

**Part 5**  
**Codes and Protocols**

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## **Kent Code of Conduct for Members**

## Kent Code of Conduct for Members

### **Preamble**

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
  - (a) Fail to notify the Authority’s Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member.
  - (b) Fail to disclose the interest at Meetings where the interest is not entered in the Authority’s register.
  - (c) Fail to notify the Authority’s Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority’s register and is not the subject of a pending notification.
  - (d) Take part in discussion or votes, or further discussions or votes, at Meetings on matters in which you have the interest which are being considered at the meeting.
  - (e) Fail to notify the Authority’s Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
  - (f) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.

- (g) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

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*Revision April 2019 (Para 3  
(3))*

## THE CODE

### 1. Interpretation

In this Code:

**“Associated Person”** means (either in the singular or in the plural):

- (a) a family member or any other person or body with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed you or such persons, any firm in which you or they are a partner, or any company of which you or they are directors; or
- (c) any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (e) any body in respect of which you are in a position of general control or management:
  - (i) exercising functions of a public nature; or
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

**“Authority”** means Ashford Borough Council.

**“Authority Function”** means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to Members of the Authority;
- (e) any ceremonial honour given to Members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

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**“Code”** means this Code of Conduct.

**“Co-opted Member”** means a person who is not an elected Member of the Authority but who is a member of:

- (a) any committee or sub-committee of the Authority, or
- (b) is a member of, and represents the Authority on, any joint committee or joint sub-committee of the Authority;
- and
- (c) who is entitled to vote on any question that falls to be decided at any Meeting of that committee or sub-committee.

**“Disclosable Pecuniary Interest”** means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

- (a) your interest or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

**“Interests”** means Disclosable Pecuniary Interests and Other Significant Interests.

**“Meeting”** means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

**“Member”** means a person who is a Member of the Authority and includes a Co-opted Member.

**“Other Significant Interest”** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

- (a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than the majority of: -
  - (i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - (ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; or



- (b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person; *Revision April 2019 (Para 3 (3))*

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.

**“Register of Members’ Interests”** means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

**"Sensitive Interest"** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

### **Scope**

2. You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority.

### **General obligations**

3. (1) You must, when using or authorising the use by others of the resources of the Authority (including the use of any IT equipment where the Member has received all or part of the allowance available under the Members’ ICT Scheme):

- (a) act in accordance with the Authority’s reasonable requirements (including the Council’s approved Email and Internet Acceptable Use Policies); and
- (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- (2) You must not:

- (a) bully any person;
- (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (i) you have the written consent of a person authorised to give it; or
  - (ii) you are required by law to do so; or

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(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is:

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- reasonable and in the public interest; and
- made in good faith and in compliance with the reasonable requirements of the Authority;

(e) prevent another person from gaining access to information to which that person is entitled by law;

(f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;

(g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

(3) When using social media:

(a) you must not publish material that a reasonable person would consider offensive or abusive.

(b) you must be aware that members of the public may perceive you to be acting as a Councillor even when you are acting in your personal capacity. Accordingly you must make it clear in your social media profile and/or in any post or tweet etc. whether you are acting in your personal capacity or as a Councillor.

## **Registering Disclosable Pecuniary Interests**

4. (1) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.

(2) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.

(3) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

## Declaring Interests

5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.

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- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the Meeting, you must:
- (a) disclose the Interest; and
  - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under para 5(4):
  - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
  - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
  - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
- (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
  - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
  - (c) not seek improperly to influence a decision about the matter.
- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
- (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and

- (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

*Revision April 2019 (Para 3 (3))*

## **Sensitive Interests**

6. (1) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (3) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

## **Gifts and Hospitality**

7. (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.
- (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.

- (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

*Revision April 2019 (Para 3 (3))*

## **Dispensations**

- 8.(1) The Standards Committee, or any sub-committee of the Standards Committee, or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Standards Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:
  - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
  - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
  - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
  - (d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
  - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

## **ANNEX 1**

### **THE SEVEN PRINCIPLES OF PUBLIC LIFE**

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles. However, it should be noted that these Principles do not create statutory obligations for Members and do not form part of the Code. It follows from this that the Authority cannot accept allegations that they have been breached.

