

CODE OF CONDUCT FOR MEMBERS OF WEST BERKSHIRE DISTRICT COUNCIL

1. INTRODUCTION

1.1. The initial Code of Conduct was adopted by the Council at its meeting on 10th May 2012 and confirmed at a meeting on 16th July 2012 pursuant to the Localism Act 2011 and its duty to promote and maintain High Standards of Conduct by members and co-opted members of the Council. It is effective from 1st July 2012. The revised Code was adopted at the Council meeting on the 12 December 2013.

2. APPLICATION

~~2.1. This Code of Conduct applies to you as a member of this Council when you are acting or purporting to act in your role as a member and you have a responsibility to comply with the provisions of this Code.~~

OR

This Code applies to you whenever you are acting in your capacity as a member of West Berkshire Council:

- 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.

It is **your** responsibility to comply with the provisions of this Code.

2.2. This Code of Conduct is consistent with and based upon the ~~following principles~~ Seven Principles of Public Life as set out in section 28(1) of the Localism Act 2011:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

The above terms are expanded at the end of this Code under the heading 'The Principles'.

2.3. Should a complaint be made against you in your role as a Councillor it will be dealt with in accordance with the Localism Act 2011 and its supporting regulations.

2.4 If you need any guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

3. GENERAL OBLIGATIONS

When acting or purporting to act in your role as a member of the Council, you must have regard to the following obligations. If you are not acting in your role as Councillor then no breach of the Code is likely to occur:

You must:

- a. Treat members, officers, members of the public and service providers with courtesy and respect
- b. Ensure that you are aware of and comply with the requirements which the Bribery Act 2010¹ places on you in your role as a Member and on the Council.
- c. When involved in the decision making of the Council:
 - i. Have regard to any advice provided to you by the Council's Chief Financial Officer and Monitoring Officer pursuant to their statutory duties.
 - ii. Give reasons for the decisions in accordance with any legal requirements or reasonable requirements of the Council.
- ~~d.~~—When using or authorising the use by others of the resources of the Council:-
 - e.d. act in accordance with the Council's reasonable requirements including the requirements of the Council's ICT policy and all relevant policies. *(Copies of these policies have been provided to you, are available on the Council's Intranet and you are deemed to have read and understood them The Policies referred to in paragraph 3.6.1 may be updated from time to time and you will be notified of any changes. You must comply with the updated policies as soon as you have been provided with a copy of the same.)*
 - f.e. Make sure that Council resources are used for and in accordance with your duties as a Councillor and are not used improperly.
 - g.f. Have regard to the applicable Local Authority Code of Publicity² under the Local Government Act 1986.

You must not:

- a. engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.
- b. disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature except where.

¹ The Act creates offences of offering or receiving bribes, bribery of foreign public officials and of failure to prevent a bribe

² This code covers the rules around content and style of publicity, dissemination, advertising, promotion of individual councillors and restrictions during the pre-election period.

- (i) you have the consent of a person authorised to give it;
 - (ii) you are required to do so by law;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice;
 - (iv) the disclosure is reasonable and in the public interest;
 - (v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or “its professional advisers”.
- c. prevent another person from accessing information if that person is entitled to do so by law;
- d. improperly use knowledge gained solely as a result of your role as a member for the advancement of your disclosable pecuniary interests;
- e.e. conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.

3.8. **4. DISCLOSABLE PECUNIARY INTERESTS AND INTERESTS OTHER THAN DISCLOSABLE PECUNIARY INTERESTS**

4.1. Disclosable Pecuniary Interests

4.1.1. By virtue of the Localism Act 2011 and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 you must disclose and register disclosable pecuniary interests as defined in the foregoing legislation by notifying the Monitoring Officer within 28 days

- (a) the adoption of this Code or
- (b) becoming a member of the Council or
- (c) becoming aware of such an interest

4.1.2 Failure to disclose such interests may result in prosecution by which could result in a fine not exceeding £5,000.00 (Level 5 on the Standard scale).

