

# West Berkshire Council Constitution

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## Part 13

### Codes and Protocols

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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>

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## **13.1 Protocol on Member/Officer Relations**

### **13.1.1 Purpose and Scope**

Member and Officer relations within the Council are positive and effective. This Protocol provides guidance to Members and Officers, and is intended to strengthen and develop those relationships for the benefit of the Council, the community and effective service delivery by setting out the appropriate standard. The Protocol reflects the recommendations of the Nolan report.

The Protocol is a working document to assist both Members and Officers and, as such:

- it is not exhaustive, and will evolve over time;
- it aims to set the context and tone for working relationships;
- it seeks to clarify how day to day, practical Member/Officer relationships will work.

### **13.1.2 Definition of ‘Officers’**

For the purpose of this protocol ‘Officer’ means any Employee/ Manager/Director employed by West Berkshire Council.

### **13.1.3 Associated Documents**

The Protocol should be read in conjunction with the following documents:

- The Council’s Rules of Procedure;
- The Members’ Code of Conduct;
- The Officers’ Code of Conduct.
- The Council’s Code of Conduct for Planning.

### **13.1.4 Principles Underlying Member/Officer Relations**

The Council’s values include Respect, Integrity and Efficiency in reaching our goals. These are reflected in the corporate style and culture which includes close working between Members and Officers.

### **13.1.5 Reasons for Close Working Relations**

Close working relations are essential to:

- maintain mutual trust, confidence and respect between Members and Officers;
- provide the right environment for partnership working;
- facilitate good communications and understanding of political aims and objectives;
- ensure clarity about management and operational responsibilities;
- avoid potentially damaging misunderstandings or tensions which might harm service delivery.

As a general principle, relationships between Members and Officers should be conducted on the basis of mutual respect, openness and partnership.

The approach will be supported by regular and effective two-way communications at both an informal and formal level.

### **13.1.6 Role of Members**

The role of elected Members is defined nationally by legislation and locally with the Council's Constitution.

The role of Members may be broadly described as:

- setting the strategic direction and policies of the Council;
- representing the interests and views of their Constituents;
- monitoring the performance of services;
- overseeing the implementation of policy.

In practice, Members discharge several different roles at the same time depending upon their interests and their position within the Council. The new decision-making arrangements set out Member responsibilities for taking particular decisions, for scrutiny and for other matters such as area working. The relationship is different where the Member is part of the Executive and is empowered to take a decision. All Members are, however, representatives of their constituents and need to be supported by all Officers in this duty.

Members are also, through the Council, the 'employers' of staff and this relationship is dealt with elsewhere in the Constitution (see Part 12, Personnel Rules of Procedure).

### **13.1.7 Role of Officers**

The key responsibilities of Officers are to:

- provide professional, technical or other advice to the Council, the Executive, Overview and Scrutiny Management Commission, Committees, Sub-Committees and other Member forums;
- manage the staff;
- implement effectively the decisions of the Council, the Executive and Overview and Scrutiny Commission, Committees and Sub-Committees;
- exercise any statutory or delegated powers in the best interests of the Council and in accordance with legislation and the Scheme of Delegation;
- provide information when requested by Members in order that they can discharge their duties;
- respect the rights of individual Members;
- refrain from expressing personal or political opinions on Council matters;



- observe their contract of employment, including provisions relating to the Code of Conduct, political restrictions and confidentiality.

Many Officers will also have management responsibilities and are accountable, through their line manager, to the Head of the Paid Service (Chief Executive) for these duties.

### **13.1.8 Political Neutrality**

Officers are employed by the Council and serve the Council in the delivery of services. As such, Officers are politically neutral and have a duty to provide information to all Members and all Party Groups, subject to the Rules on confidentiality.

### **13.1.9 Responsibility to Council**

The responsibility of Officers to the Council as a whole means that:

- Officers may report to the Council, the Executive or other Member bodies on any matter where they consider that this is required;
- Officers may express a contrary view to that of the Executive or other Member body where there are sound professional or technical reasons for doing so;
- Officer reports may not be changed by Members.

### **13.1.10 Officers' Advice**

Any individual Member may seek the advice of an Officer on a matter relating to the Council's services. The Statutory Officers of the Council have a duty to provide independent advice to the Council and Members on specific matters. These politically restricted posts are:

- Head of the Paid Service: Chief Executive;
- Monitoring Officer: Head of Legal Services;
- Section 151 Officer: Head of Finance.

### **13.1.11 Politically Restricted Roles**

Group Executives have been appointed in the Council to support the functioning of the political groups. These posts are politically restricted and postholders are Officers of the Council. A list of the posts within the Council that are politically restricted is maintained by the Monitoring Officer.

## **13.2 Relationships between Members and Officers**

### **13.2.1 Chairman of the Council**

The Chairman of the Council is the first citizen of the District with particular statutory responsibilities, including chairing meetings of the full Council.

Officers will provide appropriate support to the Chairman in their role of promoting the interests of the District and the Council. For example, by inviting the Chairman to community or staff events, ensuring that the Chairman is kept up to date with major service developments, or supporting the representational role of the Chairman with the Council's key

partners. The Chairman will be supported in their duties by Members' Services Staff.

### **13.2.2 Support by Officers to the Executive**

The Executive Leader and other Members of the Executive will receive all necessary advice and support to enable them to discharge their functions effectively. They will need to respect the political neutrality of Officers in giving advice or support.

The Council has decided not to establish a separate team of Officers to work with the Executive; any Officer may be called upon to advise Executive Members or to attend meetings of the Executive. In practice, there will be particularly frequent contact between Executive Members and senior Officers. The Chief Executive and other Officers will attend Executive meetings as necessary.

In addition, Executive Members with specific portfolios will have day-to-day dealings with the relevant Corporate Directors, Heads of Service, senior managers on particular service and policy issues. It is essential that arrangements for these regular meetings are agreed and that a proper record is kept of the purpose and outcome to avoid any unnecessary misunderstanding. Executive Members and their principal Officer contacts will need to work co-operatively and openly and respect each other's responsibilities.

Where an Executive Member has specific delegated powers they should ensure that they adhere to the appropriate protocol on decision-making by Executive Members and obtain all relevant legal, financial and professional advice before any decision is made. They should also consider to what extent they should consult other Members of the Executive or local Ward Members. Decisions made must be recorded as required by Regulations and this Constitution. The Protocol for Decision-Making by Individual Executive Members is set out in Appendix B.

### **13.2.3 Support by Officers to the Overview and Scrutiny Management Commission**

The Chairman and Members of the Overview and Scrutiny Management Commission will receive all necessary support to enable them to discharge their functions effectively.

Any Officer of the Council may be called upon to advise or attend meetings of the Overview and Scrutiny Management Commission. However, to ensure that the scrutiny and policy development role is developed, the Lead Officer for Scrutiny in conjunction with the appropriate Corporate Director will work with the Overview and Scrutiny Management Commission.

Members will need to respect the role of Officers in providing advice to the Executive as well as to the Overview and Scrutiny Management Commission in a politically neutral way. The Chairman of the Overview and Scrutiny Management Commission will, in particular, have a role in ensuring that questioning of Officers is conducted in a positive and constructive way and that the respective accountabilities of the Executive for decision-making and Officers for providing advice are understood.

### **13.2.4 Questions for Officers Attending Overview and Scrutiny Management Commission**

Officers attending the Overview and Scrutiny Management Commission may be asked questions of fact about:

- a particular policy;
- the justification for the policy and its objectives;
- the extent to which those objectives have been met;
- how operational factors relate to the policy;
- what advice they gave to the Executive;
- their reasons for taking decisions under Delegated Powers.

### **13.2.5 Support by Officers to Other Committees**

The Chairmen and Members of the Area Planning Committees, Licensing Committees, Governance and Audit Committee, Personnel Committee and Standards Committee and other relevant Member bodies will receive all the necessary advice and support to enable them to discharge their functions effectively.

These Committees will be supported by a wide range of Officers depending upon the function under discussion.

### **13.2.6 Political Groups**

Officers will provide impartial advice and support to all political Groups on the Council.

### **13.2.7 Request for Officer to attend a Political Group Meeting**

Requests for an Officer to attend a Political Group meeting will be on the following basis:

- Any request must be made through the Chief Executive or a Corporate Director normally five working days in advance of the meeting;
- Officers below senior manager level will not normally attend Group meetings;
- Officers below Head of Service level must not attend Group meetings unless there is another Officer present;
- No Officer can be required to attend a Group meeting;
- Advice given at Group meetings and the views of Members of the Group thereon will be treated as strictly confidential (unless otherwise agreed);
- Any policy formulated as a result of the advice will be regarded solely as the policy of the Group, and not a policy supported by Officers;
- Officers attending Group meetings must be treated fairly and their political neutrality respected;

- Any non-Councillors present at a Group meeting, except Group Executives, must not be given confidential papers and will be asked to leave the meeting if the Officer briefing is confidential.

### **13.3 Relationships between Individual Members and Officers**

#### **13.3.1 Mutual Respect**

All contacts, formal or informal, between individual Members and Officers must be on the basis of mutual respect, trust and courtesy. This is particularly important in relation to the reputation of the Council with the community.

#### **13.3.2 Member/Officer Relations**

In their dealings with Officers, particularly junior ones, Members need to be aware that staff may feel uneasy or at a disadvantage, and to make allowances for this accordingly.

A Member must not apply pressure on an employee to make a particular decision, to act improperly, or to provide a service to an individual where there is no entitlement.

Similarly, Officers must not apply pressure on a Member to make a decision, nor raise personal matters relating to employment etc. with a view to influencing the Member.

Close personal familiarity between an individual Member and Officer should be avoided. Any close relationship between a Member and an Officer must be made known to the relevant Group Leader and the Officer's manager.

Where a Member is involved in an Officer appointment, grievance or disciplinary panel, they should not let their personal or political views influence their judgement or discuss the matter with others outside the Panel. The overriding consideration must be the best interests of the Council following the procedures as laid down.

Any Member who proposes to act in a professional or private capacity against the Council, must notify the Chief Executive/Monitoring Officer in writing. This notification should also apply to a Member's spouse, partner, employer or company within which the Member has an interest.

Any Member who considers that they have not been treated with respect and courtesy by an Officer, or has any other concern about the conduct of an Officer (and this has not been resolved by direct discussion with the Officer), may raise this with the Chief Executive or a relevant Corporate Director. Any concern will be investigated and, if appropriate, action may be taken.

If an Officer considers that they have not been treated appropriately by a Member, or has any other concern about the conduct of a Member, they may raise it with their Manager or Head of Service. Any concern will be investigated and discussed with the relevant Group Leader and the Chief Executive. If the matter cannot be resolved satisfactorily, the Council's Grievance Procedure or Standards Committee procedures may be invoked.

### **13.3.3 Support by Officers to Ward Members**

Officers will support Members in their role as representatives of their local Constituents. This will include:

- providing information on service delivery;
- answering queries from constituents;
- meeting constituents with a Member to hear their views.

### **13.3.4 Requests for an Officer to attend a Public Meeting**

Any request for an Officer to attend a public meeting arranged by a local Member will be dealt with on the following basis:

- the request must be made to the relevant Head of Service or Director, who will consider whether attendance is possible;
- the purpose of the meeting must be clearly stated;
- any publicity for the meeting (e.g. a Ward newsletter) must make it clear that it is not a Council meeting;
- the relevant Spokesperson and other Ward Members (if appropriate) will be advised if an Officer is to be present;
- any Officer attendance will be strictly on an impartial basis;
- no representative of the media should be invited, unless this has been agreed with the Officer.

### **13.3.5 Informing Members**

Officers will seek to keep Members informed about the major issues facing the Council and, in particular, on issues and events affecting their ward. This will include notification of issues coming before the Executive or other Member body. A regular information bulletin which contains Planning Information will be issued and will contain Officer contact details.

### **13.3.6 Member Access to Information**

Where a Member seeks information or advice from an Officer, the request should normally be responded to within two working days. If longer time is needed to prepare a substantive response an acknowledgement should be given and a full response should be provided, at the latest, within 10 working days (which is the Council's performance target for answering all enquiries). The response should be provided on a confidential basis to the Member making the enquiry unless the original correspondence was copied to other Members or the Member agrees that this should happen.

Where the relevant Director or Head of Service considers that the cost of providing the information requested is unreasonable, the request may be declined. In such cases the relevant Group Leader should be advised.

If a Member is seeking information or advice on a politically contentious or controversial issue they should direct their request to the relevant Director or Head of Service. If a request is made of an Officer by a Member for information/advice of other than a factual nature, the Officer may need to liaise with their manager.

Where a Director or Head of Service provides general information to individual Group Leaders, spokespersons or Members, this information will also be provided to other Party Groups.

Where Officers consider that information is of a confidential nature which should not be openly available to the public or press, this information will be supplied by Officers to Members on a private and confidential basis. Any information provided to Members on this basis will be treated as such and will not be circulated outside the Council.

The Council's Access to Information Rules contain the formal legal provisions relating to access to documents by Members. This is supplemented in the Code of Conduct in relation to confidentiality.

### **13.3.7 Inspection of / Access to Documents (see also Access by the Public to Information Rules of Procedure)**

A Member of the Executive, Overview and Scrutiny Commission and other Committees or Sub-Committees, has the right to inspect documents about the business of that body. If not a Member of the specific body, they must satisfy the Chief Executive or the relevant Director why sight of the documents is necessary to perform their duties.

Except as otherwise provided, any Member of Council may inspect any document, or have access to information, held by the Council where such inspection or access is necessary to perform their duties as a Member of the Council.

A Member of Council is not entitled to inspect any document, or have access to any information about a matter in which they have a disclosable pecuniary or prejudicial interest or where the Member is acting against the Council in a professional capacity. However, this does not remove from the Member the basic rights of a member of the public.

The Chief Executive or relevant Director may, with good reason, refuse a Member of the Council access to, or inspection of, a document or other information. This is likely to be in cases where the information is of a highly sensitive or personal nature and the Member has not demonstrated adequately why they has a genuine 'need to know' about the information.

If a Member is not satisfied with a decision of the Chief Executive or relevant Director to refuse access to a document or information, they may refer it to the Monitoring Officer. If a Member remains dissatisfied, they may ask for the matter to be considered by the Standards Committee, who may decide to refer the issue to Council for decision.

### **13.3.8 Press Releases**

Arrangements for the issue of Press Releases will be in accordance with the Code of Practice on Local Authority Publicity. In particular, Council Press Releases will reflect the policies and decision of the Council, the Executive and Executive Members or other Member bodies, not the views of Party Groups. Press Releases will be available to all Members of the Council.

### **13.3.9 Members' Support Services**

Member Support Services will be provided through Strategic Support. These services will assist Members to discharge their various roles as elected representatives and cannot be used for party political or private purposes, or for any campaign unrelated to the Council's functions.

### **13.3.10 Review of Protocol**

This Protocol will be kept under review in the light of experience and will be reviewed at the request of the Leader of the Council and after the Council's Elections.

