

To: Tina Barnes (Chair)  
Councillors D Edwards, Ayub, Gittings,  
Khan, Lovelock, R Singh and Warman

Direct: (0118) 9372153

19 June 2019

Your contact is: **Michael Popham - Committee Services**  
(Michael.popham@reading.gov.uk)

### **NOTICE OF MEETING - STANDARDS COMMITTEE 27 JUNE 2019**

A meeting of the Standards Committee will be held on Thursday, 27 June 2019 at 6.30 pm in the Committee Room 1, Civic Offices, Reading, RG1 2LU. The Agenda for the meeting is set out below.

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## STANDARDS COMMITTEE MINUTES - 28 JUNE 2018

**Present:** Mrs T Barnes (Chair);  
Councillors Ayub and Warman;

**Apologies:** Councillors Brock, D Edwards, Gavin, Khan and Vickers;  
Mr D Comben (Independent Person).

### 1. MINUTES

The Minutes of the meeting held on 29 June 2017 were confirmed as a correct record and signed by the Chair.

Further to Minute 3(2) of the meeting held on 29 June 2017, the Committee noted that its meeting, which had been due to be held on Monday 24 July 2017, had not taken place.

### 2. TERMS OF REFERENCE AND ANNUAL REPORT

The Monitoring Officer submitted a report setting out the Committee's terms of reference and constitutional role for the Municipal Year 2018/2019, updating the Committee on developments and complaints during the Municipal Year 2017/2018 and looking forward to the current Municipal Year.

The report advised that Chapter 7 of the Localism Act 2011 had ended the statutory standards regime set up by the Local Government Act 2000, and introduced in its place a duty on local authorities to promote and maintain high standards of conduct by Councillors and Co-opted Members, including adopting a local Member code of conduct. The Act also required local authorities to adopt arrangements to deal with allegations that Members had not complied with their local Code of Conduct, and allowed local authorities to establish a local Standards Committee, and to make Standing Orders relating to aspects of the standards process (Section 31(10)). In the light of recommendations made by the Standards Committee on 19 March 2012, the Annual Council Meeting on 23 May 2012 had agreed to establish a local Standards Committee, which had been re-appointed at the subsequent Council AGMs, most recently on 23 May 2018, with the terms of reference and Standing Orders set out in **Appendix A**. The Committee was asked to note that, under the local procedure for dealing with complaints about councillors, set out in section 9.6 of Appendix A, where a complaint was received about a councillor who was not part of a group, the complaint about that councillor would be shared directly with them at Stage 1 of the three-stage process, in the absence of a Group Leader.

The report had the local Member Code of Conduct attached at **Appendix B**, which was based on a good practice draft produced by the Association of Council Secretaries and Solicitors (ACScS). The Code retained those elements of the former statutory Model Code which had not been the subject of significant legal challenge. It also set out the statutory requirement for Members to register and declare disclosable pecuniary interests, as informed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

The Standing Orders and Rules of Procedure for the Standards Committee, together with this Committee, would form the authority's local arrangements for

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investigating complaints about Councillors. The local procedure was set out in the “Complaints about Councillors” document, attached at **Appendix C** to the report and had been published on the Council’s website.

Local authorities were required to appoint at least one Independent Person with statutory responsibilities to be consulted and to advise on complaints made about Members. The 2011 Act also prescribed the recruitment process for the Independent Person. Mr David Comben had originally been appointed by the Council as the Independent Person, following the prescribed recruitment exercise in April 2013. He had most recently been re-appointed to this role at the Council meeting on 23 May 2018.

The report also reminded the Committee about the law with regard to the registration and declaration of interests by Members. There was a legal requirement on Members to register and declare interests. The report noted that the Monitoring Officer was the Proper Officer for the receipt of requests from Members for a dispensation to take part in decisions on items of business in which they had a disclosable pecuniary interest, in specified circumstances, under Section 33 of the Localism Act 2011. Under Section 33(2) of the Localism Act 2011, a dispensation may only be granted where the authority considered, having had regard to all relevant circumstances, that:

- (a) without the dispensation the number of persons prohibited from taking part in the item of business would be so great a proportion of the meeting to impede the transaction of the business;
- (b) without the dispensation the representation of different political groups at the meeting would be so upset as to alter the likely outcome of any vote relating to the item of business;
- (c) granting the dispensation was in the interests of persons living in the authority’s area;
- (d) each member of the authority’s executive would be prohibited from participating in any particular business to be transacted by the authority’s executive.

The authority to grant a dispensation to a Member with a disclosable pecuniary interest could also be delegated to an officer in accordance with the prescribed circumstances. However, the local arrangements set out in Section 7.7 of the Members’ Code of Conduct required, in the first instance, Members seeking a dispensation to make a written request to the Monitoring Officer. The Monitoring Officer would then put the request before the Standards Committee, to which the Council had delegated the authority to determine requests for dispensations. Additionally, at the Annual Council Meeting on 23 May 2018, the delegation to the Monitoring Officer to grant a general dispensation to members of the authority was re-established in the following circumstances:

- “(1) That a general dispensation be granted to all Members of the authority to take part and vote on decisions related to the functions of your authority in respect of:

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- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
  - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
  - (iv) an allowance, payment or indemnity given to members;
  - (v) any ceremonial honour given to members; and
  - (vi) setting Council Tax or a precept under the Local Government Finance Act 1992;
  - (vii) any other business that might reasonably be regarded as affecting the financial position of the Member and/or his/her spouse or partner 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.
- (2) That the general dispensation apply for four years, subject to its being renewed each year at the Annual Council Meeting.”

The Register of Gifts and Hospitality offered to Councillors in the financial year 2017/18 was attached to the report at **Appendix D**.

The Committee also noted that, at the Annual Council Meeting, on 23 May 2018, Mrs Tina Barnes, the co-opted Independent Member, had been re-appointed as Chair of the Committee for the Municipal Year 2018/19.

The Chair noted that, whilst appreciating that the meeting was quorate, the majority of the Committee’s members had on this occasion sent their apologies for absence. She was aware that those members had given understandable reasons for their absence, and therefore anticipated that in future members would recognise making attendance at this important meeting a priority.

### **Resolved -**

- (1) That the Committee’s terms of reference and Standing Orders and Rules of Procedure (Appendix A) be noted;
- (2) That the local Member Code of Conduct (Appendix B) be noted;
- (3) That the Complaints about Councillors document (Appendix C) be noted;

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- (4) That the re-appointment of Mrs Tina Barnes as the independent member and Chair of the Standards Committee and Mr David Comben re-appointment as the Independent Person for 2018/19 be noted;
- (5) That the Monitoring Officer's delegated authority to grant a general dispensation relieving Members from the restrictions on participating in the discussion or voting on any item of business in which they had a disclosable pecuniary interest in the prescribed circumstances described in paragraph 6.21(1) of the report be noted;
- (6) That the list of gifts and hospitality registered by Members in the financial year 2017/18 be received (Appendix D);
- (7) That, in the event it was deemed necessary, the Vice-Chair be asked to present the Minutes of this meeting to the Council on 16 October 2018, in order to use that meeting to express to all Councillors any matters of concern identified by the Committee.

(The meeting commenced at 6.32pm and closed at 6.45pm).

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READING BOROUGH COUNCIL  
REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	27 JUNE 2019		
TITLE:	TERMS OF REFERENCE AND ANNUAL REPORT		
CHAIR:	TINA BARNES		
SERVICE:	LEGAL & DEMOCRATIC SERVICES	WARDS:	BOROUGH-WIDE
LEAD OFFICER:	CHRIS BROOKS	TEL:	0118 937 2602 / 72602
JOB TITLE:	HEAD OF LEGAL AND DEMOCRATIC SERVICES	E-MAIL:	chris.brooks@reading.gov.uk

## 1. PURPOSE AND SUMMARY OF REPORT

1.1 Further to the Council's Annual Meeting held on 22 May 2019, this report:

- a) notes the powers and duties of the local Standards Committee, set up by the Annual Council Meeting for the Municipal Year 2019/20;
- b) attaches the Standing Orders and local arrangements for the Committee and principles for dealing with complaints about Councillors, as recommended by the Standards Committee on 19 March 2012, and adopted by the Annual Council Meeting on 23 May 2012 for information;
- c) asks the Committee to reconfirm the attached local Member Code of Conduct for the authority, as agreed by full Council on 23 October 2012, which incorporated into the Council's Standing Orders provisions for the exclusion of Members from meetings for items of business in which they have a disclosable pecuniary interest;
- d) notes the re-appointment of Mrs Tina Barnes, at the Annual Council Meeting on 22 May 2019, as an Independent Member and Chair of the Standards Committee;
- e) notes the re-appointment of Mr David Comben, at the Annual Council Meeting on 22 May 2019, as the Independent Person for the Council;
- f) attaches the updated Planning Code of Conduct, which was agreed at the Annual Council Meeting on 22 May 2019 for information;
- g) attaches the recommendations of the Committee on Standards in Public Life published on Local Government ethical standards;
- h) attaches the list of gifts and hospitality registered as having been accepted by Councillors during 2018/19.

- 1.2 Chapter 7 of the Localism Act 2011 ended the statutory standards regime set up by the Local Government Act 2000, and introduced in its place a duty on local authorities to promote and maintain high standards of conduct by Councillors and Co-opted Members, including adopting a local Member code of conduct. The Act also required local authorities to adopt arrangements to deal with allegations that Members have not complied with their local Code of Conduct, and allowed local authorities to establish a local Standards Committee, and to make Standing Orders relating to aspects of the standards process (Section 31(10)). In the light of recommendations made by the Standards Committee on 19 March 2012, the Annual Council Meeting on 23 May 2012 agreed to establish a local Standards Committee. The Annual Council Meeting on 22 May 2019 decided to re-establish a local Standards Committee, with the terms of reference and Standing Orders set out in **Appendix A**.
- 1.3 The local Member Code of Conduct is attached at **Appendix B**. This is based on a good practice draft produced by the Association of Council Secretaries and Solicitors (ACScS), which retained those elements of the former statutory Model Code which had not been the subject of significant legal challenge. It also sets out the statutory requirement for Members to register and declare disclosable pecuniary interests, as informed by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.
- 1.4 The Standing Orders and Rules of Procedure for the Standards Committee, together with this Committee, form the authority's local arrangements for investigating complaints about Councillors. The local procedure is set out in the "Complaints about Councillors" document, attached at **Appendix C**, which is available on the Council's website.
- 1.5 Chapter 7 of the Localism Act 2011 changed the law with regard to the registration and declaration of interests by Members. There is still a legal requirement on Members to register and declare interests, but the definition of declarable interests has reverted to the pre-2002 form of "pecuniary" (financial). The Secretary of State issued Regulations defining Disclosable Pecuniary Interests on 6 June 2012. Members of the authority were therefore asked to complete and return a new declaration form, within 28 days, and the completed forms have been published on the Council's website.
- 1.6 The Standards Committee has authority to issue a general dispensation to Members, in accordance with Section 33 of the Localism Act 2011 to release Members from the restrictions in Section 31(4) of the Act. The dispensation is granted to allow Members of the authority with a disclosable pecuniary interest to take part and vote on decisions in certain prescribed circumstances. The Annual Council Meeting, on 22 May 2019, re-affirmed the delegation to the Monitoring Officer to grant a general dispensation to Members to participate in items where they have a disclosable pecuniary interest in certain specified circumstances (see below for more details).
- 1.7 Over the Municipal Year 2018/19, under the local procedure for dealing with complaints about members, 7 complaints have been considered.
- 1.8 The Council adopted an updated Planning Code of Conduct at its meeting on 22 May 2019. A copy of the revised Code is attached to the report at **Appendix D**.



- 1.9 The Committee on Standards in Public Life published a report in January 2019 on Local Government ethical standards with a number of recommendations. The recommendations are attached at **Appendix E**.
- 1.10 As in previous years, a note setting out the gifts and hospitality registered by Councillors during the Municipal Year 2018/19 is attached at **Appendix F**.
- 1.11 At the Annual Council Meeting on 22 May 2013, the Council formally adopted a Committee System form of governance. The Council has been operating these governance arrangements, which involve four standing committees with delegated decision-making powers, for the past six municipal years. The role of the Standards Committee within this structure is largely unaffected although your attention is drawn to the following relevant parts of the Council's Constitution and other documents as attached:
- A: Article 9 - The Standards Committee (terms of reference) and Standing Orders and Rules of Procedure
  - B: Part 5 - Code of Conduct for Members
  - C: Complaints about Councillors document
  - D: List of Gifts / Hospitality Registered by Councillors 2018/19

## 2. RECOMMENDED ACTION

- 2.1 That the Committee's terms of reference and Standing Orders and Rules of Procedure (**Appendix A**) be noted;
- 2.2 That the local Member Code of Conduct (**Appendix B**) be noted;
- 2.3 That the Complaints about Councillors document (**Appendix C**) be noted;
- 2.4 That the re-appointment of Mrs Tina Barnes as the independent member and Chair of the Standards Committee and Mr David Comben's re-appointment as the Independent Person be noted;
- 2.5 That the Monitoring Officer's delegated authority to grant a dispensation relieving the Member from the restrictions on participating in the discussion or voting on any item of business in which they have a disclosable pecuniary interest in the prescribed circumstances described in paragraph 6.21(1) of the report be noted;
- 2.6 That the updated Planning Code of Conduct (**Appendix D**) be noted;
- 2.7 That the recommendations in the report by the Committee on Standards in Public Life on Local Government Ethical Standards (**Appendix E**) be noted;
- 2.8 That the list of gifts and hospitality registered by Members in the financial year 2018/19 be received (**Appendix F**);
- 2.9 That the Vice-Chair be asked to present the Minutes of this meeting to the Council meeting on 15 October 2019, in the event that there were matters of concern identified by the Committee, which it deemed necessary to bring to the attention of all Councillors.