4.1.3. A Disclosable Pecuniary Interest [DPI] is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if you are civil partners). The descriptions of disclosable pecuniary interests are set out in Appendix 1 to this Code of Conduct.

4.2. Other Interests

4.2.1. You must, within 28 days of:

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

notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the following descriptions, for inclusion in the register of interests.

4.2.2. You have a personal interest in any business of your authority where either:

- (a) it relates to or is likely to affect
- (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- (ii) any body
 - a. (aa) exercising functions of a public nature;
 - b. (bb) directed to charitable purposes; or
 - c. (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
- (iii) any easement, servitude, interest or right in or over land which does not carry with it a right for you (alone or jointly with another) to occupy the land or to receive income.

4.3. Disclosure of interests

4.3.1. Subject to sub-paragraphs 4.3.2 to 4.3.5, where you have a personal interest described in paragraph 4.2 above or in paragraph 4.3.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

4.3.2. You have a personal interest in any business of your authority

- (i) where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision, or
- (ii) it relates to or is likely to affect any of the interests you have registered as a disclosable pecuniary interest.

In sub-paragraph 4.3.2, a *relevant person* is:

- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00; or
 - (d) any body of a type described in paragraph 4.2.2(a)(i) or (ii).
- (3) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 4.2.2(a)(i) or 4.2.2(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- (4) Where you have a personal interest but, by virtue of paragraph 5, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (5) Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

4.4. Register of interests

4.4.1. Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

4.5. Non participation in case of pecuniary interest

- (1) Where you have a personal interest in any business of your authority you also have a pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business;
 - (a) affects your financial position or the financial position of a person or body described in paragraphs 4.2.2 ;or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph.
- (2) Subject to paragraph (3) and (4), where you have a pecuniary interest in any business of your authority;
 - (a) you may not participate in any discussion of the matter at the meeting.
 - (b) you may not participate in any vote taken on the matter at the meeting.
 - (c) if the interest is not registered, you must disclose the interest to the meeting.
 - (d) if the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition the Rules of Procedure of the Council and its Committees require you to leave the room where the meeting is held while any discussion or voting takes place.

- (3) Where you have a pecuniary interest in any business of your authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- (4) Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a pecuniary interest that relates to the functions of your authority in respect of:
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- (5) Where, as an executive member, you may discharge a function alone, and you become aware of a pecuniary interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.
- 4.6. Interests arising in relation to overview and scrutiny committees
- 4.6.1. In any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:
- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
 - (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 4.6.1(a) above and you were present when that decision was made or action was taken,
- 4.6.2. You may only attend a meeting of the overview and scrutiny committee for the purpose of answering questions or giving evidence relating to the business, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

5. SENSITIVE INTERESTS

- 5.1. Where a member is concerned that the disclosure of the details of an interest (either a DPI or any other interest which the member is required to disclose) at a meeting or on the Register of Members' Interests, and such disclosure would lead to the member or a person associated with him/her being subject to violence or intimidation, the member may request the Monitoring Officer agree that such interest is a sensitive interest.
- 5.2. If the Monitoring Officer agrees that the interest is a sensitive interest the member must still disclose the existence of the interest at a relevant meeting but the member is not required to provide the details of the sensitive interest during the meeting. The Monitoring Officer shall also exclude the details of the sensitive interest from the published version of the Register of Members' Interests.

6. DISCLOSURE AND PARTICIPATION

- 6.1. Should you have a disclosable pecuniary interest you **MUST NOT** take part in the decision making process of the Council and in order to ensure transparency you must withdraw from such process as regards that DPI.
- 6.2. The Localism Act 2011 makes participation in such matters if you have a DPI a criminal offence.

