

## Part 13

### Codes and Protocols

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

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact Stephen Chard on 01635 519462 who will be able to help.





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

### **13.1.1 Purpose and Scope**

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

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

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

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

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

### **13.1.3 Associated Documents**

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

- The Council’s Constitution;
- The Members’ Code of Conduct;
- The Officers’ Code of Conduct.

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

The Council’s values contain a commitment to fairness, integrity and the delivery of excellent customer service in reaching our goals. These are reflected in the corporate style and culture which includes close working between Members and Officers.

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

Close working relations are essential to:

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

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

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

### **13.1.6 Role of Members**

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

The role of Members may be broadly described as:

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

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

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

### **13.1.7 Role of Officers**

The key responsibilities of Officers are to:

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

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

### **13.1.8 Political Neutrality**

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

### **13.1.9 Responsibility to Council**

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

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

### **13.1.10 Officers' Advice**

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

- Head of Paid Service: Chief Executive;
- Monitoring Officer: Interim Executive Director (Resources);
- Section 151 Officer: Service Director (Finance, Property and Procurement).

### **13.1.11 Politically Restricted Roles**

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

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

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

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

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

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

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

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



Officers. The Chief Executive and other senior Officers will attend Executive meetings as necessary.

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

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

### **13.2.3 Support by Officers to the Scrutiny Function**

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

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

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

### **13.2.4 Questions for Officers Attending Scrutiny Committees**

Officers attending Scrutiny Committees may be asked questions of fact about:

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

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

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

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

### **13.2.6 Political Groups**

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

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

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

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

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

### **13.3.1 Mutual Respect**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **13.3.5 Informing Members**

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

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

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

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

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

Where an Executive Director or Service Director provides general information to individual Group Leaders, spokespersons or Members, this information will also be provided to other Political Groups.

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

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

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

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

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

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

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

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

### **13.3.8 Press Releases**

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

### **13.3.9 Democratic Support**

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

### **13.3.10 Review of Protocol**

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

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

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

- Members' Code of Conduct
- Officers' Code of Conduct
- Anti-Fraud and Corruption Policy
- Whistleblowing Policy
- Access to Information Procedure Rules

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

### **13.4.1 The Members' Code of Conduct is provided at Appendix F.**

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

### **Introduction**

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

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

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

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

### **13.5.5 Applicability**

This Code of Conduct applies to all employees directly employed by the Council. School employees will be covered by the code of conduct approved by the governing body of the school.

### **13.5.6 Gifts and Hospitality – General**

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

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

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

- (a) Employees may accept small "thank you" gifts of token value, such as a diary, a coffee mug or bunch of flowers, if they have not asked for any such gift and if their manager agrees (in advance as far as possible). The manager must note all such gifts in the hospitality register (see (e) below). Gifts that the manager refuses permission to accept must be returned.
- (b) Employees should always say no if it is believed that the giver has an ulterior motive. They should be sensitive to the possibility that the giver may think that even small gifts or simple hospitality will elicit a

more prompt service or preferential treatment.

- (c) Employees should not accept gifts or hospitality from anyone who is, or may be in the foreseeable future, tendering for any contract with the Council, seeking planning consent, seeking employment with the Council, or in dispute with the Council, even if the employee is not directly involved in that service area.
- (d) If an employee is in doubt about the acceptability of any gift or offer of hospitality they must consult their Service Director or Executive Director.
- (e) Employees must report immediately (in writing if requested to do so) any offer of hospitality made to them. The manager will make sure it is entered in the hospitality register. Each Service Director will keep a hospitality register to record any offer of a gift or hospitality, whether accepted or not.

### **13.5.8 Hospitality**

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

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

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

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

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

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

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

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

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

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

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

### **13.5.9 Rules Governing Interests**

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

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

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

Disclosures must be made in writing to the Service Director, with a copy to the Service Director (Strategy, ICT and Governance). They will enter brief details of the disclosure in a register that is open for inspection by elected Members of the Council, but not the general public. Disclosures will also be



circulated to other Service Directors for the attention of any officers who might need to know.

The Service Director (Strategy, ICT and Governance) will liaise as appropriate with the Service Director (Finance, Property and Procurement) and the Audit Manager, who will also have access to any disclosures.

#### **13.5.10 Other Employment and Activities**

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

- **Senior Employees**

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

- **All Other Employees**

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

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

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

#### **13.5.11 Confidentiality**

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

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

Employees must not pass any information, or make comment, to the press or other media unless they are expressly authorised to do so. Media enquiries in particular should be handled with care and employees should

notify the appropriate Service Director and the Public Relations Team if they have been approached by the media.

#### **13.5.12 Recruitment and Appointment**

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

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

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

#### **13.5.13 General Conduct**

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

The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed. Any failure by officers to comply with the provisions of the Council's Constitution may result in disciplinary action being taken.

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

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

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

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

#### **13.5.14 Dress and Presentation**

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

Managers will advise employees of the type of clothes that are appropriate for the type of work they are employed to do.

Employees who are required to wear a uniform must conform to those requirements. If they have personal, cultural or religious objections to these requirements, they must raise them with their Service Director, who will consider each case on its merits and take appropriate action, including using the Council's agreed procedures where appropriate, seeking advice from Human Resources where necessary.

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

#### **13.5.15 Service Delivery**

Good customer care is essential. The first impression created with service users, either in personal contact or on the telephone, will often determine how the interaction will proceed and how the Council will be perceived.

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

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

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

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

#### **13.5.16 Social Media**

The way in which Council employees present and conduct themselves on social media can have an impact on public perception of the Council. Employees should consider carefully before they identify themselves as an employee of the Council on their personal social media accounts as this will increase the likelihood that comments may have an impact on the Council.

Anything posted, shared or 'liked' on social media could potentially end up in the public domain, regardless of the privacy settings selected by the employee. Employees should be mindful of this when using social media both for and outside of work.

Employees must ensure that their use of social media does not adversely affect the Council, its business, reputation or credibility. They must ensure that their work and personal use of social media does not:

- breach any Council policy or procedure;
- subject the Council to legal challenge or potential legal challenge;
- compromise the privacy or dignity of service users or colleagues;
- disclose confidential information gained through their employment by the Council;
- amount to cyber-bullying of colleagues, service users, elected Members or others associated with the Council and its business; for example by posting, commenting or liking information or images about/of them that is intimidating, hostile, abusive, degrading, humiliating or offensive;
- criticise Council employees, service users or individual elected Members. Where an employee is concerned that the Council, its employees or elected Members are acting improperly or unlawfully they should use the Whistle Blowing Procedure to report these concerns; see section 20 below;
- show a lack of respect for the opinions and beliefs of others;
- imply that the personal views of the employee are an expression of the views of the Council.

Failure to adhere to these requirements may result in action being taken under the Council's disciplinary procedure and where appropriate this may result in dismissal.

If an employee wishes to publicly comment upon policies or proposals of the Council they should take care to ensure that their comments are not personal or offensive. Employees in politically restricted posts should also take care that their comments do not breach the restrictions placed upon them by legislation. Further information can be found in the Council's Politically Restricted Posts Policy and Procedure.

Employees in the public sector need to maintain high standards of conduct and impartiality. Employees should not connect with service users where this could give rise to a conflict of interest. Particular care must be taken with respect to vulnerable service users. Where an employee considers that it may be appropriate to accept or send a connection request (e.g. a Facebook friendship request) with a vulnerable service user they must obtain prior written approval from their manager before accepting or seeking the friendship request.

Where employees are unsure whether or not it is acceptable to post, comment or 'like' something on social media they should check with their line manager before doing so.

Personal social media sites must not be used by employees during their working hours.

### **13.5.17 Working with Managers**

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

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

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

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

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

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

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

### **13.5.18 Working with Elected Members**

Employees are expected to be polite and efficient when dealing with enquiries from elected Members, working within whatever procedures apply in each Service. Elected Members are also expected to deal with employees courteously and reasonably (as, in any event, is required by their Code of Conduct).

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

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

Employees should not try to influence Members prior to any appointment. This does not preclude them from approaching their local Ward Member in their role as their elected representative.

### **13.5.19 Working with Other Employees**

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

All forms of bullying, including violence or verbal aggression towards colleagues is unacceptable and will be dealt with under the Disciplinary

Procedure. It is not acceptable for employees to abuse their position with the Council to take advantage of other employees. If there are important issues that they cannot resolve amicably with another employee, they must make the situation known to their manager.

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

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

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

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

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

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

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

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

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

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

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

#### **13.5.22 Working Safely**

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

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

Employees are expected to:

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

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

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

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

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

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

If an employee detects or has reason to suspect that colleagues, managers or elected Members are acting improperly, the Council has a reporting process that can be followed without fear of victimisation, discrimination or disadvantage. The process is set out in the Council's Whistleblowing Policy.

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# Appendix A

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## Protocol for Decision-Making by Individual Executive Members

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### 1. Introduction

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

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

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

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

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

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

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



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

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

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

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

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

## 2. West Berkshire Council Forward Plan

Subject to the provisions contained in Part 5 (Executive Rules) Sections 9 (Exceptions to publicity in connection with Key Decisions) and 10 (Urgent key decisions) of the Constitution all decisions to be made by Portfolio Members **must** be included in the West Berkshire Council Forward Plan.

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

The provisions contained in Sections 9 and 10 will apply when a decision is deemed to be urgent. The rules relating to call-in set out in Sections 12 and 13 will not apply in the case of urgent decisions.

## 3. Dates when Individual Decisions can be made

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

## 4. Formal Written Report

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

- The name of the Portfolio Member within whose portfolio the issue falls
- The issue to be decided with reasons for the decision
- Supporting information – a summary of the facts relating to the matter under consideration. This section of the report should confirm that the proposed course of action is in accordance with the approved policy and budget framework. It should also include all the necessary corporate implications (e.g. financial, human resource, legal etc)
- The Officer's recommendation and the reasons for that recommendation
- Other options considered (where appropriate)
- A list of background papers
- Any consultations undertaken, **the method of consultation** and a summary of any representations
- A report which contains confidential or exempt information must state the reasons why such information is contained (Part 10, Section 10 refers).

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

## 5. Decision Record Notice

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

The Decision Record Notice shall contain the following information:

- The issue to be decided with reasons for the decision
- Other options considered (where appropriate)
- Any consultations undertaken and a summary of comments received. (including other Members consulted if appropriate)
- A list of background papers
- If the report contains confidential or exempt information this must be stated with the reasons why such information is contained (Part 10, Section 10 refers).
- Whether or not any Member consulted in connection with the matter or participating in the making of the decision has declared a conflict of interest under the Local Code of Conduct.
- If a conflict of interest has been declared, a copy of the minute of any dispensation granted by the Governance Committee or Monitoring Officer should be attached to the decision notice (if appropriate).