### 3. POLICY CONTEXT

- 3.1 Standards and conduct were a key theme for the modernisation agenda for local government, and were specifically addressed in Part III of the Local Government Act 2000, which introduced a statutory standards regime for local government. At the heart of the statutory regime, there was the National Code of Conduct for Members, which all local authorities had to adopt from 2002, and which all Members had to agree to observe as part of their declaration of acceptance of office.
- 3.2 The Local Government and Public Involvement in Health Act 2007 introduced local assessment of complaints, by the authority's own Standards Committee. The Council adopted a Local Assessment procedure in July 2008. Parliament, in 2007, also prescribed by Regulation a revised Model Code of Conduct which the Council adopted, with minor additions, on 15 October 2007.
- 3.3 The Localism Act was passed in November 2011. Chapter 7 deals with standards. The Government introduced a Commencement Order in mid-January 2012, to have effect from 31 January 2012. This ended the ability of Standards for England to accept new referrals from that date; and the Board was abolished from 31 March 2012. A further Commencement Order brought into force the remaining parts of Chapter 7 of the Localism Act 2011 from 1 July 2012. Therefore the local elements of the former statutory regime, including statutory standards committees with the power to suspend Councillors, ended on 30 June 2012, and from 1 July 2012, all standards matters have been the responsibility of the local authority, to be handled under the new arrangements set out below.
- 3.4 In addition, the Secretary of State issued The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 on 6 June 2012 and these also came into effect on 1 July 2012.
- 3.5 In 2018 the Committee on Standards in Public Life announced its first examination of local government standards since the complete transfer of responsibility for standards to local authorities in 2011. It makes a number of recommendations and identifies best practice to improve ethical standards in local government.
- 3.6 The report, [Local Government Ethical Standards](#), published in January 2019, focuses on principal councils and parish councils and set out where the Committee considered there should be changes in the law. The key recommended changes in the law include:
- Councillors to be presumed to be acting in an official capacity in their public conduct, including in statements on publicly-accessible social media;
  - Disclosable pecuniary interests to include a number of unpaid roles coupled with repeal of criminal sanctions;
  - A public interest test for participating in a discussion or voting if councillors have an interest in an issue;
  - Increased powers and protections for Independent Persons;
  - Local authorities to have the power to suspend councillors without allowances for up to six months;
  - Councillors to have the right to appeal to the Local Government Ombudsman in the event of suspension;
  - Disciplinary protections for statutory officers to be extended to all disciplinary action, not just dismissal.

3.7 Key best practice proposals are for:

- The adoption of an updated model code of conduct, prepared by the LGA;
- Including prohibitions on bullying and harassment in codes of conduct;
- Requiring councillors to comply with formal standards investigations;
- Strengthening aspects of the investigation of breaches of codes of conduct;
- Publicly available information on how to make a complaint;
- A report on relationships with separate bodies as part of the annual governance statement.

3.8 The Committee considered whether there was a need for a central body to govern and adjudicate on standards and concluded that whilst the consistency and independence of the system could be enhanced, there was no need to reintroduce a central body, and that local authorities should retain ultimate responsibility for implementing and applying the Seven Principles of Public Life in local government (Nolan Principles see Section 4 below).

#### 4. LOCALISM ACT 2011 - SUMMARY OF CHANGES

4.1 Chapter 7 of the Localism Act made major changes to the standards regime applying to local authorities. As part of these changes, the definition of interest is changed. Instead of personal and prejudicial interests, relating both to financial matters and to well-being, the Act reverts to the pre-2000 definition of *pecuniary* (financial) interest.

4.2 The key features of the Act, in relation to standards, are as follows:

- the Statutory Instruments which govern the conduct of Members and which prescribe the Model Code of Conduct have been revoked
- the Standards Board (Standards for England) has been abolished, and none of its functions have transferred to other bodies; and the First-tier Tribunal has lost its jurisdiction over the conduct of local authority members.
- Each local authority now has a statutory duty to promote and maintain high standards of conduct by its Councillors and co-opted members.
- the statutory requirement that local authorities must have a Standards Committee has been abolished; however, local authorities must have a local Member Code of Conduct, and adopt arrangements to deal with allegations that members have not complied with their local Code of Conduct; and may establish a local Standards Committee, and make Standing Orders relating to aspects of the standards process (Section 31(10)).
- Local authorities now have discretion over the contents of their local Member code. However, the code must be consistent with the general principles of behaviour in Part 4 of the current code (the *Nolan* Principles): these are -
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness

- Honesty
  - Leadership
- The code must also include provisions in respect of Members registering and disclosing their interests - including maintaining a public register of interests.
  - Members must register and disclose both pecuniary interests and “interests other than pecuniary interests”. The previous statutory definitions of “personal” and “prejudicial” interest have disappeared.
  - Individual local authorities may determine what interests are to be entered in their register. However, the Act requires all Members - including co-opted Members - to register and declare *disclosable pecuniary interests*. The definition of a *disclosable pecuniary interest* has been specified by Regulations made by the Secretary of State in June 2012.
  - A *disclosable pecuniary interest* will extend to spouses, civil and common-law partners - but not more widely to relatives, friends or close associates.
  - Members must register pecuniary interests within 28 days of election or when they become aware of or disclose the interest.
  - An interest that is recorded in the public register need not be declared at a meeting, but if Members have a *disclosable pecuniary interest*, then they cannot take any part in the discussion or decision-making at the meeting (so therefore in practice they will have to disclose it).
  - An authority may make Standing Orders to provide for the exclusion from meetings of Members who have a *disclosable pecuniary interest*.
- 4.3 The authority must put in place arrangements to investigate and decide on allegations of breaches of its code. However, the Act has abolished the statutory standards regime established by the Local Government Act 2000. Therefore there is no longer any statutory provision for a local authority to suspend a Member who has been found to have acted in breach of the code.
- 4.4 These arrangements must include the appointment of an ‘Independent Person’ whose views the authority must consider before it makes a decision on an allegation that it has decided to investigate; and whose views may be sought by Councillors who are the subject of an allegation. The ‘Independent Person’ cannot be a current Member or officer of the authority, nor have served in either capacity during the five years immediately preceding their appointment.
- 4.5 An allegation that a Member has failed to disclose a known pecuniary interest will be handled differently. The Localism Act specifies that Members will commit an offence if they fail to disclose a known pecuniary interest and/or participate in the discussion and vote without reasonable excuse; or provide false or misleading information about their interest. The offence will be heard in court. The penalties available to the court are:
- A fine of up to £5,000
  - Disqualification of the person from being a Member of the authority, or any other authority, for up to 5 years

## 5. LOCAL STANDARDS ARRANGEMENTS

### 5.1 General

- 5.1.1 The Localism Act 2011 has had the effect of returning local government to the situation before the Local Government Act 2000 and the introduction of the statutory standards regime from 2002. In this regard, the Council first set up a local Standards Panel in 1999. It did not adopt a formal Member Code of Conduct until required to do so, in 2002. Instead the Standards Committee adopted principles for dealing with complaints that were flexible, depending on the source of the complaint (ie public, other Councillors, staff), but informed by the authority's (then) three-stage complaints process for dealing with complaints about services. The starting point in each case was that the complaint should normally be referred at the first stage to the Leader of the Councillor's Group to be investigated under the Group's own disciplinary procedure.
- 5.1.2 The report to the Standards Committee meeting of 19 March 2012 reviewed options for setting up a local Standards Committee and how complaints about Councillors might be dealt with, with reference to the arrangements and Standing Orders operated by the Council before 2002.

### 5.2 Member Code of Conduct

- 5.2.1 Section 27 of the Localism Act 2011 places a duty on local authorities to promote and maintain high standards of conduct by Councillors and co-opted Members of the authority. Section 27(2) requires the local authority to adopt a code dealing with the conduct of Councillors and co-opted Members when they are acting in those capacities.
- 5.2.2 Section 28 of the Localism Act deals specifically with the Code of Conduct. Under para. (1), the adopted Code must be consistent with the general principles of public life set out above. These were first stated by the Committee for Standards in Public Life (the Nolan Committee), which were repeated in the White Paper *Modern Local Government: In Touch with the People*, issued in 1998.
- 5.2.3 Under Sections 28(4) and (6), the authority must put in place arrangements under which any allegation of a failure by a Councillor or co-opted member to comply with the local Code of Conduct must be dealt with. This includes both the investigation and taking a decision on such allegations.
- 5.2.4 The Code must also include specific provision for the register and disclosure of interests, and in particular pecuniary interests. Under Section 30(3) of the Localism Act, the Secretary of State issued Regulations in June 2012 to specify the definition of a disclosable pecuniary interest.
- 5.2.5 The former statutory (Model) Code is a known and public document of reference. Given its statutory basis, over the 10 years of the Standards Board's existence, the Tribunal and the courts have defined aspects of its interpretation. However, some court interpretations have not always supported the guidance issued by the Standards Board: this has been the case with regard to bringing your office or authority into disrepute.

5.2.6 The Council has adopted a local code from 2012. Under Section 28(5), the Localism Act allows a local authority to revise the existing Code of Conduct, or adopt its own replacement. In either case, the code has to include the provisions that the authority considers appropriate for the registration and disclosure of interests (Section 28(2)).

5.2.7 The document attached at **Appendix B** was adapted from a version provided by ACSeS, and based on the former Model Code, but modified in the following ways:

- Specifically including the Nolan Principles, and having an appendix providing guidance on compliance with them;
- Removal of reference to bringing your office or the authority into disrepute;
- Making clear that it applies only to when the Member is acting in their role as a Councillor or Co-opted member (and therefore not to their private life);
- Introducing a reference to complying with the Bribery Act 2010;
- Introducing a provision not to make vexatious or malicious complaints about other persons.

5.2.8 The local Code also includes specific provisions on the registration and disclosure of interests, including pecuniary (financial) interests, and the exclusion from meetings of Members who have a disclosable pecuniary interest. In this regard, Section 31(4) of the Localism Act 2011 prevents Members who have a disclosable pecuniary interest in an item of business being discussed at a meeting from participating in the discussion or voting on that item of business; whilst Section 31(10) allows local authorities to make Standing Orders to exclude such Members from the meeting whilst the discussion and vote on the item of business takes place.

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

5.3.1 This is a useful document to be read in conjunction with the Member Code of Conduct and is set out in Part 5 of the Council's Constitution. The document provides guidance on the smooth management of the Council by describing the relative roles and responsibilities of the Councillors and Officers with the intention of enabling them to carry out their roles with certainty and confidence.

### **5.4 Local Standards Committee - Standing Orders and Operating Procedures and Principles for Dealing with Complaints**

5.4.1 Unlike the Local Government Act 2000, the Localism Act 2011 does not include specific statutory provisions for Standards Committees. However, Section 28(6) of the Localism Act 2011 requires a local authority to have in place arrangements under which allegations about Councillors and co-opted members can be investigated. These arrangements can include a local Standards Committee.

5.4.2 In the absence of specific statutory provision in the 2011 Act, this local Standards Committee has been set up, by full Council, as a committee under Section 101(a) of the Local Government Act 1972. It is therefore subject to the statutory provisions concerning proportionality and access to information as any other Committee of the authority.

5.4.5 The Standards Board, in 1999, adopted the following principles for dealing with complaints about Councillors, through a three-stage complaints process, which the

Committee on 19 March 2012 agreed should form the basis for the new local system. The process is preceded by a filtering stage undertaken by the Monitoring Officer. It is summarised in the "Complaints about Councillors" document, at Appendix C. The stages are as follows:

- Initial Filter Monitoring Officer to check whether the complaint provides evidence that the Member may have acted in a way that has breached the local Code
- Stage 1 Reference to Member's Group Leader for investigation under the Group disciplinary procedure or to the individual Councillor where they are not part of a group
- Stage 2 Investigation through a formal Council process (if considered appropriate by the Monitoring Officer in consultation with the Independent Person)
- Stage 3 Report to Standards Committee IF the Monitoring Officer, in consultation with the Independent Person, considers that a serious breach of the local Code has occurred.

## 5.5 Sanctions

- 5.5.1 The Localism Act 2011 abolished the statutory standards regime set up by the Local Government Act 2000. Therefore the range of sanctions prescribed by the 2000 Act are no longer available. This means that a local Standards Committee cannot suspend, or partially suspend, a Councillor for up to six months, or require the Councillor to provide a written apology, or to undertake training or conciliation.
- 5.5.2 The lawful sanctions that are available to the local Standards Committee, therefore, are those that were available to a committee set up before the 2000 Act, and they must be exercised by the Committee in a lawful and proportionate manner with due regard to the particular facts and circumstances of the case. They amount to:
  - o A formal letter to the Councillor found to have breached the code
  - o A formal censure motion
  - o A formal request to the Councillor's Group Leader to replace him/her as a member of a committee or meeting
- 5.5.3 The Committee meeting will be held in public (unless confidential or exempt information is being considered), and therefore will carry the informal sanction of bad publicity. The Committee may also issue a press release setting out its conclusions. The Committee minutes will be a public document, and published on the Council's website.
- 5.5.4 The Committee could suggest to a Councillor and/or the relevant Group Leader that the Councillor should provide a written apology and/or undertake training or conciliation. However, it will no longer have the power to require compliance.
- 5.5.5 The newly-constrained legal basis of the local Standards Committee - and therefore of the authority - will have the effect of placing greater responsibility for ensuring compliance by Councillors with the duty to promote and maintain high standards of conduct with their political Group, and in particular the Group Leader and Whip.