### **13.3.11 Links with Other Council Policies**

There are close links between this Protocol and the following Council policies:

- Members' Code of Conduct
- Officers' Code of Conduct
- Anti-Fraud Strategy
- Confidential Reporting Code
- Access to Information Procedure Rules

## **13.4 Members' Code of Conduct**

### **13.4.1 Purpose of the Code**

The Code of Conduct provides, by way of guidance to Members of Local Authorities, recommended standards of conduct in carrying out their duties, and their relationships with the Council and the Council's Officers.

The initial Code of Conduct was adopted by the Council at its meeting on 10 May 2012 and confirmed at a meeting on 16 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 1 July 2012. The revised Code was adopted at the Council meeting on the 12 December 2013.

Details of the Code of Conduct are attached at Appendix H to Part 13 (Codes and Protocols).

### **13.4.2 Leadership and Chairmanship**

A Member should not seek, or accept, the leadership of the Council if they, or any body with which they are associated, has a significant financial interest in, or is closely related to, the business or affairs of the Council. Likewise, they should not accept the chairmanship of the Executive, a Committee or Sub-Committee if they have similar interest in the business of that Committee or Sub-Committee.

### **13.4.3 Councillors and Officers**

Both Councillors and Officers are servants of the public, and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job

is to give advice to Councillors and the Council and to carry out the Council's work under the direction and control of the Council, Executive and/or its Committees and Sub-Committees.

Mutual respect between Councillors and Officers is essential to good local government. Close personal familiarity between individual Councillors and Officers can damage this relationship and prove embarrassing to other Councillors and Officers.

The law and the Council's Constitution lay down rules for the appointment, discipline and dismissal of staff. Councillors must ensure that they observe these scrupulously at all times. In all other circumstances, if they are called upon to take part in appointing an Officer, the only question they should consider is which candidate would best serve the whole Council. They should not let their political or personal preferences influence their judgement. They should not canvass the support of colleagues for any candidate and they should resist any attempt by others to canvass theirs.

#### **13.4.4 Use of Exempt, Confidential and Private Information**

As a Councillor or a Committee or Sub-Committee Member, they necessarily acquire much information that has not yet been made public and is still exempt or confidential. It is a betrayal of trust to breach such confidences. They should never disclose or use exempt or confidential information for the personal advantage of themselves or of anyone known to them, or to the disadvantage or discredit of the Council or anyone else.

#### **13.4.5 Gifts and Hospitality**

*(Further information is supplied at Appendix D)*

A Member should treat with extreme caution any offer or gift, favour or hospitality that is made to them personally. The person or organisation making the offer may be doing, or seeking to do, business with the Council, or may be applying to the Council for planning permission or some other kind of decision.

Members are personally responsible for all decisions connected with the acceptance or offer of gifts or hospitality and for avoiding the risk of damage to public confidence in local government.

#### **13.4.6 Expenses**

There are rules enabling Members to claim expenses in connection with their duties as a Councillor or Member of a Committee or Sub-Committee. These rules are set out in Part 14 (Members' Allowances Scheme) and must be scrupulously observed.

#### **13.4.7 Dealings with the Council**

A Member may have dealings with the Council on a personal level, for instance as a Uniform Business Rate payer or Council Tax payer, as a tenant or as an applicant for a grant or planning permission.

They should never seek or accept preferential treatment in those dealings because of their position as a Councillor or Member of a Committee or Sub-Committee.



They should also avoid placing themselves in a position that could lead the public to think that they are receiving preferential treatment in those dealings because of their position as a Councillor or Member of a Committee or Sub-Committee.

They should also avoid placing themselves in a position that could lead the public to think that they are receiving preferential treatment; for instance, by being in substantial arrears to the Council, or by using their position to discuss a planning application personally with Officers when other members of the public would not have the opportunity to do so (Planning Code of Conduct also refers).

Likewise, they should never use their position as a Councillor or Member of a Committee or Sub-Committee to seek preferential treatment for friends or relatives, or any firm or body with which they are personally connected.

#### **13.4.8 Use of Council Facilities**

A Member must always make sure that any facilities (such as transport, stationery, or secretarial services) provided by the Council for use in their duties are used strictly for those duties and for no other purpose. In relation to the use of ICT equipment supplied to Members, please see the ICT Protocol attached at Appendix F.

#### **13.4.9 Appointment to Other Bodies**

A Member may be appointed or nominated by the Council as a member of another body or organisation – for instance, to a Joint Authority or a voluntary organisation. They should always observe this Code in carrying out their duties on that body in the same way they would with their own Authority.

### **13.5 Officers' Code of Conduct**

#### **13.5.1 Introduction**

This Code of Conduct for West Berkshire Council employees sets out the expected standards of behaviour for employees of the Council other than those based in schools.

The public is entitled to expect the highest standards of integrity from local government employees and to know that decisions and actions taken are fair and impartial. Public confidence is shaken if there is the least suspicion, however ill-founded, that there has been improper conduct or that decisions and/or actions have been influenced by improper motives or pressures. Councils are expected to provide clear guidance to their employees on what is acceptable conduct and what is not.

The Council also has a right to expect high standards of conduct and loyalty from its employees. In delivering services Council employees should maintain the high standards of behaviour that the public is entitled to expect. Employees should also behave in a fair, courteous and supportive manner to colleagues within the Council, and operate within the Council's employment policies.

The Council has three organisational values which help guide its philosophy and culture. The values underpin what the employer,

employees and the public can expect in terms of delivery of services, standards and styles of management. These values are:

- **respect** in all relationships;
- **integrity** in everything we do;
- **efficiency** in reaching our goals

This Code of Conduct reflects those values and provides staff with information about the rules and standards expected of them.

Breaches of the Code of Conduct will normally result in disciplinary action being taken. Serious breaches may result in dismissal from the Council's employment.

The Code of Conduct is in three sections:

- Gifts and Hospitality
- Financial and Personal Interests, Other Employment and Activities and Confidentiality
- General Behaviour and Conduct.

### **13.5.2 Gifts & Hospitality - General**

The acceptance of gifts and hospitality is a sensitive area where actions can easily be misconstrued. Much of what is acceptable practice in the private sector is not acceptable in local government employment where actions of employees are open to public scrutiny. In deciding whether to accept gifts or hospitality, employees should consider how their actions might be considered by a member of the public; they should not be embarrassed to explain them. These guidelines will help to judge what sort of gift, and what level of hospitality is acceptable.

### **13.5.3 Rules and Procedure for Gifts and Hospitality**

Acceptance of gifts or hospitality should be the exception. If in any doubt, they should be refused.

- (a) Employees may accept small "thank you" gifts of token value, such as a diary, a coffee mug or bunch of flowers, if they have not asked for any such gift and if their manager agrees (in advance as far as possible). The manager must note all such gifts in the hospitality register (see (e) below). Gifts that their manager refuses permission to accept must be returned.
- (b) Employees should always say no if it is believed that the giver has an ulterior motive. They should be sensitive to the possibility that the giver may think that even small gifts or simple hospitality will elicit a more prompt service or preferential treatment.
- (c) Employees should not accept gifts or hospitality from anyone who is, or may be in the foreseeable future, tendering for any contract with the Council, seeking planning consent, seeking employment with the Council, or in dispute with the Council, even if the employee is not directly involved in that service area.

- (d) if an employee is in doubt about the acceptability of any gift or offer of hospitality they should consult the Head of Service or Corporate Director.
- (e) Employees must report in writing (if requested to do so) any offer of hospitality made to them. The manager will make sure it is entered in the gifts and hospitality register. Each Head of Service will keep a hospitality register to record any offer of a gift or hospitality, whether accepted or not and this should be reported to Strategic Support.

#### **13.5.4 Hospitality**

A gauge of what is acceptable hospitality is whether this Council would offer a similar level of hospitality in similar circumstances.

Occasional working lunches with customers, providers or partners are generally acceptable as a way of doing business provided that the frequency and costs are reasonable.

Invitations to corporate hospitality events must each be judged on their merit. Provided the general rules at 13.5.3 above have been taken into account, it may be acceptable to join other company/organisation guests at:

- sponsored cultural and sporting events, or other public performances, as a representative of the Council
- special events such as jubilee or millennium celebrations.

In all such cases, Corporate Directors or Heads of Service must be consulted. When deciding acceptability, employees and managers should take account of:

- the number of events attended
- the possible public perception of the attendance of employees at such events
- the appropriateness of the invitations, in terms of the level of hospitality, the frequency and the status of the invited employee.

Acceptance of paid holidays, concessionary travel rates, hotel accommodation or the use of company flats is not acceptable.

If an employee is visiting a company to view equipment that the Council is considering buying, expenses for the trip should be paid by the Council. Acceptance of refreshments and/or a working lunch may be acceptable, but care must be taken to ensure that the Council's purchasing and/or tender procedures are not compromised.

Acceptance of sponsored hospitality that is built into the official programme of conferences and seminars related to an employee's work is acceptable.

Offers to speak at corporate dinners and social gatherings, or events organised by, for example, a professional body, where there is a genuine need to impart information or represent the Council may be accepted if agreed in advance with the Head of Service. In such cases where a spouse or partner is included in the invitation, it is acceptable for them to attend as well, provided that expenses incurred, are met by the employee.

Any invitation accepted should be made to the employee in their professional/working capacity as a representative of the Council.

### **13.5.5 Rules Governing Interests**

Local Government employees must, at all times, be seen to be acting fairly and impartially and must consider how their actions appear to members of the public. Everything they do is open to public scrutiny. The public must never have reason to suspect that an employee's personal needs or interests or those of their family or friends influence actions or decisions.

Further details of personal or prejudicial interests can be found in Rules 13.4.5 and 13.4.6.

The following rules set out what constitutes an interest that may conflict with the interests of the Council and the actions that employees must take should such an interest exist.

- Financial interests can be either direct (e.g. an employee or family member making application for planning consent or a grant from the Council) or indirect (e.g. an employee or family member being a committee member of a club that is making such an application).
- A personal interest exists when an employee or their family or close friends or any organisation they belong to could at sometime gain or lose (other than financially) from an act or decision of the Council.
- Employees must disclose to the Head of Service if they have a friend, associate or relative who is involved in providing goods or services to the Council or who is receiving grants or benefits from the Council of a kind that they deal with directly or monitor in any way in the course of their work.
- If circumstances arise during employment in which the employee could exploit Council information or procedures they should inform the Head of Service in writing. The manager should be informed if the employee, their partner or a close relative:
  - is applying for a service or benefit that in the job the employee supplies, administers or influences; or
  - is or could be affected by a change to service delivery, enforcement or control procedures which in the job the employee carries out, administers or influences.
- An employee should register with the Council their membership with any organisation not open to the public that has secrecy about rules, membership and/or conduct, for example Freemasons.

Disclosures must be made in writing to the Head of Service, with a copy to the Head of Human Resources. The Head of Service will enter brief details of the disclosure in a register that is open for inspection by elected Members of the Council, but not the general public. Disclosures will also be circulated to other Heads of Service for the attention of any Officers who might need to know.

The Head of Human Resources will liaise as appropriate with the Head of Finance and the Audit Manager, who will also have access to any disclosures.

### **13.5.6 Other Employment and Activities**

Employees must not engage in any additional employment, unpaid appointments or other outside activity which conflicts with the Council's interests or which could damage public confidence. In some circumstances permission must be sought before taking on additional employment, as follows:

(a) **Senior Employees**

Senior employees (on or above spinal column point 33) must not engage in any other business or take up any additional appointment or employment without the written consent of their Head of Service.

(b) **All Employees**

There is no requirement for employees on spinal column point 32 or under to obtain the consent of their Head of Service before taking up additional employment. However, all employees must inform their manager if they do so because the Working Time Directive requires employers to know the total number of hours worked by their employees.

The Council owns any inventions, writings and drawings created in the course of employment (intellectual ownership). Employees must obtain their Head of Service's written permission to publish or use this material for any other purpose.

Employees should consider with caution any requests to do private work, using their professional/technical skills, and must always be aware of the potential for conflict of interest and damage to public confidence in those circumstances.

### **13.5.7 Confidentiality**

Some Council documents are public documents e.g. the Constitution and Complaints Procedures. Other information is strictly exempt/confidential e.g. personal information about staff and clients and tendering information. Such information must not be made public or disclosed without authorisation.

Employees must not disclose any information that is exempt and/or confidential or that, if it were made public, might lead to a breakdown in the trust and confidence that the Council is required to provide to the public and therefore to expect of its' employees. It may be necessary to discuss confidential information with colleagues, but sensitive information should not be discussed in public, where it may be overheard. Employees should not disclose exempt/confidential information gained through employment in a social or public setting.

Employees must not pass any information, or make comment, to the press or other media unless they are expressly authorised to do so. Media enquiries in particular should be handled with care and employees should notify the appropriate Head of Service and the Public Relations Team if they have been approached by the media.

### **13.5.8 Recruitment and Appointment**

If an employee is involved in recruitment or making an appointment, they must apply the Council's Recruitment and Selection processes, and ensure that fairness and equity is applied at all stages.

Employees involved in recruitment or making an appointment, must inform their manager if they are closely associated with any of the candidates (e.g. they are a relative or close friend).

Employees making a work-related application to the Council (e.g. for a different job, secondment or development opportunity) must disclose to the decision-maker any information that could affect the outcome or cause public concern, (e.g. the relationship to an important contractor or client of the service or a conviction relevant to the work). They must not seek the help or influence of Members of the Council or senior employees.

### **13.5.9 General Conduct**

All employees are expected to apply the Council's values to all aspects of their behaviour and conduct at work. The Council has an Equality Policy that must be applied in all dealings with work colleagues as well as with those individuals and organisations that employees have contact with in their work.

The Council has agreed Disciplinary Rules, which contain examples of conduct which is unacceptable. Employees must make themselves aware of the content of these rules.

The Council expects the conduct of its employees to be such that no justifiable complaint can be made by members of the public, other bodies and agencies, other employees, managers or Council Members. Any complaints about inappropriate conduct will be dealt with using the Council's Disciplinary Procedure.

All employees are expected to comply with the law relating to their work and general conduct. If they break the law outside of working time and the offence is one that could damage public confidence or have a direct effect on their work, they may be subject to disciplinary procedures.

All employees are expected to treat the equipment and facilities that they use at work with care. Abuse of Council property and facilities will be considered as a serious matter and dealt with under the Disciplinary Procedure.

### **13.5.10 Dress and Presentation**

The Council expects its employees to dress in a manner that gives a good impression to the public, and is suitable for the type of work being carried out. Clothes should provide sufficient cover at all times of the year. Managers will advise employees of the type of clothes that are appropriate for the type of work they are employed to do.

Employees who are required to wear a uniform must conform to those requirements. If they have personal, cultural or religious objections to these requirements, they must raise them with their Head of Service, who will consider each case on its merits and take appropriate action, including

using the Council's agreed procedures where appropriate, seeking advice from Human Resources where necessary.

Clothes should be clean and tidy unless soiled by work duties on that day.

