

To: Councillor  
Councillors Edwards, Ayub, Cross, Eden,  
Gavin, Keane, Keeping, Mitchell, Moore and  
Williams

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10 April 2025

Your contact is:

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## **NOTICE OF MEETING - STANDARDS COMMITTEE 22 APRIL 2025**

A meeting of the Standards Committee will be held on Tuesday, 22 April 2025 at 6.30 pm in the Council Chamber, Civic Offices, Reading, RG1 2LU. The Agenda for the meeting is set out below.

### **1. DECLARATIONS OF INTEREST**

**2. MINUTES** 3 - 6

**3. ADSO REPORT ON POLITICAL PROPORTIONALITY AND MEMBER ENGAGEMENT IN DECISION MAKING** 7 - 34

To consider a report commissioned by the Council to review the Political Proportionality rules.

**4. PLANNING CODE OF CONDUCT** 35 - 74

A report asking the Committee to consider a Member Planning Code of Conduct.

**5. INDEPENDENT PERSON AND INDEPENDENT CHAIR** 75 - 78

To consider the arrangements of appointing an Independent Person and Independent Chair for Standards Committee.

**6. INVESTIGATION OF COMPLAINTS 2023/2024** 79 - 84

To provide the Committee with information relating to the number, type of complaints and their disposal in the financial years 2023/24.

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# Agenda Item 2

## STANDARDS COMMITTEE MINUTES – 14 SEPTEMBER 2023

**Present:** M6dxs`rs T Barnes (Chair); Councillors Edwards (Vice-Chair), Asare, Ayub, Dennis, Gavin, Keane, Keeping and Moore.

### 1. MINUTES

The Minutes of the meeting held on 10 October 2022 were confirmed as a correct record.

### 2. PLANNING CODE OF CONDUCT

The Monitoring Officer submitted a report outlining a new draft Planning Code of Conduct, as attached to the report as Appendix 1, for the Committee to consider.

Following updated advice published by the Local Government Association in 2019, *Probity in planning Advice for councillors and officers making planning decision*, a first draft was facilitated by an external firm of solicitors to support the revision of the current Planning Code of Conduct. In October 2022 the remit of the Standards Committee was expanded to include oversight of the Planning Code of Conduct. Therefore, the Committee considered the draft new Code, and the following suggestions were made:

- To include the option for Members to request site visits.
- Outline the role of the developer or agent at site visits.
- Consider the use of 'should' or 'must' in the document and where these terms should be used in relation to obligation rather than advisory.
- Current training should reflect the new Code.

The Committee noted that the new document was accessible and reflected current good practice.

An updated final version would be circulated to the Committee.

#### **Resolved –**

- (1) **That the draft Planning Code attached as Appendix 1 be noted;**
- (2) **That the draft Planning Code be amended as per suggestions outlined in the minute above and the final draft be considered by the Committee at a future meeting.**

### 3. HANDLING ARRANGEMENTS FOR COUNCIL DEVELOPMENTS

The Monitoring Officer submitted a report providing the formal Handling Arrangements for Council Developments Policy.

As the Council could act as the local planning authority in respect of planning applications for development of its own land, and grant planning permission to itself; formal Handling Arrangements ensured separation of functions and acted as an 'information barrier' between teams of officers acting for the Council as applicant and as local planning authority. It was noted that the formal Handling Arrangements must be published on the Council's website and processes set out to officers on how documents storage systems would be restricted to maintain an information barrier between teams.

## **STANDARDS COMMITTEE MINUTES – 14 SEPTEMBER 2023**

The Committee noted that paragraph 9.1.2 Article 9 of the Council's Constitution would also be expanded to include the Council's Handling Arrangements Policy to the list of policies within the remit of the Committee.

The Committee also considered as an example the arrangements that had been put in place for the Minister Quarter Development.

### **Resolved –**

- (1) That the Handling Arrangements for Council Developments Policy be agreed;**
- (2) The arrangements put in place for the Minister quarter Development be noted;**

### **Recommended to Council -**

- (3) That the Scope of the Standards Committee's powers be increased to explicitly include Handling Arrangements for Council Developments Policy;**
- (4) That the decision of the Standards Committee as regarding adoption of the Handling Arrangements for Council Developments Policy be endorsed.**

## **4. INVESTIGATION OF COMPLAINTS 2022/23**

The Monitoring Officer submitted a report outlining the number, type and disposal of complaints made by members of the public against councillors. The report covered complaints for 2022/23.

Annex A to the report contained a list of five complaints in the financial year 2022/23. It was noted that two of the complainants referred two councillors to the Monitoring Officer bringing the total number of complaints to seven.

Of the seven complaints set out in Annex A:

- 2 complaints resulted in no action as no evidence was provided when requested.
- 4 were judged not to engage the Code of Conduct and were rejected at the initial filter stage.
- 1 complaint was against a third-party contractor and not due to councillor conduct.

Annex A also provided data on the timeliness of responses to acknowledge and answer complaints.

It was noted that if a complaint was brought regarding a third-party contractor employed by the Council, then this would need to go through the Council's official complaints process.

The Committee were informed that guidance on the use of Council resources for political purposes was included in the Councillors Code of Conduct and Handbook. Training on the new Code of Conduct had been provided to all new councillors following the election and further training would be arranged for all existing councillors.

### **Resolved –**

- (1) That the Member Complaints received in the financial year 2022/2023 be noted.**

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- (2) That training would be provided to all councillors on the Code of Conduct.**
- (3) That any further work which might be necessary to promote high standards of conduct in public life in the Council be considered.**

[The Committee noted that Tina Barnes would be stepping down from Standards Committee meeting and this would be her last meeting. The Committee thanked Tina for all her work and support over the years as Chair.]

(The meeting commenced at 6.00pm and closed at 6.30pm).

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## Standards Committee

22 April 2025



**Reading**  
Borough Council  
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<b>Title</b>	Review of Political Proportionality
<b>Purpose of the report</b>	To note the report for information
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham, Monitoring Officer
<b>Lead Councillor</b>	Cllr Liz Terry, Leader of the Council
<b>Council priority</b>	Ensure Reading Borough Council is fit for the future
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>That the Committee notes the outcome of the Political Proportionality Review</li> <li>That the Committee considers which of the recommendations it wishes to take forward.</li> </ol>

### 1. Executive Summary

1.1. At the Annual Council Meeting in May 2024, the Monitoring Officer advised Council that he was commissioning a report into the Political Proportionality rules and how these were applied in Reading. This review was commissioned, and the report is attached for members to consider.

### 2. Policy Context

2.1. When the Council appoints councillors to Committees at the Annual Council meeting, it has to operate within a statutory framework, which is known as the "Political Proportionality Rules". As the report describes, although the rules are clear, the operation of them is not an exact science. For this reason it was appropriate to take stock and consider if the Council was operating the process correctly. Broadly speaking, it is.

2.2. There are two other relevant areas of Policy; the Member Code of Conduct and the Member's Allowances scheme. These are mentioned within the attached report.

### 3. The Proposal

3.1. The Association of Democratic Services Officers (ADSO) was commissioned by the Council to review the Council's arrangements for allocating members to Committees. This arose from the position at Annual Council in May 2024 where the main opposition group did not take up its full complement of seats on the Policy Committee, nor did they appoint the Leader to the Policy Committee. This meant that the Policy Committee had 13 members when it should have been 15.

3.2. The review was not investigating the circumstances which led to the opposition failing to take up its seats, as the matter is in the public domain. The purpose of the review was to check that the Council was operating the appropriate systems and processes as might be expected. The review attached is self-explanatory in regards to its findings.

3.3. A number of recommendations are made in the Review which members will wish to consider:

- 3.3.1. **That the Council review its arrangements for the allocation of seats on committees and sub-committees in the light of this advice.** This will be reflected in the Report for Annual Council in May 2025.
- 3.3.2. **The Council considers introducing a clear scheme of substitution and determines to which committees such a scheme should apply.** For members to consider.
- 3.3.3. **The Council could consider the potential to reduce the size of the main strategic and policy committees in order to ensure that all members are actively engaged in the democratic process this could be balanced by an increase in the size of the Planning and Licensing Committees.** For members to consider.
- 3.3.4. **Some Councils which have adopted a committee style of governance have created a smaller overarching strategic policy committee.** This operates in a manner similar to a Cabinet, albeit that it must reflect political proportionality. Chairs of the other service committees are appointed to this committee in order to avoid silo thinking developing within the individual service committees, to deal with cross cutting themes and to lead on the overarching policies and strategies of the Council. The Council could consider adopting this approach thereby reducing the size of its current Policy Committee. – For members to consider.
- 3.3.5. **The Council review the Members Allowance Scheme with a view to better reflecting the duties and responsibilities attaching to roles within the Council (note: the Council must first seek recommendations from the Independent Renumeration Panel – see advice note below).** This has already been achieved. This work was not referred to ADSO, but a separate review by the Independent Remuneration Panel took place in the Autumn and has already reported to Council on 28 January 2025. This review took into account the circumstances arising in May 2024.
- 3.3.6. **All members of the Council review the LGA workbook “A councillor’s workbook on effective opposition”.** This could be achieved through a bespoke workshop session. The Council could consider LGA support for that session together with arranging peer mentoring for Opposition Group leaders. For members to consider.
- 3.3.7. **That the Council considers the options set out to secure greater member engagement and participation.** For members to consider.

#### **4. Contribution to Strategic Aims**

- 4.1. The Council Plan has established five priorities for the years 2025/28. These priorities are:
  - Promote more equal communities in Reading
  - Secure Reading’s economic and cultural success
  - Deliver a sustainable and healthy environment and reduce our carbon footprint
  - Safeguard and support the health and wellbeing of Reading’s adults and children
  - Ensure Reading Borough Council is fit for the future
- 4.2. In delivering these priorities, we will be guided by the following set of principles:
  - Putting residents first
  - Building on strong foundations
  - Recognising, respecting, and nurturing all our diverse communities
  - Involving, collaborating, and empowering residents
  - Being proudly ambitious for Reading

- 4.3. Full details of the Council Plan and the projects which will deliver these priorities are published on the Council's website - [Council plan - Reading Borough Council](#). These priorities and the Council Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.
- 4.4. Strong governance through the proper administration of the Council is key to all strategic priorities in the Council Plan. The Policy Committee in particular has a key role to play in the formulation of and the implementation of the Council Plan. When opposition groups do not take up seats on Committees then the electorate's mandate is weakened. Electors expect their choices to be represented in Committees in order to fulfil the important role of developing policy and ensuring that strategic outcomes are achieved.

## **5. Environmental and Climate Implications**

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).
- 5.2. There are no climate change implications arising from this report.

## **6. Community Engagement**

- 6.1. There are no Community Engagement implications arising from this report.

## **7. Equality Implications**

- 7.1. 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.
- 7.2. An Equality Impact Assessment (EqIA) is not relevant to the decision.

## **8. Other Relevant Considerations**

- 8.1. There are none.

## **9. Legal Implications**

- 9.1. The Legal Implications have been fully covered in the attached report and the Monitoring Officer is content with this advice.

## **10. Financial Implications**

- 10.1. There are no Financial Implications arising from this report.