This is why stage 1 of the complaints procedure is for the Monitoring Officer to refer complaints, which s/he considers s/he cannot resolve informally, to be dealt with by the Group Leader and give the Group the opportunity of remedying the complaint before it becomes the subject of a more formal investigation.

## **5.6 Independent Person**

5.6.1 The Localism Act 2011 requires the local authority, as part of its arrangements, to appoint at least one Independent Person (IP), with the following responsibilities:

- The authority must seek the IP's views, and take them into account, before making a decision on an allegation that it has decided to investigate
- The authority may also seek the IP's views in other circumstances
- A Member who is the subject of an allegation may seek the IP's views

5.6.2 Therefore, under the three-stage procedure described in this report, the Monitoring Officer must seek the IP's views before taking a report on a complaint to the Standards Committee at stage 3; and may do so at an earlier stage in the process, such as when receiving the response of the Group Leader at stage 1, and/or instituting an investigation at stage 2.

5.6.3 Under Section 28(8), the IP cannot be a person who has been a Member or officer of the authority during the five year period before his/her appointment as the independent person. Therefore, the IP should not be an independent (non-Councillor) member of the old (statutory) Standards Committee.

## **5.7 Committee Membership**

5.7.1 The Committee's Standing Orders (see Appendix A) say that the Standards Committee will be composed of:

- Councillors, subject to each registered political group on the Council having an entitlement to at least one seat;
- At least one, and no more than three, co-opted Independent Member(s) (persons who are not a Councillor or an officer of the Council or who are not disqualified from being a Member of a Committee of the Council under Section 104 of the Local Government Act 1972;
- each political group represented on the Committee may nominate named substitute members and those Councillors may attend in the place of appointed Councillors provided that they have received training similar to that received by members of the Committee;
- no more than one Lead Councillor; and the Leader of the Council may not be a member of the Standards Committee.

5.7.2 The Independent Member(s) will be co-opted as Members of the Committee appointed under Section 102(4) of the Local Government Act 1972.

5.7.3 For the Municipal Year 2018-19, the Councillor members of the Committee were Councillors Ayub, Brock, D Edwards, Gavin, Khan, Vickers and Warman with Councillors Maskell and Skeats as the named substitutes. The new members appointed for 2019-20 are Councillors Ayub, Edwards, Gittings, Khan, Lovelock, R Singh and Warman with Councillors Ennis and Skeats as named substitutes.

## **6. INTERESTS**



- 6.1 Chapter 7 of the Localism Act 2011 has changed the law with regard to the registration and declaration of interests by Members. There is still a legal requirement on Members to register and declare interests, but the definition of declarable interests has reverted to the pre-2002 form of “pecuniary” (financial).
- 6.2 The Secretary of State issued The Relevant Authorities (Disclosable Pecuniary Interests) Regulations on 6 June 2012.
- 6.3 Under Section 30 of the 2011 Act, Councillors - and co-opted Members - must register pecuniary interests that are known to them in the following circumstances:
- within 28 days of becoming a Councillor or co-opted Member of the authority
  - Within 28 days of becoming aware of the existence of the interest
  - Within 28 days of disclosing the existence of an un-registered pecuniary interest at a meeting of the authority
- 6.4 Members must also notify the Monitoring Officer of any changes to a registered pecuniary interest, again within 28 days of their becoming aware of the change.
- 6.5 Members may give the Monitoring Officer advance notice of a disclosable pecuniary interest that they intend to register within the 28 day period.
- 6.6 Under Section 29 of the 2011 Act, the register of Members’ interests must be available for public inspection, and also published on the authority’s website. This has been the Council’s practice for a number of years.
- 6.7 Under Section 31 of the 2011 Act, Members no longer need to declare an interest in an item of business at a meeting if they have already registered this interest in the published register (Section 31(4)). However, if they have a disclosable pecuniary interest, they cannot take part in the discussion or decision-making on that item of business at the meeting, and so in practice they will have to disclose the interest. In addition, as a result of past case law (in particular the *Richardson v North Yorkshire* judgment), a court will expect Members to leave the meeting room when the business in which they have a disclosable personal interest is being discussed. Under Section 31(10) of the 2011 Act, the local authority may make provision in its Standing Orders for the exclusion from a meeting of a Member with a disclosable pecuniary interest in the item of business being discussed.
- 6.8 A Member with a disclosable pecuniary interest in an item of business at a meeting may continue to be present at the meeting to make representations, answer questions and give evidence before leaving, subject to there being equivalent public speaking rights.
- 6.9 Under Section 30(3), the Localism Act 2011 places a duty on Members to register and disclose known pecuniary interests held by “relevant persons”. These are the Members’ spouse, civil partner, or any person with whom the Member is living as husband and wife or as civil partners. Therefore, the Act extended the legal requirement for public registration to include pecuniary interests held by spouses and partners, which in turn must be open for public inspection and published on the Council’s website.

- 6.10 The 2012 Regulations in practice follow the previous Orders which implemented the relevant provisions of the 2000 Local Government Act, and require Members to register the same things. The main differences are as follows:
- The Localism Act 2011 has made the circumstances where pecuniary interests must be registered more complicated than the requirements of the 2000 Act.
  - As mentioned above, the duty to register now extends to known pecuniary interests held by a “relevant person” - ie spouse or partner
  - It is not clear whether the Member should register the extent / value of the interest as well as its existence. The old registration (2000) form specifically states that Members did not need to show the extent of their interest.
  - The statutory requirement to register and declare no longer extends to other family members or close associates; and no longer uses the expression “relates to or is likely to affect” in relation to the holding of a disclosable pecuniary interest.
  - There is no longer a duty to register gifts, or to register interests in public or charitable bodies where the Member has a position of general control or management.
- 6.11 On the last two bullet points above, there is a separation between Disclosable Pecuniary Interests (which have to be registered), and non-statutory (personal) interests, where there is not a duty to register but the Member is actively encouraged to do so in the interests of transparency and to avoid allegations of bias. It also encourages Members to declare at meetings interests which affect other family members or close associates, again in the interests of openness, transparency and the avoidance of bias; and not to participate in the discussion or vote and to leave the meeting if the interest is pecuniary.

#### Bias and Predetermination

- 6.12 It is important to separate personal interests from the common law principles of bias and predetermination. These may still apply, even if there is no personal interest:
- An *interest* is personal to the Member (and a “relevant person”) and any penalty will apply to the Member. A failure to disclose a personal interest will not invalidate the authority’s decision-making process.
  - Bias is “an attitude of mind which prevents the decision maker from making an objective determination of the issue he has to resolve”. This could include membership of a body that has lobbied for or against the issue being decided. The test of bias is whether the relevant circumstances “would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased”.
  - Predetermination is making up your mind in advance of taking the decision. This applies particularly to planning and licensing, where Councillors must consider on the merits of individual cases presented to committee. Councillors cannot take part in decisions on individual applications if they have already

made up their mind. However, predisposition is not the same as predetermination.

- Councillors who may have predetermined their position on a planning or licensing application may still attend meeting to speak on the application through the meeting's normal procedures, and need not leave the meeting. However, they cannot take part in the debate or vote on the application.

- 6.13 The legal concepts of *Bias* and *Predetermination* are normally linked. At the heart of both is a common law requirement for the decision-maker to have an open mind when making the decision. In either case, redress may be sought through the courts against the Council, not the Member, and if a court finds bias or predetermination, the failure will be by the authority and the Court, in consequence, may set aside the decision made by the authority. The Local Ombudsman may also find maladministration causing injustice by the authority and require the authority to take remedial action, including paying compensation.
- 6.14 Section 25 of the Localism Act 2011 introduced a new definition of bias and predetermination, which came into effect on 15 January 2012. The Localism Act does not change the common law principle that a decision maker (ie Member) must have an open mind when taking a decision. What it does is to introduce a clarification in relation to any allegation or complaint that a decision-maker appeared to have a closed mind when making a decision which in turn raises an issue about the validity of the decision taken by the authority. The clarification is that a decision-maker should not be taken to have had a closed mind when taking the decision *just because* [my italics] s/he had previously done anything that directly or indirectly indicated what view the decision-maker took, or might take, in relation to a matter relevant to the decision.
- 6.15 In summary, the courts will continue to require that Members taking a decision, in particular relating to planning or licensing, do not have closed minds when they take the decision, but will not expect a Member to have an 'empty' mind.

#### Dispensations

- 6.16 Under Section 33 of the Localism Act 2011, the authority may grant a dispensation to Members who have a disclosable pecuniary interest in an item of business being conducted at a meeting of the authority at which they are present, to allow them to participate in the discussion and vote on the item of business.
- 6.17 In such cases, the Member must make a written request for a dispensation to a Proper Officer, who is the Monitoring Officer. The Monitoring Officer will then put the request before the Standards Committee, to which the Council has delegated the authority to determine requests for dispensations.
- 6.18 Under Section 33(2) of the Localism Act 2011, a dispensation may only be granted where the authority (ie the Monitoring Officer and the Committee) consider, having had regard to all relevant circumstances, that :
- (a) without the dispensation the number of persons prohibited from taking part in the item of business would be so great a proportion of the meeting to impede the transaction of the business;

- (b) without the dispensation the representation of different political groups at the meeting would be so upset as to alter the likely outcome of any vote relating to the item of business;
  - (c) granting the dispensation is in the interests of persons living in the authority's area;
  - (d) each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive (as the Council is operating a committee system of governance this eventuality is not currently relevant).
- 6.19 The authority to grant a dispensation to a Member with a disclosable pecuniary interest can also be delegated to an officer in accordance with the prescribed circumstances.
- 6.20 The Annual Council Meeting on 22 May 2019 agreed to re-confirm a delegation to the Monitoring Officer to grant a general dispensation to members of the authority in the following circumstances:
- (1) That a general dispensation be granted to all Members of the authority to take part and vote on decisions related to the functions of your authority in respect of:
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;
    - (v) any ceremonial honour given to members; and
    - (vi) setting Council Tax or a precept under the Local Government Finance Act 1992;
    - (vii) any other business that might reasonably be regarded as affecting the financial position of the Member and/or his/her spouse or partner 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.
  - (2) That the general dispensation will apply for four years, subject to being renewed each year at the Annual Council Meeting.
- 6.21 A dispensation must be granted for a specified period of time, which may not exceed four years.
- 7. COMPLAINTS**
- 7.1 Complaints to Monitoring Officer

7.1.1 Over the Municipal Year 2018/19, the Monitoring Officer received 7 formal complaints, and considered them at the filter stage. One was resolved and the remainder were not taken into the three stage Complaints Procedure.

7.1.2 Consequently, the outcome of the resolved complaint was to reinforce a number of corporate messages.

## 7.2 Local Codes of Conduct and Protocols

7.2.1 The Constitution contains the following protocols of relevance to Councillors:

- Planning code of conduct (**Appendix D**)
- Protocol on Member:Officer Relations
- Council Publicity and Elections
- Social Media Protocol
- Protocol for Webcasting and Recording of Council and Committee Meetings
- Working with Reading's MPs

7.2.2 The Council adopted an updated Planning Code of Conduct (**Appendix D**) at its meeting on 22 May 2019. The changes to the document had been made in accordance with the Local Government Associations' Planning Code of Conduct guidance, and included adding an additional section on 'call in' procedures and training. A version of the new Code highlighting the changes that have been made is available on request.

7.2.3 In addition, during 2005 my predecessor and I issued guidance to Councillors on interests in licensing matters, which we updated during 2009/10 due to legislative changes.

## 8. OPERATIONAL ISSUES

### 8.1 Gifts and Hospitality

8.1.1 The Register of Gifts and Hospitality offered to Councillors in the financial year 2018/19 is attached at **Appendix F**. Under para. 7.9 of the Code of Conduct, Members have to give me notification of all gifts and hospitality with a value of over £25. There is an additional column showing the value of the gift. The Councillor Services team also adds all declared gifts to the Councillor's personal register of interests' entry.

8.1.2 The Localism Act 2011 has ended the statutory requirement for Members to register and declare gifts and hospitality. However, the Council continues to encourage Members to register gifts and hospitality that they receive in their role as Members, in the interests of openness and transparency.

## 9. CONTRIBUTION TO STRATEGIC AIMS

9.1 One of the Council's strategic aims is to promote the participation of Reading people in local democracy through effective consultation and communication. This is only likely to be successful if people have confidence in the integrity of its members. The local Standards Committee will assist in building and maintaining that confidence.

## 10. EQUALITY IMPACT ASSESSMENT

- 10.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.2 It is not considered that an Equality Impact Assessment (EIA) is relevant to the decisions arising from this report.
- 10.3 The former Model Code of Conduct included a general obligation on Members not to do anything which may cause the authority to breach any of the equality enactments as defined in Section 33 of the Equality Act 2006. The local Code attached at **Appendix B** repeats this obligation, and makes clear that this means that Members must not discriminate against people on grounds of race, gender, disability, religion or belief, sexual orientation and age. The code also has appended a list of laws conferring special obligations on Members which includes the equality enactments.