7. GIFTS AND HOSPITALITY

- 7.1. You must disclose and record any gift or hospitality you receive or are offered in your capacity as a member of the Council in excess of an estimated value of £25.00 within 28 days of receipt of acceptance. Such disclosure should be made in writing or by email to the Monitoring Officer in accordance with the Council's Protocol on Gifts and Hospitality. In addition Members should be aware of 'serial giver's or repeat offers of hospitality as these may indicate a pattern of behaviour which could may result in a breach of this Code.

8. DISPENSATIONS

- 8.1. Members who have a disclosable pecuniary [or other interest] may apply for a dispensation on specific grounds which are set out in the Dispensation Procedure set out in Appendix 2 to this Code of Conduct.

9. INTERPRETATION

"Co-opted member", means a person who is not a member of the Council but who:-

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

and who is entitled to vote on any question which is to be decided at any meeting of the committee or sub-committee.

"Disclosable Pecuniary Interests (DPI)" means those interests prescribed by the Secretary of State as such under the Localism Act 2011 and set out in Appendix 1 to this Code of Conduct.

"Other Interests" means interests other than DPI's which a member is required (by law) to disclose.

"Meeting" means any meeting of:-

- (a) the Council;
- (b) the executive of the Council;
- (c) any of the Council's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members.

"Member" includes a co-opted member.

"Bullying and intimidating behaviour" means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, (but within the scope of the Code of Conduct).

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will

| be found guilty of bullying when both parties have contributed to a breakdown in relations."

THE PRINCIPLES (referred to in paragraph 2.2 above)

- **Selflessness**
Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.
- **Honesty and Integrity**
Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.
- **Objectivity**
Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- **Accountability**
Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.
- **Openness**
Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- **Leadership**
Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Appendix 1

(In the extracts from the Regulations below, 'M' means you, when acting as a member of the Council, and 'relevant person' means you and your partner, as above)

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

Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

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

Dispensations under the Localism Act 2011

1. Introduction

- 1.1. The provisions on dispensations are significantly changed under the Localism Act. Previously there was a reference in the legislation and over a number of years Government produced regulations dealing with the process.
- 1.2. It should be noted that Parish Councils under the legislation are given the ability to deal with their own dispensations but it is not clear at this time whether or not they will be required to consult either the Monitoring Officer or the Independent Person. Further it is not clear if any regulations relating to Parish Councils will be issued.
- 1.3. At present a Member who has a prejudicial interest may apply to the Standards Committee for a dispensation on two grounds. These are:-
 - (i) that at least half of the Members of the decision making body have a prejudicial interest thus preventing the transaction of business. This provision has been used on a number of occasions in respect of Parish Councils.
 - (ii) that so many Members of one political party have prejudicial interests in the matter that it would upset the result of the vote on a political matter by impacting on the proportionality rules affecting the particular body.
- 1.4. Members will be aware of the current process and the documentation which is used in order that in effect a “digital” meeting of the Standards Committee comments and proves otherwise that application for a dispensation.

2. The ~~New~~ Dispensation Regime

- 2.1. Under Section 33 of the Localism Act 2001 ~~in future~~ a dispensation will be able to be granted in the following circumstances.

The Council may on:-

- (a) a written request
- (b) made to the Proper Officer of the Council
- (c) by a Member or Co-Opted Member of the authority.

grant a dispensation enabling a Member or Co-opted Member to participate in a meeting notwithstanding that they have a Disclosable Pecuniary Interest under Section 31 of the Act.

- 2.2. The criteria ~~which now apply are increased and~~ cover the following circumstances:-
 - (i) that so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would “impede” the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.]
 - (ii) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.

- (iii) that the authority considers that the dispensation is in the interests of persons living in the authority's area.
- (iv) that without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (v) that the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.

2.3 In each case when a dispensation is granted it must specify how long it lasts for to a maximum of four years (this reflects the previous legislation) and the Council must consider the application "after having had regard to all relevant circumstances".