## **11. Timetable for Implementation**

- 11.1. Changes could be implemented as soon as Annual Council in May 2025. If members wish to commission further work from officers as regards any of the recommendations, these can be taken forward at your June 2025 meeting.

## **12. Background Papers**

- 12.1. There are none.

## **Appendices**

1. **Association of Democratic Services Officers - Advice Note on Political Proportionality and Member Engagement in Decision Making**

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## **READING BOROUGH COUNCIL**

### **ADVICE NOTE ON POLITICAL PROPORTIONALITY AND MEMBER ENGAGEMENT IN DECISION MAKING**

#### **1. The Project Brief**

- 1.1 To review the Council's existing arrangements on political proportionality and to advise the Council on the correct operation of the proportionality rules.
- 1.2 To consider how all groups might be encouraged to participate fully in all aspects of decision making.
- 1.3 To compare committee sizes with other comparable authorities operating a committee style of governance and comment on the appropriate size of committees.
- 1.4 To produce a written report with recommendations. This would include the following:
  - Factual record of process employed by Reading BC, highlighting any recommended changes
  - Law and practice on proportionality and how this should be applied in Reading BC, highlighting any recommended changes
  - In circumstances where a Group does not nominate a member to a committee, the options for the Council including the ability to appoint an alternative
  - The nature of the role of councillors, in particular the duty of councillors to undertake the duties which the Council requires
  - Options to encourage member engagement in decision making
  - How committee sizes compare with other authorities operating a committee style of governance

NOTE: The report does not constitute legal advice. If the Council wishes to have assurance as to legal compliance, ADSO has an arrangement with Bevan Brittan where, for an additional fee, they can validate the report for legal compliance.

## **2. The Political Composition of the Council**

- 2.1 The Council comprises 48 councillors. The current political composition is shown on the Council's website as:
  - Labour 25
  - Green 8
  - Labour and Co-operative 7
  - Conservative 4
  - Lib Dem 3
  - Independent 1
- 2.2 For the purposes of political grouping, Labour and Labour and Co-operative form a single political group resulting in the following:
  - Labour 32
  - Green 8
  - Conservative 4
  - Lib Dem 3
  - Independent 1

## **3. Governance Arrangements**

- 3.1 The Council operates a committee style of governance.
- 3.2 The Council has 4 standing committees as follows:
  - Policy Committee
  - Adult Social Care, Children's Services and Education Committee
  - Housing Neighbourhoods and Leisure Committee
  - Strategic Environment, Planning and Transport

The Policy Committee has appointed a Trustee Sub-Committee.

The Strategic Environment, Planning and Transport Committee has appointed a Traffic Management Sub-Committee.

- 3.3 The Council has resolved not to appoint any separate overview and scrutiny committees. Statutory overview and scrutiny functions for health, crime and disorder and flood risk management are exercised by the above committees.
- 3.4 The Council has the following regulatory and other committees:
  - Licensing Applications Committee
  - Licensing Applications Sub-Committee
  - Planning Applications Committee
  - Audit and Governance Committee
  - Health and Wellbeing Board
  - Personnel Committee
  - Investigating and Disciplinary Committee
  - Appeals Committee
  - Independent Panel
  - Standards Committee
- 3.5 The Council currently has a single Licensing Committee to discharge licensing functions under the Local Government Act 1972 and the Licensing Act 2003 and Gambling Act 2005, notwithstanding that these are subject to different statutory provisions.
- 3.6 Political balance rules are applied to all committees with the exception of:
  - Licensing Applications Sub-Committee
  - Health and Wellbeing Board
  - Appeals Panel
  - Secure Accommodation Panel
- 3.7 The Standards Committee comprises 7 elected members subject to each political group on the Council having entitlement to at least one seat and at least one but not more than 3 co-opted independent members. The committee currently has 10 elected members.

#### **4. The Existing Arrangements on Political Proportionality**

4.1 The Council currently allocates seats by adding up the total number of seats on all committees and sub-committees and then allocating seats according to the proportion each political group has on the Council as a whole. The Investigating and Disciplinary Committee, Appeals Committee and Health and Wellbeing Board do not appear to be included in the calculations. The Council does not apply political balance requirements to the Licensing Applications Sub-Committee.

4.2 This results in the following percentage allocations:

- Labour 32 seats - **66.7%**
- Green Group 8 seats - **16.6%**
- Conservative Group 4 seats - **8.3%**
- Liberal Democrat Group 3 seats - **6.3%**
- Independent 1 seat - **2.1%**

The sizes of Committees are as follows:

- Policy **13**
- Adult Social Care, Children's Services and Education **15**
- Housing Neighbourhoods and Leisure **17**
- Strategic Environment, Planning and Transport **17**
- Licensing Applications Committee **12**
- Planning Applications Committee **12**
- Audit and Governance Committee **8**
- Health and Wellbeing Board **not specified**
- Personnel Committee **5**
- Investigating and Disciplinary Committee **not specified**
- Appeals Committee **not specified**
- Independent Panel (independent members)
- Standards Committee **10**

The sizes of sub-committees are as follows:

- Traffic Management subcommittee 16
- Licensing Applications Subcommittee not specified
- Trustee Sub-Committee 7

4.3 The Council's calculations result in Labour being "up 3", the Greens "down" 2 and the Conservatives and Liberal Democrats "correct".

## **5. The Legal Requirements relating to Political Proportionality**

5.1 The Council must allocate seats on Committees and other prescribed bodies so as to give effect to political balance rules. The rules for the allocation of seats are set out in sections 15 and 16 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990.

5.2 S.15(4) of the 1989 Act sets out 4 rules and requires authorities to apply them in descending order of priority as follows:

- 5.2.1 The first rule is that, where some or all members of an authority have formed into two or more political groups, then no committee may comprise just members from one political group. (Note this rule does not require that every political group is represented on each committee or sub-committee).
- 5.2.2 The second rule is that, where a majority of members of the Council are members of one political group, that political group must have a majority of seats on each committee.
- 5.2.3 The third rule is that, without being inconsistent with the first two rules, the number of seats allocated to each political group on all committees taken together be as near as possible proportionate to their strength on the Council. It should be noted that this rule does not apply to sub-committees, joint committees or outside bodies or to overview and scrutiny committees.
- 5.2.4 The fourth rule provides that, so far as is consistent with rules 1 to 3, each political party must be allocated that number of seats on each committee taken individually as is proportionate to their strength on Council.

5.3 Any seats left unallocated go by default to any members who are not members of any political group. A political group must comprise at least 2 members.

5.4 In respect of non-aligned independent members, regulation 16(3) of the Local Government (Committees and Political Groups) Regulations 1990 inserts a provision into s.16 of the 1989 Act as follows:

*“(2A) where appointments fall to be made to seats on a body to which section 15 applies otherwise than in accordance with a determination under that section, it shall be the duty of the authority or the committee, as the case may be, so to exercise their power to make appointments as to secure that the persons appointed to those seats are not members of any political group.”*

5.5 The above provision effectively treats non-aligned members, taken together, as a group for the purposes of allocation under the rules. The Council as a whole then decides what seats it will allocate to non-aligned members and to which non-aligned member the seat should be allocated.

5.6 The Council can only depart from these rules by passing a resolution with no member voting against the resolution (see paragraph 9 below for more details).

5.7 All of the above rules apply to ‘Ordinary Committees’ established by full Council. These are committees which have been appointed under the Local Government Act 1972.

5.8 The political balance rules also apply to Overview and Scrutiny Committees by virtue of s9FA of the Local Government Act 2000 with the exception of the third rule in paragraph 5.2.3 above which only applies to ordinary committees. Overview and Scrutiny Committees are treated as a “body” to which the political balance rules apply. However, as they are not “ordinary committees” the political balance rules must be applied individually to each Overview and Scrutiny Committee. Reading does not currently have any overview and scrutiny committees.

5.9 The political proportionality rules also apply to those outside bodies dealing with local government matters to which the Council appoints 3 or more representatives.

5.10 The Licensing and Gambling Act Committee is not an “ordinary committee” established under the Local Government Act 1972 and therefore the political balance rules do not apply to that committee or to any sub-committee established by it. However, the practice of most Councils is to broadly apply political balance rules when appointing to that committee. Reading has combined the functions of statutory licensing under the Licensing Act 2003 and Gambling Act 2005 with general licensing functions. Whilst this is a matter for the Council, it may cause some difficulty given that they are subject to different statutory regimes. For example, a committee dealing with statutory licensing matters (see paragraph 5.13 below) may meet remotely and is not subject to the access to information requirements or political balance as it is not an ordinary committee. Any sub-committees or panels dealing with statutory licensing do not need to reflect political balance but “ordinary” licensing sub-committees or panels do need to reflect political balance (see section 8.1).

5.11 Notwithstanding the comments in 5.10 above, the overall political balance calculations will not be affected as even if a separate committee were established the total seats on that committee would not be added to the cumulative total number of seats in order to allocate seats to ordinary committees as political balance rules would not apply to the statutory licensing committee.

5.12 The practice of most Councils is to have two separate committees for statutory and non- statutory licensing but with the same membership and meeting at the same time. Effectively the agenda is split into two parts. The complexity arises from the different rules applying to their respective sub-committees and the fact that they are subject to different statutory regimes.

5.13 For clarity “statutory licensing functions” are set out in the Licensing Act 2003 and the Gambling Act 2005 but, broadly, cover the regulation of liquor licences including granting of personal licences, premises licences including clubs together with temporary event notices. Statutory licensing functions also include the regulation of gambling and hypnotism. In simple terms all other licensing including street trading, hackney carriage and taxi licensing is the responsibility of ordinary committees governed by the Local Government Act 1972. In practice a large number of miscellaneous licensing functions are delegated to officers.

## **6. How the rules are normally applied**

- 6.1 The proportions and allocations cannot be an exact science and the following approach is normally applied:
  - 6.1.1 applying the relevant percentage to each body in relation to the political proportionality of the Council as a whole
  - 6.1.2 rounding up from 0.5 and above, and rounding down below 0.5
  - 6.1.3 where rounding up would result in more than one political group receiving an additional seat, and the overall allocation of seats exceeding what is required, the political group having the lowest residual entitlement will not receive an additional seat
  - 6.1.4 where the required number of members for a committee cannot be achieved using the above methods and calculations, the political group having the largest remaining entitlement for that Committee will be entitled to be awarded the additional place (e.g. if one group is entitled to 4.25 places, and another group is entitled to 1.48 places, the first group will be awarded 4 places on the committee in question, and the second group will be awarded 2 places)
  - 6.1.5 where two or more political groups have an identical residual percentage, the agreement of one group to sacrifice a seat will be observed. Alternatively, the matter will be resolved by the drawing of lots; and
  - 6.1.6 any seats left unallocated go by default to any members who are not members of any political group. It is for Council to decide how these seats will be allocated.

## **7. Joint Committees**

- 7.1 The political balance rules apply to Joint Committees established under section 101(5) of the Local Government Act 1972 with the exception of rule 3 in paragraph 5.2.3 above. The allocation of seats on Joint Committees is therefore on a case-by-case basis. (Reading has not listed any Joint Committees in its allocations).