### **13.5.11 Service Delivery**

Employees must treat all service users with courtesy and respect. If a service user is aggressive or offensive, an employee may firmly and politely end their interaction with him or her or summon assistance, but they should not be aggressive or rude in response. They should inform their manager in writing immediately of details of any aggressive or offensive customer or colleague they have dealt with. Details of the protocol that operates in each service area for dealing with aggressive or offensive customers should be provided by the Head of Service.

Training programmes are provided for staff to help develop ways of dealing with difficult customers appropriately. Managers should provide details if an employee believes it may help them in their job.

It may be necessary for security staff to use reasonable force to remove a person who has acted violently and refused to leave the premises. Employees who are directly assaulted may be entitled as a last resort to take reasonable action to defend themselves, but over-reaction can constitute a criminal offence. The Council will support and take appropriate action on behalf of employees who are assaulted in the course of their duties.

Employees should try at all times to make service users feel that they are receiving the best attention. Every effort should be made to satisfy the service user or enquirer at their first point of contact. If an employee needs to refer the enquiry or matter to another member of staff or another agency, they must explain the reason why.

### **13.5.12 Working with the Manager**

Managers should deal with staff courteously, reasonably and fairly at all times.

Managers will use the Council's Employee Performance Management scheme to appraise performance and provide feedback. They will define expectations and advise on how to improve and deal with any concerns they may have about an employee's work.

Managers should provide advice relating to the Council's human resources policies and provide access to appropriate training and career development within the context of budget and service delivery needs.

Managers will support staff in the proper performance of their duties, including assistance, where necessary, in dealing with other employees or members of the public.

Employees should treat managers with respect and courtesy and carry out any reasonable and lawful instructions their manager gives them to the best of their ability.

Employees should complete any document, form or record in an honest way and never damage, alter or falsify them.

Employees have a responsibility to report any breaches of disciplinary or other Council rules.

### **13.5.13 Working with Councillors**

Employees must be both polite and efficient, when dealing with enquiries from elected Members while working within whatever procedures apply in each Service. Councillors must deal with employees courteously and reasonably.

Employees must not discuss any personal matters to do with the job with Members directly, but must go through agreed Council procedures, such as grievance and appeals procedures or consultative panels. Allegations or claims about other employees must be taken up with an appropriate manager and not with Members.

Employees must not use Members to bypass formal Council procedures in any way, for example to influence the outcome of any disciplinary matter. This does not affect the rights of trade unions to take up matters on behalf of their members through the recognised channels, or for Members to be formally involved in Council procedures when appropriate - for example as a witness.

Employees must not try to influence Members prior to any appointment, although this does not preclude them from approaching their local Ward Councillor in their role as their elected representative.

### **13.5.14 Working with other Employees**

Employees should show respect for their colleagues and should not disrupt or hinder their work in any way.

All forms of bullying, including violence or verbal aggression towards colleagues is unacceptable and will be dealt with under the Disciplinary Procedure. It is not acceptable for employees to abuse their position with the Council to take advantage of other employees. If there are important issues that they cannot resolve amicably with another employee, they must make the situation known to their manager.

All forms of harassment, including on the grounds of sex, race, religion or belief, sexual orientation, age, gender identity, political affiliation, or membership of a trade union, are unacceptable. The Council's approach is set out in the Responding to Bullying and Harassment Policy. Allegations will be investigated and dealt with under the terms of the Disciplinary Procedure where necessary.

Personal relationships with colleagues who would have a line or other management relationship must be declared on appointment. If close personal relationships develop between colleagues who have a management relationship the employees concerned must inform their Head of Service. This information will be treated with confidentiality.

### **13.5.15 Smoking, Alcohol and Prescription Drugs at Work**

The Council operates a no smoking policy. This applies to all Council buildings and those where Council services are provided. It also applies when transporting customers in Council or private vehicles.



Employees should not consume alcohol when they are on duty unless agreed beforehand by their manager for specific occasions.

Employees should ensure that any alcohol which is consumed whilst off duty but during the normal working day will not damage the reputation of the Council. For certain types of work, for example those which involve operating heavy machinery, driving Council vehicles and working in Social Services, it is not acceptable to consume any alcohol during the working day. Managers must provide employees with details of local arrangements.

Prescribed drugs may be taken on the condition that they do not interfere with service delivery. If an employee is taking prescribed drugs that may affect their behaviour and/or their performance they should inform their line manager, who will take a view on their attendance at work.

### **13.5.16 Working with Money and making Financial Claims**

Employees receiving or responsible for public money need to take particular care. Monies collected on behalf of the Council must be banked by them or otherwise passed to responsible Officers without undue delay.

All processes and procedures laid down for the management of the Council's financial affairs must be followed, including Financial Regulations, Standing Orders and the Council's Anti-Fraud and Anti-Corruption Policy.

Claims submitted to the Council for reimbursement of expenditure or for legitimate allowances, the correct procedures must be followed and details of the claim are within set limits, are correct and can be substantiated.

### **13.5.17 Working Safely**

The Council and its employees have statutory responsibilities for ensuring that a healthy and safe working environment is maintained. These are set out in the Council's Health and Safety Policy.

Actions or omissions of any individual that place others in danger may lead to disciplinary action.

Employees are expected to:

- adhere to the Council's Health and Safety Policy and the safety rules relating to their particular service;
- make known to their manager any unsafe situations or practices that they become aware of;
- take appropriate steps to ensure the health and safety of other employees and any other users of the Council's premises;
- wear any safety clothing and use any safety equipment provided for work;
- report promptly any injuries, accidents or near misses suffered at work;
- report incidents of abusive/aggressive or bullying/threatening behaviour experienced by the employee or they come into contact with during their work;

- tell their manager if they are taking any medications that could affect their ability to work safely;
- comply with hygiene requirements.

### **13.5.18 Protecting the Council and its Standards**

The Council needs its employees help to ensure that West Berkshire can continue to be a fair and equitable provider of services, a safe and rewarding place to work and a local authority with the highest standards and reputation. It recognises that employees are often the first to know when things are going wrong in the Council's operations.

However, there may be reasons why employees are reluctant to draw attention to their concerns e.g. they feel that reporting on colleagues, managers or elected Members is disloyal; they are worried that they may not be believed or they are afraid of possible victimisation or future disadvantage.

The Council values employees and others who are prepared to acknowledge when things are not right and to bring such matters to the attention of others that can deal with them. Only by encouraging those people to report inappropriate or unlawful conduct can the Council protect its reputation and maintain its high standards.

Improper or unlawful conduct can cover a wide range including financial irregularity; abuse of clients; abuse of power or position; neglect of duty; sexual or racial discrimination; bullying or harassment.

If an employee detects or has reason to suspect that colleagues, managers or elected Members are acting improperly, the Council has a reporting process that can be followed without fear of victimisation, discrimination or disadvantage. The process is set out in the Council's Confidential Reporting Policy (often referred to as the whistle blowing policy.)

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# Appendix A

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## West Berkshire Code of Conduct for Planning

March 2014

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### 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 paragraph 13.5 of 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 used to assess the impact of the proposed development on any locality.
- 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 must 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.



## Predisposition, Predetermination or Bias, and the Code

Both predetermination and bias have proved to be difficult and controversial issues for many members and monitoring officers.

Although they are judge-made, common law issues, and not part of the Code of Conduct, the Standards Board for England has agreed to publish this occasional paper to help clarify the issues.

Based on advice from leading treasury counsel Philip Sales QC, which can be found on our website, this paper aims to clarify the issues involved and includes examples of where members are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.

**Sir Anthony Holland**  
**Chair, the Standards Board**  
**for England**

### What is predisposition?

It is not a problem for councillors to be predisposed. Predisposition is where a councillor holds a view in favour of or against an issue, for example an application for planning permission, but they have an open mind to the merits of the argument before they make the final decision at the council meeting.

This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. They may even have been elected specifically because of their views on this particular issue.

### **What is predetermination or bias?**

Predetermination or bias can lead to problems. It is where a councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the issue without taking them into account.

Councillors must not even appear to have already decided how they will vote at the meeting, so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

Rarely will membership of an organisation, such as a national charity, amount to predetermination or bias on its own unless it has a particular vested interest in the outcome of a specific decision that a councillor is involved in making.

### **Making the decision**

There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.

When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome on the basis of their support of a general policy. This is as long as they are prepared to be open-minded and consider the arguments and points made about the specific issue under consideration.

### **How can predetermination or bias arise?**

The following are some of the potential situations in which predetermination or bias could arise.

### **Connection with someone affected by a decision**

This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.

#### *Example*

A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a member panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.

Contrast this with:

The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and has no involvement with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.

### **Improper involvement of someone with an interest in the outcome**

This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.

#### *Example*

A local authority receives an application to modify the Definitive Map of public rights of way. A panel of members is given delegated authority to make the statutory Order. They have a private meeting with local representatives of a footpath organisation and other interest groups before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.

### **Prior involvement**

This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.

#### *Example*

A councillor of a local highway authority who is also a member of a parish council that has been consulted about a road closure could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.

### **Commenting before a decision is made**

Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. However, if the councillor has made comments which suggest that they have already made up their mind, they may not take part in the decision. If the councillor is merely seeking to lobby the meeting at which the decision is taking place, they are not prevented by the principles of predetermination or bias from doing so. There is no particular reason why the fact that councillors can do this, in the same way as the public, should lead to successful legal challenges.

#### *Example 1*

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the



recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

*Example 2*

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new members who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The Council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

## **Conclusion**

Councillors are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.

The Standards Board for England  
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## Appendix B

# Protocol for Decision-Making by Individual Executive Members

## 1. Introduction

At its Annual Meeting on 7 May 2002, the Council approved a protocol for decision making by Individual Portfolio Members. The Protocol was drafted on the basis that individual Portfolio Members would not have powers to make “key decisions”. These are defined by the Government (Regulation 8 of the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2001) as:

- (i) Those which result in the Local Authority incurring expenditure which is, or the making of savings which are, significant having regard to the Local Authority’s budget for the service or function to which the decision is related.
- (ii) Those which are significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Local Authority.

It was found that this protocol was too restrictive, particularly in relation to the second definition of a “key decision”, which restricted decisions to single wards or electoral divisions.

The Council, at its meeting on 17 December 2002, therefore agreed the following list of exceptions to the “key decisions”:

- (i) All decisions relating to Highway Matters which are within the approved budget and policy framework;
- (ii) With the exception of those strategic plans, strategies and policies requiring Council approval (as set out in Article 5 of the Constitution) decisions relating to all other plans, strategies and policies that the Council is required to produce;
- (iii) The Council’s response to Government and other consultation documents;
- (iv) Appointments to outside bodies.

A further exception was agreed at the Council meeting on 4 May 2004:

- (v) Insofar as the Public Rights of Way issues referred to in Part 3 of the Constitution (Scheme of Delegation) Rule 3.13.8 (Notices and Orders in Relation to Highways and Public Rights of Way) and 3.14.1 (Countryside including Rights of Way Functions) are concerned, it is proposed that, where these issues affect more than one Ward, whether objections are received or not, the decision shall be the subject of the Individual Decision-making process.

At the Council meeting on the 13 December 2005 the list of exemptions to “key decisions” was extended to allow the following to be the subject of the Individual Decision-making process:

- (vi) the Leader of the Council to approve the Council’s Forward Plan for subsequent publication in accordance with the Local Government Act 2000 later replaced by the The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

At the Council meeting on the 22 September 2011 the list of exemptions to “key decisions” was extended to allow the following to be the subject of the Individual Decision-making process:

- (vii) Annual Reports and Statement of Purpose – e.g. Castlegate, Fostering and Adoption Annual Reports;
- (viii) Permission to go out to consultation – e.g. Home to School Transport and School Admissions.

A step by step guide to the Individual Decision Making Process is attached as Appendix B1 to this protocol.

## 2. West Berkshire Council Forward Plan

Subject to the provisions contained in Part 5 (Executive Rules of Procedure) Rule 5.4.6 (General Exception) and Rule 5.4.7 (Special Urgency) of the Constitution all decisions to be made by Executive Members **must** be included in the West Berkshire Council Forward Plan.

A Forward Plan Submission Form **must** be completed and returned to Strategic Support in all cases. Deadlines for items to be included on the Forward Plan must be strictly adhered to. Failure to comply with these deadlines will result in the decision(s) having to be delayed by a further month. Revised regulations now require the forward plan to be published 28 clear days’ before a key decision can be taken. It should be noted that “clear days” means working days, from midnight to midnight, and excludes weekends and public holidays, so 28 clear days equates to around 5½ normal weeks.

The provisions contained in Rules 5.4.6 and 5.4.7 will apply when a decision is deemed to be urgent. The rules relating to call-in set out in the Rule 5.3 will not apply in the case of urgent decisions.

## 3. Dates when Individual Decisions can be made

The Executive Member will make their decision at a meeting with the relevant Corporate Director or their representative. An Officer from Strategic Support must also be in attendance. **It is the responsibility of the Service Areas to ensure that the Executive Member is aware of the forthcoming item and agrees the date when the decision will be taken.** In the absence of the Executive Member (and with their agreement) the Leader or Deputy Leader of the Council can be authorised to make a decision on their behalf at a meeting. The date and time of the meeting will, however, be at the discretion of the relevant Executive Member.

## 4. Formal Written Report

A written report will be prepared by the relevant Corporate Director or Head of Service. The report shall include the following information:

- The name of the Executive Member within whose portfolio the issue falls
- The issue to be decided with reasons for the decision
- Supporting information – a summary of the facts relating to the matter under consideration. This section of the report should confirm that the proposed course of action is in accordance with the approved policy and budget framework. It should also include all the necessary corporate implications (e.g. finance, personnel, legal etc)
- The Officer's recommendation and the reasons for that recommendation
- Other options considered (where appropriate)
- A list of background papers
- Implications e.g. policy, financial, personnel, etc
- Any consultations undertaken, **the method of consultation** and a summary of any representations
- A report which contains confidential or exempt information must state the reasons why such information is contained (Rule 8.10.4 refers).

The report should be e-mailed to Strategic Support seven clear working days before the decision is due to be made. This is in order that it can be sent out to all Members five clear working days prior to the decision being made. The five clear working days do not include the day of the meeting or day of despatch of the report. A copy of the Decision Record Notice should be completed by the Service Area and e-mailed with the report.

## 5. Decision Record Notice

An Officer from Strategic Support will bring a copy of the relevant report with the partially completed Decision Record Notice to the Decision Meeting. Prior to the meeting the Corporate Director or their representative will check with the Executive Member that they are content with the decision notice.

The Decision Record Notice shall contain the following information:

- The issue to be decided with reasons for the decision
- Other options considered (where appropriate)
- Any consultations undertaken and a summary of comments received. (including other Members consulted if appropriate)
- A list of background papers
- If the report contains confidential or exempt information this must be stated with the reasons why such information is contained (Rule 8.10.4 refers).
- Whether or not any Member consulted in connection with the matter or participating in the making of the decision has declared a conflict of interest under the Local Code of Conduct.

- If a conflict of interest has been declared, a copy of the minute of any dispensation granted by the Standards Committee or Monitoring Officer should be attached to the decision notice (if appropriate).