## 11. LEGAL IMPLICATIONS

- 11.1 The standards regime applies to voting Members of Council and Committees, including both Councillors and non-elected Members.
- 11.2 Chapter 7 of the Localism Act 2011 (Sections 26 to 37) ended the statutory requirement for local authorities to have a Standards Committee, revoked the Model Code of Conduct, and abolished Standards for England and the current statutory facility for disqualification through the First-Tier Tribunal. It replaced these by a duty on local authorities to promote and maintain high standards of conduct by Members, and a requirement to adopt a local code of conduct, and arrangements for investigating allegations that Members had not complied with the local code. The exception to this is where a Member intentionally fails to declare a declarable pecuniary interest, in which case the Member may be found guilty of a criminal offence, and may be fined, and disqualified by the court from serving as a Member for up to five years.
- 11.3 Chapter 7 was enacted by Commencement Order (Regulation). The relevant Order ending the national standards regime came into effect on 31 January 2012. The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012, which changed the local regime, was issued on 6 June 2012 and came into effect from 1 July 2012. The Commencement Order also provided for transitional arrangements in respect of the appointment of the Independent Person, as set out in 5.6.3 above.
- 11.4 The Secretary of State issued the Relevant Authorities (Disclosable Pecuniary Interests) Regulations, dealing with the definition, registration and declaration of pecuniary interests, also on 6 June 2012.

- 11.5 Under Section 28(13-14) of the Localism Act 2011, the function of adopting, revising or replacing a local code of conduct may only be discharged by full Council, and it may not be delegated to the Standards Committee or any other body or person.
- 11.6 As explained above, in the absence of specific statutory provision in the 2011 Act, the local Standards Committee has been set up, by full Council, as a committee under Section 101(a) of the Local Government Act 1972. It is therefore subject to the statutory provisions concerning proportionality and access to information as any other Committee of the authority.

## **12. FINANCIAL IMPLICATIONS**

- 12.1 Under the non-statutory local standards arrangements set out in Appendices A and B, the Council and this Committee has moved back to a more informal, local system, where the first stage focus is on complaints about individual Councillors being pursued within political groups, and any subsequent investigations taking place within a process which is appropriate to the individual complaint, not governed by restrictive external processes, and as a result less resource intensive.
- 12.2 There is no specific budget line in the Council's estimates for standards, or the costs of investigating complaints about Councillors.

## **13. BACKGROUND PAPERS**

Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 (SI 2012 - 1463)

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012 - 1464)

Local Government Ethical Standards report, published 30 January 2019

# Article 9 - The Standards Committee

## LOCAL STANDARDS COMMITTEE - TERMS OF REFERENCE AND STANDING ORDERS

### 9.1 Standards Committee

9.1.1 The Localism Act requires local authorities to adopt arrangements to deal with allegations that Members have not complied with their local code of conduct. It also allows local authorities to make Standing Orders relating to aspects of the standards process (see Section 31(10)).

9.1.2 As an integral part of these arrangements, the Council has established a Standards Committee, under the provisions of Section 102(1) of the Local Government Act 1972.

9.1.2 The Standards Committee may establish sub-committees under the same provisions.

### 9.2 Composition

#### (a) Political Balance

9.2.1 The Councillor membership of the Standards Committee will comply with the political balance rules in Section 15 of the Local Government and Housing Act 1989.

#### (b) Membership

9.2.2 The Standards Committee will be composed of:

- Councillors, subject to each registered political group on the Council having an entitlement to at least one seat;
- At least one, and no more than three, co-opted Independent Member(s) (persons who are not a Councillor or an officer of the Council or who are not disqualified from being a Member of a Committee of the Council under Section 104 of the Local Government Act 1972
- each political group may nominate named substitute members and those Councillors may attend in the place of appointed Councillors provided that they have received training similar to that received by members of the Committee
- the Leader may not be a member of the Standards Committee

#### (c) Independent Member(s)

9.2.3 The Independent Member(s) will be co-opted as Members of the Committee appointed under Section 102(4) of the Local Government Act 1972.

#### (d) Chairing the Committee

9.2.4 The Council will appoint a Member of the Committee to be its Chair.

#### (e) Quorum

9.2.5 The quorum of the Standards Committee shall be three Members, subject to Councillors from more than one political group being present.

9.2.6 The quorum of any sub-committee of the Committee shall be three members.



**(e) Voting**

9.2.7 Decisions by the Standards Committee shall be reached by a simple majority vote.

9.2.8 Any two Members of the Committee present at the meeting where a decision is taken shall be able to require any matter considered by the Committee to be referred for investigation to the Council's Chief Auditor or the Council's External Auditors.

**(f) Calling of Meetings**

9.2.9 Meetings of the Standards Committee may be called by:

- the Head of Paid Service, or
- the Monitoring Officer, or
- the Leader of the Council, or
- the Leader of any registered political Group on the Council, or
- the Chair of the Standards Committee, or
- a petition signed by at least one fifth of the Councillors serving on the Council (ie ten Councillors)

9.2.10 The meeting will be held in public, under the access to information provisions of Section 100(A) of the Local Government Act 1972. The press and public may be excluded from meetings only where confidential or exempt information is being considered, as defined in the Council's Access to Information Procedure Rules (in part 4 of the Constitution), and subject to the passage of the necessary resolution.

**9.3 Role and Function**

9.3.1 The general terms of reference of the Standards Committee are to be:

1. To advise and support the authority in meeting its statutory duty of promoting and maintaining high standards of conduct by Councillors and co-opted Members of the authority, under Section 27 of the Localism Act 2011
2. To assist Councillors and co-opted members of the Council to observe the local Member Code of Conduct, and to promote standards of behaviour and conduct by Members which is consistent with the seven principles of public life identified in the First Report of the Committee on Standards in Public Life (the *Nolan* Committee) and repeated in Section 28 of the Localism Act 2011, as follows:
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability
  - Openness
  - Honesty
  - Leadership
3. To receive and consider reports from the Monitoring Officer and Independent Person made under Stage 3 of the Council's Member complaints process, concerning allegations made about Members involving a breach of the local Member Code of Conduct, and/or other Council protocols, in particular the Planning code of conduct and the Protocol on Member/Officer Relations.
4. To monitor the probity and propriety of all aspects of Council business.

5. To scrutinise the conduct of individual Members, political groups and informal groupings, and to issue reprimands to individual Councillors or groups of Councillors in circumstances where breaches of the law, codes of practice or other conduct considered inappropriate have been established.
6. To advise the Council on the adoption or amendment of local codes of conduct and to monitor their effectiveness.
7. To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.
8. To refer any matter considered by the Committee for investigation by the Council's Chief Auditor (or other appropriate officer) or the Council's external auditors as it sees appropriate; the Committee may also refer any such matter to the relevant Political Group(s) for their consideration.
9. To advise, train or arrange to train Councillors, co-opted members and church and parent governor representatives on matters relating to the local Member Code of Conduct and local protocols;
10. To promote, oversee and monitor the register of interests of Councillors and co-opted Members of the authority, and their disclosure and declaration of disclosable pecuniary interests;
11. To grant dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct.
12. To consider any other matters as the Council refers to the Committee from time to time.

#### 9.4 Sanctions

- 9.4.1 The Localism Act 2011 has abolished the statutory standards regime set up by the Local Government Act 2000. Therefore the range of sanctions prescribed by the 2000 Act are no longer available. The local Standards Committee will no longer be able to suspend, or partially suspend, a Councillor for up to six months, or require the Councillor to provide a written apology, or to undertake training or conciliation.
- 9.4.2 The lawful sanctions that are available to the local Standards Committee are those that are generally available to a committee set up under the Local Government Act 1972, and they must be exercised by the Committee in a lawful and proportionate manner with due regard to the particular facts and circumstances of the case. They amount to:
  - o A formal letter to the Councillor found to have breached the code
  - o A formal censure motion
  - o A formal request to the Councillor's Group Leader to replace him/her as a member of a committee or meeting
- 9.4.3 The Committee meeting will be held in public (unless confidential or exempt information is being considered), and therefore will carry the informal sanction of bad publicity. The Committee may also issue a press release setting out its conclusions. The Committee minutes will be a public document, and published on the Council's website.
- 9.4.4 The Committee could suggest to a Councillor and/or the relevant Group Leader that the Councillor should provide a written apology and/or undertake training or conciliation. However, it will no longer have the power to require compliance.

## 9.5 Independent Person

- 9.5.1 The Localism Act 2011 requires the local authority, as part of its arrangements, to appoint at least one Independent Person (IP), with the following responsibilities:
- The authority must seek the IP's views, and take them into account, before making a decision on an allegation that it has decided to investigate
  - The authority may also seek the IP's views in other circumstances
  - A Member who is the subject of an allegation may seek the IP's views
- 9.5.2 Under the three-stage procedure for dealing with complaints about Members, set out below, the Monitoring Officer must seek the IP's views before taking a complaint to the Standards Committee at stage 3; and may do so at an earlier stage in the process, such as when receiving the response of the Group Leader at stage 1, and/or instituting an investigation at stage 2.
- 9.5.3 Under Section 28(8) of the Localism Act 2011, the IP cannot be a person who has been a member or officer of the authority during the five year period before his/her appointment as the independent person. Therefore, the IP cannot be a non-Councillor member of the old (statutory) standards Committee.

## 9.6 Procedure for Dealing with Complaints

- 9.6.1 The process by which a complaint against a Member will be dealt with will vary slightly, depending on the sources and nature of the complaint. All complaints received against Members regardless of how they are dealt with, will be kept in a register held by the Monitoring Officer that will record details of the complaint and its resolution.
- 9.6.2 The Monitoring Officer will submit an annual report to a public meeting of the Standards Committee, including an anonymised schedule of complaints made about Councillors over the preceding Municipal Year.
- 9.6.3 The removal of the statutory powers of Standards Committees to invoke sanctions under the Local Government Act 2000 will place greater emphasis on political Group disciplinary processes - and in particular the Group Leader and Whip - to promote and maintain high standards of conduct, and to ensure that Group Members comply with the local Member Code of Conduct and other agreed Council protocols, and to register and declare disclosable pecuniary interests.
- 9.6.4 The Council will publish its local Procedure for dealing with Complaints about Councillors on its website. This will include the list of matters which will normally be rejected, as set out in (2) below.

### Initial Filter

- (1) All complaints about Members not complying with the local Code of Conduct be referred straight away to the Monitoring Officer, who will record them
- (2) The Monitoring Officer be authorised to review the complaint, and take one of the following courses of action:
  - a. Reject the complaint on the following specified grounds:
    - Anonymous complaints
    - Complaints about actions that occurred more than 12 months before;
    - Complaints about comments made in the cut and thrust of political debate;

- o Minor complaints that s/he sees as trivial, vexatious, malicious, politically motivated or made on a tit-for-tat basis - unless these suggest a more deep-seated problem;
  - o Complaints that are similar to a previously investigated complaint where there is nothing further to be gained from an investigation;
  - o Complaints about a Councillors' private life which are unlikely to affect their fitness for office;
  - o Complaints where there is insufficient information to justify an investigation, or where an investigation is unlikely to be able to come to a firm conclusion on the matter
- b. Explore the complaint informally with the complainant and subject Member, to see whether grounds might exist for an informal local settlement
- c. Refer the complaint to the subject Member's Group Leader, for investigation under the Group's disciplinary procedure

#### Stage 1

- (3) All registered political Groups on the Council will adopt or update their own Group disciplinary or complaints procedures which they will use to deal with complaints at the first stage. The Group Leaders must share and agree these with the Head of Paid Service and Monitoring Officer. However, it will be the responsibility of the Group Leader and Whip to ensure that the complaint is investigated properly through the adopted Group procedure.
- (4) The Group Leader will be responsible for ensuring the following actions are taken when the Monitoring Officer refers a complaint under (2)(c) above:
- a. write to the complainant to acknowledge receipt of the complaint, and explain the process and timescale to be followed to consider the complaint;
  - b. respond in writing to the complainant at the conclusion of the process, with a copy sent to the Monitoring Officer for the record.
  - c. In the response, set out the courses of action open to the complainant if s/he remains dissatisfied with the first stage response.
- (5) Stage 1 of the process will be confidential to the complainant and the Group process, and the Monitoring Officer will not disclose details of any complaint or Group response without the prior approval of the complainant or the Group Leader, other than in the context of his/her annual and anonymised monitoring report to the Standards Committee.

#### Stage 2

- (6) If the complainant is dissatisfied with the response, a second stage might be invoked. This would involve the complaint being investigated through a formal Council process, to be agreed between the Monitoring Officer and the Independent Person.
- (7) The Monitoring Officer will share the complaint with the Independent Person, and seek the Independent Person's views on:
- a. the merits of the complaint
  - b. whether it should be subject to a formal Council investigation process
  - c. if so, the process and timescale to be followed.