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

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

## **6. Call-In**

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

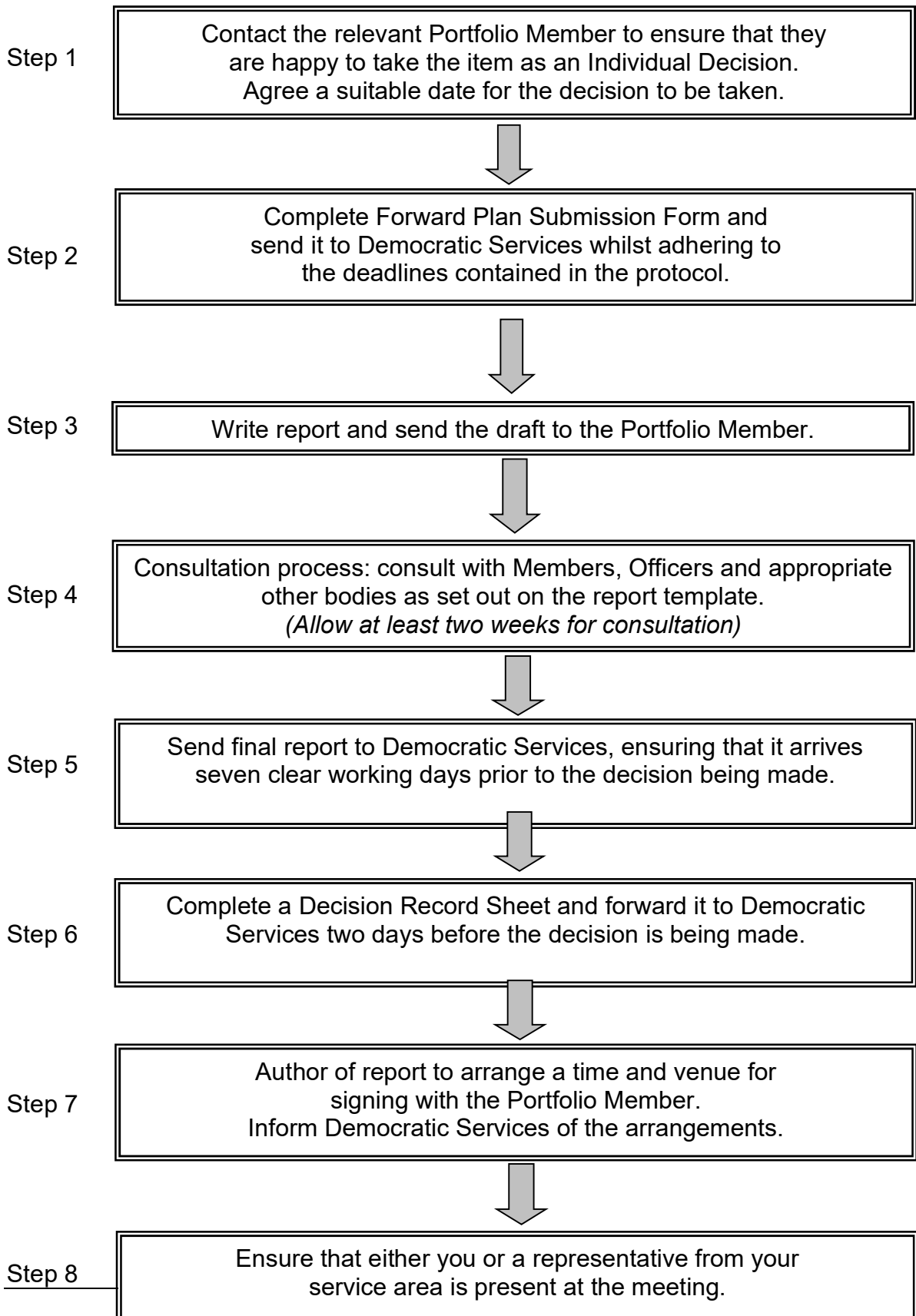
- If there were a delay in implementing the decision, this would have serious financial implications for the Council or could compromise the Council's position.
- The item has been considered by the Scrutiny Commission or the Health Scrutiny Committee, or has been the subject of a review undertaken by another body e.g. Task Group, within the preceding six months.
- The item is deemed an Urgent Key Decision as set out in Part 5 (Executive Rules) Section 10 (Urgent Key Decisions).
- Reports that do not require a decision and are for information only will also not be subject to 'call-in'.

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

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

## Appendix A1

# Individual Decision Making Process



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## Appendix B

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# Procedure Rules for Dealing with Representations

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## 1. Petitions

### 1.1 Introduction

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

### 1.2 What is a Petition?

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

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

### 1.3 Submitting a Petition

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

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

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

#### 1.4 Types of Petition and next steps

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



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

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

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

### 1.5 The Petitions Website

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

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

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

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

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

When a petition is received by West Berkshire Council:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- the Commission cannot overturn the decision, but can make recommendations for the Executive Member/Executive to consider.

### 1.15 Petition Organiser

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

### 1.16 Petitions not being reported

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

**Please Note:**

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

- Customer Comments and Complaints Procedure
  - Complaints Leaflet
  - Ombudsman Leaflet
  - Your Right to a Review
  - Guidance for making a complaint about an elected Councillor's conduct
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## Part 13

### Codes and Protocols

#### Appendix C: Procedure for Local Determination of Allegations

##### 1 Introduction

- 1.1 The procedure referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a District Councillor or Parish/Town Councillor, where West Berkshire Council is the responsible authority. The purpose of the procedure is to ensure that every effort is made to deal with the complaint as smoothly as possible and to ensure that complaints are dealt with in accordance with the relevant legislation and within the agreed timescales. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.
- 1.2 Under the Code of Conduct regime all complaints are received by the Monitoring Officer who has delegated authority to take an initial decision on whether a complaint requires investigation, some other form of action, should be referred to the Director of Public Prosecutions or the Police or whether no further action is required.
- 1.3 The person making the complaint is referred to as the Complainant and the District/Town or Parish Councillor being complained about is referred to as the Subject Member.



## 2 Process for dealing with complaints – Pre-assessment

- 2.1 A flowchart summarising the procedure that will be followed when a complaint is received is attached at Appendix C1 to this procedure.
- 2.2 All complaints must be submitted in writing (electronic submissions are acceptable). It is the responsibility of the Complainant to provide all evidence on which the complaint arises.
- 2.3 Once the Monitoring Officer receives a complaint, a pre-assessment will be undertaken within three working days of receipt and may be rejected if:
  - 2.3.1 the Complainant fails to provide enough information on which to base a decision;
  - 2.3.2 the Subject Member is no longer a Councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
  - 2.3.3 the complaint has been the subject of an investigation or other action relating to the Code of Conduct or the complaint has been the subject of an investigation by other regulatory authorities;
  - 2.3.4 the complaint is about something that happened so long ago that there would be little benefit in taking action now;
  - 2.3.5 the complaint is too trivial to warrant further action;
  - 2.3.6 the complaint appears to be malicious, politically motivated or tit for tat;
  - 2.3.7 the Complainant appears to be submitting persistent or prolific complaints, but fails to add anything material to a previous complaint.
- 2.4 The Complainant will be advised that further information or evidence will be required within 14 days on such decision or otherwise the file will be closed.
- 2.5 In circumstances that the Monitoring Officer may be unclear, the presumption shall be for the complaint to proceed to an initial assessment.

## 3 Initial Assessment

- 3.1 Once the Monitoring Officer has received a formal complaint, they need to ensure that it is acknowledged within five Working Days of receipt.
- 3.2 The Monitoring Officer also needs to ensure that the complaint complies with the Council's Assessment Criteria i.e.
  - 3.2.1 it is a complaint against one or more named Councillors of the authority, or an authority covered by West Berkshire Council as responsible authority;
  - 3.2.2 the Subject Member was in office at the time of the alleged conduct and the relevant Code of Conduct was in force at the time;
  - 3.2.3 the complaint relates to matters where the Councillor was acting as a Councillor or representative of the authority, and it is not a private matter;
  - 3.2.4 the complaint, if proven, would be a breach of the Code under which the Councillor was subject at the time of the alleged misconduct.
- 3.3 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the Complainant will be informed that no further action will be taken in respect of the complaint.
- 3.4 Following receipt of a complaint that meets the agreed Assessment Criteria the Complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

- 3.5 A copy of the complaint will also be sent to the Subject Member (anonymised appropriately if the Complainant has asked to keep their identity confidential – see Requests for Confidentiality) for written comment. The Subject Member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.
- 3.6 Where the Subject Member has not commented, and 15 Working Days has elapsed (and they have not provided a reasonable excuse for the delay) since the provision of the Complainant's paperwork, the assessment should nevertheless be made within five working days after that.
- 3.7 Both the Subject Member and the Complainant can consult one of the Council's Independent Persons directly to seek advice. The Council has therefore appointed three Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted the Independent Person will not be involved in the decision-making process.
- 3.8 The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the initial assessment process.
- 3.9 An Initial Assessment meeting will take place usually within 25 Working Days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting, neither the Subject Member nor the Complainant, nor members of the press or public, will have the opportunity to attend or speak at the meeting.
- 3.10 In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:
- 3.10.1 no further action will be taken on the complaint;
  - 3.10.2 some form of informal resolution will be sought;
  - 3.10.3 the matter will be referred to the Director of Public Prosecutions or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
  - 3.10.4 the complaint will be investigated fully by an independent investigator.
- 3.11 The Subject Member, Complainant and if appropriate the Clerk to the relevant Town or Parish Council will be notified of the outcome of the Initial Assessment meeting usually within five Working Days of the meeting taking place. Details of the discussion will be included in an Initial Decision Notice which will be sent to the Subject Member, the Complainant and the relevant Parish or Town Clerk if appropriate.
- 3.12 The Initial Decision Notice will record the views of the Independent Person should these not accord with the decision of the Monitoring Officer.
- 3.13 Where a complaint is resolved at an Initial Assessment stage, there are no findings of fact as no formal investigation has been undertaken. The purpose of resolving at the Initial Assessment stage shall balance the interest in resolving a matter quickly and satisfactorily against the interest in the Complainant having their complaint upheld or the Subject Member's desire to clear their name.

## 4 Requests for Confidentiality

- 4.1 In the interests of fairness and in compliance with the rules of natural justice, District, Town and Parish Councillors who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them.

- 4.2 Complainants do however have the right to request that their identity is not revealed to the Subject Member and the Monitoring Officer, in consultation with the Independent Person, may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a Complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a Complainant has justifiable grounds for anonymity/confidentiality.
- 4.3 When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:
- 4.3.1 the Complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the Subject Member(s) against whom they are submitting the complaint (or from or by a person associated with the Subject Member(s));
  - 4.3.2 the Complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;
  - 4.3.3 the Complainant works closely with the Subject Member, and is therefore afraid of the consequences to their employment or of losing their job;
  - 4.3.4 there is a medical risk to the Complainant's health if their identity is revealed and is this supported by medical evidence;
  - 4.3.5 the Complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the Subject Member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or
  - 4.3.6 other exceptional circumstances.
- 4.4 When considering a request for confidentiality against these criteria the Monitoring Officer will also:
- 4.4.1 balance the request for confidentiality against the substance of the complaint;
  - 4.4.2 consider whether it is possible to investigate the complaint without making the Complainant's identity known to the Subject Member, given the requirement for a proper investigation.
- 4.5 If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality they may decide to offer the Complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the Complainant's wish to have their identity withheld from the Subject Member.

## 5 Outcome of Initial Assessment – No Further Action

- 5.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that no further action should be taken on a complaint then this will be the end of the matter.
- 5.2 The Localism Act 2011 does not provide any appeals mechanism. However, the decision could be open to Judicial Review by the High Court should they wish to take up this option. The Complainant would be advised to seek independent legal advice about taking up this option.

## 6 Outcome of Initial Assessment – Informal Resolution or Other Action

- 6.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that other action should be taken on the complaint the nature, format and timescales for this action needs to be articulated in the Initial Assessment Notice.
- 6.2 Informal resolution may take the form of an apology, mediation or training by way of example.
- 6.3 If informal resolution is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as unresolved and progress to investigation.
- 6.4 The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should either party wish to take up this option. The Complainant or Subject Member would be advised to seek independent legal advice about taking up this option.

## 7 Outcome of Initial Assessment – Referred to the Director of Public Prosecutions or the Police

- 7.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that the matter needs to be referred to the Director of Public Prosecutions or the Police both the Subject Member and the Complainant and if appropriate the Town or Parish Clerk will be informed.
- 7.2 The Monitoring Officer will pass to the Police or the Director of Public Prosecutions any relevant evidence relating to the allegations received which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.
- 7.3 If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

## 8 Outcome of Initial Assessment – Investigation by Appointed Person

- 8.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.
- 8.2 The Monitoring Officer will usually appoint an external independent investigator to undertake an investigation on behalf of the Governance Committee. The Complainant, Subject Member and the Group Leader of the Subject Member shall be notified of the details of the investigator who will contact them to arrange an interview with them. In addition, the investigator may wish to interview additional witnesses.
- 8.3 The Complainant and Subject Member are to ensure that all witness statements and evidence are provided within ten working days of the initial assessment on which they rely (if they have not provided a reasonable excuse for any delay). No further evidence shall be admitted after this deadline.
- 8.4 Once the investigation is concluded (preferably within three months of receipt of instruction) the investigator will be required to produce a written report setting out their findings. The Monitoring Officer, Subject Member, the Complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.

- 8.5 The Subject Member and the Complainant will be asked to respond articulating any areas of the report they dispute. All comments would need to be received within ten Working Days of receipt of the draft report (if they have not provided a reasonable excuse for a delay). The Complainant will then be given an additional three Working Days to comment on any of the Subject Member's comments on the draft report (if they have not provided a reasonable excuse for a delay).