## **8. Sub-Committees**

- 8.1 The political balance rules apply to the appointment of sub-committees with the exception of any sub-committee established under the Licensing and Gambling Acts. This creates a difficulty with Reading's existing arrangements as political proportionality should be applied to any licensing sub-committee or panel exercising general licensing functions but not to a sub-committee or panel exercising functions under the Licensing Act 2003 or the Gambling Act 2005.
- 8.2 Rule 3 above does not apply to sub-committees and therefore allocation of seats is calculated on an individual basis calculated according to the number of seats held by each political group on the Council as a whole.

## **9. Mechanism to disapply political balance rules**

- 9.1 The Council can disapply the political balance rules in whole or in part but only where no member of the authority votes against this (s.17 (1) (a) of the 1989 Act refers). Moreover, the Council would be required to pass a fresh resolution to this effect each time the allocation of seats was reviewed (for example following a by-election or a member deciding to leave a political group).
- 9.2 Some Councils chose, by unanimous resolution to disapply the political balance rules to the Standards Committee to enable the committee to have representatives from all political groups. Reading has instead chosen to vary the size of the committee to enable this.

## **10. Nomination of alternate members**

- 10.1 The Council may introduce a substitute scheme enabling political groups to nominate alternate (substitute) members where a member is unable to attend a meeting. Council Procedure Rule 1.2 (iii) refers to the appointment of substitutes at the Annual Meeting but the Constitution does not appear to include a scheme of substitution.
- 10.2 If a scheme is not currently in place this is something which could be considered by the Council and would offer greater flexibility to political groups in putting forward members for membership of committees.

**11. Giving effect to the wishes of the political groups**

11.1 It is normal practice to consult Group Leaders and/or Group Whips on the proposed allocations of seats. The Council is required to give effect to the wishes of the political group in making appointments to committees in accordance with the allocations.

**12. Can political groups swap seats or decline to take up their entitlement?**

12.1 There is conflicting legal opinion on whether political groups can swap seats or give up their seats to another political group although a number of Councils adopt this practice.

12.2 The argument against this approach is that the council has a duty to allocate seats according to political balance (see section 15 Local Government and Housing Act 1989).

12.3 The counter argument is that seats must be allocated according to the wishes of the political groups (see section 16). Moreover, the duty in section 15 is to be applied "so far as practicable."

12.4 Our view is that swapping and relinquishing seats to another party is not strictly permissible. Section 16 refers to the appointment to seats on a body "which are allocated to a particular political group". However, we accept that a counter interpretation is that section 16 enables seats allocated to a group to be allocated according to the wishes of that group. A wider interpretation would enable the allocation to be to another political party if that was the wish of the group.

12.5 It is for the Council to reach its own view as to the reading of the relevant provisions.

**13. The Health and Wellbeing Board**

13.1 The Health and Well Being Board is a Committee of the Council established under s.102 of the Local Government Act 1972 as an ordinary committee but amended pursuant to 194 of the Health and Social Care Act 2012 (Establishment of Health and Wellbeing Boards) and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.

13.2 As a result, the voting members of the Board must as a minimum consist of:

- (a) at least one councillor of the local authority
- (b) the director of adult social services for the local authority
- (c) the director of children's services for the local authority
- (d) the director of public health for the local authority
- (e) a representative of the Local Healthwatch organisation for the area of the local authority
- (f) a representative of each relevant clinical commissioning group; and
- (g) such other persons, or representatives of such other persons, as the local authority thinks appropriate.

13.3 The political requirements set out in sections 15, 16 and Schedule 1 of the Local Government and Housing Act 1989 do not apply to the membership of the Board.

#### **14. Are the Council applying the political balance rules correctly?**

14.1 The Council is in our view broadly applying the rules correctly. However, in respect of ordinary committees, rule 3 as set out in paragraph 5.2.3 applies. This means that seats on all ordinary committees should be totalled before the allocation of seats to individual committees is determined. Therefore, if they are standing committees, the Investigation and Disciplinary Committee and Appeals Committee should be included in the total.

14.2 The Council have correctly excluded the Health and Wellbeing Board from the calculations as political balance rules do not apply to the Board.

14.3 However, the sub-committees should not have been included in the calculation of the total number of seats available as they are not "ordinary" committees.

14.4 The political balance rules apply but should be calculated individually for each sub-committee applying rules 1 and 2 as set out in paragraphs 5.2.1 and 5.2.2 above.

14.5 The political balance rules do not apply to sub-committees dealing with statutory licensing functions but do apply in respect of general licensing functions such as street trading, hackney carriages and taxi licensing.

## **15. Committee sizes**

- 15.1 We have been asked to compare committee sizes at Reading with other comparable authorities operating a committee style of governance.
- 15.2 It is difficult to make direct comparisons as each Council operating a committee style of governance has its own unique arrangements. Also, a number of authorities who we would have used in the comparison have changed to a Cabinet/Leader model.
- 15.3 Wirral for example is a large unitary authority operating a committee style of governance. Its constitution does not specify the size of committees but states that this will be determined annually by the Council.
- 15.4 Sheffield City Council has 7 themed Policy Committees together with an overarching Strategy and Resources Policy Committee which includes the chairs of the themed Policy Committees. Its committee structure is therefore much larger than that of Reading. Like Wirral, the constitution does not specify committee numbers but reports prior to adopting the committee system recommended that policy committees should be between 8 and 11 members.
- 15.5 We have observed that the Licensing and Planning Committees at Reading, with 12 members each, are quite small even when compared to smaller district authorities. The statutory licensing committee is required by regulations to comprise between 10 and 15 members. The rational for a larger committee is to have a wider pool to draw on in order to constitute sub-committees or panels. In practice, most licensing applications are dealt with by sub-committees rather than by the main committee. This is the case for both statutory and non-statutory licensing.
- 15.6 Cheshire East Council is a much larger authority with 82 councillors. Its 6 service committees comprise 13 councillors each, with Audit & Governance having 9 members. It has 2 area planning committees (north and south) with 11 and 12 members respectively. It also has a Strategic Planning Board comprising 11 members. Its Licensing Committee has 14 members, with a sub-committee of 3 members.

15.7 Albeit also a larger authority, Bristol City Council (with 70 members) has 9 members on each of its main committees, development control sub-committees and Public Services and Protection Committee. Licensing Sub-Committee has 3 members.

15.8 In relation to smaller authorities, we include below the committee sizes of several district councils operating a committee style of governance.

15.9 Spelthorne Borough Council has 39 councillors with 4 strategic committees. The number of councillors on each main committee varies between 16, 15, 12 and 11 with named substitutes in each case. Its Planning Committee has 14 members plus 7 named substitutes. Licensing Committee has 11 members with a sub-committee of 3.

15.10 Rochford District Council has 39 members and its main committee sizes vary between 13, 11, 9 and 7. Planning Policy has 7 members whilst the Development Control Committee has 13. Its Licensing & Regulatory Committee comprises 15 Members.

15.11 Ribble Valley Borough Council has 40 councillors and 15 members on each of its main committees including Planning & Development and Licensing.

15.12 Worcester City Council only has 35 members and has 11 councillors on most of its main committees including Licensing & Environmental Health and Planning Committees. Licensing Sub-Committee has 3 members.

15.13 It will be seen from the above that there is a wide variety of practice in respect of committee sizes and no “one size fits all.” Reading has fewer main strategic committees than other unitary councils operating a committee style of governance. It could be argued that committee sizes should be larger as a result. However, there are disadvantages in having committees which are too large as this may inhibit discussion and debate. It was for this reason that legislation provided that Councils operating an executive form of governance should have a Cabinet comprising no more than 10 members.

- 15.14 Another factor to bear in mind is that some Councils resolve to only have uneven numbers on committees to avoid the eventuality of an equality of votes. However, this practice is not universal as can be seen from the above and will to some extent depend on the political composition of the Council.
- 15.15 Committee sizes are of course not written in tablets of stone and can be altered from time to time as the Council considers appropriate.

## **16. Duties of Councillors**

- 16.1 Article 2 of the Constitution sets out the key roles of councillors (Article 2.3.1 refers). This includes involvement in decision making both at Council and in committees. There is therefore an expectation that members will carry out these roles on being elected to office.
- 16.2 The LGA have produced a guide to the role of councillors which is available on their website. This highlights the key roles as representing their community, community leadership, developing council policy and planning and regulation. All councillors must decide on the Council's budget and policy framework at full Council.
- 16.3 The Council's Code of Conduct incorporates the seven principles of public life which include selflessness, acting solely in the public interest, accountability and leadership.
- 16.4 There is accordingly an expectation that all councillors will contribute to the decision-making process. However, we are not aware of any express statutory provision which would require an individual member to take a particular seat on a particular body with the exception of the full Council meeting.
- 16.5 Where it is the political group as a whole or the Leader of that group who chooses not to take up seats then this may breach the General Principles of the Code as a failure to show leadership.

## **17. Securing more effective member engagement**

- 17.1 Effective participation across all political groups is clearly critical to the effective governance of the Council. The challenge is how best to achieve this where one or more of those groups shows a reluctance to participate.
- 17.2 Opposition groups in particular have a vital role to play in holding the ruling group to account as well as in influencing policy development and the decision-making process.
- 17.3 The LGA have produced a workbook to assist members on effective opposition titled “A councillor’s workbook on effective opposition in local government.” This highlights the important role that opposition groups and councillors play in ensuring good governance and effective local government working. It offers practical ideas, tips and guidance to opposition councillors and groups and is designed to promote reflection and insight. Members may find it helpful to review the workbook and to reflect on their roles within the Council. LGA support in the form of peer mentoring for Opposition Group leaders could also be considered.
- 17.4 The workbook identifies key roles as follows:
  - Supporting good governance
  - Holding the controlling group to account
  - Improving policy and decision making
  - Ensuring a focus on sound finances and risk management
  - Developing alternative policies and being a ruling group in waiting
  - Representative and advocacy roles
  - Scrutinising the impact of national policy on local councils
  - Ensuring good group management
  - Election campaigning and providing choice at elections

- 17.5 Another means of securing more effective engagement would be to try and reflect duties and responsibilities through the Members Allowance Scheme. The Regulations and guidance enable a Special Responsibility Allowance (SRA) to be paid to those members of the council who have significant additional responsibilities, over and above the generally accepted duties of a councillor. These special responsibilities must be related to the discharge of the authority's functions. This can include the payment of an SRA to leaders of opposition groups. However, where an opposition group leader is not fully performing their key duties and responsibilities, this could be reflected in the level of SRA awarded. A small number of Councils pay members of the Planning and Licensing Committees an SRA on the basis that the committee meets "with exceptional frequency or for exceptionally long periods." (the regulations refer). However, it should be noted that an SRA cannot be awarded for performing normal duties and responsibilities as a councillor. Moreover, guidance on members allowances advises against more than half the members receiving an SRA (see advice note below)
- 17.6 The Members Allowance Scheme could also be reviewed to see if it provides adequate support for parents, carers and people in full time work. All these issues may be a factor in deterring greater member engagement particularly in formal meetings.
- 17.7 A note on the Members Allowance Scheme is attached as an Appendix to this report.
- 17.8 Another avenue which could be explored is to introduce a clear scheme of substitution. This may encourage members of a political group to put themselves forward for membership of a committee where they know that a substitute is available where they are unable to attend.
- 17.9 If the Council were to create a separate statutory licensing committee, this could meet remotely and may encourage attendance by members with childcare and other caring commitments.