- (8) The Monitoring Officer will respond to the complainant, explaining the process and timescale to be followed, if any; and requesting any further information that s/he considers necessary to assist the process.
- (9) Whilst it is important that the Head of Paid Service has overall management of the complaints process, the Monitoring Officer will play the leading role in commissioning the investigatory process. Because of the necessary relationship between the Head of Paid Service and Leading Members of the Authority, it will not always be appropriate, or possible, for the Head of Paid Service personally to carry out investigations. In such circumstances, it might be appropriate for the Monitoring Officer to carry out the investigation personally, or to appoint another senior officer or an external individual to do so. It is important for Members to appreciate that the Head of Paid Service and the Monitoring Officer act as a "check and balance" on each other's actions in this as in other matters.
- (10) At the completion of the investigation, the Monitoring Officer will share the investigation report with the Independent Person and discuss its findings and possible courses of action.
- (11) The Monitoring Officer will then write to the complainant to set out the results of the formal investigation and, where appropriate, the views of the Independent Person.
- (12) If the Monitoring Officer and Independent Person concur with any finding in an investigation report that there has been a serious breach of the local Member Code of Conduct, which requires the application of a sanction available to the Standards Committee to address, the Monitoring Officer may choose at this stage to put the findings directly to the local Standards Committee for its consideration.

### Stage 3

- (13) If the complainant is still dissatisfied, the Monitoring Officer may refer the complaint to the Standards Committee at the third stage. In such circumstances, the Committee will consider a report from the Monitoring Officer outlining the results of the previous stages and decide whether any further investigation or information was needed before it arrived at its own conclusions.
- (14) The decision to refer a complaint to the Standards Committee will be for the Monitoring Officer, having regard to the views of the Independent Person. The complainant will not have a right to require a complaint to be considered by the Standards Committee, or to appeal against a decision of the Monitoring officer not to proceed to this stage.
- (15) The Monitoring Officer will set out the views of the Independent Person in the report to the Standards Committee.
- (16) At this stage, the meeting of the Standards Committee will be held in public, with an agenda published five working days before the meeting. The Committee will be subject to the access to information provisions of Section 100(A) of the Local Government Act 1972, and may only resolve to exclude the press and public if it considers that there will be a disclosure of exempt information as defined in that Section, or confidential information on a third party as defined in Section 40 of the Freedom of Information Act 2000.
- (17) The limited sanctions available to the Committee are set out in para. 9.4 above.

### General

- (18) Subject to a complaint getting through the preliminary filter stage, the stage at which a complaint enters the process will depend upon the nature of and implications flowing from it. It might be appropriate to start the process at a different stage or proceed by a different order. The general principle should be that a complaint will be dealt with at the most

appropriate point at the first stage and will then be escalated to a higher authority if the complainant was not satisfied, and eventually to the Standards Committee.

- (19) It is important that the process is operated flexibly and with common sense. The previous statutory process was administratively complex and slow because of the requirements to follow a prescribed process and the possibility of legal challenge.

## 9.7 Examples of Application of Procedure

9.7.1 The following are examples of how a complaint might be dealt with depending on the source of the complaint.

### (1) The Public

- a) The principles described above could be applied to complaints from members of the public.
- b) However, if a complaint could not be resolved through the various stages described, the complainant would be advised to consider taking the complaint to the Local Government Ombudsman. If the Local Government Ombudsman considered that a Member had been at fault to the extent of breaching the local Member Code of Conduct or the law, the Ombudsman will name the Member concerned in the Report.
- c) In the event of a member being named in a formal report by the Ombudsman, the Monitoring Officer would then refer the matter to the Standards Committee.

### (2) Ombudsman

- a) The Ombudsman's principal focus is on actions of maladministration that cause injustice. This can include a failure to act. The Ombudsman can make findings of maladministration against a Councillor, and grounds for such a finding could include a failure by a Councillor to follow any agreed local protocol.
- b) Irrespective of the origin of the complaint to the Ombudsman, if a Member were named in a formal report by the Local Government Ombudsman, it would be appropriate for the Monitoring Officer to refer that report to the Standards Committee. In all cases where the Ombudsman issues a formal report, a local authority is obliged to advertise the fact and, where there has been a finding of maladministration, to tell the Ombudsman what action it proposes to take.

### (3) Councillors

- a) Occasionally, there are complaints by one Member about the conduct of another Member. More often than not such complaints arise as a result of something said during a heated debate in the Council Chamber.
- b) Members are protected by qualified privilege with regard to anything they say in the course of carrying out their functions as Councillors and this includes debate in the Council Chamber.
- c) It would be inappropriate for such complaints to be referred directly to the Standards Committee, unless the Head of Paid Service or the Monitoring Officer considered there to be a significant breach of Standing Orders or the Council was in danger of being sued for defamation. Such cases should be referred to the Group Leader or Leaders concerned, in the first instance, to see if the matter can be resolved within the political groups' own procedures.

- d) If the complaint cannot not be resolved at this stage, it could then be referred to the Standards Committee.
- e) The route for dealing with complaints about other matters, eg allegations of misuse of Council property, might depend upon the seriousness of the allegation and the potential consequences for the Council.

(4) Staff

- a) Complaints by staff against Councillors usually arise when a member of staff feels that they have been unfairly criticised or are being harassed by an elected Member. Conduct of this nature by another member of staff would lead to a complaint in accordance with either the grievance procedure or the harassment procedure. However, those procedures do not make any provision for circumstances where the complaint concerns an elected member.
- b) In such cases, complaints by members of staff about Councillors will normally be referred to the relevant Group Leader in the first instance. If not resolved to the satisfaction of the member of staff concerned, the complaint could then be investigated by the Monitoring Officer or another senior officer nominated by the Head of Paid Service. A course of action or solution would be recommended.
- c) If this did not produce a satisfactory resolution or the complaint persisted, the complaint would be referred to the Standards Committee.

May 2013

# Part 5 - Codes and Protocols

## Member Code of Conduct

(Adopted by Council, 23 October 2012)

1. This Code is adopted, pursuant to Section 27(2) of the Localism Act 2011, to give force to the Council's statutory duty, under Section 27(1) of the Act, to promote and maintain high standards of Conduct by Councillors and co-opted members of the authority.
2. This Code is not intended to be an exhaustive list of all the obligations placed on Councillors and co-opted members of this authority. It is your responsibility to comply with the following provisions of this Code as well as other legal obligations beyond the scope of this Code.
3. It shall be a defence to an allegation that you have failed to comply with the Code if you can demonstrate that your conduct was reasonable in all the circumstances.

#### 4. GENERAL PRINCIPLES

- 4.1 This Code is based on and consistent with the following seven Principles which are set out in Section 28 of the Localism Act 2011, and which were originally set out by the Nolan Committee on Standards in Public Life:

##### **Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits.

##### **Integrity**

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

##### **Objectivity**

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

##### **Accountability**

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

##### **Openness**

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



## **Honesty**

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

## **Leadership**

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

- 4.2 In following these principles, you must be aware of the laws that confer special obligations on Councillors and co-opted Members, as set out in **Appendix 1**.
- 4.3 You should also follow the guidance for compliance with the General Principles and the Code of Conduct, as set out in **Appendix 2**.

## **5. DEFINITIONS**

- 5.1 This Code applies to all:

- a) Councillor members of this authority, and
- b) co-opted members of this authority

when you are acting in your role as a Councillor/ co-opted member. This includes when you are acting on authority business and / or ward business, representing the Council, or carrying out the business of an office to which you have been appointed by the Council, such as Leader, Lead Councillor or Committee Chair.

- 5.2 A "co-opted member" for the purpose of this Code, as defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who
- a) is a member of any committee or sub-committee of the authority, or
  - b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".

- 5.3 A reference to a "Meeting" shall include reference to a meeting of -
- a) the Council or of any committee, sub-committee, joint committee or joint sub-committee of the authority;
  - b) the Executive or a Committee of the Executive of the authority,
- and shall include reference to any meeting convened for a briefing from an officer or for a site visit, but shall not include any party group meeting when not being briefed by an officer of the authority.

## **6. GENERAL OBLIGATIONS FOR MEMBERS AND CO-OPTED MEMBERS**

- 6.1 When acting in your role as a Councillor or co-opted member of the authority:
- (1) Do comply with the Member Code of Conduct, the Council's constitution and other protocols adopted by the authority in addition to this Code in respect of Member conduct, including:
    - (a) Planning Code of Conduct
    - (b) Protocol on Member / Officer relations
    - (c) Council Publicity and Elections
    - (d) Social Media Protocol

- (2) Do treat others with respect.
- (3) Do ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council as a whole.
- (4) Do not do anything which may cause the authority to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006(a)). This means that you must not discriminate against people on grounds of race, gender, disability, religion or belief, sexual orientation and age.
- (5) Do not bully any person.
- (6) Do not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
- (7) Do not use your position as a Member improperly for personal gain or to advantage other people.
- (8) Do not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
  - a) you have the consent of a person authorised to give it;
  - b) you are required by law to do so;
  - c) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
  - d) the disclosure is—
    - (i) reasonable and in the public interest; and
    - (ii) made in good faith and in compliance with the reasonable requirements of the authority
- (9) Do not prevent another person from gaining access to information to which that person is entitled by law.
- (10) Do not make vexatious or malicious complaints against other persons.

6.2 When making decisions on behalf of or as part of the authority:

- (1) Do have regard to any relevant advice provided to you by the Council's Chief Financial Officer and Monitoring Officer where such advice is offered pursuant to their statutory duties.
- (2) Do give reasons for the decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.
- (3) Do consult with the Monitoring Officer where there is doubt about the authority's powers to act; or whether the action proposed lies within the policy framework of the authority; or where the legal consequences of action or failure to act by the authority might have important repercussions.
- (4) Do consult with the Chief Finance Officer where there is doubt about the authority's ability to fund an action; or whether the action proposed lies within the budget framework of the authority; or where the financial consequences of action or failure to act by the authority might have important repercussions

- 6.3 When using or authorising the use by others of the resources of the authority:
- (1) Do act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies and procedures listed in the Council's constitution which you are deemed to have read;
  - (2) Do make sure that such resources are not used improperly for political purposes (including party political purposes); and
  - (3) Do have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
  - (4) Do not improperly use knowledge gained solely as a result of your role as a member for the advancement of your disclosable pecuniary interests.

## 7. REGISTRATION AND DISCLOSURE OF INTERESTS BY COUNCILLORS AND CO-OPTED MEMBERS

### 7.1. Disclosable Pecuniary Interests

- 7.1.1 Under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, you will have a disclosable pecuniary (financial) interest in any business of the authority which falls within any of the following categories:
- (a) Any employment, office, trade, profession or vocation carried out by you for gain
  - (b) Any payment or provision or any other financial benefit (except from the authority) made or provided to you in the preceding 12 months in respect of expenses incurred by you in carrying out your duties as a Member or towards your election expenses
  - (c) Any person or body which, to your knowledge, has a place of business or land in the authority's area, and in which you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth (1%) of the total issued share capital of that body
  - (d) Any contract for goods, services or works made between the authority and you, or a firm in which you are a partner, or a corporate body in which you are a Director, or where you have a beneficial interest in the securities of that firm or corporate body.
  - (e) Any land, licence or corporate tenancy in the authority's area in which you have a beneficial interest
  - (f) Any land where the landlord is the authority and the tenant is a firm in which you are a partner, or a company of which you are as remunerated Director, or a person or body specified in (c) above
  - (g) Any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer
- 7.1.2 You will also have a disclosable pecuniary interest which you must register if the above interests are held by a "relevant person" as described by the 2012 Regulations and Section 30(3) of the Localism Act 2011. A "relevant person" is:

- Your spouse or civil partner
- A person with whom you are living as husband and wife, or
- A person with whom you are living as if you are civil partners

## 7.2. Registration of Interests

7.2.1 You must register in writing any disclosable pecuniary interest that you, and/or your spouse or partner, have in a public Register of Members' Interests maintained by the authority's Monitoring Officer under Section 29 of the Localism Act 2011, within 28 days of:

- (a) this Code being approved by the authority;
- (b) your election or appointment to office as a Member;
- (c) your becoming aware of the existence of the interest;
- (d) Your disclosing the existence of an interest that you have not previously registered at a meeting of the authority.

7.2.2 You must register any new or changed pecuniary interest held by you, or your spouse or partner, with the Monitoring Officer, in writing, within 28 days of your becoming aware of the new or changed interest.

## 7.3 Non-Pecuniary Interests

7.3.1 The Localism Act 2011 does not place a duty on Members to register non-pecuniary interests. However, you are actively encouraged to register and declare any non-financial interests held by you or your spouse or partner, in the interests of transparency and to avoid allegations of personal bias.

7.3.2 In particular you are actively encouraged to register the following interests:

- (a) membership, or holding a position of general control or management, of a body or bodies to which you have been appointed or nominated by the authority
- (b) membership or holding a position of general control or management of any body that:
  - exercises functions of a public nature
  - is directed to charitable purposes
  - one of whose principle purposes includes the influence of public opinion or policy (including any political party or trades union)
- (c) any body or person from whom you have received a gift or hospitality with an estimated value of at least £25.

## 7.4 Declaration of Interests at Meetings

7.4.1 You should declare any interest that you and/or your spouse or partner hold, under 7.1 and 7.3 above, which relates to or is likely to affect an item of Council business being transacted at any meeting of the authority at which you are present.

7.4.2 In the interests of transparency, openness and the avoidance of bias, you should also declare any pecuniary interest, under 7.1 above, which relates to or is likely to affect an item of Council business being transacted at any meeting of the authority at which you are present, that is held by a member of your family or the family of your spouse or partner, or by a person with whom you or your spouse or partner have a close association.