## 9 Arranging the meeting of the Governance Committee

- 9.1 A special meeting of the Governance Committee shall be held within 15 working days of receipt of the Investigation Report, but must allow the relevant parties adequate time to consider and respond to the Investigation Report.
- 9.2 The Monitoring Officer shall arrange a time and date for the Governance Committee to meet and consider the matter.
- 9.3 At least five clear Working Days before the date of the meeting of the Governance Committee, the Monitoring Officer shall notify the Subject Member, Complainant and any relevant witnesses of the date, time and place of the meeting and the membership of the Governance Committee at which the matter will be considered.
- 9.4 At least five clear working days before the day of the meeting of the Governance Committee, the Monitoring Officer will send to each member of the Governance Committee, to the Subject Member and the Complainant, a copy of the paperwork for the meeting. The paperwork will include the agenda for the meeting of the Committee, a copy of the investigator's report, any witness statements, a copy of any written statement in response to the report which has been received from the Subject Member, Complainant and Independent Person.
- 9.5 Paperwork shall not be published, and the Monitoring Officer makes the provision of any such copy of papers conditional upon an appropriate undertaking of confidentiality until the report is available to the press and public or the Governance Committee agree that the press and public shall not be excluded from the meeting.
- 9.6 At the same time the Monitoring Officer will write to the Subject Member and Complainant and advise them that, at the commencement of the meeting, the Governance Committee will consider whether the press and public should be excluded from the meeting. There will be an assumption that the majority of hearings should take place in public.
- 9.7 All paperwork associated with the Governance Committee meeting will be subject to the Council's Access to Information Procedure Rules (see Part 10 of the Constitution).

## 10 Procedure at the Meeting

### 10.1 Attendance of the Subject Member and Complainant

- 10.1.1 The Subject Member and Complainant may arrange to be accompanied at the meeting at their own expense by a solicitor, counsel or friend.
- 10.1.2 Where the Subject Member or Complainant opt to be accompanied at the meeting by a solicitor, counsel or friend they must notify the Monitoring Officer of their intention to do so at least three clear working days before the meeting.
- 10.1.3 If the Subject Member or Complainant are not present at the start of the meeting, having been provided with notice of the meeting and failed to provide any reasonable explanation for such non-attendance, the Committee shall resolve to proceed in their absence. The procedure for the meeting shall be adapted as necessary, giving any representative of the Subject Member or Complainant who is present such rights as would otherwise be accorded to them.

## 10.2 Order of business

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

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

### 10.3 Speaking

- 10.3.1 Presentation by the Monitoring Officer or the independent investigator of the investigator's report.
- 10.3.2 Committee's questions to the Monitoring Officer/ independent investigator. (There shall be no cross-examination by the Subject Member, but the Subject Member may request the Chairman of the Meeting to direct appropriate questions to the Monitoring Officer).
- 10.3.3 The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the Complainant and Subject Member have disputed.\*
- 10.3.4 Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the Subject Member, but the Subject Member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).
- 10.3.5 Opportunity for the Complainant or their representative to raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee is aware of any written submissions.)
- 10.3.6 Committee's questions to the Complainant. (There shall be no cross-examination by the Subject Member, they will have the opportunity to raise any issues when they address the Committee).
- 10.3.7 The Complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- 10.3.8 Committee's questions to the Complainant's witnesses. (There shall be no cross-examination by the Subject Member, they will have the opportunity to raise any issues when they address the Committee).
- 10.3.9 Presentation by the Subject Member or their representative. They should only raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- 10.3.10 Committee's questions to the Subject Member.
- 10.3.11 The Subject Member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- 10.3.12 Committee's questions to the Subject Member's witnesses.
- 10.3.13 The Committee may at any time seek legal advice from its legal advisor. Such advice will on all occasions be given in the presence of the Subject Member (or their representative) and Complainant (or their representative).

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

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

## 10.4 Making a Decision

- 10.4.1 At the conclusion of the presentation by the last speaker, the Chairman will ask the Monitoring Officer whether there was any matter raised during the course of the meeting which was not addressed in the investigator's report or in the information submitted by the Complainant or Subject Member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;
- 10.4.2 If no adjournment is requested, the Committee is then required to come to a decision as to whether the Subject Member has breached the relevant Code of Conduct. The Committee needs to satisfy themselves that they have sufficient information upon which to take that decision. In the event that they require additional information they may question the Monitoring Officer, the Subject Member, Complainant or any witness present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.
- 10.4.3 The Committee will then adjourn into another room where they will consider in private session whether the Subject Member has acted in breach of the relevant Code of Conduct. Should they require any additional clarity they will raise matters with those present. Any advice will be sought from the clerk or legal advisor as to process or legislative provisions.
- 10.4.4 At the conclusion of their consideration, the Committee will return and the Chairman will advise the Complainant and the Subject Member of their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.
- 10.4.5 If the Committee conclude that the Subject Member has acted in breach of the Code of Conduct, the Committee will then hear representations from the Monitoring Officer and the Subject Member as to whether the Committee should take any action against the Councillor and what form any sanction should take. Members of the Committee may ask questions of the Monitoring Officer and the Subject Member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- 10.4.6 The Committee will then adjourn into another room where they will consider in private session whether to take any action in respect of the Subject Member and what form any sanction should take. The sanctions available to the Committee are set out in Appendix C1 to this procedure. The Committee will then return and the Chairman will advise the Subject Member of their decision as to whether any action would be taken and what sanctions, if any, would be applied and the reasons for those decisions.
- 10.4.7 The Committee can also consider in open session whether there are any recommendations which the Committee should make to the authority of which the Subject Member is a member arising from their consideration of the allegation.
- 10.4.8 Should the Subject Member fail to comply with the Governance Committee sanction, the matter shall be referred to Chairman of Governance Committee and Group Leader to review and provide a view at the next Governance Committee on further sanctions that may be appropriate.



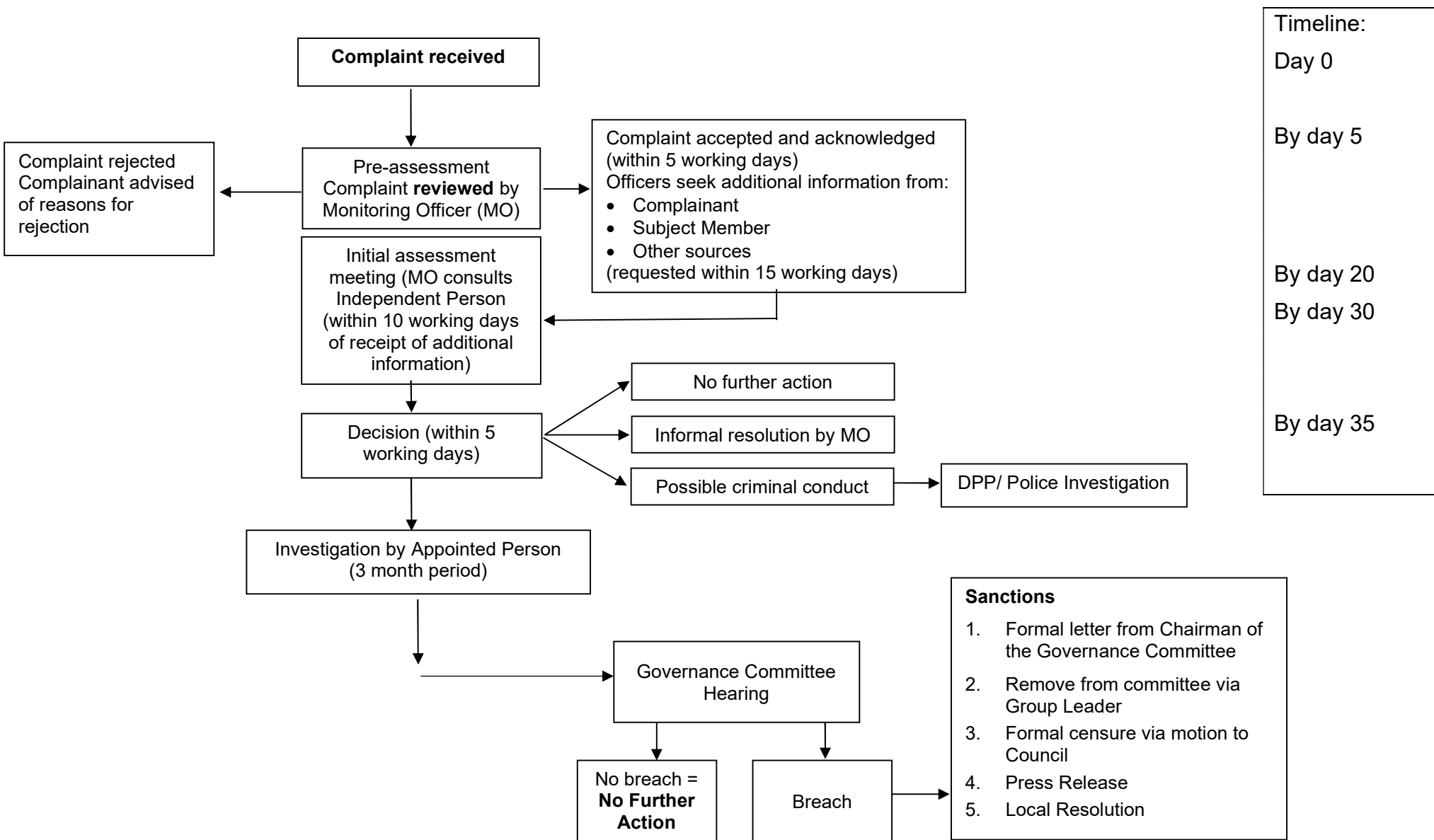
## 11 Reporting of Decision of Governance Committee

- 11.1 As soon as reasonably practicable (usually within three clear working days) after the Committee has made its determination in respect of an allegation, the Monitoring Officer shall take reasonable steps to give written notice of that determination and the reasons for such determination to the Complainant, Subject Member, Group Leader of the Subject Member, the investigator, Independent Person and if appropriate the relevant Parish/Town Clerk.
- 11.2 Where the Committee determines that there has not been a breach of the Code of Conduct the notice shall:
- 11.2.1 state that the Committee found that the Subject Member concerned had not failed to comply with the Code of Conduct of the authority concerned or the Code of Conduct of any other authority concerned and shall give its reasons for reaching that finding; and
  - 11.2.2 not be published in summary in one or more local newspapers unless the Subject Member requests that it is published.
- 11.3 Where the Committee determines that there has been a failure to comply with the Code of Conduct the notice shall:
- 11.3.1 state that the Committee found that the Subject Member concerned had failed to comply with the Code of Conduct of the authority;
  - 11.3.2 specify the details of the failure;
  - 11.3.3 give reasons for the decision reached by the Committee; and
  - 11.3.4 specify the sanction imposed if any;
  - 11.3.5 state that the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings (if appropriate).
- 11.4 Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:
- 11.4.1 state that the Committee found that the Subject Member concerned had failed to comply with the Code of Conduct of the authority;
  - 11.4.2 specify the details of the failure;
  - 11.4.3 give reasons for the decision reached by the Committee.

## 12 Failure to adhere to the decision of the Governance Committee

- 12.1 Should the Subject Member fail to comply with the sanction imposed by the Governance Committee decision, this will be referred to the Chairman of the Governance Committee and the respective Group Leader to review and provide a view at the next Governance Committee on further sanctions that may be appropriate.

# Processing Complaints: Code of Conduct: Localism Act 2011



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## Appendix D

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# Protocol for use of ICT Equipment supplied to Members

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### 1. Purpose of Document

This document constitutes the protocol for the use of Information and Communications Technology (ICT) facilities provided for West Berkshire Council Members and should be read in conjunction with the West Berkshire Council ICT Policy and ICT User Usage Agreement. This protocol is included in the Council's Constitution and the requirements of the Code of Conduct (Appendix E to Part 13 (Codes and Protocols) will apply to the protocol. This protocol should also be read in conjunction with the Social Media Protocol for Councillors (Appendix H to Part 13 (Codes and Protocols).

### 2. Background

This protocol was developed when West Berkshire Council Members were first provided with ICT facilities in 2002, to support them in carrying out their role as District Councillors, and has been periodically updated to reflect changes in the technology provided or to reflect changes in policy or legislation.