After each decision has been taken, the Executive Member, Corporate Director or their representative will finalise and sign the Decision Record Notice. The report and Decision Record Notice will then be handed over to the attending Officer from Strategic Support who will also sign it and a copy of the Notice will be sent to the Corporate Director or their representative for their records.

The Decision Record Notice will then be made available via the Council's website.

## **6. Call-In**

Decisions will usually be subject to call-in. The call-in procedure shall not apply where the decision taken by the Portfolio Holder has to be implemented before the expiry of the call-in period. This will only be the case if one of the following applies:

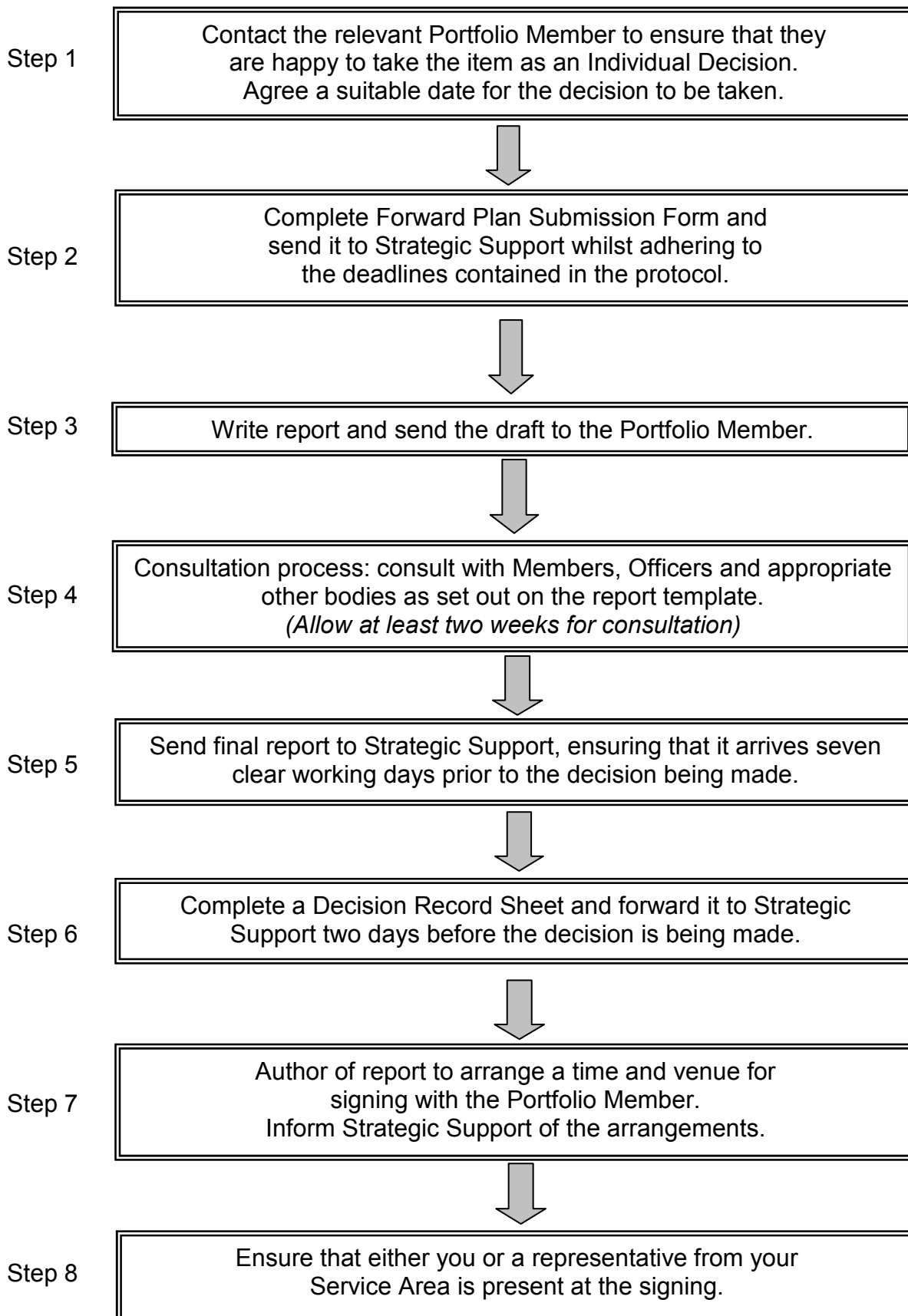
- If there were a delay in implementing the decision, this would have serious financial implications for the Council or could compromise the Council's position.
- The item has been considered by the Overview and Scrutiny Management Commission, or has been the subject of a review undertaken by another body e.g. Task Group, within the preceding six months.
- The item is deemed an Urgent Key Decision as set out in Rule 5.4.7 (Special Urgency – Key Decision).
- Reports that do not require a decision and are for information only will also not be subject to 'call-in'.

The reason why the item is "not subject to call-in" must be specified in the report. In the event of a dispute over the reason why the item is "not subject to call-in" the Monitoring Officer or the Section 151 Officer will be the final arbiter.

In the event that an item is called in, an Officer from Strategic Support will inform the relevant Corporate Director and/or Head of Service if the item has been called-in. If the item has not been called-in after five clear working days have elapsed the decision can then be implemented.

# Appendix B1

## Individual Decision Making Process



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## Appendix C

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# Procedure Rules for Dealing with Representations

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## 1. Petitions

### 1.1 Introduction

- (a) This is the Petition Scheme for West Berkshire Council made under Section 11(1) of the Local Democracy, Economic Development and Construction Act 2009 ('The 2009 Act').
- (b) The Scheme was originally approved at the full meeting of West Berkshire Council on 23 September 2010 and is available on the Council's website.
- (c) The Council reviewed the Scheme at the full Council meeting on the 19 September 2013. In line with best practice the scheme will be reviewed in September 2016 or such earlier time as may be required.
- (d) The purpose of this scheme is to establish a clear process for petitions submitted to West Berkshire Council to be handled in accordance with the legislation (Sections 10-22 of the 2009 Act).
- (e) The Council welcomes petitions and recognises that they are one way in which people can let the Council know about their concerns. Petitions have a long tradition and can be useful in suggesting levels of support for various proposals. West Berkshire Council has long had procedures in its Constitution for Ward Councillors and members of the public to bring petitions to the Council by various means. This Petition Scheme merely clarifies, extends and strengthens those procedures, in accordance with 2009 Act.
- (f) Advice on petitions can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD, via the telephone on (01635) 42400 or email [petitions@westberks.gov.uk](mailto:petitions@westberks.gov.uk).

### 1.2 What is a Petition?

- (a) West Berkshire Council defines a petition as 'any communication which is signed or sent to us on behalf of a number of people'. For practical purposes, there is normally a minimum requirement of at least **50 signatories** before it is treated as a petition. Exceptions can be made in special cases at the discretion of the Council's Monitoring Officer.
- (b) Whilst the Council is keen to hear from people who live, study or work in West Berkshire, this is not always a requirement. A petition from 50 visitors about, for example, the quality of tourism facilities in the district would qualify under the Petition Scheme.

- (c) A petition must include:
- (i) **A clear and concise statement of the concerns and what West Berkshire Council is being asked to do.** The subject matter must relate to the West Berkshire District or to something which the Council has responsibility for or over which it has influence. Where the petition relates to a matter which is the responsibility of another public authority the Council will ask the petition organiser whether they would like to redirect the petition to that authority. Where the petition relates to a matter over which West Berkshire Council has no influence or responsibility, the petition will be returned to the petition organiser with an explanation for that decision.
  - (ii) **The name and contact details of the ‘petition organiser’.** This should normally be the person whom the Council will contact to explain how the Council will respond to the petition. This can be either a postal address or an email address. This need not appear on the website. If the lead signatory chooses to relinquish their role as petition organiser another signatory can and must be elected as lead signatory.
  - (iii) **The names of at least 50 valid petitioners (in most cases this will mean that they live, work or study in West Berkshire),** which may include the petition organiser. In some instances it would be appropriate to require fewer signatures but this will be at the discretion of the Council’s Monitoring Officer. On a paper petition actual signatures from each petitioner would be preferable but this is not essential. Petitioners will be required to provide verifiable details that they live, work or study in West Berkshire. Signatures from others (e.g. visitors) may be considered if they are relevant to the issue in the petition subject. These details need not be published.
  - (iv) For certain types of petition, the number of petitioners will be higher (see sections below ‘A Petition for Debate’ and ‘A Petition to Hold an Officer to Account’)
  - (v) If a petition is produced in response to a consultation that the Council is conducting on a specific matter, please clearly identify the consultation it relates to, to enable the petition to be handled along with other responses to these matters. (see paragraph 1.3(a) below)
- (d) Petitions which are considered to be vexatious, abusive or otherwise inappropriate (e.g. relating to information on an individual(s)) will not be accepted.
- (e) In the period immediately before an election or a referendum Council Officers may need to deal with the petition differently. The reason will be explained to the petition organiser.
- (f) Where the guidelines are not followed the Council may decide not to do anything further with the petition.



### 1.3 Submitting a Petition

- (a) When a petition is submitted in response to a consultation by West Berkshire Council, or to a planning or licensing application it should be directed to the return address specified in the consultation details or in the public notice regarding the application. This will ensure it is considered at the appropriate time in relation to the matter in which it was intended to be considered.
- (b) For all other petitions, there is a choice of means of submitting them:
- (i) **Paper petitions** should be addressed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury RG14 5LD.
  - (ii) **Email petitions** should be sent to [petitions@westberks.gov.uk](mailto:petitions@westberks.gov.uk). The Petitions Officer will send an acknowledgement that the petition has been received within five clear working days.
  - (iii) **Online petitions** can be submitted by following this link [www.westberks.gov.uk/petitions](http://www.westberks.gov.uk/petitions). The Council will issue a formal acknowledgement within five clear working days of the initial submission. During this time the Petitions Officer will act as a 'moderator' and establish if there are any difficulties. The Petitions Officer will contact the organiser and endeavour to resolve these issues so that the petition can open for signatures. Petitioners signing the online petition will be required to provide verifiable details (including: names, addresses and postcodes).
  - (iv) **Presented to a meeting of the Executive.** These meetings take place on a six weekly basis, dates and times can be found on the [Executive Meetings](#) page of the Council's website.  
  
Where notice of a petition is given to the Head of Strategic Support by 10.00am seven clear working days before the meeting, details will be included in the summons or agenda. Members of the public may speak for up to five minutes on that petition at the meeting. No further debate shall take place unless the relevant body receives a report on the matter. The petitioner will be notified within three clear working days as to where the petition will be referred. However, if the petition relates to a matter on the agenda for the meeting of the Executive, it shall be dealt with at that meeting.
  - (v) Petitions can also be submitted by Elected Members at Full Council meetings. Dates and times can be found on the [Council Meetings](#) page of the Council's website. Petitions may not be submitted at the Annual (May) or Budget Council (March) meetings. Petitions can also not be presented at extraordinary meetings of Council.
- (c) The petition, however it is submitted, will be entered on the Council's petitions website. The website will be regularly updated with information concerning the progress of the petition and this information will be publicly viewable. Whenever possible we will also publish all correspondence relating to the petition (all personal details will be

removed). The Petition will remain open for 90 calendar days unless otherwise agreed with the Petition Organiser.

- (d) Petitioners will be notified, within 10 clear working days of receipt of the completed/closed petition, what the Council plans to do with the petition and when they could expect to hear from the Council again. If the petition has enough signatures to trigger a Council debate or a senior Officer giving evidence (see 1.4(e) and (f)) then the acknowledgement will confirm this and tell you when the meeting will take place. Relevant Ward Councillors will be notified in writing that a petition has been submitted which particularly affects their Ward(s).
- (e) The Council has a duty to verify signatories to all petitions, using publicly available databases. This is to prevent the misuse of personal information by petition organisers, for example the use of names, email addresses or signatures without permission of the person – or the use of non-existent persons' names.
- (f) Petitions relating to planning and licensing applications will normally be received by Officers during the planning or licensing consultation process. Normal deadlines to these consultations apply. Petitions received after the deadlines will not be accepted.
- (g) If the petition forms part of a statutory process, or where there is an existing appeal mechanism in place (for example council tax banding) other procedures will apply.
- (h) Petitions cannot be a duplicate or a near duplicate of a similar petition received or submitted within the last 12 months.

#### 1.4 Types of Petition and next steps

- (a) There are five different types of petition which are outlined below. How the Council deals with a petition will depend on which category it falls into:
  - Ordinary Petitions
  - Consultation Petitions
  - Statutory Petitions
  - Petitions for Debate
  - Petitions to Hold an Officer to Account
- (b) **Ordinary Petitions.** These are petitions which do not fall into any of the following specific petition categories. Please note that any petitions raising the issue of possible Councillor misconduct will be taken as complaints arising under the Local Government Act 2000 and the Localism Act 2011 and will be reported to the Standards Committee and not dealt with under this Petition Scheme.
- (c) **Consultation Petitions.** These are petitions in response to an invitation from the Council to comment on a particular proposal, policy or application. For example, planning or licensing applications or proposals concerning speed limits. Consultation petitions which are received by the closing date of the consultation will be reported at the

relevant meeting or to the relevant person taking the decision in question. This will not be impacted on by this process.

- (d) **Statutory Petitions.** Certain Acts of Parliament require the Council to consider petitions. Examples of statutory petitions include those for a directly-elected Mayor or for a review of Parish Councils. When a Statutory Petition is submitted then it will be processed in accordance with statutory requirements.
- (e) **Petitions for Debate.** For a petition to be reported to a Full Council meeting for debate by the elected Members of West Berkshire Council, it must contain a minimum of 1,500 petitioners. Where a petition relates to a local issue, affecting no more than two electoral wards in West Berkshire, this requirement may be reduced to 500 per ward at the discretion of the Monitoring Officer. In order to ensure that this is dealt with appropriately, the two Leaders must agree that the subject for debate is of real significance locally to the people of West Berkshire and its immediate surrounding area. Failure of the two Leaders to agree will result in automatic referral to the Monitoring Officer, whose decision shall be final.
- (f) Where a Full Council meeting debate is triggered by a petition, and the Leaders (or Monitoring Officer) agree that the subject matter is of real significance locally, the Petition Organiser or their nominated spokesperson will have up to five minutes to present their petition and the petition will then be discussed by Councillors for a maximum of 15 minutes. The Council may decide to take the action the petition suggests, not to take the action requested for reasons put forward in the debate or to commission a further investigation into the matter.
- (g) **Petitions to Hold an Officer to Account.** For a petition to be considered at a meeting of the Overview and Scrutiny Management Commission (OSMC) where an Officer identified either by name or by post will be required to answer questions on a particular matter, the petition will need to contain a minimum of **750 petitioners**. Where a petition relates to a local issue, affecting no more than two electoral wards in West Berkshire, this requirement may be reduced to **500 at the discretion of the Monitoring Officer**.