- 7.4.3 Under Section 31(4) of the Localism Act 2011, any Members who are aware that they have a disclosable pecuniary interest in an item of business being considered at a meeting at which they are present may not participate in the discussion, or vote, on the item of business at the meeting.
- 7.4.4 If you declare that you have a pecuniary interest which relates to or is likely to affect an item of Council business being transacted at a meeting of the authority at which you are present, you may make representations, answer questions and give evidence on the item of business, subject to there being equivalent public speaking rights, but you may not participate in the discussion or vote on the item of business, and you should leave the meeting before any discussion on the item of business takes place at the meeting and before the vote on the item of business is taken.
- 7.4.5 You should declare the interest as soon as you become aware of it at the meeting. Each public meeting will have a "Declaration of Interests" item at the start of its agenda.
- 7.4.6 You should declare both the existence of an interest, and details of the interest. All declared interests will be recorded in the minutes of the meeting.
- 7.4.7 If you realise that you, and/or your spouse/partner, have a disclosable pecuniary interest in an item of business at a meeting which you have not previously registered, then you must both declare the interest at the meeting and then give written notice to the Monitoring Officer, within 28 days of the meeting, of the existence and nature of the interest, for inclusion in the authority's published register.

#### 7.5 Declaration of Interests by Single Members

- 7.5.1 Members who, by virtue of any office that they hold on behalf of the authority, are in a position to take decisions on behalf of the authority, are bound by the same requirements as in 7.4 above, and in this respect you should:
- (a) Make a public declaration of any interest that you, and/or your spouse or partner, have in any item of business of the authority that they are considering; and
  - (b) Not consider or take a decision on any item of business in which you, and/or your spouse/partner, have a disclosable pecuniary interest.

#### 7.6 Sensitive Interests

- 7.6.1 This applies to a situation where a Member considers that the disclosure of the details of your interest - including that of your spouse or partner - could lead to you, or a person connected with you, being subject to violence or intimidation.
- 7.6.2 In such circumstances you should share your concerns with the authority's Monitoring Officer. If the Monitoring Officer agrees with you, s/he will not include details of the interest in the authority's Register of Interests, but may state that you had registered an interest the details of which had been withheld under Section 32(2) of the Localism Act 2011.
- 7.6.3 Similarly, if the Monitoring Officer has accepted that you have a sensitive interest under Section 32 of the Localism Act 2011, you should declare the existence of the interest at any meeting at which you are present but you need not declare the details of the interest.

#### 7.7 Dispensations

- 7.7.1 The authority may grant a dispensation to Members who have a disclosable pecuniary interest in an item of business being conducted at a meeting of the authority at which they are present, to allow them to participate in the discussion and vote on the item of business.

7.7.2 In such cases, you must make a written request for a dispensation to the Monitoring Officer, who will put the request before the Standards Committee. Under Section 33(2) of the Localism Act 2011, a dispensation may only be granted where the Monitoring Officer and the Committee consider, having had regard to all relevant circumstances, that:

- (a) without the dispensation the number of persons prohibited from taking part in the item of business would be so great a proportion of the meeting as to impede the transaction of the business
- (b) without the dispensation the representation of different political groups at the meeting would be so upset as to alter the likely outcome of any vote relating to the item of business
- (c) granting the dispensation is in the interests of persons living in the authority's area
- (d) each member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive

7.7.3 The Standards Committee will grant a dispensation for a specified period of time, which may not exceed four years.

7.7.4 All Members of the authority have been granted a general dispensation to take part and vote on decisions related to the functions of the authority in the following circumstances:

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting Council Tax or a precept under the Local Government Finance Act 1992;
- (vii) any other business that might reasonably be regarded as affecting the financial position of the Member and/or his/her spouse or partner 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.

7.7.5 The general dispensation will apply for four years, subject to being renewed each year at the Annual Council Meeting.

## 7.8 Sanctions

7.8.1 Under Section 34 of the Localism Act 2011 Members will be committing an offence if you:

- (a) fail, without reasonable excuse, to register or declare a disclosable pecuniary interest (7.1)
- (b) participate in any discussion or vote on an item of business in which you have such an interest (7.4)
- (c) register or declare false or misleading information, or are reckless as to whether the information is true or misleading

7.8.2 Such offences will be heard in court, on a prosecution initiated by the Director of Public Prosecutions. The penalties available to the court are:

- (a) a fine of up to £5,000
- (b) disqualification from being a Member of the authority, or any other authority, for up to 5 years

#### 7.9 Registration of Gifts and Hospitality

7.9.1 If you receive any gift or hospitality over the value of £25 in your role as a Member of the authority, you must provide written notification to the Monitoring Officer within 28 days of the existence and nature of that gift or hospitality. The Monitoring Officer will record this in a gift book, and will publish details of all gifts and hospitality registered by Members each year to the Council's Standards Committee.

Reading Borough Council  
Standards Committee  
12 July 2012

Laws conferring special obligations on Councillors and co-opted Members

Bribery Act 2010  
Localism Act 2011  
Data Protection Act 1998  
Freedom of Information Act 2000  
Employment Rights Act 1996  
Local Government Act 1972

Equality enactments including

- the Equal Pay Act 1970 (c. 41),
- the Sex Discrimination Act 1975,
- the Race Relations Act 1976,
- the Disability Discrimination Act 1995,
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006 and regulations made under this Act



Guidance on Compliance with the General Principles

1. As Councillors or co-opted members of Reading Borough Council, we have a responsibility to represent local people and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

2. When acting in this capacity we are committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

**SELFLESSNESS**

- We will champion the needs of our residents and put their interests first.
- We will take representations from our residents seriously and not allow other pressures, including our own financial interests, to deter us from pursuing casework or otherwise advocating for our electors in order to achieve a result.

**INTEGRITY**

- We will not compromise our position by placing ourselves under obligations to outside individuals or organisations who might seek to influence the way we perform our duties as Councillors/co-opted members of this authority.

**OBJECTIVITY**

- We will listen to the interests of all parties, remain objective and make decisions on merit, for example when making public appointments, awarding contracts, or recommending individuals for rewards and benefits.

**ACCOUNTABILITY**

- We will be bold in taking decisions and be accountable for them when scrutinised internally and externally, including by our residents.

**OPENNESS**

- We will make our decisions as open and transparent as possible to enable our residents to understand the reasoning behind them and be informed when holding us to account for them.
- We will only restrict information when the wider public interest or the law clearly demands it.

**HONESTY**

- We will act in accordance with all our legal obligations as outlined in Appendix 1, as well as any requirements contained within the Council's constitution, policies and procedures.

**LEADERSHIP**

- We have a duty to provide leadership and accountability for public services which may require us to champion our residents' interests with other organisations as well as the council's own departments.

We will value our colleagues and staff and lead by example by seeking always to treat people we work alongside with respect.



## Complaints about Councillors

You can make a complaint about a Councillor if you consider that the Councillor has acted in a way that breaches the Code of Conduct for Members. The code can be found on the Council's website: here is the reference <http://www.reading.gov.uk/media/3773/Councillors-code-of-conduct/pdf/Councillors-code-of-conduct.pdf>

### What is the Member Code of Conduct?

The Code is a local document agreed by the Borough's Standards Committee on 12 July 2012. It sets out the standards of moral and ethical conduct that are expected from a Member.

Councillors are the elected Members of the Borough Council. The Code will also apply to any co-opted Members of Council Committees.

Under the Localism Act 2011, all local authorities have a duty to promote and maintain high standards of conduct by Councillors and co-opted Members of the authority. To do this, they must adopt a code setting out the conduct expected from their Members when they are acting as a Councillor or co-opted Member.

All Reading Councillors, when they are elected, are asked to sign to say that they will faithfully fulfil their duties as a Councillor to the best of their judgment and ability.

The Code of Conduct says that Councillors should **DO** the following things:

- Follow the Code when they are representing the Council
- Follow other local codes and protocols
- Treat others with respect
- Comply with the Bribery Act 2010
- Declare any disclosable pecuniary (financial) interests they have in the business of the authority
- Register their personal interests in the Council's Register of Members Interests, and keep their entry up-to-date. Members' interests can be found on their individual pages on the Council's website, at: <http://www.reading.gov.uk/councillorsbyward>
- Register gifts and hospitality received in their role as a Councillor, worth more than £25

The Code of Conduct says that Councillors should **NOT DO** the following things:

- Breach any of the equality enactments (ie discriminate against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age;
- Bully any person
- Compromise the impartiality of people who work for the Council;
- Use their position improperly for personal gain or to advantage other people
- Disclose confidential information, other than in exceptional circumstances;
- Prevent anyone from getting information they are entitled to.
- Make vexatious or malicious complaints against somebody else
- Use the Council's resources improperly for party political purposes;
- Attend meetings or be involved in decision making or voting where they have a disclosable financial interest - except when speaking when the general public are also allowed to do so.

The Code of Conduct applies to Councillors when they are:

- Carrying out Council business;
- Carrying out ward business;
- Carrying out the business of an office to which they have been elected or appointed by the Council (eg Leader, Chair);
- Acting as a representative of the Council.

The Code does not apply to Councillors' personal life.

### What are Interests?

Councillors will have a disclosable *Pecuniary (Financial) Interest* in an item of business being considered by the Council where a decision on a matter would affect the financial position of:

- o The Councillor and/or their spouse or partner
- o A body employing any of those persons
- o Any corporate body in which such persons hold shares above £25,000 in nominal value

To a greater extent than other people in the ward affected by the decision.

## How do I Complain?

If you have evidence that a Councillor has acted in a way that breaches the Code of Conduct, you can complain to the Council's Monitoring Officer, at the following address:

Chris Brooks  
Monitoring Officer  
Reading Borough Council  
Civic Offices  
Reading RG1 7TD

Your complaint must be in writing. You can submit it in three ways:

- By letter (post to above address)
- By e-mail - to [Cttee.Services@reading.gov.uk](mailto:Cttee.Services@reading.gov.uk)
- By completing the proforma below.

In your complaint you must specify the following:

- Name of Councillor
- When the breach occurred
- Details of breach - ie the thing you are complaining about
- The redress you are seeking - ie what would you like the Councillor to do about it?

## What will happen when I complain?

Firstly, the Council's Monitoring Officer will acknowledge receipt of your complaint. He may also contact you to clarify any aspects of the complaint.

The complaint will then follow a complaints process which has an initial filter and then up to three stages.

### Initial Filter

At this stage, the Monitoring Officer will consider whether the complaint provides evidence to suggest that a Councillor may have acted in a way that has breached the local Code of Conduct whilst carrying out the business of the Council. The Monitoring Officer may do three things:

(1) Reject the complaint on one of the following grounds:

- There is no evidence of any action which breaches the Member Code of Conduct
- The complaint is about the Councillor's private life;
- The complaint has been made anonymously
- The complaint is about actions that occurred more than 12 months before;

- The complaint is about comments made in the cut and thrust of political debate;
  - The complaint is trivial, vexatious, malicious, politically motivated or made on a tit-for-tat basis - unless these suggest a more deep-seated problem;
  - The complaint is similar to a previously investigated complaint where there is nothing further to be gained from an investigation;
  - The complaint gives insufficient information to justify an investigation, or where an investigation is unlikely to be able to come to a firm conclusion on the matter
- (2) Explore the complaint informally with you, and the Councillor who is the subject of your complaint, to see whether there is any scope for settling the complaint informally;
- (3) Where the Monitoring Officer considers that the complaint may suggest that a serious breach of the Member Code of Conduct may have occurred, and there does not appear to be scope for an informal local settlement, he will refer the complaint to the Leader of the political Group of which the Councillor is a member, to be investigated under the Group's disciplinary procedure.

### Stage 1

Where the Monitoring Officer refers the complaint for investigation under the disciplinary procedure of the Councillor's Group, the Group Leader will be responsible for ensuring that the following things happen:

- (4) You receive written confirmation of receipt of the complaint, and the process and timescale the Group will follow to look into it;
- (5) At the end of the process, the Group Leader will write to you again to set out the findings of the Group investigation, and the action, if any, that the Group intends to take with regard to the Councillor.
- (6) The Group Leader will copy this response to the Monitoring Officer. Apart from this, this stage of the complaints process will be confidential to yourself and the political Group.

If you are not satisfied with the response you receive from the Group Leader, you may refer your complaint back to the Monitoring Officer.

### Stage 2

The Monitoring Officer will consider whether your complaint should now be investigated through a formal Council process.

In doing this, the Monitoring Officer will share your complaint with the Council's **Independent Person**. The Independent Person is somebody that every local authority has to appoint, and whose views must be sought and taken into account before the

authority makes a decision on the outcome of any investigation that it undertakes formally.

- (7) The Monitoring Officer will seek the Independent Person's views on:
  - o the merits of the complaint
  - o whether it should be subject to a formal Council investigation process
  - o if so, the process and timescale to be followed.
- (8) The Monitoring Officer will then write to you to explain the process and timescale to be followed, if any; and to request any further information that he considers necessary to assist the process.
- (9) At the completion of the investigation, the Monitoring Officer will share the investigation report with the Independent Person and discuss its findings and possible courses of action.
- (10) The Monitoring Officer will then write to you to set out the results of the formal investigation and, where appropriate, the views of the Independent Person.

### Stage 3

- (11) If the Monitoring Officer and Independent Person concur with any finding in an investigation report that there has been a serious breach of the local Member Code of Conduct, which requires the application of a sanction available to the Standards Committee to address, the Monitoring Officer may decide at this stage to put the findings directly to the local Standards Committee for their consideration.
- (12) The Monitoring Officer will tell you if he decides to do this.
- (13) When this happens, the Committee will consider a report from the Monitoring Officer outlining the results of the previous stages and decide whether any further investigation or information was needed before it arrived at its own conclusions.
- (14) The decision to refer a complaint to the Standards Committee will be for the Monitoring Officer, having regard to the views of the Independent Person. You will not have a right to require a complaint to be considered by the Standards Committee, or to appeal against a decision of the Monitoring Officer not to proceed to this stage.