### 3. ICT Facilities Provided

- Following the 2019 election all West Berkshire Councillors will be provided with the following ICT equipment, software and services:
  - **Hardware**
    - A touchscreen laptop, (Dell XPS 13 2-in-1) running Microsoft Windows 10
    - A bluetooth mouse
    - A USB adaptor and converter
    - A protective carry case
    - The option of a BlackBerry smartphone upon request for Executive Members.
  - **Software**
    - Microsoft Office 2013
    - Mod.Gov - Paperless meeting software and storage
    - Microsoft Bitlocker - Hard disk encryption
    - Sophos – Anti-virus/malware protection
    - Skype for Business
  - **Services**
    - Wireless connectivity in West Berkshire Council corporate buildings (Market Street Offices, Shaw House, Turnhams Green, West Street House, West Point)
    - Follow Me Printing – Allowing members to print to multi-function devices (MFDs) in all WBC corporate buildings

- □ Access to technical support through the WBC ICT Help Desk 01635 519440 during core office hours 08:30-17:00 Mon-Thu, 08:30-16:30 Fri.

#### **4. Use of the Members ICT Equipment**

The Council will provide each elected Member with a tablet computer with a standard build/configuration as described above. The primary purpose of the ICT facilities provided is to allow Members to effectively carry out their role as elected Councillors. However, it is permissible for Members to make minor configuration changes to this equipment and/or to install additional software for their own business use, or for private use at their own expense.

All the standard software installed on the supplied tablet is appropriately licensed and WBC ICT department hold these licences. Should Members install additional software, it is their responsibility to ensure that it is appropriately licensed.

In the event that changes made by Members render their tablet computer unusable the Council's ICT department will address this by reinstating the device back to its standard configuration. It is each individual Member's responsibility to ensure that they take regular back-ups of any applications or data they may have installed or stored locally on the tablet hard drive, and to reinstate these as necessary following a device rebuild.

As custodian of the Council's provided ICT equipment, Members are responsible for how the equipment is used and by whom.

The primary means by which the tablets will connect to WBC systems is via WiFi, either in WBC corporate offices, Members homes or elsewhere. All Members will be expected to have suitable WiFi enabled internet connectivity in their homes and these costs will be funded from their allowance.

Computer viruses and malware present a very real threat to all ICT systems, particularly when connecting to the internet. Member ICT equipment has been configured to protect it from these threats and Members should not attempt to disable or bypass these protection mechanisms.

In the event of loss or damage to Members ICT equipment, it would normally be expected that any cost would be indemnified by the person in possession of the equipment. Failure to do so will result in costs being incurred by the Council. It is recommended that Members ensure that the WBC ICT equipment provided is included in their household contents insurance policy. This should not usually result in any additional premium.

Should a Member to whom ICT equipment has been supplied cease to hold office, for whatever reason, all of the equipment supplied must be returned to the Member Services Officer within two weeks – at which point all data on the machine will be deleted and the equipment will be scrapped or re-issued.

All Members will be provided with their own *westberks.gov.uk* email address. This is available using Microsoft Outlook which is part of the Office 365 suite of programs installed on their tablet. In the interests of Council branding, ease of data sharing and security it is expected that Members will opt to access this email account directly rather than forwarding or re-directing mail to another address. It is expected that Members

will check their West Berkshire email accounts at least daily. Officers of the Council will assume this to be a reliable method of communication to all Members.

## **5. Security Requirements**

As custodians of the data of its citizens and customers West Berkshire Council operates rigid information security standards and is also required to comply with standards imposed by central Government under the Public Services Network (PSN) accreditation scheme. This protocol identifies specific information security considerations that Members should be aware of in relation to the use of the provided ICT equipment.

### **Password**

Members should be aware that the ID/password that is issued to enable them to connect to West Berkshire systems is unique to them and is for their sole use. They should not divulge their password, share it with anyone nor should they write it down unless it is stored securely where it is not available to anyone else. Members are required to change their password at 3-monthly intervals or once a year if they create a password following the rules of Option 1 found in Password Quick Notes: <http://intranet/CHttpHandler.ashx?id=45945> Members will need to change their password immediately if there is evidence of system or password compromise. Members should not use the same password for West Berkshire Council and other uses.

### **Data Protection**

Members have access to sensitive and personal information of the Council and its stakeholders. Members should ensure that this information is only used in the course of Council business and must not be disclosed to a third party without authority of the data owners. Failure to treat sensitive and personal information could lead to a complaint being made against a Member for breaching the Council's Code of Conduct.

### **Use of Personal ICT Equipment**

PSN rules dictate that access to WBC systems and data should only be made using equipment supplied by and owned by the Council. The use of Members own, or other third party ICT equipment to access WBC system (other than those publicly available) is not allowed.

### **Security Breaches or Incidents**

Members should report actual or suspected breaches of security to the ICT Helpdesk. Security incidents examples include:

- An unauthorised person gaining access to a Members account
- A third party obtaining a Members password
- Loss or theft of Members ICT equipment
- Loss of sensitive information or divulgence to an unauthorised third party
- A virus, malware infection or attempted hacking attempt

## **6. Privacy**

Whilst not routinely monitoring an individual Members use of ICT, the Council maintains the right to review, audit, intercept, access, monitor, delete or disclose any information, created, sent, received or stored on its ICT systems. Members' use of the Council's systems implies that they recognise and consent to the rights of the Council

described above. The strictest confidentiality is observed in respect of such monitoring, and any inappropriate use generally is only known to the ICT Operations Manager and the Head of Customer Services and ICT. However, the Chief Executive, in consultation with the Monitoring Officer and/or Section 151 Officer Part 13 – Codes and Protocols 71 would determine whether the Member concerned should be reported to the Police and / or the Council's Governance and Ethics Committee.

## **7. ICT Support**

### **Reporting Issues**

ICT support to Members is accessed through the Council's ICT Help Desk (01635 519440) which is staffed during normal working hours 08:30-17:00 Mon-Thu, 08:30-16:30 Fri and should be used to report all urgent problems.

Outside of normal working hours, an email can be addressed to [ITHelpdesk@westberks.gov.uk](mailto:ITHelpdesk@westberks.gov.uk). These messages will normally be dealt with as soon as possible on the next working day. When logging a Help Desk call it is useful if a contact telephone number is given.

In the first instance, Members might prefer to contact their Group Executive, or Members Services Officer who will either be able to help with the query, or contact the ICT Help Desk on Members behalf.

### **Resolving Issues**

It should be possible to resolve most issues through verbal advice provided via telephone or by remote access. If the issue cannot be resolved in this way, Members may need to arrange for their ICT equipment to be brought to the ICT Helpdesk (Ground Floor, Council Offices, Market Street) to allow the issue to be investigated and resolved.

Any faults will be dealt with either by correcting them on the existing equipment, or by the provision of replacement equipment. In the latter case, Members should be aware, that the Council's ICT Department cannot accept liability for loss of any personal data stored or application installed on the tablet; it is a Member responsibility to keep backup copies of any personal data or software.

### **Support Exclusions**

The Council's ICT Department cannot usually resolve the following issues:

- Members' home broadband connectivity
- Members' own ICT equipment.

## **8. Training**

Illustrated Help Guides are provided on the ICT Training Manuals page on the intranet. Training Sessions for Members are provided when receiving their equipment and Members are encouraged to attend these so that they can make best use of the facilities offered.

Members who are less confident in using ICT are encouraged to attend further training sessions and can take advice from the IT Training Team on the most appropriate course to meet their needs.

## 9. Accessibility

Any Member with a disability that affects the use of the Members ICT equipment or facilities may request configuration changes or adaptations via the WBC ICT Helpdesk.

## 10. Useful Contacts

Fault reporting & support	ICT Help Desk	01635 519440	ITHelpdesk@westberks.gov.uk
Human Resources (Training) IT Training Officer	Kerry Taylor	01635 519099	kerry.taylor@westberks.gov.uk
Principal Democratic Services Officer (Legal and Democratic Services)	Darius Zarazel	01635 519458	darius.zarazel1@westberks.gov.uk@westberks.gov.uk
Liberal Democrat Group Executive (Legal and Democratic Services)	Melanie Booth	07876516705	melanie.booth1@westberks.gov.uk
Group Executive Conservatives Strategic Support (Legal and Democratic Services)	Jake Carpenter	01635 503295	jake.carpenter2@westberks.gov.uk

## Part 13

### Codes and Protocols

#### Appendix E: Councillors' Code of Conduct

##### 1 Introduction

- 1.1 The initial version of this Code of Conduct ("this Code") was adopted by the Council at its meeting on 10 May 2012 and confirmed at its meeting on 16 July 2012 pursuant to the duty to promote and maintain high standards of conduct by Councillors and others set out in the Localism Act 2011 ("the Act"). It came into effect on 1 July 2012 and revisions were adopted on 12 December 2013 and 15 September 2016.

##### 2 Gifts and Hospitality Protocol and Appendices

- 2.1 The Councillors' Gifts and Hospitality Protocol is an associated document to be read in conjunction with this Code.
- 2.2 Appendix 1 contains the Seven Principles of Public Life ('the Nolan Principles').
- 2.3 Appendix 2 gives guidance for declaring and registering interests.
- 2.4 Appendix 2a sets out the prescribed definitions relating to Disclosable Pecuniary Interests.
- 2.5 Appendix 2b gives guidance on pre-disposition or pre-determination at Planning Committees.
- 2.6 Appendix 2c contains a flow chart relating to the declaration of interests.
- 2.7 Appendix 3 sets out the rules relating to Dispensations.

##### 3 Application

- 3.1 This Code applies to Councillors and Co-Opted Members (e.g. whenever they are acting, claiming to act, or giving the impression they are acting in their capacity as a Councillor or Co-Opted Member). Where a councillor is not acting with Capacity no breach of this Code is likely to occur.
- 3.2 It is a Councillor's or a Co-Opted Member's personal responsibility to comply with this Code.
- 3.3 This Code is consistent with and based upon the Seven Principles of Public Life (also known as the Nolan Principles).
- 3.4 Should a complaint be made against a Councillor or Co-Opted Member it will be dealt with in accordance with the Act and its supporting regulations.
- 3.5 If a Councillor or Co-Opted Member needs any guidance on any matter relating to this Code, they should seek it from the Monitoring Officer or their own legal adviser (but it is repeated that it is entirely their personal responsibility to comply with the provisions of this Code).



## 4 General Obligations

### 4.1 Councillors and Co-Opted members **must**:

- 4.1.1 Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.
- 4.1.2 When involved in the decision making of the Council:
  - (i) ensure that they are aware of and comply with the requirements of the Bribery Act 2010;
  - (ii) have regard to any advice provided to them by the Council's s151 Officer or Monitoring Officer pursuant to their statutory duties;
  - (iii) give reasons for decisions made in accordance with any legal requirements and/or reasonable requirements of the Council.
- 4.1.3 When using or authorising the use by others of the resources of the Council, use the resources properly and in accordance with the Council's relevant policies.
- 4.1.4 Have regard to the applicable Local Authority Code of Publicity under the Local Government Act 1986.

### 4.2 Councillors and Co-Opted Members **must not**:

- 4.2.1 Engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.
  - 4.2.2 Do anything which may cause the Council to breach any of the equality enactments as defined in section 33, Equality Act 2006.
  - 4.2.3 Disclose information given to them in confidence or information acquired by them which they believe or are aware is of a confidential nature except where:
    - (i) they have the consent of a person authorised to give it;
    - (ii) they are required to do so by law;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice;
    - (iv) the disclosure is reasonable and in the public interest;
    - (v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or its professional advisers.
  - 4.2.4 Prevent another person from accessing information if that person is entitled to do so by law.
  - 4.2.5 Improperly use knowledge gained solely as a result of their role as a Councillor for the advancement of their Disclosable Pecuniary Interests.
  - 4.2.6 Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.
  - 4.2.7 Seek or accept preferential treatment in dealings with the Council on a personal level because of their position as a Councillor or Member of a Committee or Sub-Committee.
- 4.3 A Member should not seek, or accept, the leadership of the Council if they, or any body with which they are associated, has a significant financial interest in, or is closely related to, the business or affairs of the Council. Likewise, they should not accept the chairmanship of the Executive, a Committee or Sub-Committee if they have similar interest in the business of that Committee or Sub-Committee.

## 5 Interests, Dispensations, Sensitive Interests and Bias

- 5.1 Councillors **must** declare any interests (Disclosable Pecuniary Interests, Other Registrable Interests and Personal Interests) that relate to their public duties and **must** take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming with the procedures. Further guidance is contained within Appendix 2.
- 5.2 Councillors who have a Disclosable Pecuniary Interest may apply for a Dispensation to enable them to speak and/or vote at a meeting on the specific grounds set out in the Dispensation Procedure in Appendix 3.
- 5.3 If the Monitoring Officer agrees that an interest is a Sensitive Interest the Councillor **must** disclose its existence at a relevant Meeting but is not required to provide specific details (see Appendix 2). The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Interests.
- 5.4 When exercising a quasi-judicial function (e.g. Planning, Licensing and Appeals), interests which do not qualify as Disclosable Pecuniary Interests or Other Registrable Interests could nevertheless lead a reasonable member of the public to conclude that there was a real possibility of bias on the part of a Councillor. In such circumstances the Councillor should not participate in the decision making process (i.e. the Councillor should not vote nor, unless they are requested to do so by the Chairman of the Meeting on a point of clarification, speak on the matter). The interest should be registered with the Monitoring Officer.