A petition falling into this category must relate to the Chief Executive, a Corporate Director or a Head of Service. Please note that where a petition raises issues of competence or misconduct, the petition will be referred to the Chief Executive (or the Head of Human Resources in the case of the Chief Executive) for consideration under the Council's Capability Procedure and/ or Disciplinary Procedure. Such petitions will not be dealt with under this Petition Scheme.

### 1.5 The Petitions Website

- (a) West Berkshire Council keeps a petitions webpage at [www.westberks.gov.uk/petitions](http://www.westberks.gov.uk/petitions). When a petition is received, the Petitions Officer will open a new public file on the website within 10 clear working days and place in that file the subject of the petition, the date it was received and the number of petitioners. This will not apply to Planning and Licensing petitions which will be dealt with under the relevant processes.

- (b) The petition organiser's name and contact details will only be included on the website if the organiser has requested this.
- (c) Once it has been determined who within West Berkshire Council will consider the petition and when that consideration will take place, this information will be entered on the website and sent to the petition organiser at the same time.
- (d) As soon as the petition has been considered, the Council's decision will be notified to the petition organiser and put on the website within five clear working days of the decision being taken.

### **1.6 Ward Councillors and petitions**

- (a) All Petitions will be notified to all Council Members, upon receipt unless resolved directly as in paragraph 1.7(c). This is to ensure that Council Members are informed as to the receipt and progress of **all** petitions that affect them as Ward Members, because **all** petitions could in theory end up as Petitions for Debate.
- (b) Where a Petition appears to affect not more than two Wards, unless a Member challenges this within 10 working days, the Petitions Officer will inform the organiser that a reduced number of signatures is sufficient to make the Petition come to Full Council for Debate, if requested.
- (c) Nothing in the Petitions Scheme affects the right of Ward Members to present Motions to Full Council for debate. Such Motions may be based upon Petitions that fail to reach the required number of signatures under this Scheme.
- (d) When a petition is referred to a person or body within the Council who has the authority to take a decision on the subject matter, the Ward Member(s) representing any affected ward(s) will be invited to attend and address the person or body making the decision for no more than five minutes (each), immediately after the petition organiser

### **1.7 Process when a petition is received**

When a petition is received by West Berkshire Council:

- (a) Within five clear working days of its receipt, the Petitions Officer will acknowledge receipt to the petition organiser. The Ward Councillor will be notified of the submission. The Petitions Officer will open a new public file for the petition on the petitions website. The petition file will include:
  - the subject matter of the petition;
  - the date the petition was received and the closing date for receipt of additional signatures;
  - the number of petitioners (this will be updated weekly);
  - the action being taken by the Council to consider the matter including the date of any public meeting.
- (b) The name and contact details of the petition organiser will only be included if requested.
- (c) In some instances the Petitions Officer may be able to resolve the petitioners' request directly by getting the relevant Executive Member or

Officer to take direct action. An example of this could be a case of fly-tipping. The Petitions Officer will then ask the petitions organiser whether they consider the matter to have been resolved.

- (d) Unless the matter has been resolved directly as described in 1.7c above, the Petitions Officer will within ten clear working days of receipt of the petition provide a response to the petition organiser which sets out:
- who the petition will be reported to for consideration;
  - when and where that consideration will take place;
  - the number of signatures required for the petition to be debated at Full Council under 1.4(e).
  - an invitation for the petition organiser or their nominated representative to attend and address the meeting for up to five minutes on the issue covered by the petition.
  - NB The invitation to the petition organiser or their nominated representative to address that meeting is in addition to any other existing public speaking rights at that meeting. This does not apply to Planning and Licensing petitions which are dealt with under separate processes.
- (e) When responding to the petitions organiser (1.7d), the Petitions Officer will also forward the same information to the relevant Executive and Shadow Executive Members and Ward Councillors.
- (f) The Petitions Officer is responsible for updating the website so that progress in dealing with the petition can be tracked.
- (g) At this point the process varies depending on the different type of petition.

### **1.8 Process when a Consultation Petition is received**

- (a) Submitted in response to an invitation from the Council to contribute on a particular proposal or application. Consultation Petitions will be reported to the relevant person or body at the meeting when they are due to take the decision on that application, appeal or proposal. The Council's Constitution sets out who will take different types of decisions under the Scheme of Delegation, terms of reference of Committees, Commissions and Sub-Committees.
- (b) All planning and licensing applications (except where powers are delegated to officers under the Constitution) will be determined by the relevant Planning Committee or Licensing Sub-Committee and Traffic Regulation Orders by Individual Decision of the Executive Member for Highways and Transport where objections to the orders are received.

### **1.9 Process when a Statutory Petition is received**

Where a petition is submitted under a specific statute, for example a petition for a directly-elected Mayor, it will be reported to the next available meeting of the Council, in accordance with the requirements of the statute in question.

### **1.10 Process when a Petition for Debate is received**

- (a) Petitions for Debate will be reported to the next scheduled meeting of Council unless the matter is deemed urgent, in which case an Extraordinary meeting of Council may be convened. Petitions will not be considered at the Annual Meeting of Council, the Budget meeting or at Extraordinary Meetings of Council unless they are specifically arranged to consider the subject matter of the petition.
- (b) The petition organiser will be invited to address the meeting for up to five minutes on the subject of the petition.

### **1.11 Process when a Petition to hold an Officer to Account is received**

- (a) Petitions to hold an officer to account will be reported to the next convenient meeting of the Overview and Scrutiny Management Commission (OSMC).
- (b) In advance of the Commission meeting, the petition organiser will be invited to submit a list of questions the organiser would like to put to the Officer at the meeting. These questions will be provided to the Chairman and Vice Chairman of the Commission, who will decide whether they are appropriate, and to the Officer concerned, in advance of the meeting.
- (c) At the meeting of the OSMC, the Chairman will invite the petition organiser to address the Commission for a maximum of five minutes on the issue. The relevant officer will then be asked to respond to the Commission on the subject matter of the petition. OSMC Members may question the officer and the Chairman may invite questions from the petition organiser to be put to the Officer through the Chairman.

### **1.12 Process when an Ordinary Petition is received**

The Petitions Officer will arrange for each ordinary petition to be reported to the next convenient meeting of the Executive, Council, Committee, Commission or Sub-Committee of Council which has the power to take a decision on the matter.

### **1.13 Meetings considering a petition**

- (a) Petitions which do not relate to an ordinary item of business will be considered before the normal business of the meeting.
- (b) Petitions will be considered in the order in which they were received unless the Chairman of the Committee/Commission decides otherwise.
- (c) A maximum of 30 minutes is permitted for the discussion of petitions prior to the normal business of each meeting. Any petitions not considered in this time will be held over to the next meeting unless the next meeting is the Annual or Budget meeting.
- (d) Petitions which do relate to a particular item of business will be taken with that item, in the order of business outlined on the agenda.
- (e) The person or Committee making the decision may invite a relevant officer to set out the background to the issue before inviting the petition organiser to speak for up to five minutes. The Executive Member / Chairman may then ask questions of the petition organiser and invite any relevant Ward Councillors present to speak on the subject for up to

minutes each. The Executive Member / Chairman will then invite a relevant officer to advise the meeting, after which the matter will be opened to debate by the Committee. In the case of an Individual Executive Member Decision, the Executive Member will proceed to take a decision. Possible decisions may be:

- to determine the matter;
  - to refer the matter for investigation and report back; or
  - to refer the matter up to a meeting of Council, Executive or a higher Committee for determination.
- (f) In the case of a decision by an Executive Member, the Petitions Officer will notify the petition organiser of the decision within five clear working days, advising that if the organiser is not satisfied with that decision, the matter could be reported to the next meeting of the Overview and Scrutiny Management Commission for review (see section 1.14 below).
- (g) At each stage of the process in section 1.13, the Petitions Officer will enter the relevant information on the website as it is sent to the petitions organiser.

#### **1.14 Appeal to a Scrutiny Committee/Commission**

- (a) If the petition organiser is not satisfied with the outcome of the Council's consideration of the petition, the petition organiser may appeal to the Overview and Scrutiny Management Commission by notifying the Petitions Officer of their intention to appeal. The Petitions Officer must receive notification of intention to appeal within 28 clear working days of the petitions organiser being notified of the Council's decision on the petition.
- (b) Within five clear working days of receipt of intention to appeal the Petitions Officer:
- will determine which is the relevant Scrutiny Commission;
  - will notify the petition organiser of the date, time and place of the next convenient meeting of that Scrutiny Committee/Commission; and
  - will invite the petition organiser to attend that meeting and address the Committee/Commission for up to five minutes on why the Council's decision on the petition is considered to be inadequate.
- (c) At the meeting of the Scrutiny Commission:
- the Committee/Commission will invite the petition organiser to make representations and explain why it is thought the Council's response is inadequate (no more than five minutes);
  - the Commission will invite relevant Ward Councillors to make representations on the matter (no more than five minutes each);
  - the Commission cannot overturn the decision, but can make recommendations for the Executive Member/Executive to consider.

### 1.15 Petition Organiser

- (a) Petition organisers will receive acknowledgement of receipt of the petition within five clear working days of its receipt by West Berkshire Council.
- (b) When the petition is not accepted for consideration, the Petitions Officer will advise the petition organiser of the grounds for rejection.
- (c) Where the petition is accepted for consideration, the Petitions Officer will advise the petition organiser who will consider the petition, the date, time and place of the meeting at which it will be considered, and will invite the petition organiser to address the meeting for up to five minutes. This information will be notified to the petition organiser within ten clear working days of receipt of the petition by West Berkshire Council. The petition organiser may be asked questions on the subject matter of the petition at the meeting
- (d) The petition organiser may nominate another person to address the meeting on their behalf.
- (e) The Petitions Officer will keep the petition organiser regularly updated with developments on the petition and notify them of the outcome of the petition's consideration in writing within five clear working days of the decision.
- (f) The petition organiser must notify the Petitions Officer of the intention to appeal to the Scrutiny Commission against the decision relating to the petition within 28 days of being notified of that decision. The appeal must be submitted in writing. The petition organiser or their nominated representative may attend and address the meeting of the Scrutiny Commission for up to five minutes to explain why West Berkshire Council's decision on the petition is considered to be inadequate.

### 1.16 Petitions not being reported

- (a) **Duplicate petitions.** Where more than one petition is received in time for a particular meeting each supporting the same outcome on the same matter, each petition organiser will be treated independently but only the organiser of the first petition received will be invited to address the relevant meeting.
- (b) **Repeat petitions.** A petition will not normally be considered where it is received or submitted within 12 months of another petition being considered by West Berkshire Council on the same matter.
- (c) **Rejected petitions.** Petitions will not be considered if, in the opinion of the Petitions Officer, they are rude, offensive, defamatory, scurrilous, vexatious, time wasting or do not relate to something which is the responsibility of West Berkshire Council, or over which West Berkshire Council has some influence.

#### **Please Note:**

The following documents also exist and are available on request from Strategic Support:

- Customer Comments and Complaints Procedure
- Complaints Leaflet



- Ombudsman Leaflet
- Your Right to a Review
- Guidance for making a complaint about an elected Councillor's conduct

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## Appendix D

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# Gifts and Hospitality: A Code of Conduct for Councillors

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## 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 declaring it 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. (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 that 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 that 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 at the Council Offices, Market Street.

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.

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## **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;

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- (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.

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## Appendix E

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# Procedure for Local Determination of Allegations

## The Localism Act 2011

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### 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 1 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 E1 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 member 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 the 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 they 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 complainant 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 a 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**

- (i) 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;
- (ii) 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.



- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) 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)*

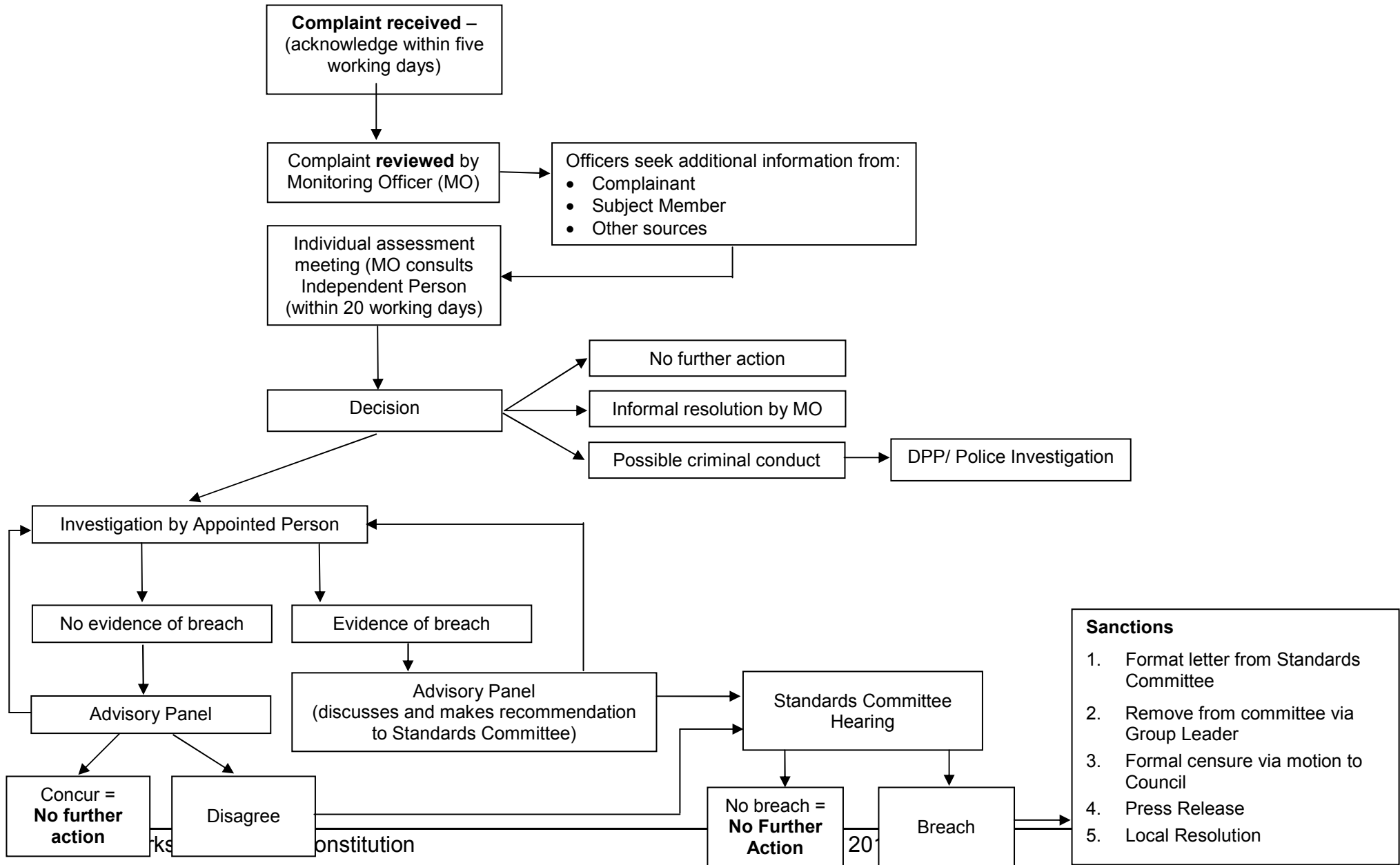
## **11. Reporting of Decision of Standards Committee**

- 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 published.