**18. Other issues which could be considered to encourage greater member engagement**

18.1 Time and Duration of Meetings – the timing of meetings may be a factor particularly for those working full time or with caring responsibilities. When Sheffield City Council moved to a committee style of governance, they recognised that it may place additional pressures on members by increasing the number of meetings. They therefore imposed a guillotine on meetings after 2 hours with scope to extend for a further half hour. Is the meeting venue a factor? Hybrid options could be explored where permitted by legislation (note recent Government announcement and consultation on remote meetings). Could the frequency of meetings be reduced to relieve the burden on members? Greater officer delegation, with member consultation where appropriate, could facilitate a reduction in the meeting cycle.

18.2 Member development strategy – a review of the member development strategy would identify training and development which may encourage greater member engagement and participation. Each member could have a bespoke training and development plan if your resources allow.

18.3 Whilst we see some difficulties in such an approach, some Councils adopt “job share” arrangements in respect of chairing committees.

18.4 Could members be given greater case work support to free up time for attending formal meetings?

**19. Recommendations**

19.1 That the Council review its arrangements for the allocation of seats on committees and sub-committees in the light of this advice (section 14 refers)

19.2 The Council considers introducing a clear scheme of substitution and determines to which committees such a scheme should apply (section 10 and paragraph 17.5 refer).

19.3 The Council could consider the potential to reduce the size of the main strategic and policy committees In order to ensure that all members are actively engaged in the democratic process this could be balanced by an increase in the size of the Planning and Licensing Committees.

- 19.4 Some Councils which have adopted a committee style of governance have created a smaller overarching strategic policy committee. This operates in a manner similar to a Cabinet, albeit that it must reflect political proportionality. Chairs of the other service committees are appointed to this committee in order to avoid silo thinking developing within the individual service committees, to deal with cross cutting themes and to lead on the overarching policies and strategies of the Council. The Council could consider adopting this approach thereby reducing the size of its current Policy Committee.
- 19.5 The Council review the Members Allowance Scheme with a view to better reflecting the duties and responsibilities attaching to roles within the Council (note: the Council must first seek recommendations from the Independent Renumeration Panel – see advice note below).
- 19.6 All members of the Council review the LGA workbook “A councillor’s workbook on effective opposition”. This could be achieved through a bespoke workshop session. The Council could consider LGA support for that session together with arranging peer mentoring for Opposition Group leaders
- 19.7 That the Council considers the options set out in 18 above to secure greater member engagement and participation.

## **Contact:**

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8 November 2024

## **APPENDIX 1**

### **Advice Note on Members Allowances**

#### **1. Legislative background**

- 1.1 Section 18 of the Local Government and Housing Act 1989, as amended by section 99 of the Local Government Act 2000 ("the 2000 Act"), makes provision in relation to basic, special responsibility and childcare and dependants' carers' allowances for members of local authorities. The Secretary of State can make regulations under this section requiring local authorities to make a scheme of allowances for their members and to establish and maintain a panel to make recommendations to the council about the scheme.
- 1.2 The Local Authorities (Members' Allowances) (England) Regulations 2003 ("the Regulations") have been made under these provisions.
- 1.3 Section 100 of the 2000 Act allows the Secretary of State to make provision in relation to travel and subsistence allowance for members of local authorities and an allowance for non-councillors who are members of a council's committee or sub-committee. This includes the amendment or repeal of provisions of sections 173 to 178 of the Local Government Act 1972.
- 1.4 The Regulations provide that it is for each local authority to decide its scheme and the amounts to be paid under that scheme.
- 1.5 Guidance on the Regulations was issued by EIM65960 - Local Government Councillors and civic dignitaries in England: ODPM guidance: Part One: members' allowances

#### **2. Independent renumeration panels**

- 2.1 The Council is required to establish and maintain an independent remuneration panel which will broadly have the functions of providing the local authority with advice on its scheme, the amounts to be paid and the pensionability of allowances where relevant. The Council must have regard to this advice.

- 2.2 Regulation 20 deals with the establishment of the Panel. It must consist of at least 3 members, none of whom is also a member of the Council or of a committee or sub-committee of the authority or who would be disqualified from being a member.
- 2.3 There are no express legislative provisions on how the Panel should be appointed but there is detailed guidance on this (see paragraph 1.5 above).
- 2.4 The Panel will produce a report making recommendations as to the duties and responsibilities for which special responsibility allowances, travelling and subsistence allowances and co-optees allowances should be payable and the amount of such allowances, together with the amount of the basic allowance and dependent carers allowance (if payable).
- 2.5 The Panel's report has to be made available for public inspection and a public notice must be issued describing the main features of the Panel's recommendations. The Council must provide a copy of the report on payment of a reasonable fee.

### **3. The Scheme**

- 3.1 The Council must make a Scheme for members allowances before the beginning of each year. It must include in its scheme of allowances a basic allowance, payable to all members, and may include provision for the payment of special responsibility allowances and a dependants' carers' allowance. By virtue of section 100 of the 2000 Act, the Local Authorities (Members' Allowances) (England) Regulations 2003 allow the inclusion of a travel and subsistence and a co-optee allowance within an allowances scheme. These allowances are also discretionary. Under the Regulations, made under s99 of the Local Government Act 2000, authorities may make provision in their schemes for the eligibility of members for pensions under the Local Government Pension Scheme.
- 3.2 Notice of the Scheme should be published every 12 months even if it has not been amended since the last notice.
- 3.3 A Scheme may be backdated and can include provision for annual adjustments.

#### **4. What allowances can be paid?**

4.1 The allowances which are or may be payable to members of local authorities are as follows:

- basic allowance
- special responsibility allowance
- dependants' carers' allowance
- travelling and subsistence allowance
- co-optees allowance

#### **5. Basic allowance**

5.1 The Council must make provision in its scheme of allowances for a basic, flat rate allowance payable to all members of the authority. The allowance must be the same for each member. The allowance may be paid in a lump sum, or in instalments through the year.

5.2 The basic allowance is intended to recognise the time commitment of all councillors, including such inevitable calls on their time as meetings with officers and constituents and attendance at political group meetings. It is also intended to cover incidental costs such as the use of their homes.

#### **6. Special responsibility allowance**

6.1 The Council may also make provision in its scheme for the payment of special responsibility allowances for those councillors who have significant responsibilities. Special responsibility allowance may be payable for duties which fall within the following categories:

- acting as leader or deputy leader of a political group
- membership of the executive, where an authority is operating executive arrangements
- presiding at meetings of a committee, sub-committee, or joint committee
- representing the authority at meetings of another body
- membership of a committee or sub-committee which meets with exceptional frequency or for exceptionally long periods

- acting as a spokesperson for a political group on a committee or sub-committee
- acting as a member of any committee or sub-committee that deals with any function arising under any enactment authorising the authority to license or control the carrying out of any activity
- any other activities in relation to the discharge of the authority's functions as to require of the member equal or greater effort than any of the activities listed above.

6.2 The relevant provisions are contained in Regulation 5 of the Local Authorities (Members Allowances) (England) Regulations 2003.

6.3 A scheme must also specify the amounts of allowance to be paid for each such responsibility.

6.4 Where one political group is in control, and where an authority has decided to pay special responsibility allowances, the authority must make provision for the payment of a special responsibility allowance to at least one member of a minority group.

6.5 There is specific provision in the guidance as to the circumstances in which special responsibility allowance (SRA) may be paid to those members of the council who have significant additional responsibilities, over and above the generally accepted duties of a councillor. These special responsibilities must be related to the discharge of the authority's functions.

6.6 The Regulations do not limit the number of special responsibility allowances which may be paid, nor do the regulations prohibit the payment of more than one special responsibility allowance to any one member. However, the guidance emphasises that these are important considerations for the Council.

The guidance sets out the following:

*"If the majority of members of a council receive a special responsibility allowance, the local electorate may rightly question whether this was justified. Local authorities will wish to consider very carefully the additional roles of members and the significance of these roles, both in terms of responsibility and real time commitment before deciding which will warrant the payment of a special responsibility allowance.*

*It does not necessarily follow that a particular responsibility which is vested to a particular member is a significant additional responsibility for which a special responsibility allowance should be paid. Local authorities will need to consider such particular responsibilities very carefully. Whilst such responsibilities may be unique to a particular member it may be that all or most members have some such responsibility to varying degrees. Such duties may not lead to a significant extra workload for any one particular member above another. These sorts of responsibilities should be recognised as a time commitment to council work which is acknowledged within the basic allowance and not responsibilities for which a special responsibility allowance should be recommended.”*

## **7. Dependents' carers' allowance**

7.1 A scheme of allowances may also include the payment of a dependents' carers' allowance to those councillors who incur expenditure for the care of children or other dependants whilst undertaking particular duties. Duties in respect of which the allowance may be paid are set out in the Regulations and the guidance provides further clarification.

## **8. Travelling and subsistence allowance**

8.1 Each local authority may also make provision in its scheme for the payment of a travelling and subsistence allowance to its members, including co-opted members which may include provision for the payment of an allowance for those members who travel by bicycle or other non-motorised transport.

8.2 The Regulations set out the circumstances in which travelling and subsistence allowances may be paid.

## **9. Co-optees' allowance**

9.1 The Council may make provision in its scheme for the payment of a co-optees' allowance, for attendance at conferences and meetings, to any co-opted and appointed members of a Council's committees or sub-committees.

9.2 The co-optees' allowance will in general be an annual allowance, and it may vary from one co-opted member to another. Authorities have the ability to pay a proportion of the annual allowance in proportion to part of the year for which a member of a relevant

committee or sub-committee serves on that committee or sub-committee.

9.3 Where either a co-opted or an appointed member is appointed chair of the committee on which they are co-opted or appointed, the co-optees' allowance they receive must be of an amount no less than the equivalent special responsibility allowances being made available to chairs of equivalent committees of the council.

## **10. Withholding Allowances**

10.1 Certain allowances may be withheld as a result of full or partial suspension of a member. Provision for withdrawal of allowances should be included in the scheme. The Council may provide in its scheme for the repayment of any allowances which have been paid in respect of a period during which a member has been suspended.

10.2 Where a councillor is fully or partially suspended from their duties, their basic allowance may be fully or partly withheld.

10.3 Travel and subsistence allowances maybe withheld where a councillor has been suspended from duties or responsibilities which attracted these allowances.

10.4 Where a councillor is fully or partially suspended from any duties or responsibilities which attract special responsibility allowance, those allowances may be withheld by the authority.