## 6 Gifts and Hospitality

- 6.1 Councillors **must** disclose and record any gift or hospitality they are offered or receive in accordance with the Councillors' Gifts and Hospitality Protocol.

## 7 Alleged breaches of this Code

- 7.1 Any allegation that a Councillor has breached this Code after confirming the Complaint complies with the assessment criteria, an initial assessment shall be considered by the Monitoring Officer in consultation with one of the Independent Persons. Where a matter is referred for investigation the Governance Committee will consider the findings of the investigation.
- 7.2 A flowchart outlining the process for dealing with alleged breaches of this Code is contained within Appendix C of Part 13 (Procedure for Local Determination of Allegations) (INSERT LINK).

# Councillors' Gifts and Hospitality Protocol

## 1. Introduction

- 1.1 This Protocol is intended to complement the Councillors' Code of Conduct. It offers guidance to Councillors with regard to best practice and the need to preserve integrity and demonstrate good governance. It has been written to protect both individual Councillors and the Council itself. The intention of this Protocol is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.
- 1.2 This Protocol sets out Councillors' obligations to declare any relevant gifts and hospitality which might be offered to or received by them in their capacity as a Councillor or to their spouse, partner or dependent as a result of their relationship with the Councillor.
- 1.3 The corollary of this is that gifts and hospitality offered to a councillor in their private capacity, of whatever value, do not need to be registered at all. Further, this Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to a councillor by the Council.
- 1.4 It is the Councillor's responsibility to ensure any gifts and hospitality received or offered to them or their spouse/partner are declared to the Council's Monitoring Officer in accordance with the agreed procedures.

Transparency is the issue: councillors should always consider whether any gifts or hospitality could be seen as being connected with their public role as a Councillor. It is public perception that matters.

- 1.5 A breach of this Protocol amounts to a breach of the Code and a complaint can be reported to the Monitoring Officer or the Governance Committee and dealt with in accordance with the process for alleged breaches of the Code.

## 2. The Rules

- 2.1 A Councillor, their spouse/ partner or Dependent must never:
  - accept a gift or hospitality as an inducement or reward for anything which they do as a Councillor; or
  - accept a gift or hospitality which might be open to misinterpretation; or
  - accept a gift or hospitality which puts them under an improper obligation; or
  - solicit a gift or hospitality.
- 2.2 Prior to the acceptance of any hospitality with a value of £25 or more, a Councillor should whenever possible seek authorisation from the Monitoring Officer, and only if consent has been given should the Councillor or their spouse/partner accept the hospitality.
- 2.3 A Councillor must register every individual gift or item of hospitality over £25 in value that is offered to them and indicate whether or not it was accepted.
- 2.4 A Councillor's registration of the gift or hospitality must be made within 28 days of the date of offer or receipt as the case may be.
- 2.5 Registration is made by a declaration in writing to the Member Services Officer(s) working on behalf of the Monitoring Officer, preferably electronically (e.g. by email), and giving details of:
  - the value (or estimated value) and details of the gift or hospitality offered or received;
  - if the gift or hospitality has been accepted, the reason for that acceptance;
  - whether to the Councillor's knowledge the donor of the gift has, or has had in the past, or is likely to have in the future, dealings with the Council.

- 2.6 A Councillor should be aware of serial givers or repeat offers of hospitality as these may indicate a pattern of behaviour that might result in a breach of the Code of Conduct.
- 2.7 An offer of a gift or hospitality that appears over-generous must be declined; it could be seen as an inducement to affect a Council decision.
- 2.8 Even if all Councillors, or a large number of them, are offered or receive the same gift or hospitality, they must each make individual notifications.

Please note that the press and public have the right to inspect gift and hospitality declarations as submitted (and that Officers cannot edit the declarations).

## Guidance

### 3. Should a Councillor accept gifts and hospitality?

- 3.1 It is not sufficient just to register gifts or hospitality; a Councillor **must** consider whether it is appropriate or sensible to accept them in the first place. The general test of caution is one of common sense and perception, i.e. would a reasonable member of the public question the appropriateness of hospitality or gifts offered to or received by the Councillor or their spouse/partner/dependent? If a Councillor is concerned the acceptance could be misinterpreted they **must** decline it and declare it.
- 3.2 A Councillor or their spouse/partner/dependent **must never** solicit a gift or hospitality, or accept any gift or hospitality offered as an inducement or which puts them under any obligation.
- 3.3 Particular care must be taken in relation to gifts and hospitality offered by current or potential contractors for the Council. In certain cases, the acceptance of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any offer is intended as an inducement, then the matter **must** be reported in accordance with established procedures.
- 3.4 The Bribery Act 2010 has offences of “bribing another person” (active bribery) and of “being bribed” (passive bribery). The offences consist of “promising, offering or giving” or “requesting, agreeing to receive or accepting an advantage (financial or otherwise)” in circumstances involving the improper performance of a relevant function or activity.
- 3.5 In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust. There is a maximum penalty of 10 years’ imprisonment or an unlimited fine for these offences.

### 4. Must a Councillor register all gifts and hospitality that they are offered?

- 4.1 A Councillor **must** register any gift or hospitality worth £25 or more that they or their spouse/partner/dependent are offered, and whether it was accepted. Where the value of any gift or hospitality is under £25 a Councillor **may** wish to declare receiving it.

### 5. What about gifts or hospitality that a Councillor is offered but did not accept?

- 5.1 A Councillor **must** register any offer of gifts and/or hospitality over £25 even if declined, since this protects both their position and that of the Council.

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

- 6.1 A Councillor may have to estimate how much a gift or some hospitality is worth in their written declaration. It is suggested that they take a common sense approach and consider how much they reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result they estimate that the value is £25 or more, then the Councillor **must** declare it.
- 6.2 Where hospitality is concerned, a Councillor can disregard catering on-costs and other overheads, e.g. staff and room hire. If the refreshments, of whatever kind, would cost £25 or more in a comparable establishment providing food of comparable quality, the Councillor **must** register it.
- 6.3 If a Councillor is not certain whether the value is under £25, the safest course of action is to register it and give an approximate value.

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

- 7.1 There is no requirement to declare gifts of a value of less than £25. However, in order to be transparent, if a Councillor or their spouse/ partner receive a series of related gifts which are all under £25, but together total above £25, then they **must** register them if they are from the same person. If the small gifts offered by or received from different persons are connected in some way, it is good practice to register them.

## **8. How does a Councillor register gifts and hospitality that they receive?**

- 8.1 A Councillor **must** give Democratic Services working on behalf of the Monitoring Officer written details about the gifts and hospitality they or their spouse/ partner are offered, preferably by email. The best advice is to get into the habit of registering things as soon as possible.

## **9. Which organisation does a Councillor make declarations to?**

- 9.1 A Councillor **must** also consider that they might be offered gifts and hospitality in their capacity as the Council's representative on an outside body. It is a Councillor's responsibility to ensure that they declare any gifts and hospitality in accordance with that organisation's rules and procedures.

## **10. How to deal with the issue of when gifts or hospitality are offered or received in different capacities or where there are overlapping roles**

- 10.1 Councillors need only declare gifts and hospitality to the Monitoring Officer where they are offered or received in their Capacity as a West Berkshire District Councillor.
- 10.2 If a councillor receives gifts or hospitality in another capacity, e.g. arising from holding another public office, they should register in accordance with whatever code is in place for that other body. If a particular body does not actually require the councillor to register anything, then they do not need to do anything in respect of the receipt of a gift or hospitality directly attributed to their role within that organisation.
- 10.3 If the councillor is not sure what capacity they or their spouse/partner was offered or received something in, provided they declare the gift or hospitality *at least once* with the body that appears to be the most appropriate, they will have fulfilled their duties. The overriding purpose is public transparency.

**11. What happens if a Councillor does not register a gift or hospitality?**

11.1 Failure to notify the Monitoring Officer, or the Democratic Services acting on their behalf, of the offer or receipt of a gift or hospitality with a value of £25 or more is a breach of this Protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer or Governance Committee which could result in the matter becoming the subject of an investigation.

**12. Gifts which are more likely to be considered acceptable**

12.1 It is the responsibility of the Councillor to decide whether or not to declare gifts and hospitality.

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

- Civic hospitality provided by another authority;
- Modest refreshments offered or received in the ordinary course of duties as a Councillor e.g. at formal meetings, training or working meetings or when in contact with constituents;
- Tickets for sporting or cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value branded with the name of the company or organisation making the gift (e.g. pens, diaries, calendars etc);
- Modest souvenir gifts from another public body given on the occasion of a visit by or to that body;
- Hospitality offered or received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by Officers rather than the Councillors who will be benefiting and hospitality should be commensurate with the nature of the visit; and
- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases the Councillor may wish to pass the gift to the Chairman's Charity.

12.3 Offers/receipt of gifts and hospitality of these types are still subject to the requirements of this Protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 in value. The appropriateness of acceptance must always be considered beforehand. It must also be noted that the fact that a gift or hospitality does not have to be notified under this Protocol does not necessarily mean that it is appropriate to accept it.

**13. Will the register be open to the public?**

13.1 The register is available to the public in the same way as the register of Disclosable Pecuniary Interests is. It is open for inspection at the Council Offices, Market Street.

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

**14. Further assistance**

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

## **Appendix 1 - The Seven Principles of Public Life ('the Nolan Principles')**

### **Selflessness**

Councillors should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

### **Honesty**

Holders of public office should be truthful.

### **Integrity**

Councillors 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 disclose and resolve any interests and relationships.

### **Objectivity**

Councillors should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits. Councillors must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Councillors should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

### **Openness**

Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

### **Leadership**

Councillors should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

## Appendix 2 - Interests

### Introduction

- 1.1 Councillors and Co-Opted Members **must** declare any interests that relate to their public duties and **must** take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming to the procedures.
- 1.2 There are three types of interest:
  - Disclosable Pecuniary Interests
  - Other Registrable Interests
  - Personal Interests
- 1.3 Councillors should also always consider whether any interest could be seen as being prejudicial to their decision making as a Councillor. It is public perception that matters.

### Disclosable Pecuniary Interests (DPIs)

- 1.4 Schedule 2 of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 lists the disclosable pecuniary interests specified for the purpose of the Act. This list is in Appendix 2a
- 1.5 The requirements to register interests apply to either an interest of the Councillor or an interest of the Councillor's spouse, civil partner, partner or dependent. However, the Councillor does not have to differentiate between their own or their spouse/civil partner/partners' interests or to name them.

### How to declare a DPI

- 1.6 Councillors **must** notify the Monitoring Officer of any DPI, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose DPIs applies to Co-Opted Members as well as to Councillors.
- 1.7 Any interests **must** also be disclosed at a Meeting if they are relevant to the matters under discussion.
- 1.8 The Act makes participation in such matters a criminal offence if the Councillor has a DPI.
- 1.9 Where, as an Executive Member, a Councillor may discharge a function alone, and they become aware of a DPI in a matter being dealt with, or to be dealt with by them, the Councillor **must** notify the Monitoring Officer of the interest and **must not** take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

### Other Registrable Interests

- 1.10 Councillors are required by law to register Other Registrable Interests.
- 1.11 An Other Registrable Interest is one which a member of the public who knows all the relevant facts relating to it would reasonably consider that interest is so significant that it is likely to prejudice or influence the Councillor's judgement of the public interest.
- 1.12 These relate to:
  - any body of which a Councillor is a member or in a position of general control or management and to which they are appointed or nominated by their authority;
  - any body exercising functions of a public nature; directed to charitable purposes; or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which they are a member or in a position of general control or management;



- any easement, servitude, interest or right in or over land which does not carry with it a right for the Councillor (alone or jointly with another) to occupy the land or to receive income.

