## **164. The Role of the Chairman**

**14.1** The role of the Chairman will be key and specific training for this will be provided.

## **175. Complaints**

**15.1** Complainants alleging a breach of this protocol may direct their allegations to the Monitoring Officer.

15.2 To investigate complaints fully, record keeping should be complete and accurate.

15.3 Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors at a Licensing Sub-Committee. Complaints pertaining to delegated decisions will be dealt with under the Council's Corporate Complaints Procedure.

15.4 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

~~Complainants alleging a breach of the statutory local code of conduct may direct their allegations to the Standards Board for England.~~

~~To investigate complaints fully, record keeping should be complete and accurate.~~

~~Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors.~~

## **186. Training**

16.1 All Members of the Licensing Committee (including ssubstitutes) to receive appropriate training before being able to make formal decisions on the Committee and then to attend subsequent refresher training to remain on the Committee.