- 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)*

## Processing Complaints: Code of Conduct: Localism Act 2011



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## Appendix F

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# Protocol for use of ICT Equipment supplied to Members

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The following protocol has been produced to give information to Members in receipt of ICT equipment supplied by the District Council and should be read in conjunction with the West Berkshire Council ICT Policy and ICT User Usage Agreement. The protocol will be included in the Council's Constitution and the requirements of the local Code of Conduct will apply to the protocol.

### 1. Introduction

- 1.1. ICT equipment is provided to Members to support them in carrying out their role as District Councillors. Appropriate (in line with the West Berkshire ICT Protocol) business/private use of the Council ICT equipment and the internet is perfectly acceptable providing that the primary use of the equipment remains for Council business.

### 2. Equipment and Software

- 2.1. You will be supplied with a standard package of ICT equipment and software. The details are attached at Appendices F1 and F2. A record of the ICT equipment issued to you will be recorded on the ICT asset management system and you may be requested to return the equipment if you cease to be an elected Member.

### 3. Internet Connectivity

- 3.1. Each Member in receipt of Council ICT equipment will require a broadband service at home if they wish to access the internet, or WBC corporate applications such as email. Members will be expected to arrange the installation of their home broadband and claim the costs associated with installation (if any) back from the Council. Members will be responsible for meeting the monthly revenue costs of their Broadband from their annual ICT Allowance of £200 which is included in their basic allowance

### 4. Additional Software and Hardware

- 4.1. Your laptop will be delivered with standard software installed (See Annex F2) which can be supported by the Council's ICT Service. Members are also given enough 'user rights' to enable them to install their own non-standard software if they wish, on the understanding that the ICT Service will not support these applications. Members are responsible for ensuring any such software is licensed, and be responsible for any adverse consequences caused by the installation of the software. In the event of a laptop requiring to be rebuilt it will be reinstated to the WBC standard configuration i.e. without any of the extra software you may have subsequently installed. It is the Member's responsibility to keep backup copies of their data stored locally on their laptop.

### 5. Virus Protection

- 5.1. Computer viruses present a very real threat to the Council's ICT systems and your laptop has anti-virus software installed to help protect you, your

equipment and the Council's systems from this threat. Members are asked to be vigilant and report to the ICT Help Desk any virus incident which occurs when using their WBC supplied equipment.

## **6. Information Security**

- 6.1. Security of your PC is your responsibility as its "custodian". You should take care to protect the physical security of any WBC ICT equipment issued to you and immediately report any thefts or losses.
- 6.2. You must not divulge any passwords or personal identification numbers (PINs) to anyone else.
- 6.3. You must not allow others to use your equipment.
- 6.4. The Government also makes certain stipulations under the Public Services Network (PSN) security scheme which are applicable to anyone connecting to WBC ICT systems. These rules currently include the following:
  - Apart from accessing Outlook Web Access connections to WBC ICT systems are only allowed from WBC supplied (managed) devices.
  - Laptops must have encrypted hard drives.
  - Passwords must be complex and be renewed at least every 90 days.

## **7. Privacy**

- 7.1. It is standard District Council policy that all use of its email and Internet connection may be monitored for inappropriate use. Any reported or detected misuse or inappropriate content might be brought to the attention of the appropriate Member. Given the security policy outlined above any misuse from a Council laptop will be considered to have been made with the full knowledge of the custodian of the machine.
- 7.2. By accepting use of District Council supplied ICT equipment, you are accepting that your usage may be monitored for any breach of the Council's ICT Policy and ICT User Usage Agreement. Any such breach could result in a referral to the Standards Committee. The strictest confidentiality is observed in respect of such monitoring, and any inappropriate use generally is only known to the ICT Operations Manager, the Head of ICT and Corporate Support, or the ICT Portfolio Holder, except exceptionally in cases of illegality or impropriety where action may be required when the Monitoring Officer or the S151 Officer may need to be informed.

## **8. Support**

- 8.1. You should report any ICT problems or faults through the Council's IT Help Desk contact number (01635 519440) which is staffed during normal working hours (8.30am-5.00pm Monday to Thursday and 8.30am – 4.30pm Friday). Outside of normal working hours, you can email the IT Help Desk on [ITHelpDesk@westberks.gov.uk](mailto:ITHelpDesk@westberks.gov.uk).
- 8.2. Most problems should be resolvable through advice given over the telephone. If the problem cannot be solved in this way, Members may need to arrange for the equipment to be delivered to the ICT Helpdesk to be investigated or repaired and then arrange for collection afterwards.

**9. Training**

- 9.1. Members receiving ICT equipment from the District Council, are advised to attend appropriate training offered by the ICT Training Officer.

**10. Consumables**

- 10.1. All Members are entitled to receive an ICT Allowance of up to £200 per annum to cover the cost of consumables.

**11. Equipment Return**

- 11.1. Should a Member to whom equipment has been supplied cease to hold office, for whatever reason, the equipment supplied must be returned to the Members Services Officer(s) within two weeks, all data on the machine will be deleted and the equipment will be re-issued.

**12. Duties of Care**

- 12.1. Your principal obligations under the Protocol are:

- to take reasonable care to safeguard the computer equipment and software supplied;
- to follow instructions given by the District Council, its agents and manufacturers of the equipment as to its use, and not to allow it to be interfered with;
- to allow reasonable access to the equipment for any necessary work, adjustment, removal or replacement;
- to report any loss or damage to any WBC ICT equipment issued to you;
- to comply with all legal requirements including the software licence condition;
- otherwise to comply with the terms of this Protocol and ICT Policy and ICT User Usage Agreement.

- 12.2. The Council's principal obligations are to take reasonable care to carry out its obligations under the Protocol responsibly and to make appropriate and timely arrangements for appropriate supply and maintenance. It is important you appreciate, however, that the Council does not:

- accept liability for loss of any personal data stored locally on the computer;
- guarantee that the computer equipment or service will be available at any particular time.

- 12.3. In the event of your ceasing to be a Member of the Council, all computer equipment and software, which remains the property of the District Council, must be returned within a two-week period after the end of your term of office. Any missing equipment may need to be replaced at your own cost. Use of the equipment during this two week period should be agreed in advance with the District Council.

**13. Contacts**

Fault reporting & support	IT HelpDesk	01635 519440	<a href="mailto:ITHelpdesk@westberks.gov.uk">ITHelpdesk@westberks.gov.uk</a>
Training	Kerry Taylor	01635 519099	<a href="mailto:ktaylor@westberks.gov.uk">ktaylor@westberks.gov.uk</a>
Members Services	Jo Watt/ Jude Thomas	01635 519242	<a href="mailto:jwatt@westberks.gov.uk">jwatt@westberks.gov.uk</a> <a href="mailto:jathomas@westberks.gov.uk">jathomas@westberks.gov.uk</a>
Liberal Democrat Group Executive	Gillian Durrant	01635 519097	<a href="mailto:gdurrant@westberks.gov.uk">gdurrant@westberks.gov.uk</a>
Conservative Group Executive	Robin Steel	01635 519644	<a href="mailto:rsteel@westberks.gov.uk">rsteel@westberks.gov.uk</a>

## Members ICT Agreement

Dated: .....

I have received a copy of the Members ICT Protocol and West Berkshire Council ICT Policy and ICT User Usage Agreement and agree to comply with the terms of the Protocol and Policy. I understand that the Protocol will be included in the Council's Constitution and the requirements of the local Code of Conduct will apply.

I acknowledge receipt of the following ICT equipment and agree that the equipment will be returned within two weeks of my ceasing to hold office as a Councillor for the district of West Berkshire:

Equipment	NID/Serial No	Received
Latitude DE620 Laptop		<input type="checkbox"/>
Safeword Access token		<input type="checkbox"/>
Blackberry (Executive Members and Chairman only)		<input type="checkbox"/>

Name: .....  
(Member of West Berkshire Council)

Signed: .....

In the presence of .....  
(Officer of West Berkshire Council)

Signed.....



## Appendix F1

### Standard ICT Equipment provided to Members

- Latitude DE620 laptop
- Floppy drive module
- Safeword Access token
- Personal colour laser printer
- Netgear wireless Router
- Blackberry Smartphone (Executive Members and Chairman)

## Appendix F2

### Standard Software provided to Members

- Microsoft Windows XP Operating System
- Microsoft Office 2003
- Adobe Acrobat Reader
- McAfee Anti – Virus Software

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## Appendix G

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# West Berkshire Code of Conduct for Licensing

March 2014

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## 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 licensed 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 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 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.
- 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.
- 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 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.

#### **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, 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 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.

## **9. Ward Members**

- 9.1 If a Licensing Committee Member representing a Ward 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.]*

## **10. 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. If the application is connected to the Team Manager Licensing 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.

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

- 11.1 Councillors have a role to play in helping consultation between their constituents and the licensed and gambling trades. 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 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.

## **12. 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 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 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).

### **13. 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 Policies 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.

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

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

### **15. 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.

### **16. Training**

- 16.1 All Members of the Licensing Committee (including substitutes) 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.

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## Appendix H

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# Code of Conduct for Members - West Berkshire Council

## December 2013

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### 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 came into effect on 1st July 2012. The revised Code was adopted at the Council meeting on the 12 December 2013.

### 2. Application

- 2.1 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 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) When involved in the decision making of the Council:
  - (i) ensure that you are aware of and comply with the requirements which the Bribery Act 2010<sup>1</sup> places on you in your role as a Member and on the Council;
  - (ii) have regard to any advice provided to you by the Council's Chief Financial Officer and Monitoring Officer pursuant to their statutory duties;
  - (iii) give reasons for the decisions in accordance with any legal requirements or reasonable requirements of the Council.
- (c) When using or authorising the use by others of the resources of the Council:- 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 and are available on the Council's Intranet. You are deemed to have read and understood them The Policies referred to 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.)*
- (d) Make sure that Council resources are used for and in accordance with your duties as a Councillor and are not used improperly.
- (e) Have regard to the applicable Local Authority Code of Publicity<sup>2</sup> 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:
  - (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;

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

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

- (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 (DPIs);
  - (e) conduct yourself in a manner which could reasonably be regarded as bringing your office or Authority into disrepute.

#### **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 of:

- (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 it relates to or is likely to affect:

- (a) 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;
- (b) any body exercising functions of a public nature; directed to charitable purposes; or 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;

- (c) 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 or other 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 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

- (a) 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
- (b) 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) or (b).

4.3.3 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) or (b), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

4.3.4 Where you have a personal interest but, by virtue of paragraph 5 (Sensitive Interests), 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.

4.3.5 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 Other Interest:

- 4.5.1 Where you have a personal interest in any business of your authority you also have a other 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 paragraph 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.

- 4.5.2 Subject to paragraph 4.5.3 and 4.5.4, where you have a Disclosable 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.

- 4.5.3 Where you have an Other 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.

- 4.5.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a Other Interest that relates to the functions of your authority in respect of:

- (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members;
- (e) any ceremonial honour given to members; and
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

4.5.5 Where, as an Executive Member, you may discharge a function alone, and you become aware of a disclosable 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 or 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 givers or repeat offers of hospitality as these may indicate a pattern of behaviour which 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)

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

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.

## Appendix 2

### 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:
  - (a) 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;
  - (b) 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 2011 in future a dispensation will be able to be granted in the following circumstances.

The Council may on:

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

- (c) that the authority considers that the dispensation is in the interests of persons living in the authority's area.
- (d) 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.
- (e) that the Council considers that it is "otherwise appropriate" to grant a dispensation. This is a particularly wide provision as to some extent is (c) 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 2.2(a) and (d) 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 2.2(b), (c) and (e) 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 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:

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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**

- (a) 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. 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.
- (b) 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.
- (c) the Standards Committee should then consider the legal implications for the dispensation set out at 4(a) to (f) as well as at 2.1(a) above. This consideration may also take account of any other relevant circumstances or local criteria.
- (d) members of the Standards Committee should determine whether the applicant should be permitted to make oral representations to the meeting of the Standards Committee or whether written applications only will be allowed.
- (e) the Standards Committee should then determine the nature of any dispensation they are minded to grant:
  - (i) whether the applicant can speak and not vote; or
  - (ii) whether the applicant can participate fully and vote.Additionally the Committee can also decide the length of the dispensation (not more than four years).
- (f) it should be noted that the regulations do not allow for the Standards Committee to grant a general dispensation to cover any situation where a prejudicial interest may arise.

- (g) if the Committee grants a dispensation it should do so in writing and before the meeting in question is held.
- (h) the Standards Committee may decide to refuse an application for a dispensation. This is within their discretion under the regulations.
- (i) a written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.

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

# Appendix I

## Councillor Call for Action Protocol

### Introduction

This protocol provides a description of a 'Councillor Call for Action'; guidance on who may initiate one, when and how; specific exclusions from the process; investigation and resolution; and monitoring.

### Description

The Councillor Call for Action (CCfA) is a mechanism that provides Members of the Council with the opportunity to ask for discussions at the Overview and Scrutiny Management Commission (OSMC) on issues where local problems have arisen and where other methods of resolution have been exhausted.

CCfA is not guaranteed to provide a solution to a problem but can provide:

- A public forum for discussion of the issues
- An opportunity to discuss the issues in a balanced way
- An opportunity to discuss the problem with the explicit and sole aim of providing an appropriate recommendation
- A high profile process owned by the Ward Member.

All of these factors can make resolution easier to achieve.

The CCfA is a whole Council process and is not solely related to scrutiny. Scrutiny is however the forum for bringing together evidence from multiple sources, including partner organisations.

It is a technique for helping to resolve queries, which may lead to the forming of recommendations for the consideration of the Executive or other bodies.

### Eligibility criteria for the initiation of a Councillor Call for Action

Any Member of the Council may submit a Councillor Call for Action for inclusion in the agenda of the Overview and Scrutiny Management Commission.

The issue for consideration must relate to a single locality only rather than the entire district, for which other channels for consideration exist. In this context a 'single locality' could be a town, village, ward or part thereof.

CCfA may only be initiated after all other appropriate methods of problem resolution have been exhausted. These methods might include, but not be limited to:

- Questions at Executive/Council
- Informal discussions with officers or other Members
- Formal letters written on behalf of constituents
- Public meetings
- Petitions and deputations
- Motions on the agenda at full Council

- Communication with local MPs
- Communication with Councillors in other authorities
- The Council's complaints process
- Web or e-mail based campaigns
- Communications with relevant Portfolio Holder

Members bringing forward a CCfA will be required to define their preferred outcomes and resolutions prior to discussion and, wherever possible, attend the relevant committee meeting(s).

To raise a CCfA a Member should in the first instance contact the Scrutiny and Partnerships Manager outlining the issue, the desired outcome and the processes previously undertaken to resolve it. A submission form is available on the intranet. Submissions must be received by no later than 10.00am, seven clear working days prior to the date of the Overview and Scrutiny Management Commission meeting at which it is to be considered.