### How to declare an Other Registrable Interest

- 1.13 Councillors **must** notify the Monitoring Officer of any Other Registrable Interests, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose Other Registrable Interests applies to Co-Opted Members in addition to Councillors.
- 1.14 A Councillor may participate in decision making relating to their Other Registrable Interests to make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. The Councillor **must** leave the Meeting immediately after making representations, answering questions or giving evidence.
- 1.15 Subject to the Councillor disclosing the interest at the Meeting, they may attend a Meeting and vote on a matter where they have an Other Registrable Interest that relates to the functions of their authority in respect of:
- housing, where they are a tenant of their authority provided that those functions do not relate particularly to their tenancy or lease;
  - school meals or school transport and travelling expenses, where they are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
  - statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where they are in receipt of, or are entitled to the receipt of, such pay;
  - an allowance, payment or indemnity given to Councillors;
  - any ceremonial honour given to Councillors; and
  - setting council tax or a precept under the Local Government Finance Act 1992.

### When an Other Registrable Interest becomes a Personal Interest

- 1.16 The Council has many dual-hatted Councillors who are also town or parish councillors. Membership of a body exercising functions of a public nature, such as town and parish councils, is an Other Registrable Interest and usually restricts a Councillor's participation in decision making. A Councillor would however be permitted to participate in decision making at Planning Committee meetings because their membership of a town or parish council is unlikely to prejudice or influence the Councillor's judgement of the planning application before the Committee. In this instance the Councillor should follow the rules on how to declare a Personal Interest.
- 1.17 Conversely, there might be times when a Councillor's membership of a town or parish council is likely to prejudice or influence the Councillor's judgement of the planning application before the Committee. The Councillor should seek advice from the Monitoring Officer if they are unsure.

### Personal Interests

- 1.18 A Councillor has a Personal Interest in any decision of their authority where the interest might reasonably be regarded as affecting their well-being or financial position or that of a Relevant Person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward
- 1.19 A Relevant Person is:

- a parent, grandparent, sibling, child, aunt, uncle, cousin (or partner/spouse of any of those people) by birth or by marriage; or
- any person or body who employs or has appointed a Relevant Person, any firm in which they are a partner, or any company of which they are directors;
- any person or body in whom a Relevant Person has a beneficial interest in a class of securities exceeding the nominal value of £25,000.00; or
- any body of a type described in Other Registrable Interests.

### **How to declare a Personal Interest**

- 1.20 Where a Councillor has a Personal Interest in any business of the Council a Councillor needs to disclose to the meeting the existence and nature of that interest when they address the meeting on that business.
- 1.21 Personal interests do not need to be declared to the Monitoring Officer, but Councillors should seek advice if they are not sure what type of interest they have.

### **When a Personal Interest becomes an Other Registrable Interest**

- 1.22 As outlined in the Code, a situation may arise where a member of the public who knows all the relevant facts relating to it would reasonably consider that an interest is so significant that it is likely to prejudice or influence the Councillor's judgement of the public interest. In that circumstance their interest would be considered to be an Other Registrable Interest.
- 1.23 A Councillor would have an Other Registrable Interest in a planning application that their parent had submitted because that Relevant Person is likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or parish. A DPI would not cover this aspect as they relate to Councillor and their spouse/partner only. The existence of a close family tie would mean that the public might consider that it would prejudice the Councillor's view when considering the application.
- 1.24 In this instance the Councillor should follow the rules on how to declare an Other Registrable Interest.

### **Interests arising in relation to Scrutiny Committees**

- 1.25 In any business before a Scrutiny Committee of the Council (or of a sub-committee of such a committee) where:
- that business relates to a decision made (whether implemented or not) or action taken by the executive or another of their authority's committees, sub-committees, joint committees or joint sub-committees; and
  - at the time the decision was made or action was taken, they were a member of the Executive, committee, sub-committee, joint committee or joint sub-committee they were present when that decision was made or action was taken,

- 1.26 a Councillor may only attend a meeting of the overview and scrutiny committee for the purpose of answering questions or giving evidence relating to the business, and they **must** leave the room where the meeting is held immediately after making representations, answering questions or giving evidence. The Councillor should not stay in the meeting for the purposes of taking part in the committee's general debate.

### **Register of Interests**

- 1.27 The Council will maintain a register of Councillors' interests and make it available to the public on their website.

### **Sensitive Interests**

- 1.28 Where a Councillor is concerned that the disclosure of the details of an interest (whether a DPI or Other Interest which the Councillor is required to disclose) at a Meeting or on the Register of Members' Interests, and such disclosure would lead to the Councillor or a person associated with them being subject to violence or intimidation, the Councillor may request the Monitoring Officer agree that such interest is a Sensitive Interest.
- 1.29 If the Monitoring Officer agrees that the interest is a Sensitive Interest the Councillor **must** still disclose the existence of the interest at a relevant Meeting but the Councillor is not required to provide the details of the Sensitive Interest during the meeting. The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Members' Interests.

## Appendix 2a - Prescribed definitions for Disclosable Pecuniary Interests

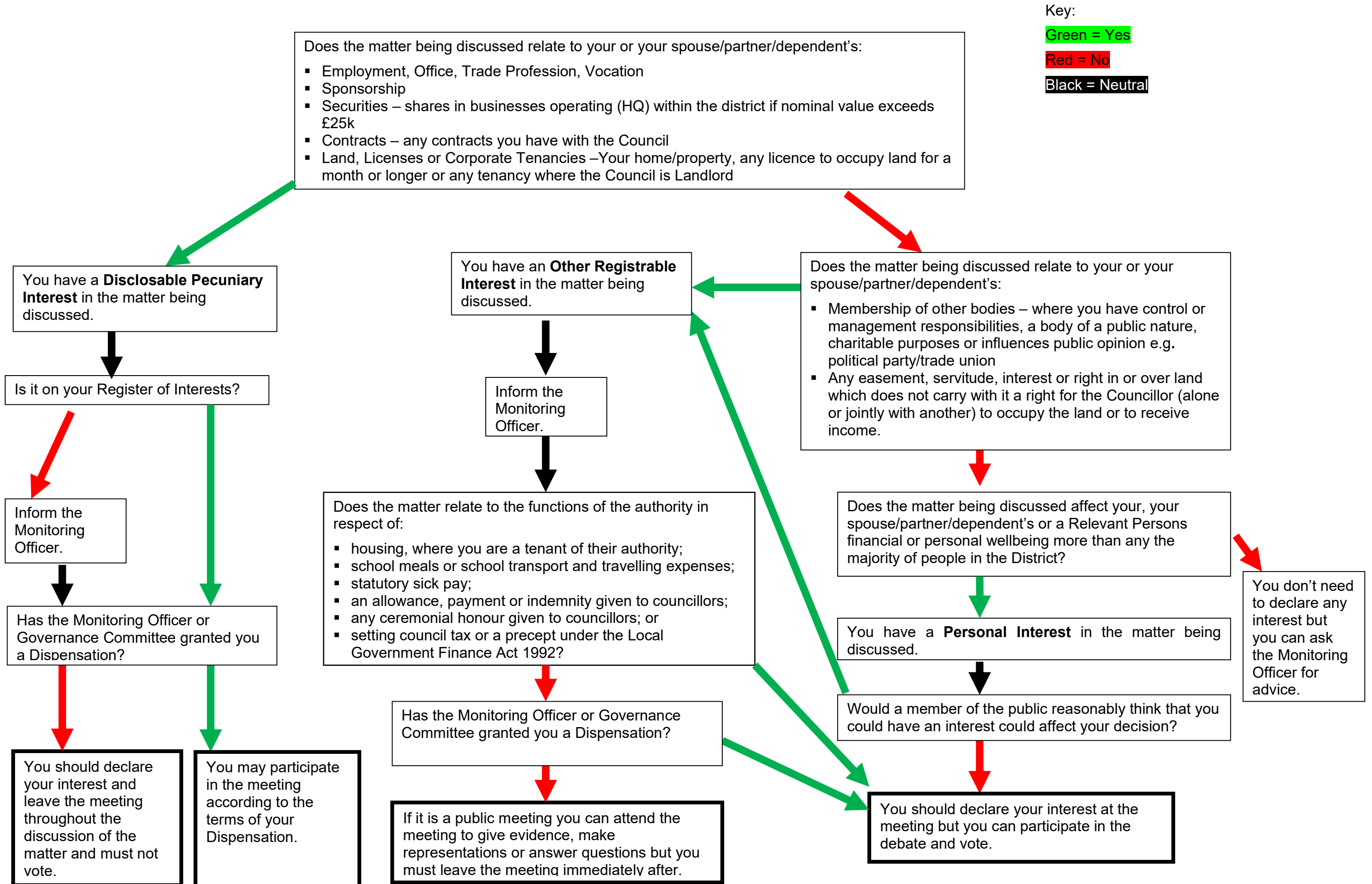
The following table replicates Schedule 2 of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and gives the prescribed definitions for Disclosable Pecuniary Interests.

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

## Appendix 2b - Pre-disposition or Pre-determination – Planning Committees

- 1.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the Committee.
- 1.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the Committee reach a decision.
- 1.3 Members of the Planning Committee can have a predisposition to an initial view, where the Councillor is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.
- 1.4 A Councillor that has fettered their discretion and then takes part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 1.5 The Localism Act 2011 (Section 25) provides that a Councillor who has expressed a preference for a particular outcome of an application as it proceeds to determination, will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate their view in respect of the matter. However, in order to use this provision, it is important that a fair minded observer would consider that the Councillor was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 1.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Councillors taking the decision on an application must take account of all the evidence presented before arriving at a decision and should avoid committing themselves one way or another before hearing all the arguments.
- 1.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Councillor decides to make a public statement, and either supports or opposes the application, it will be difficult for that Councillor to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Councillor should make an open declaration, in relation to their position and not vote on the determination of the application at Planning Committee.
- 1.8 The open declaration should be noted in the Planning Committee minutes. The Councillor will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward Member, they can address the Planning Committee at the appropriate time in accordance with the Ward Member speaking arrangements (see paragraph 10 of Part 6.8 of the Constitution).
- 1.9 Ultimately it is the responsibility of the individual Councillor to ensure that, as a result of their stance in regard to a particular matter the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

## Appendix 2c Interest Flowchart



## Appendix 3 - Dispensations under the Localism Act 2011

### Introduction

Regulations came in to force on 1 July 2012 following the introduction of the Localism Act 2011. Section 33 of these regulations prescribes the circumstances in which the Governance Committee and the Monitoring Officer may grant Dispensations to Councillors to speak and/or vote at a meeting in which they have a Disclosable Pecuniary Interest under Section 31 of the Act.

If a Councillor acts in accordance with the granting of such a Dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct is not a failure to comply with the authority's Code. These regulations refer to the circumstances where a Councillor, finds they are in a position where they have to declare a Disclosable Pecuniary Interest or Other Registrable Interest under the Code of Conduct which would ordinarily then require them to leave the meeting. These Councillors might be able to obtain a Dispensation from the Governance Committee or Monitoring Officer to stay in the meeting after declaring the interest and either speak or speak and vote according to any Dispensation granted.

### Dispensations

#### 1 Circumstances in which a Dispensation can be Granted

1.1 The Governance Committee or Monitoring Officer may grant a Dispensation to a Councillor in the following circumstances:

- (a) That so many Councillors of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result].
- (b) That without the Dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (c) That the authority considers that the Dispensation is in the interests of persons living in the authority's area.
- (d) That without a Dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (e) That the Council considers that it is "otherwise appropriate" to grant a Dispensation. This is a particularly wide provision as to some extent is (c) above.

1.2 It is considered that grounds (a) and (d) are objective. Dispensations on these grounds are delegated to the Monitoring Officer with an appeal to the Governance Committee.

1.3 Grounds (b), (c) and (d) are rather more complex and subjective. The discretion to grant Dispensations on these grounds remains with Governance Committee after consultation with the Independent Person.

#### 2 Requesting a Dispensation

2.1 Requests for Dispensations **must**:

- (a) be made in writing;
- (b) be made to the Monitoring Officer of the Council;

- (c) be made by an individual Councillor or Co-Opted Member of the authority;
- (d) provide sufficient information to base a decision on.