10.5 Co-optees' allowance may also be withheld where a co-optee is partially or fully suspended from their duties.

10.6 Dependents' carers' allowance may not be withheld from councillors.

## Standards Committee

22 April 2025



**Reading**  
Borough Council  
Working better with you

<b>Title</b>	Planning Code of Conduct Review
<b>Purpose of the report</b>	To make a decision
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham, Assistant Director for Legal and Democratic Services
<b>Lead Councillor</b>	Cllr Liz Terry, Leader of the Council
<b>Corporate priority</b>	Our Foundations
<b>Recommendations</b>	<p>To:</p> <ol style="list-style-type: none"> <li>1. Consider the draft Planning Code attached as Appendix 1</li> <li>2. To make recommendations to officers to finalise the updating of the Planning Code</li> </ol>

### 1. Executive Summary

1.1. The Council has a Planning Code within the Constitution. Article 9 of the Constitution places this Policy within the remit of the Standards Committee.

### 2. Policy Context

2.1. The Planning Code of Conduct within the Constitution was adopted by Council in 2015 (and updated in May 2019).

2.2. In December 2019 the Local Government Association (LGA) published *Probity in planning: Advice for councillors and officers making planning decisions*. Whilst our 2015 document was based on the 2013 version of the same LGA advice, we have not subsequently updated the Planning Code to take into account the updated advice. A review is therefore overdue.

2.3. The LGA published a model code of conduct in January 2024, which with adaptations to reflect Reading Borough Council's arrangements, would provide an up-to-date code focussing on expected councillor behaviour to replace our current version, which is a mixture of advice and a description of procedure.

2.4. Details of procedures are set out in Part 4 of the Council's Constitution.

2.5. In October 2022, the remit of the Standards Committee was expanded to include oversight of the Planning Code of Conduct:

9.1.2 The purpose of the Standards Committee is to oversee and develop the Council's ethical framework which includes, but is not limited to, the following policies:

Councillor Code of Conduct  
 Overall standards of conduct and ethics of Members and co-opted Members of the Council  
 Arrangements for Dealing with Allegations of Misconduct (the "Arrangements Document")  
 Staff Code of Conduct  
 Planning Code of Conduct  
 Member Officer Protocol  
 Policies in relation to Gifts and Hospitality

### **3. The Proposal**

- 3.1. The Committee is invited to review the Planning Code of Conduct.
- 3.2. The Code is based on the model code published by the LGA, with minor amendments to reflect Council-specific job titles (e.g. Planning & Building Control Manager) and procedures.
- 3.3. Officers from Planning and Legal will be in attendance to assist the Committee to discuss this draft document and to identify areas where it can be improved to offer the best advice to councillors. The Code applies not just to Planning Application Committee members but also to ward councillors.

### **4. Contribution to Strategic Aims**

- 4.1. Putting a new Planning Code in place will allow the Council to comply with best practice and to protect itself from the risk of legal challenges to planning permission decisions. It is a key policy for good governance in the Council.

### **5. Environmental and Climate Implications**

- 5.1. There are no environmental or climate implications arising from the decision, which only concerns the Council's internal operational procedures.

### **6. Community Engagement**

- 6.1. No Community Engagement has been carried out as this relates to Council operational procedures to comply with a regulatory requirement and best practice.

### **7. Equality Implications**

- 7.1. 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.

- 7.2. There are no Equality implications stemming from the matters covered by this report.

### **8. Other Relevant Considerations**

- 8.1. There are none.

### **9. Legal Implications**

- 9.1. One of the main issues to be considered in the revised Planning Code is how to deal with situations where members wish to depart from officer recommendations so that they can give cogent reasons for their decision. The Supreme Court held in Dover District Council v CPRE Kent (2017) that when reasons for a decision are required, their adequacy is to be determined in the case of committees of elected members of a local authority by the same standard as is applicable to others (such as the Secretary of State). The reasons to be provided should not leave room for genuine doubt as to what has been decided and why, dealing with the main issues. It also held that the common law may impose a duty on such a committee to give reasons for the grant of planning permission for a development which is contrary to policy and against the advice of their own officers.
- 9.2. Our procedures have not been updated since this judgement to take into account the enhanced duty to give reasons, and whilst we have not had any challenges since that time, our policies and procedures should be effective and up to date to guard against that risk.

## **10. Financial Implications**

- 10.1. There are no financial implications, as the change of policy represents a change of internal procedures and so will be covered by existing officer time.

## **11. Timetable for Implementation**

- 11.1. The Policy is within the remit of the Committee. If the Committee has enough information to proceed, it can determine the Policy at its September meeting. If further consideration is required, then the Committee can devise a work plan to conclude the matter.

## **12. Background Papers**

- 12.1. There are none.

## **Appendices**

1. Draft Planning Code of Conduct
2. Probity In Planning LGA document

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## Introduction

**The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Authority is** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or their team, and preferably well before any meeting takes place.**

### 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Authority's Code of Conduct first, as these must be always be complied with. This includes both the rules on disclosable pecuniary interests (and other interests if included in your authority's code) and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Planning Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning and development control. If you do not abide by this Members' Planning Code, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
- **Do** be aware that, like the Authority's Code of Conduct, this Planning Code is a reflection and summary of the law on decision making and not a direct replication of it. If in doubt, seek the advice of your Monitoring Officer or their staff advising at the meeting.

### 2. Development Proposals and Interests under the Members' Code

- **Do** disclose the existence and nature of your interest as required by your members Code of Conduct.
- **Do take into account when approaching a decision** that the Principle of integrity is defined, by the Committee on Standards in Public Life in 2013, in terms that "*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for*

*themselves, their family, or their friends. They must declare and resolve any interests and relationships*". It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that the Members' Code of Conduct may place additional limitations on you in representing that proposal
- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
  - you should send the notification no later than submission of that application where you can;
  - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
  - you must not get involved in the processing of the application; and
  - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

### **3. Fettering Discretion in the Planning Process**

(natural justice, predisposition and predetermination)

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by approaching the decision with a closed mind. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- **Do** be aware that in your role as an elected Member you are entitled, and are often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the law. Your prior observations, apparent favouring or objections in respect of a particular outcome will not on their own normally suffice to make a decision unlawful and have it quashed, but you must never come to make a decision with a closed mind.
- Do keep at the front of your mind that, when you come to make the decision, you
  - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice and the arguments from all sides;
  - are not required to cast aside views on planning policy you held when seeking election or when otherwise acting as a Member, in giving fair consideration to points raised;
  - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
  - are to come to a decision after giving what you feel is the right weight to those material considerations.

- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county councillor), provided:
  - the proposal does not substantially affect the well-being or financial standing of the consultee body;
  - you make it clear to the consultee body that:
    - your views are expressed on the limited information before you only;
    - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
- **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (*Use the disclosure form provided for disclosing interests.*)
- **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (*where this is granted by the authority's standing orders or by the consent from the Chair and Committee*) where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the seating area for members of the Committee for the duration of that item; and
  - ensure that your actions are recorded in accordance with the Authority's committee procedures.
- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Planning & Building Control Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.

#### 4. Contact with Applicants, Developers and Objectors

- **Do** otherwise:
  - follow the rules on lobbying;

- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Planning & Building Control Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

**In addition, in respect of presentations by applicants/developers:**

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

**5. Lobbying of Councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or the other;
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the Planning & Building Control Manager at the earliest opportunity.
- **Do** promptly refer to the Planning & Building Control Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:
  - listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion of others in your role as a Ward Member.

## **6. Lobbying by Councillors**

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will be seen to have fettered your discretion on the grounds of bias.
- **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but you should normally disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Do** be aware of the power of social media posts or re-posting and be careful to not to give the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the authority.
- **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## **7. Site Visits/Inspections**

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the Planning & Building Control Manager about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site visits.

## **8. Public Speaking at Meetings**

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally, in writing or by social media) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Don't** participate in social media or exchanges by texting as a member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.
- Do ensure that you comply with the Council's procedures in respect of public speaking.

## **9. Officers**

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Planning & Building Control Manager, which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## **10. Decision Making**

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter. (Where a matter is deferred and its consideration recommences at a subsequent meeting, only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh and this would include public speaking rights being triggered again).
- **Do** have recorded the reasons for Committee's decision to defer any proposal.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded (it will help to take advice from officers when and where necessary to do this and, if there are no indications allowing you to do this in advance of the meeting, it may be helpful to request a short adjournment for these

purposes). Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

## **11. Training**

- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

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# Probit in planning

Advice for councillors  
and officers making  
planning decisions

This advice was first published in 1992. This version has been prepared by CITIESMODE Planning. It updates and expands the April 2013 document prepared by Trevor Roberts Associates for the Planning Advisory Service.

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# 1. Introduction

## Background

Probity in planning is about ensuring that decisions on plan making and planning applications are undertaken, on behalf of communities, in a fair, impartial and transparent way. This guide has been written for officers and councillors involved in making planning decisions in their local authority. It is informed by contributions from councillors and officers and includes:

- a brief overview of the planning system and the role of decision makers
- councillor and officer conduct
- registration and disclosure of interests
- predisposition, predetermination or bias
- lobbying of and by councillors
- discussions before a decision is taken
- officer reports
- public speaking at planning committees
- decisions which differ from an officer's recommendation
- committee site visits
- reviewing past planning decisions and the outcomes
- complaints and record keeping.

Councillors and officers should be familiar with, and adhere to, their own local authority codes of conduct and guidance. This advice is not intended to be prescriptive.

Local circumstances may necessitate local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

The Local Government Association (LGA) endorses the good practice of many councils who ensure their councillors receive training on planning when first appointed to the planning committee or local plan steering group. It is recommended that councillors receive regular ongoing training on probity in decision making and the local code of conduct as well as on planning matters. The Planning Advisory Service (PAS) can provide training to councillors.<sup>1</sup>

**“To new committee members... Get as much training as you can, and not just the standard ‘in house’ two hour session with your own planning officers – but also from other bodies like PAS, Urban Design London<sup>2</sup> and the Royal Town Planning Institute (RTPI), and look at how colleagues in other authorities do things.”**

**Councillor Sue Vincent, Camden**

This guide does not constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity. Where there are any doubts or queries, advice should always be sought from the council's monitoring officer.

<sup>1</sup> contact [pas@local.gov.uk](mailto:pas@local.gov.uk)

<sup>2</sup> [www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018](http://www.urbandesignlondon.com/library/sourcebooks/councillors-companion-design-planning-2018)

## 2. The planning system and the role of decision makers

The National Planning Policy Framework 2019 (NPPF)<sup>3</sup> states that the purpose of the 'planning system' is to contribute to the achievement of sustainable development. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs.<sup>4</sup> Planning has a positive and proactive role to play at the heart of local government and local communities. It can:

- help councils stimulate growth and translate goals into action
- balance social, economic and environmental needs to achieve sustainable development
- deliver important public benefits such as new housing, infrastructure and local employment opportunities.

**"Everything starts with planning! The way our neighbourhoods develop to meet the challenges of a growing population is determined by the placemaking that is done through the planning policy process, which in turn informs the development management process. It is important for the planning committee members to give careful consideration to the impact that all applications will have on an area, as they will (hopefully) be in place for many**

**years to come."**

**Councillor Adele Morris, Southwark**

Planning law requires that applications for planning permission be determined in accordance with the development plan (the 'local plan' document(s) and if relevant spatial development strategy), unless 'material considerations' indicate otherwise. National planning practice guidance<sup>4</sup> (NPPG) explains that a material planning consideration is one which is relevant to making a planning decision to grant or refuse an application for planning permission. It states that the 'scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration.<sup>5</sup> However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.'