2.4. ~~Overall the provisions of the new legislation do expand the instances when a dispensation may be granted which for Parish Councils may be of assistance although it could equally bring comment from the public who may perceive that certain individuals have an interest but are still taking part in the decision making process.~~

3. Delegation

3.1. ~~A major change from the previous legislation under the Local Government Act 2000 is that the Localism Act gives discretion for this power to be delegated to Standards Committee, a Sub-Committee or to the Monitoring Officer. Previously, the Standards Committee itself had to deal with any applications for dispensation.~~

3.2. It is considered that grounds (i) and (iv) are objective and ~~it is recommended that dispensations on these grounds are~~ delegated to the Monitoring Officer with an appeal to a Standards Committee. ~~This would enable dispensations to be granted effectively "at the door of the meeting".~~

3.3. Grounds (ii), (iii) and (v) are ~~rather~~ more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee after consultation with the independent person.

4. Considerations in granting a dispensation

4.1. The following matters will be taken into account when assessing a dispensation application:

~~As mentioned above it is not clear whether not the Department of Communities and Local Government will issue further guidance and/or regulations dealing with dispensations but it is considered that Members should be given some pointers as to what they may wish to consider when considering a dispensation and when matters are delegated to the Monitoring Officer to ensure consistency. Having reviewed the previous guidance it is considered that the following applies:-~~

- (i) the Standards Committee should weigh up the effect of Members' prejudicial Interest(s) against the outcome of the vote if they are not participating in the vote.

- (ii) the Standards Committee should consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Member were allowed to vote.
- (iii) the Standards Committee should look at whether the interest in question is one that is common to both the Member and to a significant proportion of the population.
- (iv) account should also be taken of the expertise and knowledge of the Member and whether this justifies their participation in the item in question. For example, if members of Police and/or Fire authorities would be able to bring their expertise by addressing the meeting.
- (v) Standards Committee Members should have regard to whether the business in question relates to a voluntary or public body which is to be considered by an Overview and Scrutiny Committee, and additionally whether the interest is a financial one.
- (vi) if a dispensation not being granted would mean the meeting was not quorate, this might be a reason to grant the dispensation.

5. Process for granting and recording a dispensation

- (i) a Member must apply in writing to the Monitoring Officer for a dispensation as soon as possible, setting out why it is required. The Monitoring Officer will then arrange for the ~~Standards Committee to consider~~ the request to be considered. Only written requests are acceptable, and cannot be made by someone else on behalf of the Member. Group and joint requests are not permitted. Each Member should apply individually.
- (ii) If appropriate a meeting of the Standards Committee must be then convened to consider the application. In the case of urgent items if it is possible to convene a virtual meeting of the Committee, an urgent dispensation may still be granted.
- (iii) the Standards Committee/ Monitoring Officer should then consider the legal implications for the dispensation set out at 4(i) to (v) as well as at 2.1(a) above. This consideration may also take account of any other relevant circumstances or local criteria.
- (iv) members of the Standards Committee/ the Monitoring Officer should determine whether the applicant should be permitted to make oral representations to the meeting of the Standards Committee/ Monitoring Officer or whether written applications only will be allowed.
- (v) the Standards Committee/ Monitoring Officer should then determine the nature of any dispensation they are minded to grant:
 - (a) whether the applicant can speak and not vote; or
 - (b) whether the applicant can participate fully and vote.
 Additionally the Committee/ Monitoring Officer can also decide the length of the dispensation (not more than four years).
- (vi) it should be noted that the regulations do not allow for the Standards Committee/ Monitoring Officer to grant a general dispensation to cover any situation where a prejudicial interest may arise.
- (vii) if the Standards Committee/ Monitoring Officer grants a dispensation it should do so in writing and before the meeting in question is held.
- (viii) the Standards Committee/ Monitoring Officer may decide to refuse an application for a dispensation. This is within their discretion under the regulations.

(ix) a written record of the decision taken must be kept and placed with the Register of Interests maintained under ~~Section 81(1) of the Localism Government Act 2000~~11.

5.2. Any advice on the process of granting dispensations and any questions relating to this arrangement should be directed to the Monitoring Officer.