### **3 Procedure and Considerations**

- 3.1 The Governance Committee or Monitoring Officer will take the following into consideration when determining whether or not a Dispensation should be granted:
  - (a) They will weigh up the effect of Councillors' Disclosable Pecuniary or Other Registrable interest against the outcome of the vote if they are not participating in the vote.
  - (b) They will consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Councillor were allowed to vote.
  - (c) They will look at whether the interest in question is one that is common to both the Councillor and to a significant proportion of the population.
  - (d) They will take account of the expertise and knowledge of the Councillor and whether this justifies their participation in the item in question.
  - (e) They will have regard to whether the business in question relates to a voluntary or public body and additionally whether the interest is a financial one.
  - (f) They will consider whether a Dispensation not being granted would mean the meeting was inquorate, this might be a reason to grant the Dispensation.
- 3.2 This consideration may also take account of any other relevant circumstances or local criteria.
- 3.3 The Monitoring Officer or Governance Committee will determine the nature of any Dispensation they are minded to grant:
  - (a) Whether the applicant can speak and not vote; or
  - (b) Whether the applicant can participate fully and vote.
- 3.4 The Monitoring Officer or Governance Committee can also decide the length of the Dispensation (not more than four years).
- 3.5 The regulations do not allow for the Monitoring Officer or Governance Committee to grant a general Dispensation to cover any situation where a Disclosable Pecuniary Interest may arise.
- 3.6 If the Monitoring Officer or Governance Committee grants a Dispensation it should do so in writing and before the Meeting(s) in question is/are held.
- 3.7 The Monitoring Officer or Governance Committee may decide to refuse an application for a Dispensation. This is within their discretion under the regulations.
- 3.8 A written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.



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# Appendix F

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## Councillor Call for Action Protocol

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### Introduction

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

### Description

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

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

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

All of these factors can make resolution easier to achieve.

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

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

### Eligibility criteria for the initiation of a CCfA

Any Member of the Council may submit a CCfA for inclusion in the agenda of a Scrutiny Committee.

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

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

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

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

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

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

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

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

Specifically excluded from becoming a CCfA are:

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

### **Investigation and resolution**

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

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

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

will produce a report containing recommendations for the consideration of the Council's Executive or other organisations as appropriate.

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

### **Monitoring**

The responding service will provide implementation progress reports to the Scrutiny Commission at intervals not normally more frequent than six monthly.

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## Appendix G

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# Protocol for Council Representation on Outside Bodies

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## 1. Introduction

- 1.1 Elected Members are appointed by West Berkshire Council to serve on a range of Outside Bodies. In the context of this Protocol, an “Outside Body” covers organisations such as Trusts, Voluntary Bodies, Charities, Community Associations and Companies etc.
- 1.2 Service on Outside Bodies has always been an established part of a Councillor’s role. A Member appointed to an external body will be able to use their knowledge and skills both as a Council Member, and as a representative of their communities, to assist the organisation to which they are appointed, as well as the Council which they represent.
- 1.3 This Protocol is designed to provide guidance as to the roles, experience and responsibilities as well as the liabilities that Members may attract in connection with their involvement with these organisations. Councils are increasingly working in partnership with external organisations. This means that it is important that everyone is clear exactly what the role of Councillors appointed to these bodies is. Questions of accountability and governance are likely to arise particularly as more funding may be channelled through the Council to these Outside Bodies.
- 1.4 Membership of an Outside Body brings into play different considerations to those which relate to Council membership. As members of Outside Bodies, elected Members will have different duties, obligations and liabilities depending upon the type of organisation involved. Members’ roles on these Outside Bodies may appear to conflict, sometimes with each other, and sometimes with their position as a West Berkshire Councillor. This can be eased by giving clear guidance, which is what this document aims to do. Paragraphs 9 and 10 of this Protocol provides information on registering interest and information on dealing with conflicts of interest are set out in paragraph 11.
- 1.5 Depending on the legal nature of the body and the role fulfilled by the Member they may attract personal responsibility for decisions and actions of the body. It is a Members’ responsibility to ensure that they are aware of their liabilities and any insurance arrangements that are in place where they participate in Outside Bodies. Officers will strive to ensure that Members are provided with as much information as possible prior to their appointment. Paragraphs 4 and 5 of the Protocol set out the general roles and responsibilities for Members on Outside Bodies.
- 1.6 To aid Members further, this Protocol sets out the different types of bodies and responsibilities. Members with any doubts or questions should consult the Monitoring Officer at the earliest opportunity for help and advice. More detailed information, relating to Limited Companies, Charitable Trusts, Partnerships and Unincorporated Organisations, is set out in paragraphs 12 to 15.

- 1.7 The Council will indemnify Members representing the Council on Outside Bodies in many circumstances. There are however specific statutory limitations as to the extent of indemnification the Council is able to provide. These are set out in paragraph 16 of the Protocol.
- 1.8 Members can serve on Outside Bodies in their personal capacity provided that there is no conflict of interest with their duties as a Member of West Berkshire Council. Again, legal advice is available to help Members assess their position.

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

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

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

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

concerned with representing the Council and will not have responsibilities for governance of the body; or

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

- what the body has been set up to do;
- the governance arrangements of the organisation; and
- the financial position of the organisation.

3.2 The Council representatives are also advised to:

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

## **4. The Responsibilities of the Councillor**

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

4.2 Members should:

- act according to the rules, constitution and framework set by the Outside Body;
- take an active and informed role in the Outside Body's affairs;
- make independent and personal judgements in line with their duty of care to the Outside Body;
- report back to West Berkshire Council annually (by the 1 May ) using the prescribed form;
- promote equality as an integral part of the role and to treat everyone with fairness and dignity;
- from time to time it is possible that a conflict of interest may arise between the role of the Councillor and the role they are undertaking on an Outside Body. Members are referred to paragraph 11. Members are advised to seek legal advice before setting off on a course of action;
- behave ethically and follow as far as applicable the Code of Conduct for Members; and
- wherever possible approach the lead officer for the Outside Body for a briefing on agenda items before attending meetings of the Outside Body.

#### 4.3 Members should not:

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

#### 4.4 More specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out within this Protocol.

### 5. The Role of the Councillor

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

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

### 6. Expenses, Remuneration and Benefits

#### 6.1 As a general rule Members should not benefit personally from their appointment to outside organisations.

- 6.2 Travel and subsistence expenses should be claimed through the organisation if available otherwise through the Council in accordance with Part 14 of the Constitution (Members' Allowances Scheme).
- 6.3 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution.
- 6.4 Free access to a Company's facilities should only be accepted where it is necessary to discharge duties and responsibilities as a Director and should be declared to the Council.
- 6.5 The Code of Conduct should be followed at all times.

## **7. Representatives Reporting Back**

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

## **8. Further Advice**

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

## **9. Interests**

- 9.1 Members are required to register interests in line with section 4. (Disclosable Pecuniary Interests and Interests other than Disclosable Pecuniary Interests)



of Appendix H (Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

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

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

## **11. Conflicts of Interest**

- 11.1 Appointment to an Outside Body can take various forms, and before taking up active membership it is advisable to establish exactly in what capacity the Member is being appointed.
- 11.2 If Members are appointed to an Outside Body they will have a personal interest in that body and will need to consider their position when they sit on Council, the Executive, a Council committee or other decision-making body which is considering a matter which relates to that body.
- 11.3 If Members attend a meeting where there is an item of business which relates to or affects the Outside Body, they will need to disclose the interest at the meeting, regardless of whether or not they were appointed onto the Outside Body by the Council, or by the Outside Body itself. This may not be a report which specifically mentions the body, but will affect it. For example, the budget setting meeting of Full Council can have implications for Council funding of voluntary organisations.
- 11.4 The next issue is to consider whether they also have a Disclosable Pecuniary Interest (DPI) which would require them not only to disclose it but also to withdraw from consideration of that item of business.
- 11.5 If a Member does decide that they have a DPI, they must disclose this and leave the meeting room and not influence the debate or decision in any way. If the Council body making the decision has a policy of allowing members of the public to speak, Members can use this avenue legitimately to speak to the meeting but they must follow the rules of the public speaking session and then leave the room as soon as they have spoken on the matter.
- 11.6 Members should take advice from the Monitoring Officer if any situation arises where they think they might have a problem with an interest arising from their involvement with the Outside Body.
- 11.7 Whilst a failure by a Member to disclose a personal interest, or to disclose and withdraw for a DPI, may lead to sanctions against the individual Councillor, it will not of itself invalidate the decision of the authority in which the Councillor participated. However, where there is a real possibility that the decision of the Council might have been affected by bias or predetermination on the part of one or more Councillor, that decision can be held by a Court of Law to be invalid. Members therefore need also to be careful about the possibility of bias and predetermination when they are dealing with matters involving an Outside Body on which they serve.
- 11.8 Any Councillor who is about to take part in a decision, either collectively with other Councillors or via Individual Decision, must not allow themselves to be unduly influenced by their allegiance to any Outside Body or individual, nor should they give the impression that they might be influenced by it. That is

bias and apparent bias. It arises because of a connection to an Outside Body or person.

- 11.9 It also follows that, whilst a Councillor may have preferences and predispositions, they must not finish the decision-making process until they have received and considered all the relevant information relating to the matter. To do so would be predetermination. Whilst it is accepted that Councillors live in the real world and will discuss matters with colleagues and constituents, and bring the benefit of those discussions to the Committee Room, they must still listen to the arguments and be prepared to change their mind if the evidence presented requires it.
- 11.10 From this it will be apparent that particular difficulties arise where a Councillor is a member of an Outside Body such as a pressure group, which is seeking to influence the authority's decision on a particular matter, as such membership can readily be taken as evidence of bias and/or predetermination. On occasion, and particularly in respect of local, single-issue pressure groups, a Member may have to choose whether to be a campaigning Councillor, participating in a pressure group, or to remain outside the campaign but be able to vote on the issue when it comes before the Council.
- 11.11 In some instances a Member may also find that they are unable to properly carry out their functions as a Member of the Council and a Member of the Outside Body. In these instances the Member may consider resigning from one body or another. Members should seek advice from the Monitoring Officer before taking such action.

## **12. Limited Company**

- 12.1 A company has a separate legal personality to its shareholders (also described as company members or subscribers). One of the main advantages of acting through a limited company is that shareholders can claim the benefit of limited liability. In the case of a company limited by shares this means that they will not be liable for the debts of the company if the company makes losses over and above the amount which they have pledged to pay the company for their shares. In a company limited by guarantee this means that the shareholders 'guarantee' to contribute a specified sum if called upon to do so (usually a nominal amount of £1) in the event that the company goes into insolvent liquidation.
- 12.2 An appointment as a director of a company needs to be confirmed by the completion of a form (known as '288') which needs to be signed and submitted to Companies House. The secretary of the Outside Body should assist you with this.
- 12.3 The Directorship should also be recorded in the Council's Register of Members' Interests (within 28 days of the appointment). Directors take responsibility for all the main decisions in relation to the operation of the company, including entering into contracts.
- 12.4 The position of Council Members acting as Company Directors is that although Members have been appointed by the Council they have a duty to act in the best interest of the Company.
- 12.5 Although Members are advised to consider the specific rules pertaining to the Company they have been appointed to, the general legal responsibilities of Company Directors are:

- to ensure that the Company acts within its legal powers;
- to act honestly and in good faith in the best interests of the Company;
- not to make a personal profit and to take proper care of the assets;
- to avoid conflicts of interest and not to allow personal interest to influence action as a Director;
- to record personal interests in the Company's Register of Director's Interests;
- to act with reasonable competence and care;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience); and
- not knowingly allow the Company to trade fraudulently, recklessly or in an insolvent position.

12.6 Council appointed Directors are advised to:

- clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals;
- to be familiar with the Articles and Memorandum of Association of the Company;
- to ensure that their interests are registered with the Company;
- to attend Board meetings regularly, read the agenda in advance and seek a briefing from officers where necessary;
- to ensure that the Company has proper procedures for reporting performance and financial information to board members at each meeting;
- to take an interest in the appointment of the management of the Company to ensure that suitable qualified and experienced managers are in place;
- to ensure that the Company has adequate Health and Safety and Equalities Policies; and
- to seek advice from the appropriate Council Officers if in any doubt about the financial viability of the Company or any aspect of its operation.

12.7 Members need to be particularly careful when acting as a Company Director if there is any prospect of the company becoming insolvent i.e. not having sufficient assets to pay its debts. When a company becomes insolvent, or it is foreseeable that it will be insolvent, directors of the company have a higher duty of competence and attention to company business than when the company is still solvent. If they fail to take every possible step to minimise the company's debts, they may be personally liable for any additional losses suffered by creditors of the company ("wrongful trading"). A director may be found guilty of fraudulent trading (a criminal offence) if they allow the company to trade with an intent to defraud creditors.