On receipt of the proposal, the OSMC Chairman and Vice-Chairman, along with the Scrutiny and Partnerships Manager, will assess its suitability for consideration by the OSMC. If the issue is considered appropriate it will be added to the next OSMC agenda. If it is assessed that the issue is not appropriate then the member making the CCfA will be directed to other courses of action for issue resolution.

### **Exclusions from Councillor Call for Action**

Specifically excluded from becoming a CCfA are:

- Any matter relating to a planning decision.
- Any matter relating to a licensing decision.
- Any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment.
- Any matter which is vexatious, discriminatory or not reasonable.
- Any matter that has been considered by the Overview and Scrutiny Management Commission or task group in the previous six months.

### **Investigation and resolution**

Following initial acceptance by the Scrutiny and Partnerships Manager, Members of the Overview and Scrutiny Management Commission will then consider whether they wish to accept the matter for investigation and the most appropriate forum and course of action to determine resolution. This may include the establishment of a time limited task group or examination of the subject as a full Commission. The matter will then be dealt with as any other item of Scrutiny.

In conducting its investigation, the Scrutiny body will have regard to the issue and the resolution required by the Member raising the CCfA. Reviewing Members may challenge the expected outcome if they feel that it is unreasonable.

The Council's scrutiny function only has the power or authority to require the Council or other organisations to have regard to its considerations and cannot of itself impose a resolution. Therefore at the conclusion of its investigation the OSMC will produce a



report containing recommendations for the consideration of the Council's Executive, West Berkshire Partnership Board or other organisations as appropriate.

As with other scrutiny reports, a response to each of the OSMC's recommendations will normally be given within 56 calendar days (8 weeks) of the report's production. The Council service most closely involved with delivery of the recommendations will have responsibility for the production of the response report.

### **Monitoring**

The responding service will provide implementation progress reports to the OSMC at intervals not normally more frequent than 6 monthly.

## Appendix J

# Protocol for Council Representation on Outside Bodies

## 1. Introduction

- 1.1 Elected Members are appointed by West Berkshire Council to serve on a range of Outside Bodies. In the context of this Protocol, an “Outside Body” covers organisations such as Trusts, Voluntary Bodies, Charities, Community Associations and Companies etc.
- 1.2 Service on Outside Bodies has always been an established part of a Councillor’s role. A Member appointed to an external body will be able to use their knowledge and skills both as a Council Member, and as a representative of their communities, to assist the organisation to which they are appointed, as well as the Council which they represent.
- 1.3 This Protocol is designed to provide guidance as to the roles, experience and responsibilities as well as the liabilities that Members may attract in connection with their involvement with these organisations. Councils are increasingly working in partnership with external organisations. This means that it is important that everyone is clear exactly what the role of Councillors appointed to these bodies is. Questions of accountability and governance are likely to arise particularly as more funding may be channelled through the Council to these Outside Bodies
- 1.4 Membership of an Outside Body brings into play different considerations to those which relate to Council membership. As members of Outside Bodies, elected Members will have different duties, obligations and liabilities depending upon the type of organisation involved. Members’ roles on these Outside Bodies may appear to conflict, sometimes with each other, and sometimes with their position as a West Berkshire Councillor. This can be eased by giving clear guidance, which is what this document aims to do. Appendix A1 to this Protocol provides information on registering interest (paragraphs 9 and 10) and dealing with conflicts of interest (paragraph 11).
- 1.5 Depending on the legal nature of the body and the role fulfilled by the Member they may attract personal responsibility for decisions and actions of the body. It is a Members’ responsibility to ensure that they are aware of their liabilities and any insurance arrangements that are in place where they participate in Outside Bodies. Officers will strive to ensure that Members are provided with as much information as possible prior to their appointment. Paragraphs 4 and 5 of the Protocol set out the general roles and responsibilities for Members on Outside Bodies.
- 1.6 To aid Members further, this Protocol sets out the different types of bodies and responsibilities. Members with any doubts or questions should consult the Head of Legal Services at the earliest opportunity for help and advice. More detailed information, relating to Limited Companies, Charitable Trusts,

Partnerships and Unincorporated Organisations, is set out in Appendices A2, A3, A4 and A5 of the Protocol.

- 1.7 The Council will indemnify Members representing the Council on Outside Bodies in many circumstances. There are however specific statutory limitations as to the extent of indemnification the Council is able to provide. These are set out in Appendix A6 of the Protocol.
- 1.8 Members can serve on Outside Bodies in their personal capacity provided that there is no conflict of interest with their duties as a Member of West Berkshire Council. Again, legal advice is available to help Members assess their position.

## **2. How are Appointments made?**

- 2.1 In accordance with the Council's Constitution authority to appoint Members as representatives on Outside Bodies has been delegated to the Executive. With the exception of appointments to regulatory bodies i.e. Police and Fire Authorities appointments to Outside Bodies have been further delegated to the Leader of the Council or the relevant Portfolio Holder to make as an Individual Decision. The authority to appoint School Governors has been delegated to the Head of Education Services.
- 2.2 The majority of appointments are aligned to the electoral cycle and representatives are appointed for four years. A small number of appointments, most notably those to the regulatory bodies, are made on an annual basis. The majority of the appointments are made as early in the Municipal Year as is practicably possible.
- 2.3 The choice of the most appropriate representative will depend on the nature of the Outside Body, the interests and experience of the prospective representative, and why the Council wishes to be involved with that body.
- 2.4 The Strategic Support team is responsible for maintaining a database setting out details of the appointment and information relating to the Outside Bodies.

## **3. Before Accepting the Appointment**

- 3.1 Before accepting the appointment Members should establish:
  - the time commitment required by the role and whether or not they have the time and capacity to take on the responsibility;
  - what the nature of the organisation is as this will affect their role and help with identifying the potential risks involved. One of the most important things is to find out if the organisation is a separate legal organisation (i.e. a body which has an identity of its own such as a company) or whether it is simply a group of people coming together with a common purpose (an unincorporated organisation). An unincorporated organisation generally poses a more significant risk to those involved in it because if something goes wrong, personal legal action can be taken against everyone managing it.
  - in what capacity they are being asked to serve on the Outside Body:
    - as a member of an Outside Body where they represent the Council's position as a 'member' of the Outside Body but take no part in its management or governance other than to attend and vote at annual or

general meetings. Here they will be mainly concerned with representing the Council and will not have responsibilities for governance of the body; or

- as a member of the management committee, board of directors or committee of trustees of the Outside Body. Whilst the Member may have been appointed to the body by the Council, their primary responsibility will be to the body itself, to advance the interests of the body or of the beneficiaries of the trust, as opposed to acting as a representative of the Council. They will have detailed responsibilities which are outlined further in this guidance
- what the body has been set up to do;
- the governance arrangements of the organisation; and
- the financial position of the organisation.

### 3.2 The Council representatives are also advised to:

- consider if there is likely to be any significant conflict of interest between their role in the outside organisation and their Council role before accepting the office;
- clarify the insurance arrangements (does it cover the key risks of the organisation as well as the Member and is the liability limited or unlimited) and assess the possibility of any implications on themselves as individuals (specifically consider the nature and function of the body and the amount of money it deals with – always be aware of the added risk where the organisation employs staff);
- if no insurance exists this must be weighed up in the decision to accept the appointment;
- ask about any specific legal responsibilities attached to the membership of the organisation;
- read the constitution of the organisation and be aware of its powers, duties and objectives;
- attend meetings regularly and present apologies in good time when they are unable to attend;
- satisfy themselves that they receive regular reports on the activities of the organisation and its financial position;
- satisfy themselves that the organisation has adequate Health and Safety and Equalities Policies;
- obtain a copy of the annual report and accounts to ensure that funds are spent on agreed objectives where the organisation is funded by or through the Council; and
- seek advice from the appropriate Council Officers in the event of any doubt or concerns about the running of the organisation.

## 4. The Responsibilities of the Councillor

### 4.1 In carrying out the role of a representative on the Outside Body, Councillors act both as individuals and as representatives of the Council:

#### 4.2 Members should:

- act according to the rules, constitution and framework set by the Outside Body;
- take an active and informed role in the Outside Body's affairs;
- make independent and personal judgements in line with their duty of care to the Outside Body;
- report back to West Berkshire Council annually (by the 1st May ) using the form attached at Appendix J(1);
- promote equality as an integral part of the role and to treat everyone with fairness and dignity;
- from time to time it is possible that a conflict of interest may arise between the role of the Councillor and the role they are undertaking on an Outside Body. Members are referred to Appendix A6. Members are advised to seek legal advice before setting off on a course of action.
- behave ethically and follow as far as applicable the Code of Conduct for Members; and
- wherever possible approach the lead officer for the Outside Body for a briefing on agenda items before attending meetings of the Outside Body.

#### 4.3 Members should not:

- represent the political party to which the Councillor is aligned;
- consider matters purely from the Council's perspective;
- commit the Council to any expenditure; (In accordance with the Council's Financial Rules of Procedure any additional expenditure requests must be authorised by the appropriate person or body).

4.4 More Specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out in Appendices A2, A3, A4 and A5 of this Protocol.

## 5. The Role of the Councillor

5.1 The role of Council representatives on Outside Bodies will vary but essentially the role will be:

- to help to secure any objectives of the Council in participating in the organisation;
- to help the organisation to achieve its aims and objectives legally, properly and effectively;
- to meet any specific legal responsibilities attached to membership of the organisation; and
- to safeguard the Council's interest on those organisations which are funded by or through the Council.

5.2 More Specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out in Appendices A2, A3, A4 and A5 of this Protocol.

## **6. Expenses, Remuneration and Benefits**

- 6.1 As a general rule Members should not benefit personally from their appointment to outside organisations.
- 6.2 Travel and subsistence expenses should be claimed through the organisation if available otherwise through the Council in accordance with the relevant Part of the Constitution (Members' Allowances Scheme).
- 6.3 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
- 6.4 Free access to a Company's facilities should only be accepted where it is necessary to discharge duties and responsibilities as a Director and should be declared to the Council.
- 6.5 The Code of Conduct should be followed at all times.

## **7. Representatives Reporting Back**

- 7.1 Councillors are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (s137A Local Government Act 1972).
- 7.2 While the law now makes this a requirement for involvement in outside companies, it is self evident that the requirement to report back should apply to involvement in all Outside Bodies. It is important that anyone who is appointed to an Outside Body provides appropriate information on what the organisation is doing. Members are not required to disclose information which is commercially confidential to the body.
- 7.3 Accordingly Members are required to submit their annual report to the Head of Strategic Support using the attached form by the 1st May each year. The reports will then be circulated to all Members. Where there is more than one Member appointed to an outside body a joint submission should be made.
- 7.4 There are a number of organisations to which the Council appoints Members where more regular feedback from Members would be appropriate. In these circumstances Members or Officers attending the meeting should provide a brief summary for dissemination to all Members and relevant Officers.

## **8. Further Advice**

- 8.1 Relationships between the Council, Outside Bodies and the Council's representative can be complex. In any case of dispute or difficulty, Members should seek advice from the Secretary or Clerk to the Outside Body, who can then take advice from professional advisors where necessary.
- 8.2 If Members are concerned about the position they find themselves in as a Councillor on an Outside Body, they should contact the Monitoring Officer for further advice.

## **9. Interests**

- 9.1 Members are required to register interests in line with section 4 . (Disclosable Pecuniary Interests and Interests other than Disclosable Pecuniary Interests) of Appendix H (Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

## **10. Council's Code of Conduct – General Provisions**

- 10.1 The Council Code of Conduct requires that a Member must observe the Code of Conduct whenever the Member is acting as a representative of the authority.

- 10.2 The Code of Conduct also states:

*“2 (5) Where you are acting as a representative of the authority:*

*(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or*

*(b) on any other body, you must, when acting for that other body, comply with the authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.”*

## **11. Conflicts of Interest**

- 11.1 Appointment to an Outside Body can take various forms, and before taking up active membership it is advisable to establish exactly in what capacity the Member is being appointed.
- 11.2 If Members are appointed to an Outside Body they will have a personal interest in that body and will need to consider their position when they sit on Council, the Executive, a Council committee or other decision-making body which is considering a matter which relates to that body.
- 11.3 If Members attend a meeting where there is an item of business which relates to or affects the Outside Body, they will need to disclose the interest at the meeting, regardless of whether or not they were appointed onto the Outside Body by the Council, or by the Outside Body itself. This may not be a report which specifically mentions the body, but will affect it. For example, the budget setting meeting of Full Council can have implications for council funding of voluntary organisations.
- 11.4 The next issue is to consider whether they also have a Disclosable Pecuniary Interest (DPI) which would require them not only to disclose it but also to withdraw from consideration of that item of business.
- 11.5 If a Member does decide that they have a DPI, they must disclose this and leave the meeting room and not influence the debate or decision in any way. If the Council body making the decision has a policy of allowing members of the public to speak, Members can use this avenue legitimately to speak to the meeting but they must follow the rules of the public speaking session and then leave the room as soon as they have spoken on the matter.
- 11.6 Members should take advice from the Monitoring Officer if any situation arises where they think they might have a problem with an interest arising from their involvement with the Outside Body.

- 11.7 Whilst a failure by a Member to disclose a personal interest, or to disclose and withdraw for a DPI, may lead to sanctions against the individual Councillor, it will not of itself invalidate the decision of the authority in which the Councillor participated. However, where there is a real possibility that the decision of the Council might have been affected by bias or predetermination on the part of one or more Councillors, that decision can be held by a Court of Law to be invalid. Members therefore need also to be careful about the possibility of bias and predetermination when they are dealing with matters involving an Outside Body on which they serve.
- 11.8 Any Councillor who is about to take part in a decision, either collectively with other Councillors or via Individual Decision, must not allow themselves to be unduly influenced by their allegiance to any Outside Body or individual, nor should they give the impression that they might be influenced by it. That is bias and apparent bias. It arises because of a connection to an Outside Body or person.
- 11.9 It also follows that, whilst a Councillor may have preferences and predispositions, they must not finish the decision-making process until they have received and considered all the relevant information relating to the matter. To do so would be predetermination. Whilst it is accepted that Councillors live in the real world and will discuss matters with colleagues and constituents, and bring the benefit of those discussions to the Committee Room, they must still listen to the arguments and be prepared to change their mind if the evidence presented requires it.
- 11.10 From this it will be apparent that particular difficulties arise where a Councillor is a member of an Outside Body such as a pressure group, which is seeking to influence the authority's decision on a particular matter, as such membership can readily be taken as evidence of bias and/or predetermination. On occasion, and particularly in respect of local, single-issue pressure groups, a Member may have to choose whether to be a campaigning Councillor, participating in a pressure group, or to remain outside the campaign but be able to vote on the issue when it comes before the Council.
- 11.11 In some instances a Member may also find that they are unable to properly carry out their functions as a Member of the Council and a Member of the Outside Body. In these instances the Member may consider resigning from one body or another. Members should seek advice from the Monitoring Officer before taking such action.