# READING BOROUGH COUNCIL

## COMPLAINTS ABOUT COUNCILLORS

### COMPLAINT FORM

*NB - You should only complete the parts of this form in boxes. The remainder of the form is explanatory text.*

#### YOUR DETAILS

##### 1. Who are you?

Title:	
First name:	
Surname:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile phone:	
E-mail address:	

We will tell the following people that you have made this complaint:

- The Councillor(s) you are complaining about
- The Council's Monitoring Officer
- The Leader of the political Group of which the Councillor is a member.

We will tell them your name, but not your address. The Monitoring Officer will be given full details of your complaint. He will provide the Councillor(s) and the Group Leader with a summary of your complaint, unless in his judgment it is necessary for them to have the full details in order to deal with it.

If you have serious concern about your name, or the full details, of your complaint being given to the Councillor(s) you are complaining about, and/or the assessment sub-committee, please fill in section 8 of this form, below.

## 2. Please tick which of the following descriptions fits you best:

- Member of the public
- Councillor or Co-opted Member of the authority
- Independent member of the Standards Committee
- MP
- Monitoring Officer
- Other Council employee
- Other (please specify)

## YOUR COMPLAINT

## 3. Who are you complaining about?

Which Councillors or Members do you believe have breached the Code of Conduct?

Title	First name	Surname	Position in Council (eg Leader, Chair of Committee)

## 4. Which part of the Member Code of Conduct do you think they have breached?

Please tick - you may tick more than one box

- Not following the Code or other protocols when they are acting as a Member or representing the Council
- Not declaring any personal and pecuniary interests they have in the business of the authority
- Not treating others with respect
- Not complying with the Bribery Act 2010
- Using the Council's resources for unauthorised party political purposes
- Compromising the impartiality of people who work for the Council
- Discriminating against people on the grounds of race, gender, disability, religion or belief, sexual orientation and age



- Bullying
- Using their position improperly for personal gain or to advantage other people
- Disclosing confidential information, other than in exceptional circumstances
- Preventing anyone from getting information they are entitled to
- Making vexatious or malicious complaints about somebody else
- Not registering their disclosable pecuniary interests in the Council's Register of Members Interests, or keeping their entry up-to-date
- Not declaring their disclosable pecuniary interests at meetings
- Attending meetings or being involved in decision making where they have a disclosable pecuniary interest - except when speaking when the general public are also allowed to do so

#### 5. How has the Code of Conduct been breached?

Please set out in the box below what the Councillor or Member has done which you believe has breached the Code of Conduct.

Where you are complaining about more than one Councillor or Member, you should make clear what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information that you want the Monitoring Officer to take into account when considering your complaint. You should, where possible:

- Be specific about what exactly you are alleging the Councillor said or did
  - eg - If you are complaining that the Councillor insulted you, you should state what the Councillor said.
- Provide details of the dates and times of the alleged incidents
  - If you cannot give precise dates, then give a general timeframe
- Confirm whether there were any witnesses - and if so, give their names and contact details if known
- Provide all relevant background information

**Details of Complaint**

Please continue on another sheet if you need more space

**6. Redress**

How would you like the Councillor(s) you are complaining about to remedy your complaint?

**7. Disclosure of Personal Information**

In the interests of fairness and natural justice, we believe that any Councillors who are complained about have a right to know:

- that a complaint has been made about them
- who has made the complaint
- what the complaint is

We will not withhold your identify or the details of your complaint unless you specifically ask us to do so, and then only in the following circumstances:

- to preserve the evidence

- to protect you or other witnesses from intimidation or bullying
- where there is a legal requirement not to disclose
- where the information you are providing in your complaint would be exempt or confidential under the Freedom of Information Act 2000 or Data Protection Act 1998, and the public interest would not be best served by disclosing it

Please provide details of why you believe we should not disclose your name or details of your complaint

## 8. Additional Help

Complaints must be made in writing - including fax or electronic submissions.

If you have a disability that prevents you from making your complaint in writing, please ring the Monitoring Officer on (0118) 937 2359 to discuss other ways for you to make your complaint.

If English is not your first language, please contact the Council's translation and interpretation service on 0118 939 0033.

If you would like this note printed in large print and double space, please ring the Monitoring Officer on 937 2359.

Chair, Standards Committee  
July 2012

## **PLANNING CODE OF CONDUCT FOR COUNCILLORS**

ADOPTED BY COUNCIL, 20 OCTOBER 2015 (updated 22 May 2019)

### **1. Introduction**

- 1.1 This guidance note is purely advisory. However, its recommendations are based upon the best practice promoted by the Local Government Association, the Planning Advisory Service and the Royal Town Planning Institute's Code of Professional Conduct. It also takes into account advice issued by the Local Government Ombudsmen and the Council's Code of Conduct for Councillors. Failure to follow the recommendations without good reason could be taken into account in investigations into possible maladministration or have implications for the standing of Councillors and professional officers.
- 1.2 This Code once adopted is intended to guide Councillors who deal with planning matters at Reading Borough Council. Though devised primarily to address the processing of planning applications, it applies equally to all planning matters including planning policy, enforcement of planning control, listed buildings, conservation areas and trees.

### **2. Outline of Planning**

- 2.1 Planning is not an exact science. Rather it relies on informed judgement within a firm policy context. It is also highly contentious because its decisions affect the daily lives of the public and the private interests of individuals and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the legal nature of development plans and decision notices.
- 2.2 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgement, and for justifiable reasons. The process should leave no grounds for suggesting, with any justification, that a decision has been the subject of bias or predetermination or was otherwise not well founded.
- 2.3 Thus the successful operation of the planning system in Reading depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This requires a shared understanding of the respective roles of Councillors and officers and trust between these parties. The following quotation from the Local Government Association serves to illustrate the point:-

*“The role of an elected member on a planning committee involves a balance between representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, as the Nolan Committee in its recent report acknowledges, can give rise to great tensions”.*

(Source: Probity in Planning 1997)

### 3. The General Role and Conduct of Councillors and Officers

- 3.1 Councillors and officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council’s work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to officers through a formal Council decision including delegated powers. Any other system which develops is open to question. A successful relationship between Councillors and officers can only be based upon mutual trust and understanding of each other’s positions. This relationship, and the trust which underpins it, must never be abused or compromised.
- 3.2 Both Councillors and officers are guided by Codes of Conduct. The Local Code of Conduct provides general guidance and standards for Councillors. Breaches of that Code may be regarded as maladministration by the Local Government Ombudsman, and failure to declare a pecuniary interest may be a criminal offence. Officers are also bound by the Council’s Code of Conduct for Officers and those who are Chartered Town Planners are guided by the Royal Town Planning Institute’s (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. In addition to these Codes the Council’s standing orders set down rules which govern the conduct of Council business.
- 3.3 Officers must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 Act places restrictions on their outside activities, such as membership of political parties and serving on another Council. During the course of carrying out their duties, officers may be offered hospitality from people with an interest in a planning proposal. If possible, such offers should be declined politely. If receipt of hospitality is unavoidable, officers should ensure it is of the minimum level and declare its receipt as soon as possible. Officers will be guided in such matters by the Council’s Code of Conduct for Officers.
- 3.4 In respect of planning, Councillors set policies and must determine applications, enforcement issues and other planning matters within the context of those policies. When the Planning Applications Committee considers any report and recommendation within that report Councillors must:-

- Act fairly and openly.
- Approach each application with an open mind.
- Carefully weigh up all relevant issues.
- Determine each application on its own merits.
- Avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another.
- Ensure that there are clear and substantial reasons for their decisions and that those reasons are clearly stated.

3.5 The officers' function is to advise and assist Committee Members in policy matters and in their determination of planning applications, enforcement issues and any other planning related matters by:-

- Providing impartial and professional advice.
- Making sure that all the information necessary for the decision to be made is given.
- Providing a clear and accurate analysis of the issues.
- Setting planning applications, enforcement issues and other planning matters against the broader Development Plan policies and all other material considerations.
- Giving a clear recommendation.
- Carrying out the decisions of the Committee.

#### 4. Declaration and Registration of Interests

4.1 The Localism Act 2011 places requirements on Councillors regarding the registration and disclosure of pecuniary (financial) interests and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 set out the definition of such interests. The Local Code set out requirements and guidance for Councillors, respectively, on declaring pecuniary interests and non-pecuniary interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review their situation regularly. When doing so it must be borne in mind that the Local Code advises that not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct. The responsibility for this rests individually with each Councillor. The Commission for Local Administration in England's publication 'Guidance for Good Practice on Members' interests' also provides helpful advice.

4.2 A Register of Members' Interests is maintained by Councillor Services. Councillors who have substantial property interests or other interests which would or are likely to prevent them from voting on a regular basis, should avoid taking up a position on the Planning Applications Committee and/or avoid other Council positions where regular decisions on planning matters are required.

- 4.3 Whilst advice on what constitutes a pecuniary interest is reasonably clear, that regarding non-pecuniary interests or personal interests is less so. Advice is given in the Local Code for Councillors. It is for Councillors to interpret this using the guiding rule that one should not use one's position to further a private or personal interest, rather than the general public interest, or give grounds for such suspicion. Such non-pecuniary interests include those of a spouse or civil partner and being a member of an outside body. There is no statutory duty to register or declare such interests but Councillors are encouraged to do so.
- 4.4 Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and the acceptance of gifts or hospitality by Councillors can be a very serious criminal offence. Committee Members should have particular regard to the provisions of the Local Code of Conduct. Also, they should avoid any behaviour which might be taken as indicating that they are open to such offers.
5. **Bias and Predetermination**
- 5.1 The common law principles of bias and predetermination may apply even if no pecuniary or other interest exists. Bias is *"an attitude of mind which prevents the decision maker from making an objective determination of the issue he has to resolve."* It could include membership of a body that has lobbied for or against the issue being determined.
- 5.2 Predetermination is having a closed mind ie where a person has *"nailed their colours to the mast"* in advance of considering all material planning considerations including the debate at the Planning Applications Committee.
- 5.3 Councillors cannot take part in decisions on individual applications if they are biased or have already made up their mind. If they do the decision of the Committee is susceptible to judicial review proceedings.
- 5.4 However, where a Councillor has expressed a preliminary view (predisposition), no matter how strong that may be but s/he is willing to listen to all the considerations presented at the Committee then they are at liberty to fully participate in the decision making process.
- 5.5 Section 25 of the Localism Act 2011 makes it clear that a Councillor should not be taken to have had a closed mind just because s/he had previously done anything to indicate the view s/he might take.
- 5.6 All these matters are best judged by applying the objective by-stander test namely whether in all the relevant circumstances the reasonable onlooker would conclude that there was a real possibility, or a real danger of bias. If the answer to that question is yes the Councillor should declare and leave the room.

## 6. Lobbying of and by Councillors

- 6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who are making proposals may wish to explain them to Elected Members or those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward Councillor or to a member of the relevant committee. It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves.
- 6.2 However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called into question (See Paragraph 5 on Bias and Predetermination above). When being lobbied, Councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the relevant officer's report. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at the Committee.
- 6.3 In reality, of course, Councillors will often form a preliminary view about an application early on in its passage through the system, whether or not they have been lobbied. Members of the Committee must accept that they will only make a final decision about how to vote on a particular application when they have heard the evidence and arguments on both sides.
- 6.4 A Committee Member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Councillor represents either their own or constituents opposition to a planning application on planning or other relevant grounds that Member should not be constrained from speaking at the Committee meeting or voting on the application. However if the Member responds to lobbying by applicants by deciding to go public in support of a particular outcome, or by campaigning actively for it before the matter is formally considered by the Council and before all the facts and information are known, the proper course of action for such a Member would be to make an open declaration that they have already formed a judgement and in those circumstances it would be inappropriate for them to vote.