- 12.8 If you become a Company Director there are some useful guidance documents to assist you on the websites of the [Institute of Directors](#) and [Companies House](#).
- 12.9 There may be occasions where conflicts of interest arise between the Council and the Company. Some examples are:
- contracts between the two;
  - negotiations on agreements, such as terms of leases;
  - applications for Council permission, e.g. planning consent.
- 12.10 This may mean that the primary responsibility to the Company could conflict with the Council's interest.
- 12.11 In these circumstances, Members are advised to declare a DPI at any Council meetings or discussions and should withdraw from the decision making process.

### **13. Charitable Trustees**

- 13.1 To be a Charity an organisation must operate for one of the four charitable purposes, namely:
- the relief of poverty and human suffering;
  - the advancement of education;
  - the advancement of religion; and
  - another purpose for the benefit of the community.
- 13.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.
- 13.3 Trustees duties include:
- the need to act in accordance with the constitution of the Charity;
  - not making a private profit from their position;
  - acting honestly and in good faith in the best interests of the Charity;
  - ensuring that information relating to the charity and trustees is registered with the Charity Commissioners and annual accounts, reports and returns are completed and sent;
  - ensuring that the body acts in accordance with the overriding duty to the beneficiaries of the Trust;
  - ensuring compliance with all relevant legislation (e.g. in relation to tax and land matters); and
  - Council representatives are advised to clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals.
- 13.4 There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:
- exercising a general power of investment or any specific power of investment arising from the Trust;

- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations;
- compounding liabilities under section 15 of the Trustee Act 1925;
- Insuring Trust property; and
- Dealing with reversionary interests, valuations or audits.

13.5 The standards of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual. Additional information relating to the responsibilities for charitable directors and trustees is available on the Charity commission's website [The Charity Commission - GOV.UK](https://www.charity-commission.gov.uk).

## 14. Partnerships

14.1 The Council representatives on partnerships have three main roles:

- to promote the Council's objectives in participating in the partnership;
- to ensure that the Partnership delivers its own objectives;
- to safeguard the Council's interests within the partnership, particularly where the Council is a funding partner or the accountable body for external funding.

14.2 Council representatives on partnerships are advised to:

- be clear on the Council's own objectives in participating in the partnership;
- read the Constitution of the partnership and be aware of its objectives and powers;
- attend partnership meetings regularly, read the agendas in advance and seek briefing from Officers where necessary;
- ensure that the partnership has proper procedures for reporting progress and financial information; and
- take an interest in the appointment of key staff.

## 1. Unincorporated Organisations

15.1 Groups which are not charitable trusts or limited companies are 'unincorporated associations' and have no separate legal identity from their members. The rules governing the Members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for Management Committees to be responsible for the every day running of the organisation. An unincorporated organisation may be charitable and therefore register as a charity.

15.2 Management Committee Members must act within the Constitution of that Outside Body and must take reasonable care when exercising their powers.

- 15.3 If Members become involved in the administration of an unincorporated body, they need to be aware that, as the body has no separate corporate status, any liabilities will fall upon the members personally. This means that if something goes wrong and the organisation is sued, the members/owners personal assets are at risk – they cannot stand behind a company or other body which gives them some protection.
- 15.4 If Members take on personal responsibilities for the organisation, such as buying equipment or renting premises, they are personally liable for the entire cost, and can only recover those costs from the organisation to the extent that it actually has the money to reimburse them, or from the other members of the organisation to the extent that the membership agreement gives them the right to be reimbursed by each of them.
- 15.5 Members need to be very careful about the risk of personal liability and the extent to which this has been covered by insurance arrangements (either arranged by the organisation itself or by the Council or by indemnities).

## **16. Indemnity for Members**

- 16.1 The Council may only indemnify Members in certain circumstances as prescribed by the Local Authorities (Indemnity for Members and Officers) Order 2004.
- 16.2 The Council will provide an indemnity in relation to any action or failure to act by any Member which:
- is authorised by the Council;
  - forms part of, or arises from, any powers conferred, or duties placed, upon that Member at the request, or with the approval of the authority, including acting as the Council's representative on an Outside Body;
  - arises in respect of the cost of defending any claim for an allegation of defamation by a Member acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
  - is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the insurer for their costs incurred in relation to those proceedings;
- 16.3 The indemnity includes an act or omission subsequently found to be beyond the powers of the Member in question, but only to the extent that the Member reasonably and genuinely believed that the act or omission was within their powers at the time they acted.
- 16.4 The indemnity does not apply to the defence of any criminal proceedings brought against a Member unless specifically approved by the Council and then only on a similar basis to that relating to proceedings for breaches of the Code of Conduct.
- 16.5 It is possible in some circumstances for the Council to indemnify (i.e. stand behind the Councillor and pick up any personal legal liabilities/costs/damages which the Councillor incurs as a result of their appointment to an Outside

Body). The Council currently has Officials Indemnity insurance cover in place which covers Members on Outside Bodies but it may be necessary to consider issues on a case by case basis. Please speak to the Monitoring Officer if you have any cause for concern that an Outside Body with whom you are involved is getting into difficulty or you have any indication that you might be getting involved in potential personal liability.

## Appendix G(1)

### West Berkshire Council

### Appointment to Outside Bodies Annual Feedback Form

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



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

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

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

Yes / No

If No, please state why:

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

Councillor .....

**Signed** .....

**Dated** .....

Return completed forms to:

Stephen Chard, Legal and Democratic Services, Market Street Offices, Newbury,  
RG14 5LD or email: [stephen.chard@westberks.gov.uk](mailto:stephen.chard@westberks.gov.uk)

## Appendix H

# Social Media Protocol for Councillors

## 1. Introduction

- 1.1 This protocol (“Protocol”) was last reviewed and updated on 6 December 2018.
- 1.2 This Protocol should be read in conjunction with the Councillor’s Code of Conduct (“Code of Conduct” - Appendix H to Part 13 Codes and Protocols of the Council’s Constitution), the Council’s ICT Policy, the Council’s Equalities Policy, and the Local Authority Code of Publicity under the Local Government Act 1986.
- 1.3 Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Service Lead – Legal and Democratic Services, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.

## 2. Purpose and Application

- 2.1 This Protocol seeks to ensure that:  
Councillors make use of social media effectively whilst avoiding breaches of the Code of Conduct; and  
the reputation of the Council is not adversely affected, and that the Council is not subject to legal challenge, as a result of Councillors’ use of social media.
- 2.2 This Protocol will apply to Councillors using social media who are acting, purporting to act, or reasonably perceived to be acting, in their Capacity as a Councillor – all references to “Councillor” below adopt this definition.
- 2.3 For the purposes of this Protocol, social media has a broad meaning. By way of example, this will include but will not be limited to the following types of social media: Facebook, Instagram, Twitter, Snapchat, You Tube and local internet based discussion forum
- 2.4 You should bear in mind that anything posted, shared (for example by retweeting), or liked on social media could end up in the public domain, regardless of any privacy settings that you have applied.
- 2.5 Particular care needs to be taken when sharing the views or comments of others as this could be perceived as an endorsement of the content regardless of your intention.

**It is difficult to give definitive advice on the application of the Code of Conduct to social media use and there is developing case law in this area. However, if you use a social media platform where you identify yourself or can otherwise be identified as a Councillor, either in your profile or otherwise, there is a strong likelihood that you will be regarded as acting in your Capacity as a Councillor.**

- 2.6 Bear in mind the Code of Conduct when you blog, post, use social networking sites or any other digital content publication service. You should pay particular attention to the requirements of the Code relating to:
- courtesy and respect;
  - bullying or intimidating behaviour;
  - disclosure of confidential information;
  - conduct that could bring your office or the Council into disrepute;
  - misuse of the Council's resources.
- 2.6 The content of a blog, account, page or other social networking tool and the circumstances surrounding its creation will determine whether or not you are deemed to be acting in your Capacity as a Councillor. There are however some general rules that Councillors should bear in mind when deciding on whether to publish content:
- only publish on social media what you would say verbally in public, even in an informal discussion;
  - only publish on social media what you could defend in court if asked to do so; and
  - if retweeting or forwarding the views of others, ensure that it is clear whether you are endorsing or otherwise the original content.

### **3. Guidance**

- 3.1 All Councillors are required to act in accordance with the Code of Conduct.
- 3.2 Social media is an effective method by which Councillors can interact with constituents and support local democracy. Used effectively, Councillors can engage those who would not normally have access to local councillors and politics.
- 3.3 This Protocol is intended to assist Councillors in complying with the Code of Conduct and ensuring that the use of social media is well received. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing.
- 3.4 Whenever you are using social media, you should be aware that such activity may be subject to the Code of Conduct. Councillors are permitted to write their own official blogs or pages as members of the Council but they must always conform to the Code of Conduct and other relevant policies and protocols of the Council.
- 3.5 It should be noted that privacy settings will not prevent others with access to your comments from sharing your views with a broader audience. Therefore, notwithstanding the privacy settings applied to any of your social media accounts, you must bear in mind that if you refer to council business in it, you may be viewed as acting in your Capacity.
- 3.6 To make sure you comply with the Code of Conduct, it is suggested that when using social media as a Councillor, you should observe the Guidelines below. You may also wish to adopt these principles even when you regard your social media activity as being conducted in your private capacity, as this should reduce the potential that allegations are made against you that you have breached the Code of Conduct.

### **4. Derogatory comments against you**

- 4.1 On occasion, Councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs, accounts, pages or networking sites.

- 4.2 If you become the subject of offensive on-line behaviour or trolling, it is suggested that you pursue a policy of indifference and, if you do wish to respond, do so in a measured manner, eg asking the blog/account/page owner/person making the remarks to remove them from the site.
- 4.3 If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code of Conduct by making the remarks, and it could be appropriate to make a complaint to the Governance Committee.
- 4.4 If you are subject to unacceptable on-line behaviour, you should seek advice from the Monitoring Officer as to whether there is any action that can be taken by the Council in this regard.

## **5. Use of social media during and after Meetings**

- 5.1 Councillors are permitted to use social media for the reporting of proceedings of public Council meetings. Councillors will need to consider whether using social media may distract them from participating and understanding information that is being shared at the meeting prior to a decision being made to use social media at any point or points during the meeting.
- 5.2 Councillors should however switch their mobile phone or other equipment to silent mode, so that no disruption is caused to proceedings. If, at a meeting, a Councillor's use of an electronic communication device is causing proceedings to be disrupted any councillor may move that the Councillor should desist from using the device. If the motion is seconded it should be put to the vote without discussion.
- 5.3 Members wishing to record (whether in an audio or visual format) meetings will need to do so in accordance with (as pertinent) the Council Rules of Procedure, Executive Rules of Procedure, Scrutiny Rules of Procedure, and/or Regulatory and Other Committees Rules of Procedure.

## **Social Media Guidelines**

### **You should always:**

- conduct yourself in a manner that is respectful of others - this does not prevent you from holding opposing views and expressing political opinion, but views should be expressed in an appropriate manner;
- keep an eye out for defamatory, untrue or obscene posts from others on your blog, account or page and remove them as soon as possible to avoid the perception that you condone such views, and to prevent any potential libel action being taken against you;
- act in accordance with the Council's policies, including but not limited to the Council's Equality Policy;
- be aware that the higher your profile as a Councillor, the more likely it is you will be seen as acting in your official capacity when you blog, post or network;
- be careful about being 'friends' with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure you use Council facilities appropriately; and be aware that any posts you make using Council facilities will be viewed as being made in your official capacity and/or an inappropriate use of Council resources;

- consider that English Law allows court actions for libel to be brought for published statements alleged to defame a named or identifiable individual or individuals, and that blogging, social media and other forms of digital content publication are covered by the libel laws.

**You should never:**

- blog, post, tweet, network, or otherwise use social media in haste;
  - engage in any form of personal attack on an individual that may be seen as disrespectful - general comments about another political party or genuine political expression is less likely to be viewed as disrespect;
  - place images or text on social media from a copyrighted source (for example extracts from publications or photos) without permission;
  - post comments on social media that you would not be prepared to make in writing or face to face;
  - make any comments on social media that you could not defend in court;
  - disclose any information identified by the Council as confidential or exempt;
  - disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature;
  - publish personal information relating to individuals, including photographs, unless you have their permission to do so;
  - give the impression that you are expressing the views of the Council where it is not appropriate to do so;
  - use online accounts and digital publishing services associated with a specific council office if you no longer hold that office, or during Purdah;
  - if you are involved in determining planning or licensing applications or other quasi-judicial decisions, publish anything on your blog, account or page that might suggest you do not have an open mind about a matter you may be involved in.
-