Local planning authorities are tasked with both preparing the development plan that applications will be assessed against and making planning decisions. In England the NPPF must be taken into account in preparing the development plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect other relevant international obligations and statutory requirements. Local planning decisions are made in this wider national and international context.

<sup>4</sup> [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

<sup>5</sup> However, for a recent judicial interrogation of material consideration, see the recent case of *R (Wright) v Resilient Energy Severndale Ltd and Forest of Dean District Council* [2019] UKSC 53

<sup>3</sup> [www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

The determination of a planning application is a formal administrative process involving:

- the application of national and local planning policies
- reference to legislation, case law and rules of procedure
- rights of appeal and an expectation that local planning authority will act transparently, reasonably and fairly.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework in the wider public interest. Planning affects people's lives and land and property interests, particularly the financial value of landholdings, and the quality of their settings. Opposing views are often strongly held by those involved. Whilst councillors must take account of these views, they should not favour any person, company, group or locality, or appear to be doing so. Decisions need to be taken in the wider public interest on what can be controversial proposals.

Because planning decisions can be controversial, it is particularly important that the process is open and transparent. The risk of controversy and conflict is heightened by a system which invites public opinion before taking decisions. The legal and procedural nature of the planning system means there is a risk of complaints to the Ombudsman for maladministration or a breach of the authority's code. There may also be a legal challenge, in the form of a judicial review in which a judge reviews the lawfulness of a decision or action made by a public body.

Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.

Officers prepare the development plan (the local plan document or documents) which must conform to the policies set out in the NPPF and be adopted by a meeting of the full council. Applications for planning permission submitted to the local planning authority are assessed by planning officers who will, based on the development plan and any material planning considerations, make recommendations to planning committees who then resolve to grant or refuse the application. Councillors can be involved in decisions on planning enforcement action or compulsory purchase orders.

Most councils also delegate powers to senior officers to determine a large proportion of planning applications – the advice in this document and the council's code of conduct as it relates to planning decisions will apply to these officers too. The applications that go to committee, or are determined by an officer, will be set out in the local authority's scheme of delegation. Effective delegation can help ensure that decisions on planning applications that raise no significant planning issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area. These will typically be larger or more complex applications and potentially controversial – and are defined locally through authority schemes of delegation.

Therefore, whilst councillors are ultimately responsible for decision making in local planning authorities, officers who have delegated authority to make decisions need to be aware of the issues covered in this document – and the advice and principles discussed apply to them too.

# 3. Councillor and officer conduct

The seven principles of public life apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reassured and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019.<sup>6</sup> These principles are:

- **Selflessness:** holders of public office should act solely in terms of the public interest.
- **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not

be withheld from the public unless there are clear and lawful reasons for so doing.

- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Section 27 of the Localism Act 2011 (as amended)<sup>7</sup> requires local planning authorities to promote and maintain high standards of conduct and adopt a local code of conduct, which should reflect these principles. It must cover:

- the registration of pecuniary interests (explained in Section 4)
- the role of an 'independent person' to investigate alleged breaches
- sanctions, to be imposed on any councillors who breach the code.

Parish and town councils are covered by the requirements to have a code of conduct and to register interests. They can choose to 'opt in' to the code of conduct adopted by their principal authority (the local district or unitary council).

The Local Government Ethical Standards Report published in 2019 suggests that many codes of conduct fail to adequately address important areas of behaviour, such as social media use and bullying and harassment.

6 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

7 [www.gov.uk/government/collections/planning-practice-guidance](http://www.gov.uk/government/collections/planning-practice-guidance)

It includes a number of recommendations for codes of conduct – some of which will require changes to primary or secondary legislation. It also includes a series of best practice recommendations, which they recommend are addressed in codes.

Many local planning authorities have also adopted their own codes relating specifically to planning, which should be read alongside the substantive code of conduct for the council. In addition to these codes, a council's standing orders also set down rules which govern the conduct of council business.

Officers who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct,<sup>8</sup> breaches of which may be subject to disciplinary action by the Institute. The RTPI provides advice for planning professionals on matters of probity aimed at supporting planners in exercising their independent professional judgement, and promoting public confidence in the planning system.

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority, even if they are not involved in the decision making on them.

In addition, officers must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 (as amended)<sup>9</sup> enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Care needs to be taken in the use of social media, such as Twitter, Facebook or Instagram, by officers and councillors, where it relates to decision making functions (see Section 5 on predetermination and bias). The Local Government Ethical Standards Report 2019 also addresses issues related to social media use.

<sup>8</sup> [www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

<sup>9</sup> [www.legislation.gov.uk/ukpga/1989/42/contents](http://www.legislation.gov.uk/ukpga/1989/42/contents)

# 4. Registration and disclosure of interests

## Pecuniary interests

Decision makers must make known any pecuniary interests – that is any business or wider financial interests – and other personal interests their code requires them to disclose.

Councillors must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must also be registered with the monitoring officer within 28 days of the councillor becoming aware of them.

Each council's code of conduct should establish what interests need to be disclosed. The council's monitoring officer should maintain a register of these disclosable interests, which should be made available to the public. Councillors should also disclose any interest orally at a committee meeting if it relates to an item under discussion.

Chapter 7 of the Localism Act 2011 (as amended)<sup>10</sup> places explicit requirements on councillors to register and disclose their pecuniary interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.<sup>11</sup>

It is a criminal offence to:

- Fail to register a disclosable pecuniary interest within 28 days of election or co-option
- Give false or misleading information on registration
- Participate in discussion or vote in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest.

<sup>10</sup> [www.legislation.gov.uk/all?title=Localism%20Act](http://www.legislation.gov.uk/all?title=Localism%20Act)

<sup>11</sup> [www.legislation.gov.uk/ksi/2012/1464/made](http://www.legislation.gov.uk/ksi/2012/1464/made)

## Personal Interests

The Localism Act also includes the need to register and disclose personal interests with other councillors, officers, and the public.

A councillor with a disclosable pecuniary interest relating to an item under discussion must withdraw from the committee (or other decision forum) and not participate in discussions and debate, nor vote. This applies to all planning decisions and not just on individual planning applications. For example, a development plan document might cover sites or property where a councillor has an interest in the land. Officers involved in making recommendations and decisions should adopt the same approach, and seek advice from the authority's monitoring officer.

If a councillor has a non-pecuniary personal interest, including being a member of an outside body, they should disclose that interest, but then may still speak and vote on that particular item. However, the Local Government Ethical Standards Report (2019) highlights the potential for conflicts and potential need to withdraw from committee in relation to non-pecuniary interests as well.

## Dispensation and handling relevant interests

In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business. A dispensation may be granted for any reason, but the Act specifies a number of scenarios where this might apply.

This includes the number of councillors having an interest being so great that the meeting cannot proceed, with the political balance of the meeting being substantially affected.

It is always best to identify a potential interest in a planning decision early on and raise this with the monitoring officer as soon as possible. Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

Appendix 1 on page 25 includes a flowchart of how councillors' interests should be handled. For comprehensive guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013.<sup>12</sup>

The provisions of the Localism Act 2011 (as amended) seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate or not.

<sup>12</sup> [www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors](http://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors)

# 5. Predisposition, predetermination or bias

## Predetermination

Members of a planning committee, local plan steering group or full council (when the local plan is being considered) need to avoid any appearance of bias or having 'predetermined' views when making a decision on a planning application or policy.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is indicative of a 'closed mind' approach and may leave the grant of planning permission vulnerable to challenge by Judicial Review.

## Predisposition

Predisposition is where a councillor may have a pre-existing opinion or attitude about the matter under discussion, but remains open to listening to all the arguments and changing their mind in light of the information presented at the meeting. Section 25 of the Localism Act 2011 (as amended) clarifies that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicates what view they might take in relation to any particular matter.

A councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased. For example, a councillor who says or 'tweets' from their Twitter account: 'Wind farms are blots on the landscape and I will oppose each and every wind farm application that comes before the committee' will be perceived very differently from a councillor who states: 'Many people

find wind farms ugly and noisy and I will need a lot of persuading that any more wind farms should be allowed in our area'.

## Impartiality and avoiding bias

Planning issues must be assessed fairly and on their planning merits, even when there is a predisposition in favour of one side of the argument or the other. Avoiding predetermination and the impression of it is essential. The decision making process must be seen to be fair and impartial from the perspective of an external observer.

If a decision maker has predetermined their position, they should withdraw from being a member of the decision making body for that matter. This applies to any member of the planning committee who wants to speak for or against a proposal as a campaigner (for example on a proposal within their ward).

Local planning authorities will usually have a cabinet or executive member responsible for development and planning (sometimes known as the portfolio holder). PAS advise that the leader and portfolio holder of a local authority, who play an important role driving planning policies and proposals, should normally exclude themselves from decision making committees. This is to avoid the perception of a conflict of interests and predisposition.

In smaller councils it may be necessary for a portfolio holder to be on a planning committee. PAS suggest that in these situations they will need to be extremely careful and will need to withdraw when the committee is considering the council's own schemes or other applications that they have been seen to support previously.

# 6. Development proposals

Planning applications or proposals for changes to a local plan submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local guidance should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals and ensure probity in decision making
- the council's monitoring officer should be informed of such proposals.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as an applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

# 7. Lobbying of and by councillors

## Reporting on local concerns

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report<sup>13</sup> states: '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 through the local elected representatives, the councillors themselves'.

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, and so care and common sense must be exercised by all parties involved.

## Expressing opinions

As noted earlier in this guidance note, the common law permits predisposition. However it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all the application materials and arguments for and against the development proposal.

In such situations, a councillor could restrict themselves to giving advice about the process and what can and can't be taken into account. Councillors can raise issues which have been raised by their constituents with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after they have heard all the relevant arguments, and have taken into account all relevant material and planning considerations at committee.

## Conduct at committee

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision making committee, they would be well advised to withdraw from the meeting once any public or ward member speaking opportunities have been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to convey every nuance of these situations and get the balance right between the duty to be an active local representative, and the need to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor. Again, where there are concerns, advice should immediately be sought from the local authority's Monitoring Officer.

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336864/3rdInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf)

## Local codes

A local code on planning should also address the following more specific issues about lobbying:

- planning decisions cannot be made on a party political basis in response to lobbying - the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration
- planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors
- councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

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. As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

## Gifts and hospitality

Councillors and officers should be cautious about accepting gifts and hospitality in general and especially where offered by lobbyists. It is not enough to register such gifts. Any councillor or officer receiving offers over an agreed value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Councillors and officers involved in planning decisions should not accept over-frequent or over-generous hospitality, especially where from the same organisation. They should always ensure that acceptance of such hospitality does not constitute a conflict of interest. Guidance on these issues should be included in the local code of conduct, and the Local Government Ethical Standards Report suggests adherence to consideration be given to the purpose of the hospitality, proportionality and the avoidance of any conflict of interest.