## 7. Political Discussions and the Party Whip

- 7.1 There are occasions when planning matters will be discussed prior to being determined at Committee by political groups and/or by the Chair and Vice Chairs of Committee either with or without officer attendance. These meetings are informal opportunities for Councillors to consider various aspects of planning matters before taking a decision at Committee. For more complex planning proposals these informal meetings may be essential to the understanding of proposals and could lead to the request for more information or consultation on a proposal.
- 7.2 Notwithstanding Paragraph 7.1 Members of the Committee cannot accept an instruction from anyone to determine an application in a particular manner, but must determine the issue on its merits. Accordingly, whilst they may accord appropriate weight to the relevant views of other Committee Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state in open Committee. Therefore, it is inappropriate for any Party Group to instruct its Committee Members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any Member who votes contrary to the Group's collective views.
- 7.3 Where such a "Whip" has been applied, Committee Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.
- 7.4 A Councillor must not put pressure on officers for a particular recommendation.
- 7.5 Call-in procedures, whereby Councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

## 8. Pre-Application and other discussions held before a decision is made.

- 8.1 Discussions between a potential applicant and officers/Members prior to the submission of an application can be of considerable benefit to both parties and is to be encouraged. However, it would be easy for such discussions to become, or be seen (especially by objectors) to become, part of a lobbying process. The Localism Act, particularly S25, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.
- 8.2 In order to avoid such problems, pre-application discussions should take place within the clear guidelines below. Although the term

'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non - confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

8.3 The council has other mechanisms to involve councillors in pre-application discussions including:

- Committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information;

- Developer presentations to committees which have the advantage of transparency.
  - Ward Councillor briefing by officers on pre-application discussions.
- 8.4 Similar arrangements can also be used when the Council is looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.
- 8.5 The Statement of Community Involvement will set out the Council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

## 9. Officer Reports

- 9.1 It is particularly important to write full and consistent reports to Committee on planning applications with clear officer recommendations, not only as a matter of good practice, but because failure may constitute maladministration, and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the Council's statutory duties under the Town and Country Planning Act 1990 and other town planning legislation/delegated legislation.
- Relevant points will include a clear explanation of the development plan, site or related history, and any other material considerations.
  - Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted.
  - Reports should have written recommendations of action; oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.
  - Reports should include a balanced assessment of the planning issues and contain a technical appraisal which clearly justifies the recommendation.
  - If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

## 10. Site Visits

- 10.1 Where possible site visits should take place in advance of the planning application report being considered by Committee and should only be used where the expected benefit is substantial.
- 10.2 The purpose, format and conduct of site visits should be clearly established by officers. They consist simply of an inspection by a Viewing Sub-Committee, with officer assistance either in person or through a briefing note, as the most fair and equitable process between applicant and objectors. Applicants and objectors will have no right to speak but can merely observe the process and answer questions when asked. Applicants will be informed of such visits as a matter of practice.
- 10.3 A site visit may be requested by Councillors if the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by officers (although, if this is the case, additional illustrative material should have been requested); or, there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing; or, the proposal is particularly contentious.

## 11. The Decision Making Process

- 11.1 In determining applications submitted pursuant to the Town and Country Planning Act 1990 and other planning or planning related legislation the Council will follow the Guidelines adopted as part of this Code. These adopted Guidelines will be subject to changes from time to time to reflect the latest government guidance and case law (Appendix A).
- 11.2 Committee Members should not take part or vote on any application or matter if they have not read the Committee report and have not been present throughout the consideration of such application or matter unless the item has been deferred from a previous meeting after being partially considered.
- 11.3 In discussing and determining a planning application, enforcement issue or other planning matter, Committee Members should confine themselves to the planning merits of the case. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits. The Planning Committee's decisions should be properly minuted.
- 11.4 From time to time Members of the Planning Applications Committee will disagree with the professional advice given by the Assistant Director of Planning Transport and Regulatory Services, the Head of Planning or his representative. As indicated above planning is not an exact science and there can be genuine disagreement about the implications of a particular proposal. A legal officer will be present at Committee and will be able to

advise if the facts simply cannot support the conclusion which the Committee Members have drawn and the Committee is in danger of acting unreasonably and exposing the Council to a claim for costs.

- 11.5 Where an appeal arises against such a decision, officers will give support to the relevant Committee Members in preparing evidence for the appeal, but it will be for Members of the Planning Committee to appear at any appeal inquiry/hearing and give evidence to justify the reasons for the Committee's decision. On occasion the Assistant Director of Planning, Transport and Regulatory Services or Head of Planning may consider it appropriate to appoint external Planning Consultants to defend the decision.
- 11.6 Where Committee Members wish to add or amend conditions or reasons for refusal, the general content will be agreed at the meeting before the vote is taken and the final wording will generally be delegated to the Assistant Director of Planning Transport and Regulatory Services / Head of Planning.
- 11.7 If the officer report recommends approval of a departure from the Development Plan, the justification for this recommended departure should be included in the report.

## 12. Section 106 Planning Agreements/Unilateral Undertakings

- 12.1 When applications which propose or require planning obligations by agreement or Unilateral Undertaking are referred to the Planning Applications Committee the heads of agreement will be included in the officers' written report, and a copy of the agreement, when made, will be publicly available, provided (following the advice of a Council Solicitor) it is not considered to prejudice clearly established interests of commercial confidentiality.

## 13. Development proposals submitted by Councillors and Officers, and Council development

- 13.1 Proposals to their own authority by serving Councillors and officers can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications, development plan proposals or relate to other planning matters including enforcement.
- 13.2 It is perfectly legitimate for such planning applications and development plan proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.
- Serving Councillors who act as agents for people pursuing a planning matter within their authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the authority they serve, they should take no part in its

processing, nor should they seek to influence the case officer's assessment or recommendation on the proposal.

- All planning matters that relate to serving Councillors should be reported to the relevant Council body as main items and not dealt with by officers under delegated powers. In addition planning matters that relate to any member of the Corporate Management Team and any person employed or engaged by the Planning and Legal Services must be dealt with in the same way and be determined by the Committee. The Committee report should make it clear that the applicant is a member or a relevant officer of the Council.
- Proposals for a Council's own development should be treated in the same way as those by private developers.

13.3 Enforcement matters relating to serving Councillors and officers will also be dealt with in the same way as any other enforcement case.

13.4 The Council's Monitoring Officer should be informed of such proposals or other planning matters relating to serving Councillors and officers.

#### 14. Training

14.1 Planning regulations can sometimes be complex and it is appropriate that councillors should receive basic training on planning when first appointed to the planning applications committee or local plan steering group, and regularly thereafter. Officers will also provide guidance to individual councillors on planning related matters as necessary.

#### 15. Complaints and Record Keeping

15.1 Every planning file will contain an accurate account of events throughout its life. It should be possible for someone not involved with the matter to understand what the decision was and how and why it was reached. Planning matters determined under officers' delegated powers, where there is no Committee report, will be as well documented and recorded as those taken by the Committee.

15.2 Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance note should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place. When such complaints came forward, they will be treated as any other made to the Council and considered under the Council's complaints procedures.

COUNCIL GUIDELINES FOR DETERMINING PLANNING APPLICATIONS

1. The emphasis in determining applications is upon a plan led system. Section 54A of the Town and Country Planning Act 1990 requires all planning applications to be determined by reference to the Development Plan if material to the application, and any other material considerations. If the Development Plan is material to the application then the statutory position is that the application should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
2. The term “*other material considerations*” has a wide connotation as expressed by the following judicial comment:-  
  
*“I find it impossible, however, to accept the view that such considerations are limited to matters relating to amenity.....it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration”.*
3. Material considerations include national planning guidance in the form of the NPPF, the NPPG, government Circulars, a Ministerial Statement, Non-Statutory Development Control Guidelines Inspectors Decisions and case law.
4. Examples of material considerations are:-
  - appearance and character of development;
  - traffic generation, highway safety and parking;
  - overshadowing, overlooking and loss of privacy;
  - noise, disturbance or other loss of amenities;
  - layout and density of buildings;
  - relevant planning policies.
5. Matters which are not material considerations include:-
  - boundary disputes, covenants or other property rights;
  - personal remarks (e.g. the applicant’s motives);
  - reduction in property values;
  - loss of private view over the land.
6. The personal circumstances of an applicant for planning permission are not generally a material consideration because they do not relate to the character or use of the land. However, in exceptional circumstances they may outweigh other material planning considerations. Where this is the case, specific and valid reasons must be given to justify the exception.
7. What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision-maker having regard to the planning evidence.

8. It is essential to consider thoroughly any advice given by a statutory consultee or relevant Government Department, including views expressed by Historic England or the Environment Agency.
9. The view of local residents are relevant when determining a planning application, but it must be recognised that such opposition cannot be reason in itself for refusing or granting planning permission unless founded on valid planning reasons, which are supported by substantial evidence.
10. Account should be taken of previous Council decisions, appeal decisions in relation to the site, or other related appeal decisions.
11. It is not permissible to prevent, inhibit or delay development which could reasonably be permitted.
12. Planning Conditions should only be imposed for a planning purpose and not for any ulterior one. They must fairly and reasonably relate to the development. Thus it is essential to avoid conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.



# List of recommendations

Number	Recommendation	Responsible body
1	The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.	Local Government Association
2	The government should ensure that candidates standing for or accepting public offices are not required publicly to disclose their home address. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to clarify that a councillor does not need to register their home address on an authority's register of interests.	Government
3	Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly-accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.	Government
4	Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority.	Government
5	The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 should be amended to include: unpaid directorships; trusteeships; management roles in a charity or a body of a public nature; and membership of any organisations that seek to influence opinion or public policy.	Government
6	Local authorities should be required to establish a register of gifts and hospitality, with councillors required to record any gifts and hospitality received over a value of £50, or totalling £100 over a year from a single source. This requirement should be included in an updated model code of conduct.	Government

Number	Recommendation	Responsible body
7	Section 31 of the Localism Act 2011 should be repealed, and replaced with a requirement that councils include in their code of conduct that a councillor must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, “if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your consideration or decision-making in relation to that matter”.	Government
8	The Localism Act 2011 should be amended to require that Independent Persons are appointed for a fixed term of two years, renewable once.	Government
9	The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.	Government
10	A local authority should only be able to suspend a councillor where the authority’s Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction.	Government
11	Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.	Government /all local authorities
12	Local authorities should be given the discretionary power to establish a decision-making standards committee with voting independent members and voting members from dependent parishes, to decide on allegations and impose sanctions.	Government
13	Councillors should be given the right to appeal to the Local Government Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.	Government

Number	Recommendation	Responsible body
14	The Local Government Ombudsman should be given the power to investigate and decide upon an allegation of a code of conduct breach by a councillor, and the appropriate sanction, on appeal by a councillor who has had a suspension imposed. The Ombudsman's decision should be binding on the local authority.	Government
15	The Local Government Transparency Code should be updated to require councils to publish annually: the number of code of conduct complaints they receive; what the complaints broadly relate to (e.g. bullying; conflict of interest); the outcome of those complaints, including if they are rejected as trivial or vexatious; and any sanctions applied.	Government
16	Local authorities should be given the power to suspend councillors, without allowances, for up to six months.	Government
17	The government should clarify if councils may lawfully bar councillors from council premises or withdraw facilities as sanctions. These powers should be put beyond doubt in legislation if necessary.	Government
18	The criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished.	Government
19	Parish council clerks should hold an appropriate qualification, such as those provided by the Society of Local Council Clerks.	Parish councils
20	Section 27(3) of the Localism Act 2011 should be amended to state that parish councils must adopt the code of conduct of their principal authority, with the necessary amendments, or the new model code.	Government
21	Section 28(11) of the Localism Act 2011 should be amended to state that any sanction imposed on a parish councillor following the finding of a breach is to be determined by the relevant principal authority.	Government
22	The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 should be amended to provide that disciplinary protections for statutory officers extend to all disciplinary action, not just dismissal.	Government

<b>Number</b>	<b>Recommendation</b>	<b>Responsible body</b>
<b>23</b>	The Local Government Transparency Code should be updated to provide that local authorities must ensure that their whistleblowing policy specifies a named contact for the external auditor alongside their contact details, which should be available on the authority's website.	Government
<b>24</b>	Councillors should be listed as 'prescribed persons' for the purposes of the Public Interest Disclosure Act 1998.	Government
<b>25</b>	Councillors should be required to attend formal induction training by their political groups. National parties should add such a requirement to their model group rules.	Political groups National political parties
<b>26</b>	Local Government Association corporate peer reviews should also include consideration of a local authority's processes for maintaining ethical standards.	Local Government Association

Councillor Gifts Hospitality 2018-19

Date:	Name:	Nature of gift/hospitality:	Estimated Value (Total):	Offered By:	Accepted:
22/08/19	Brock, Jason	Reading Festival Production Pass	Unknown	Festival Republic	NO
25/08/18	McDonald, Claire	x2 Reading Festival Day Tickets (Sat) *	£153.00	Festival Republic	YES
25/08/18	Robinson, Simon	x2 Reading Festival Day Tickets (Sat) *	£153.00	Festival Republic	YES
26/08/18	McDonald, Claire	x2 Reading Festival Day Tickets (Sun) *	£153.00	Festival Republic	YES
26/08/18	Robinson, Simon	x2 Reading Festival Day Tickets (Sun) *	£153.00	Festival Republic	YES
24/08/18	Davies, Richard	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Eden, Rachel	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Edwards, Debs	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Edwards, Kelly	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Emberson, Ellie	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Gittings, Paul	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Hacker, Sarah	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Hopper, Ed	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Hoskin, Graeme	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	James, Sophia	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	McEwan, Ruth	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	McKenna, Emmett	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
24/08/18	Stanford-Beale, Jane	x2 Reading Festival Weekend Tickets *	£442.80	Festival Republic	YES
22/09/19	Hoskin, Graeme	Attendance at Reading FC vs Hull City - match on 22/09/2018 - including: hospitality box, meal & refreshments and stadium tour	£70.00	Reading Football Community Trust	YES
22/09/19	James, Sophia	Attendance at Reading FC vs Hull City - match on 22/09/2018 - including: hospitality box, meal & refreshments and stadium tour	£70.00	Reading Football Community Trust	YES
22/09/19	Pearce, Ashley	Attendance at Reading FC vs Hull City - match on 22/09/2018 - including: hospitality box, meal & refreshments and stadium tour	£70.00	Reading Football Community Trust	YES
21/05/19	Eden, Rachel	x3 silk scarves and x1 watermelon	£30.00	Reading Buddhist Gumba	YES

**Notes:**

*\*Estimated Reading Festival ticket value based on advertised prices for 2018*

*Day Ticket        £76.50*

*Weekend Ticket   £221.40*

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