## **12. Limited Company**

- 12.1 A company has a separate legal personality to its shareholders (also described as company members or subscribers). One of the main advantages of acting through a limited company is that shareholders can claim the benefit of limited liability. In the case of a company limited by shares this means that they will not be liable for the debts of the company if the company makes losses over and above the amount which they have pledged to pay the company for their shares. In a company limited by guarantee this means that the shareholders 'guarantee' to contribute a specified sum if called upon to do so (usually a nominal amount of £1) in the event that the company goes into insolvent liquidation.
- 12.2 An appointment as a director of a company needs to be confirmed by the completion of a form (known as '288') which needs to be signed and submitted



to Companies House. The secretary of the Outside Body should assist you with this.

- 12.3 The Directorship should also be recorded in the Council's Register of Members' Interests (within 28 days of the appointment). Directors take responsibility for all the main decisions in relation to the operation of the company, including entering into contracts.
- 12.4 The position of Council Members acting as Company Directors is that although Members have been appointed by the Council they have a duty to act in the best interest of the Company.
- 12.5 Although Members are advised to consider the specific rules pertaining to the Company they have been appointed to, the general legal responsibilities of Company Directors are:
- to ensure that the Company acts within its legal powers;
  - to act honestly and in good faith in the best interests of the Company;
  - not to make a personal profit and to take proper care of the assets;
  - to avoid conflicts of interest and not to allow personal interest to influence action as a Director;
  - to record personal interests in the Company's Register of Director's Interests;
  - to act with reasonable competence and care;
  - to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience); and
  - not knowingly allow the Company to trade fraudulently, recklessly or in an insolvent position.
- 12.6 Council appointed Directors are advised to:
- clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals;
  - to be familiar with the Articles and Memorandum of Association of the Company;
  - to ensure that their interests are registered with the Company;
  - to attend Board meetings regularly, read the agenda in advance and seek a briefing from officers where necessary;
  - to ensure that the Company has proper procedures for reporting performance and financial information to board members at each meeting;
  - to take an interest in the appointment of the management of the Company to ensure that suitable qualified and experienced managers are in place;
  - to ensure that the Company has adequate Health and Safety and Equalities Policies; and
  - to seek advice from the appropriate Council Officers if in any doubt about the financial viability of the Company or any aspect of its operation.

- 12.7 Members need to be particularly careful when acting as a Company Director if there is any prospect of the company becoming insolvent i.e. not having sufficient assets to pay its debts. When a company becomes insolvent, or it is foreseeable that it will be insolvent, directors of the company have a higher duty of competence and attention to company business than when the company is still solvent. If they fail to take every possible step to minimise the company's debts, they may be personally liable for any additional losses suffered by creditors of the company ("wrongful trading"). A director may be found guilty of fraudulent trading (a criminal offence) if they allow the company to trade with an intent to defraud creditors.
- 12.8 If you become a Company Director there are some useful guidance documents to assist you on the websites of the [Institute of Directors](#) and [Companies House](#).
- 12.9 There may be occasions where conflicts of interest arise between the Council and the Company. Some examples are:
- contracts between the two;
  - negotiations on agreements, such as terms of leases;
  - applications for Council permission, e.g. planning consent.
- 12.10 This may mean that the primary responsibility to the Company could conflict with the Council's interest.
- 12.11 In these circumstances, Members are advised to declare a DPI at any Council meetings or discussions and should withdraw from the decision making process. (see Appendix A1)

### **13. Charitable Trustees**

- 13.1 To be a Charity an organisation must operate for one of the four charitable purposes, namely:
- the relief of poverty and human suffering;
  - the advancement of education;
  - the advancement of religion; and
  - another purpose for the benefit of the community.
- 13.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- 13.3 Trustees duties include:
- the need to act in accordance with the constitution of the Charity;
  - not making a private profit from their position;
  - acting honestly and in good faith in the best interests of the Charity;
  - ensuring that information relating to the charity and trustees is registered with the Charity Commissioners and annual accounts, reports and returns are completed and sent;
  - Ensuring that the body acts in accordance with the overriding duty to the beneficiaries of the Trust;

- ensuring compliance with all relevant legislation (e.g. in relation to tax and land matters); and
  - Council representatives are advised to clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals.
- 13.4 There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:
- exercising a general power of investment or any specific power of investment arising from the Trust;
  - making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
  - exercising the power to acquire land or deal in land;
  - appointing agents, custodians or nominees or in reviewing their obligations;
  - compounding liabilities under section 15 of the Trustee Act 1925;
  - Insuring Trust property; and
  - Dealing with reversionary interests, valuations or audits.
- 13.5 The standards of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual. Additional information relating to the responsibilities for charitable directors and trustees is available on the Charity commission's website <http://www.charity-commission.gov.uk>.

## **14. Partnerships**

- 14.1 The Council representatives on partnerships have three main roles:
- to promote the Council's objectives in participating in the partnership;
  - to ensure that the Partnership delivers its own objectives:
  - to safeguard the Council's interests within the partnership, particularly where the Council is a funding partner or the accountable body for External Funding
- 14.2 Council representatives on partnerships are advised to:
- be clear on the Council's own objectives in participating in the partnership;
  - read the Constitution of the Partnership and be aware of its objectives and powers;
  - attend Partnership meetings regularly, read the agendas in advance and seek briefing from Officers where necessary;
  - ensure that the Partnership has proper procedures for reporting progress and financial information; and
  - take an interest in the appointment of key staff.

## **15. Unincorporated Organisations**

- 15.1 Groups which are not charitable trusts or limited companies are ‘unincorporated associations’ and have no separate legal identity from their members. The rules governing the Members’ duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for Management Committees to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and therefore register as a charity.
- 15.2 Management Committee Members must act within the Constitution of that Outside Body and must take reasonable care when exercising their powers.
- 15.3 If Members become involved in the administration of an unincorporated body, they need to be aware that, as the body has no separate corporate status, any liabilities will fall upon the members personally. This means that if something goes wrong and the organisation is sued, the members/owners personal assets are at risk – they cannot stand behind a company or other body which gives them some protection.
- 15.4 If Members take on personal responsibilities for the organisation, such as buying equipment or renting premises, they are personally liable for the entire cost, and can only recover those costs from the organisation to the extent that it actually has the money to reimburse them, or from the other members of the organisation to the extent that the membership agreement gives them the right to be reimbursed by each of them.
- 15.5 Members need to be very careful about the risk of personal liability and the extent to which this has been covered by insurance arrangements (either arranged by the organisation itself or by the Council or by indemnities).

## **16. Indemnity for Members**

- 16.1 The Council may only indemnify Members in certain circumstances as prescribed by the Local Authorities (Indemnity for Members and Officers) Order 2004.
- 16.2 The Council will provide an indemnity in relation to any action or failure to act by any Member which:
- is authorised by the Council;
  - forms part of, or arises from, any powers conferred, or duties placed, upon that Member at the request, or with the approval of the authority including acting as the Council’s representative on an Outside Body;
  - arises in respect of the cost of defending any claim for an allegation of defamation by a Member acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
  - is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the insurer for their costs incurred in relation to those proceedings;

- 16.3 The indemnity includes an act or omission subsequently found to be beyond the powers of the Member in question, but only to the extent that the Member reasonably and genuinely believed that the act or omission was within their powers at the time they acted.
- 16.4 The indemnity does not apply to the defence of any criminal proceedings brought against a Member unless specifically approved by the Council and then only on a similar basis to that relating to proceedings for breaches of the Code of Conduct.
- 16.5 It is possible in some circumstances for the Council to indemnify (i.e. stand behind the Councillor and pick up any personal legal liabilities/costs/damages which the Councillor incurs as a result of his/her appointment to an Outside Body). The Council currently has Officials Indemnity insurance cover in place which covers Members on Outside Bodies but it may be necessary to consider issues on a case by case basis. Please speak to the Monitoring Officer if you have any cause for concern that an Outside Body with whom you are involved is getting into difficulty or you have any indication that you might be getting involved in potential personal liability.

## Appendix J(1)

### West Berkshire Council

### Appointment to Outside Bodies Annual Feedback Form

Name of Organisation	
Name of Member	
Period of review	
Number of Meetings called to attend	
Number of Meetings attended	
Reasons for not attending, if appropriate	
<p>Please give a brief synopsis of the key areas covered by the outside body during the past Municipal Year.</p>	

What background/briefing information did you receive from the organisation on its constitution, aims, objectives etc and was it sufficient to enable you to carryout your appointed role? What additional information do you require?

Please indicate how effective you think the organisation is (has it met or contributed to the Council's Key Priorities?) and give examples to illustrate your reply.

Do you think the Council should continue to be represented on this organisation?

Yes / No

If No, please state why:

Please provide any additional information that fellow Members might find useful.

Councillor .....

**Signed**.....

**Dated:**.....

Return completed forms to:

Moira Fraser, Strategic Support, Market Street Offices, Newbury, RG14 5LD or email:  
[mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)



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## Appendix K

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# Social Media Protocol for Councillors

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## 1. Background

- (a) The Scheme was approved at the full meeting of West Berkshire Council on 12 December 2013 and is available on the Council's website.
- (b) The scheme will be reviewed in December 2016 or such earlier time as may be required.
- (c) The purpose of the protocol is to ensure that Councillors make use of social media effectively whilst avoiding potential accusations that they may be breaching the Council's Code of Conduct. It is also designed to ensure that the reputation of the Council is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.
- (d) Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.

## 2. Application

- 2.1 This protocol 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 protocol. The protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution).
- 2.2 Bear in mind the Code of Conduct when you blog, use social networking sites or any other digital content publication service. You should pay particular attention to the following paragraphs of the Code:
  - Disrespect;
  - Bullying;
  - Disclosure of confidential information;
  - Disrepute;
  - Misuse of authority resources.
- 2.3 It is difficult to give definitive advice on the application of the Code of Conduct as each blog and social networking page is different. The content of a blog or other social networking tool and the circumstances surrounding its creation will determine whether or not it might be covered by the Code of Conduct. There are however two general rules that councillors should bear in mind when deciding on whether to publish content:

- (1) Only publish what you would say verbally in public, even in an informal discussion, when representing the Council.
- (2) Only publish what you could defend in court if asked to do so.

2.4 Ethical use of online social media is not limited to what is covered in the Code of Conduct. Councillors are encouraged to respect the Seven Principles of Public Life as set out in section 28(1) of the Localism Act 2011 which can be found at paragraph 2.2 in the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution). While your conduct may not be a breach of the Code it may still be viewed as less than exemplary and attract adverse publicity for your office and the Council.

### **3. Associated Policies**

3.1 This protocol should be read in conjunction with the Members Code of Conduct (Appendix H to Part 13 Codes and Protocols of the Council's Constitution), the Council's ICT Policy, the Council's Equalities Policy, the Local Authority Code of Publicity under the Local Government Act 1986. The Council's Social Media Guidelines and Social Media Guidance can be found on the Council's website.

### **4. Introduction**

4.1 All Members of the authority are required to act in accordance with the Members Code of Conduct whilst acting in their official capacity. Blogging and social networking are effective methods for councillors to interact with constituents and support local democracy. Used effectively, they can engage those who would not normally have access to local councillors and politics.

4.2 However it is not always clear whether such activities are covered by the Code of Conduct. This guide is intended to assist councillors in complying with the Code and ensuring that the use of online media is well received. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing. You will also need to think about whether you are seen to be, or give the impression that you are acting in your official capacity as a councillor.

4.3 If you do give the impression that you are acting in your official capacity whilst blogging or using social media, such activity may be subject to the Code of Conduct. Individual councillors are permitted to write their own official blogs as Members of West Berkshire Council but in these they must conform to the protocols of the Council. If you have a private blog you must bear in mind that if you refer to council business in it, you may be viewed as acting in your official capacity. To make sure you comply with the Code of Conduct, you are requested to observe the following guidelines:

#### **You should:**

- consider whether you need to set appropriate privacy settings for your blog or networking site – especially if you have a private, non-political blog;
- keep an eye out for defamatory, untrue or obscene posts from others on your blog or page and remove them as soon as possible to avoid the perception that you condone such views and to prevent any potential libel action being taken against you;

- act in accordance with the Council’s Equality Policy
- be aware that the higher your profile as a councillor, the more likely it is you will be seen as acting in your official capacity when you blog or network;
- be careful about being ‘friends’ with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure you use Council facilities appropriately; and be aware that any posts you make using Council facilities will be viewed as being made in your official capacity and/ or an inappropriate use of Council resources;
- be aware that by publishing information that you could not have accessed without your position as a councillor, you will be seen as acting in your official capacity;
- make political points, but be careful about being too specific or personal if referring to individuals. An attack on individuals may be seen as disrespectful, whereas general comments about another party or genuine political expression is less likely to be viewed as disrespect.
- consider that English Law allows actions for libel to be brought in the High Court for any published statements alleged to defame a named or identifiable individual or individuals. Blogging, social media and other forms of digital content publication are covered by the libel laws.

**You should not:**

- blog, tweet or network in haste;
- place images or text on your site from a copyrighted source (for example extracts from publications or photos) without permission;
- post comments that you would not be prepared to make in writing or face to face;
- use Council facilities for personal or party political blogs;
- refer in a blog to any information identified by the Council as confidential or exempt;
- 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;
- publish personal data of individuals unless you have their express written permission to do so;
- give the impression that you are expressing the views of the Council where it is not appropriate to do so;
- use online accounts and digital publishing services associated with a specific council office if you no longer hold that office, or during Purdah;

- if you are involved in determining planning or licensing applications or other quasi-judicial decisions, publish anything on your blog that might suggest you do not have an open mind about a matter you may be involved in determining.

## **5. Derogatory comments**

- 5.1 On occasion, councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs or networking sites. The following approach is advised in such circumstances, and applies equally to any form of publication:
- 5.2 Pursue a policy of indifference to such remarks, but if you do wish to respond, do not be tempted into retaliation because you may risk breaching the Code. You could ask the blog owner/person making the remarks to remove them from the site.
- 5.3 If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code of Conduct by making the remarks, and it could be appropriate to make a complaint to the Standards Committee.
- 5.4 Aside from any possible breaches of the Code of Conduct, the matter is usually deemed private between yourself and the individual. The Council cannot provide legal assistance for pursuit of a claim through the civil courts, but you may decide that you wish to take independent legal advice.

## **6. Use of Social Media During and after Council Meetings**

- 6.1 Members are permitted to use social media for the reporting of proceedings of public Council meetings. If Members wish to use social media during meetings they should inform the Chairman who will make it clear to any members of the public attending that this activity is permissible. Members will need to consider whether using social media may distract them from participating and understanding information that is being shared at the meeting prior to a decision being made.
- 6.2 Councillors should however switch their mobile phone or other equipment to silent mode, so that no disruption is caused to proceedings. If, at a 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 seconded it should be put to the vote without discussion. Members wishing to record (whether in an audio or visual format) meetings will need to do so in accordance with Appendix A to Parts 4 (Council Rules of Procedure), 5 (Executive Rules of Procedure), 6 (Overview and Scrutiny Rules of Procedure) and 7 (Regulatory and Other Committees Rules of Procedure).