# 8. Discussions before a decision is taken

## Early engagement and pre-application discussions

Early councillor engagement is encouraged to ensure that proposals for sustainable development will lead to settlements that communities need. This guidance is intended to reinforce councillors' community engagement role whilst maintaining good standards of probity to minimise the risk of legal challenges. It is also important to encourage good decision-making that is transparent and upholds public confidence in the planning system. Ultimately, the public are a critical part of the planning process and the role of councillors provides democratic legitimacy for decisions.

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

## Avoiding predetermination

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. The Localism Act 2011 (as amended) acknowledges that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise along with an understanding of community views.

There is a difference between being predisposed to the planning policies set out in the NPPF or adopted development plan principles such as delivering housing, sustainable transport or good design and expressing views on this – and being predetermined in relation to a specific case.

Some local planning authorities have, or encourage, public planning forums to explore major pre-application proposals, with the developer outlining their ideas and inviting 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 such discussions still need to avoid pre-determination.

Councillor involvement can help identify issues early on, help councillors lead on community issues, and help to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' at committee approach.

## Meetings and discussions before a decision

The Localism Act, particularly Section 25, which establishes prior indications of view of a matter not to amount to predetermination, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid the perception that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Discussions before a decision is taken should ensure:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are 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.
- Consistent advice is given by officers based upon the development plan and material planning considerations.
- That councillors avoid giving separate advice on the development plan or other material planning considerations, as they may not be aware of all the issues at an early stage. Councillors should not 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.
- A commitment is made that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.

Officers should arrange any meetings, attend these with councillors and make a written record of the meeting placing this note on the case file. 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. 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.

Councillors also talk regularly to constituents to gauge their views on matters of local concern – which can include planning applications. The Nolan Committee acknowledged that keeping a register of these conversations would be impractical and unnecessary; however, local planning authorities should think about when discussions should be registered and notes written.

## Other approaches to early engagement

Local planning authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers
- 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 if held in public as a committee would normally be (with notes taken).
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when local planning authorities are 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.

# 9. Officer reports

Officer reports are a critical part of the decision-making process. They can also be difficult to write, as officers have to grapple with complex and technical information such as viability and daylight and sunlight analysis along with matters such as any equalities impacts of the proposed development. Conclusions can be finely balanced, having exercised planning judgement as to the merits of a scheme.

Sometimes, the local planning authority will engage external consultants to interrogate the applicant's material on specialist areas of expertise, and advise the officer accordingly. The presentation of this information in the report is particularly important – along with the availability of any background papers. Whilst the Courts are generally reluctant to interfere in the exercise of planning judgement, officer reports can nonetheless be fertile ground for judicial review challenges. This is particularly so where there is a risk that the officer may have inadvertently misled the committee, therefore tainting the resulting decision.

Careful reviews of draft reports, which may involve consultation with the council's legal team, is always recommended. Similarly, appropriate interventions by the legal officer at the committee meeting itself might be needed in order to correct any misconceptions on specific issues.

As a result of decisions made by the courts and Ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the NPPF, any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain, where relevant, technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but failure to do so may constitute maladministration or give rise to a 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 duty under Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990.
- Any oral updates or changes to the report should be recorded.

# 10. Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.

New documents should not be circulated to the committee as councillors may not be able to give proper consideration to the new information, and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. Late information might lead to a deferral. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

# 11. Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (Section 38A of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other non material considerations which might cause local controversy, will rarely satisfy the relevant tests.

Planning committees can, and do, make decisions which are different from the officer recommendation. Sometimes this will relate to conditions attached to the permission or planning obligations secured through a legal agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended).<sup>14</sup> A S106 legal agreement, or undertaking, includes obligations entered into by the developer, landowner and other relevant parties to mitigate the impacts of a development proposal.

Sometimes the committee's decision will change the outcome from an approval to a refusal, or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- If a councillor is concerned about an officer's recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. Care should be taken however to ensure that this does not lead to predetermination of a decision.
- Recording the detailed reasons as part of the mover's motion.
- Adjourning for a few minutes for those reasons to be discussed and then agreed by the committee.
- Where there is concern about the validity of reasons, considering deferring to another meeting to have the reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 planning obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation, which should be set in the context of the development plan or the NPPF. The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome based on policies set out in the development plan and the NPPF, and chances of a successful award of costs against the local authority, should one be made.

<sup>14</sup> [www.legislation.gov.uk/ukpga/1990/8/contents](http://www.legislation.gov.uk/ukpga/1990/8/contents)

The decision is ultimately the committee's; however, it is imperative that the decision is made with regard to relevant planning considerations.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departures' from the development plan. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, and/or the Mayor, depending upon the type and scale of the development proposed (Section 77 of the Town and Country Planning Act 1990).<sup>15</sup> If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

The common law on giving a statement of reasons for decisions has developed significantly in the last few years. It is important that the report that supports planning decisions clearly shows how that decision has been reached – whether for the grant or refusal of permission.

Whilst a committee giving reasons for refusing an application might be common, it may also be sensible to give reasons for resolving to grant permission, and having those accurately captured in minutes of the meeting. This may be particularly so where there is an overturn of an officer recommendation and/or where the application is particularly controversial due to planning policy protections and/or weight of objections. Where the development is EIA development, there is, in any event, a separate statutory requirement to give reasons for the grant of permission.

It should always be remembered that the public have a stake in the planning process and are entitled to understand how decisions are reached.

<sup>15</sup> [www.legislation.gov.uk/ukpga/1990/8/section/77](http://www.legislation.gov.uk/ukpga/1990/8/section/77)

# 12. Committee site visits

National standards and local codes also apply to site visits. Local planning authorities should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply
- a record should be kept of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

# 13. Reviewing past planning decisions and the outcomes

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development, ideally on an annual or more frequent basis. This should improve the quality and consistency of decision making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

# 14. Complaints and record keeping

All local planning authorities should have a complaints procedure which may apply to all of its activities. Local planning authorities should also consider how planning related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

# List of references

## The Localism Act 2011

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## National Planning Policy Framework Department for Communities and Local Government, March 2019

[www.gov.uk/government/publications/national-planning-policy-framework--2](http://www.gov.uk/government/publications/national-planning-policy-framework--2)

## Committee on Standards in Public Life (1995) First Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report

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## Royal Town Planning Institute Code of Professional Conduct

[www.rtpi.org.uk/media/1736907/rtpi\\_code\\_of\\_professional\\_conduct\\_-\\_feb\\_2016.pdf](http://www.rtpi.org.uk/media/1736907/rtpi_code_of_professional_conduct_-_feb_2016.pdf)

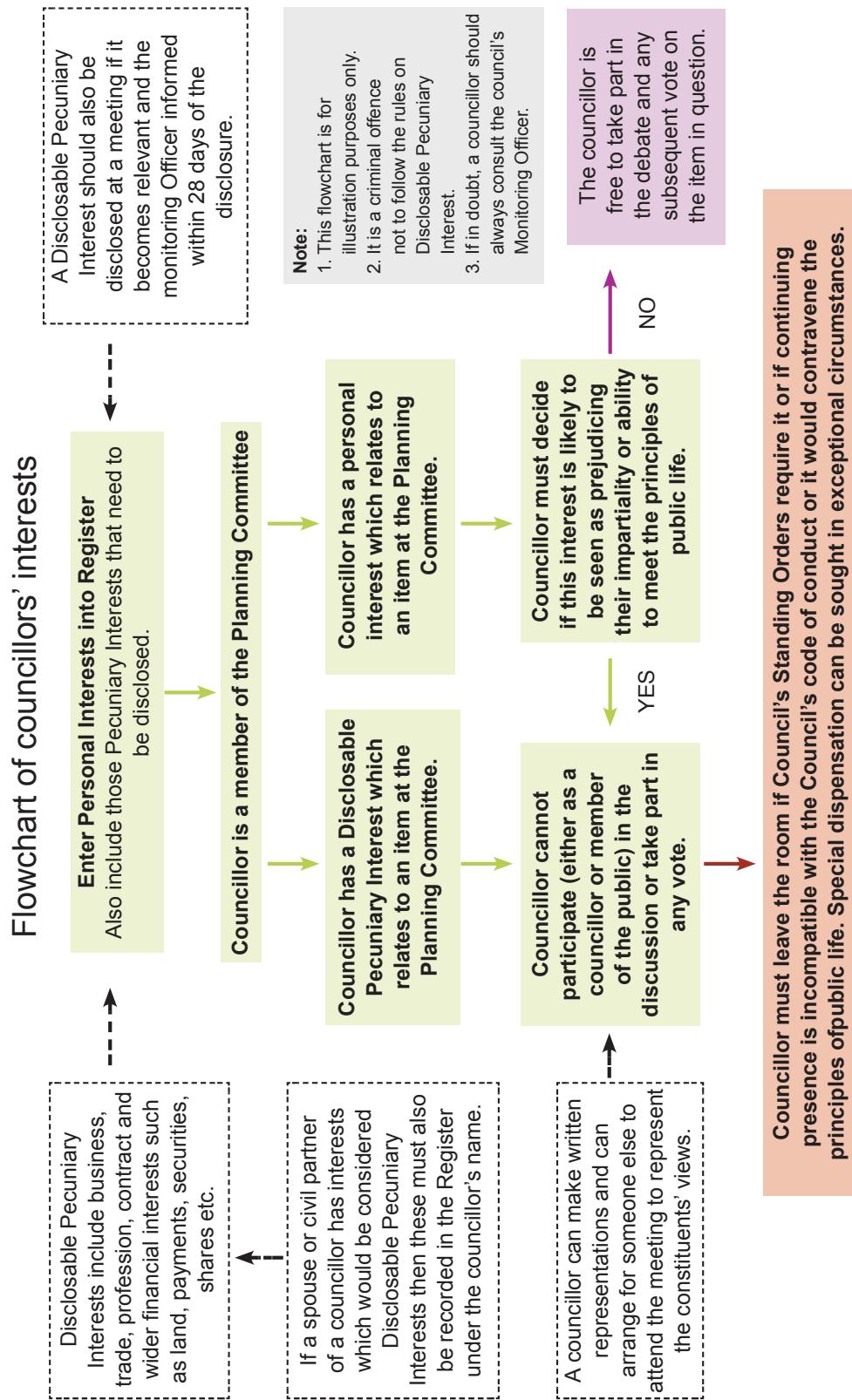
## RTPI Guidance on Probity for Professional Planners

[www.rtpi.org.uk/probity](http://www.rtpi.org.uk/probity)

## Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013

[www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors](http://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors)

# Appendix 1 Flowchart of councillors' interests









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## Standards Committee

22 April 2025



**Reading**  
Borough Council  
Working better with you

<b>Title</b>	Appointments of Independent Person and Independent Chair for Standards Committee
<b>Purpose of the report</b>	To make a decision
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham, Monitoring Officer
<b>Lead Councillor</b>	Cllr Liz Terry, Leader of the Council
<b>Council priority</b>	Ensure Reading Borough Council is fit for the future
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That the Monitoring Officer be authorised to consider arrangements with other Berkshire Councils to establish a Panel and share Independent Persons.</li> <li>2. That the Monitoring Officer be authorised to recruit an Independent Chair for Standards Committee.</li> <li>3. That the Monitoring Officer report back to Council to make the appointments.</li> </ol>

### 1. Executive Summary

- 1.1. The Localism Act 2011 required local authorities to appoint at least one Independent Person with statutory responsibilities to be consulted and to advise on complaints made about Members. The 2011 Act stated that the Independent Person cannot have been a member or officer of the authority during the preceding five years.
- 1.2. Following the resignation of Mr David Comben as Independent Person, the Council are required to recruit and appoint a new Independent Person. The Monitoring Officer has requested authorisation to consider sharing arrangements with other Berkshire unitary authorities of one or more Independent Persons due to the low number of investigations required by the Council.
- 1.3. As per Article 9 of the Constitution, the Standards Committee Terms of Reference states that the Council should appoint an Independent Member as the Chair of Standards Committee.
- 1.4. Following the resignation of Mrs Tina Barnes, the Monitoring Officer is seeking the approval of the Committee to advertise for a new Independent Member as the Chair of Standards Committee.

### 2. Policy Context

- 2.1. 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 requires 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)).

- 2.2. The Act states that a relevant authority must have in place (a) arrangements under which allegations can be investigated, and (b) arrangements under which decision on allegations can be made.
- 2.3. These arrangements must include provision for the appointment by the authority of at least one independent person.
- 2.4. On 18 October 2022 the Council agreed amendments to Article 9 of the Council's Constitution. The Councillor's Code of Conduct sits under the remit of the Standards Committee in Article 9. The Terms of Reference set out in 9.2.3 (d) state that the Council will appoint an Independent Member of the Committee to be its Chair.

### **3. The Proposal**

#### **Independent Person**

- 3.1. The Localism Act 2011 requires the local authority to appoint at least one Independent Person (IP).
- 3.2. Arrangements with neighbouring Berkshire local authorities to share an Independent Person/s would allow for a wider pool of IPs so that investigations when required would be dealt with in a timely and efficient manner.
- 3.3. Note that Reading needs an IP infrequently due to the static low number of member complaints received which proceed beyond Stage 0. Other Berkshire Councils with Parish Councils have a more frequent need for IPs.
- 3.4. Applications for Independent Person would be assessed by a Panel of Monitoring Officers for the Council's proposing to enter into the Consortium arrangement.
- 3.5. The proposed delegation is that the Monitoring Officer be authorised to consider arrangements with Berkshire Unitary authorities to share Independent Persons, this will include joint advertising, setting up a MOU about a Consortium arrangement, and agreeing the nominations to each constituent Council.

#### **Independent Chair**

- 3.6. That a new Independent Chair of Standards Committee be recruited as per Article 9 of the Constitution so that Standards Committee meetings are following correct procedure and governance.
- 3.7. It is proposed that the Monitoring Officer and Deputy Monitoring Officer interview potential candidates with the Vice-Chair of Standards Committee.
- 3.8. The appointment of an independent member to chair the Standards Committee is a local arrangement set out in Article 9 of the Constitution. Therefore, the requirement to appoint an independent member could be discontinued or the condition that the independent member must chair the Standards Committee could be relaxed.
- 3.9. The Monitoring Officer will report back to Council to make the final appointments.

### **4. Contribution to Strategic Aims**

- 4.1. The Council Plan has established five priorities for the years 2025/28. These priorities are:
  - Promote more equal communities in Reading
  - Secure Reading's economic and cultural success
  - Deliver a sustainable and healthy environment and reduce our carbon footprint
  - Safeguard and support the health and wellbeing of Reading's adults and children
  - Ensure Reading Borough Council is fit for the future
- 4.2. In delivering these priorities, we will be guided by the following set of principles:
  - Putting residents first

- Building on strong foundations
- Recognising, respecting, and nurturing all our diverse communities
- Involving, collaborating, and empowering residents
- Being proudly ambitious for Reading

4.3. Full details of the Council Plan and the projects which will deliver these priorities are published on the Council's website - [Council plan - Reading Borough Council](#). These priorities and the Council Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.

## **5. Environmental and Climate Implications**

5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).

5.2. There is nothing within this report which is of relevance for the Council's strategic priority of Climate Change.

## **6. Community Engagement**

6.1. The vacancy for the Independent Person will be publicly advertised on the Council's website in accordance with Section 28 of the Localism Act 2011. Any applications for the position of Independent Person must be submitted to the Monitoring Officers for consideration.

6.2. The vacancy for Independent Chair will also be advertised.

## **7. Equality Implications**

7.1. 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.

7.2. It is not considered that an Equality Impact Assessment (EIA) is relevant to the decisions arising from this report.

## **8. Other Relevant Considerations**

8.1. There are none.

## **9. Legal Implications**

9.1. 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

9.2. 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.

9.3. The appointment must be made by Council – it cannot be delegated.

9.4. The IP cannot be a relative or close friend of a serving Member or officer of the authority as set out in s28(10) Localism Act 2011.

- 9.5. The vacancy for the IP must be advertised to the public, and the person appointed must have submitted an application to fill the vacancy.
- 9.6. The appointment of an independent member to Chair the Standards Committee is a local arrangement, which is set out in Article 9, 'The Standards Committee' of the Council's Constitution (para 9.2.3 refers)

## **10. Financial Implications**

- 10.1. The Independent Person qualifies for a Special Responsibility Allowance (SRA) at Tier 4 of the Members' Allowances Scheme. The Chair of the Standards Committee receives an SRA at Tier 3, which is payable to Chairs of the Council's Committees. These costs are met from the Members' Allowances Budget.
- 10.2. There are no financial implications arising from this report. Advertisements and the process for appointing Independent Persons and the Independent Member, will be met from current resources.

## **11. Timetable for Implementation**

- 11.1. An Independent Person and Independent Chair would need to be recruited as soon as practicable as these posts are currently vacant.

## **12. Background Papers**

- 12.1. There are none.

## Standards Committee

22 April 2025



**Reading**  
Borough Council  
Working better with you

<b>Title</b>	Standards Committee
<b>Purpose of the report</b>	To note the report for information
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham – Monitoring Officer
<b>Lead Councillor</b>	Cllr Liz Terry, Leader of the Council
<b>Corporate priority</b>	Not applicable, but still requires a decision
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. To note the Member Complaints received in year 2023/2024</li><li>2. To consider any further work which may be necessary to promote high standards of conduct in public life in the Council</li></ol>

### 1. Executive Summary

- 1.1. Each year the Standards Committee receives a report on complaints activity in the previous year. This allows members of the Committee to scrutinise the workings of the complaints system.

### 2. Policy Context

- 2.1. The Localism Act requires all councils to have a local Member Code of Conduct. It also requires councils to put in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. Currently the Council's arrangements are set out in Article 9 of the Constitution (which describes the remit of the Standards Committee). These arrangements have been in place since May 2013 although the Code and the Arrangements for Dealing with Complaints were substantively reviewed in 2022 with a new Code of Conduct agreed at Council in October 2022

### 3. Complaints In the Financial Year 2023/2024

- 3.1. Reports to the Standards Committee are usually made annually to update the Committee on the number of complaints made and other issues.
- 3.2. Annex A to this report contains a list of seven complaints that were made to the Monitoring Officer in financial year 2023/2024.
- 3.3. The lists are anonymised. There is a public interest in the operation of a complaints procedure, that not every matter should be made public. Hence, details of councillors and members of the public are redacted in this summary. This encourages resolution of matters at the earliest stage possible, in the quickest timescale and with the least formality. This practice is consistent with Standards Committee proceedings elsewhere. If a serious matter is brought before the Committee, the Committee item would usually proceed as a Part 2 matter until the Committee had weighed up the public interest in publicity and taken into account whether the subject councillor was proven to have breached the Code or not.

- 3.4. If a member is found to have breached the Code then this report will identify that councillor so that there is transparency in the public interest.
- 3.5. Members will note that of the seven complaints in Annex A, none proceeded beyond Stage 0. This means that the Code of Conduct was not engaged or the complaint was misconceived.
- 3.6. In two instances, complainants wanted to proceed with anonymity. These requests were rejected because they did not meet the “exceptional” criteria outlined in the Arrangements for Dealing with Complaints process. I do not think the outcome of these complaints would have been any different if those requests had been granted.
- 3.7. It is suggested by the Monitoring Officer that there are no trends or conclusions which can be drawn from this data. The cases which are reported do not highlight any systemic issues of concern for the Council. This is a low level of complaint activity and demonstrates that councillors generally have good relations with the community. The Committee will no doubt wish to consider this for itself.

#### **4. Options**

- 4.1. The Committee is asked:
  - a) To note the Complaints received in financial years 2023/2024
  - b) To consider any further actions which are appropriate to improve standards in public life within the Council

#### **5. Environmental and Climate Implications**

- 5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).
- 5.2. There are no environmental or climate implications arising from this decision. This report is to consider member complaints. None of these complaints relate to environment or climate implications.

#### **6. Community Engagement**

- 6.1. It is not anticipated that there will be public consultation on the matters raised by this report.

#### **7. Equality Implications**

- 7.1. 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.

- 7.2. Equality Impact Assessment (EIA) is not relevant to this report.

#### **8. Legal Implications**

- 8.1. The Council is bound to maintain a Councillor Code of Conduct and to publish arrangements to advise residents how complaints can be made under the Code. These implications are covered in the main report.

#### **9. Financial Implications**

- 9.1. There are no direct financial implications arising from this report.

#### **10. Background Papers**

10.1. There are none.

## Annex A

### Councillor Complaints received between 1 April 2023 – 31 March 2024

Complaints are anonymised where there is an early resolution of the complaint. It is in the public interest to ensure that the complaints procedure can operate smoothly with issues which are resolved informally not subject to publicity.

No	Date Rec'd	Redacted Name	Redacted Cllr	Date Ack.	Days to Ack.	Complaint outline	Outcome	Stage resolved	Date of resolution	Working days
1	14-Apr-23	Miss A	Cllr B	18-Apr-23	3	Further perceived religious intolerance online	Complaint misconceived, comments online were not related to any religious group.	0	10-May-23	19
2	26-Apr-23	Mr C	Cllr D	12-May-23	13	Interference in employment contract	Complaint misconceived no evidence to indicate interference with employment contract	0	22-Jun-23	42
3	24-Jul-23	Mr E	Cllr F	10-Aug-23	14	Resident concerned with outcome of Licensing Sub-Committee	Not a Code of Conduct matter.	0	10-Aug-23	14

No	Date Rec'd	Redacted Name	Redacted Cllr	Date Ack.	Days to Ack.	Complaint outline	Outcome	Stage resolved	Date of resolution	Working days
4	30-Oct-23	Mrs G	Cllr H	30-Oct-23	1	Resident concerned with Cllr conduct in a private setting	Not a Code of Conduct matter.	0	07-Nov-23	7
5	07-Dec-23	Mrs I	Cllr H	07-Dec-23	1	Resident concerned about lack of response to letter.	Letter was stuck in postroom - not the fault of the Cllr.	0	08-Dec-23	2
Page 83	12-Feb-24	Mr J	Cllr K	12-Feb-24	1	Ill advised words used on facebook group.	Words of advice offered.	0	15-Feb-24	4
	28-Feb-24	Cllr L	Cllr H	28-Feb-24	1	Complaint about handling of a meeting.	Complaint not pursued.	0	29-Mar-24	23

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