**SELFLESSNESS:** You should act solely in terms of the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.

**INTEGRITY:** You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

**ACCOUNTABILITY:** You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

**OPENNESS:** You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning

behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

*Revision April 2019 (Para 3 (3))*

**HONESTY:** You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

**LEADERSHIP:** Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

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## ANNEX 2

### **Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:**

The descriptions on Disclosable Pecuniary Interests are subject to the following definitions:

**“the Act”** means the Localism Act 2011

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

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

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

**“M”** means a Member of the relevant authority

**“member”** includes a co-opted member

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

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

**“relevant person”** means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

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

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vacation	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 relevant authority) made or provided

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

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## **Guidance Note**

### **Speaking at Meetings and in Public – Defamation and Qualified Privilege**

## Guidance Note

### 1. **Speaking at Meetings and in Public - Defamation and Qualified Privilege**

Except for the limited circumstances in which the press and public are excluded, the Council conducts its meetings in public. It is therefore important that Members appreciate that statements made at meetings of the Council, the Cabinet (Executive) and all other Committee meetings are subject to the laws of defamation.

This note aims to explain:

- what is defamation;
- the consequences of a defamatory statement;
- the defence of Qualified Privilege (and other defences);
- defamation of the Council.

### 2. **What is Defamation?**

A person is entitled to his/her reputation and good name: particularly if they hold public or professional office and their position and reputation depends on a large degree of public trust and confidence. Accordingly, communication of a matter which is untrue and likely to disparage substantially a person's reputation is, on the face of it, defamation.

Defamation is defined as the **publication** to another person of an oral or written statement which:-

- exposes a person to hatred, ridicule or contempt; or
- causes him/her to be shunned or avoided; or
- has the effect of lowering his/her reputation in the estimation of right-thinking members of the public generally; or
- injures him/her in their **office**, profession or trade.

### 3. **Distinction Between Libel and Slander**

A defamatory spoken word or gesture will usually amount to a slander whereas a libel may be contained in a written or printed statement, or in a painting, talking film, caricature, advertisement or any disparaging object. Reading out a defamatory document in a Council or Committee meeting would not be slander but the publication of a libel. A defamatory statement

broadcast on radio, television or the theatre is treated as the publication of a libel and not slander.

#### 4. **Consequences of a Defamatory Statement**

Defamation is unique in civil law in that it may be tried by a Jury. The Jury can award general, actual or aggravated damages.

The level of damages may be reduced if any of the following can be shown:-

- **Lack of deliberate malice.**
- **Provocation** - i.e. if the defamatory statement is made as a direct response to provocative statements made by the person alleging defamation.
- **Mere repetition** - It is considered less malicious to repeat rather than originate a defamatory statement.
- **Apology** - If the defamator can show that he made or offered an apology before the commencement of the action or as soon afterwards as he had an opportunity of so doing.

An Injunction may also be granted to prevent publication.

#### 5. **Defences to an Action for Defamation**

It is a complete defence to an action for defamation to show that it was made on a privileged occasion. Privilege may be absolute or qualified -

- (a) **Absolute Privilege** - attaches to Parliamentary and Judicial proceedings and Reports. It does not attach to Council meetings, even when functions are exercised which attract an obligation to act judicially and fairly (e.g. in licensing matters). Communications

between the local Ombudsman and the Council are absolutely privileged.

(b) **Qualified Privilege** - exists where

- the person who makes a communication has an **interest or duty** (whether legal, social or moral) **to make it** to the person to whom it is made; and
- the person to whom it is made has a corresponding **interest or duty to receive it**; and
- the person who makes the communication is **not motivated by malice**.

Qualified Privilege will frequently attach to statements made in Council and Committee whether contained in a report or spoken. It will be a complete defence to prove that the person had a duty or interest to make the statement, that there was a corresponding duty or interest on the part of the recipient to receive it and that he was not motivated by malice.

So long as a person believes in the truth of what is said malice cannot normally be inferred. Malice may be inferred however, if it can be shown that he was motivated by a purpose **other than his interest or duty** to make the statement.

Examples of improper purposes or motives may include giving vent to personal spite or ill-will.

The requirement for a duty or interest to receive a statement has the effect of greatly limiting the extent of publication if the defence is to be relied upon. For example in the case of *De Buse -v- McCarthy* (1942) the Town Clerk of the Borough of Stepney sent out a notice convening a meeting of the Council to consider a report of the Committee regarding the loss of petrol from one of the Council's Depots. Included in the notice was a complete copy of the report of a Committee setting out its defamatory conclusions as to who in its opinion was responsible for the loss of petrol. In accordance with established practice a complete copy of the notice was sent to the public libraries in the Borough. In an action for defamation from the person named in the report against the Town Clerk for publication of a libel, the Town Clerk raised the defence of Qualified Privilege. He maintained that he was under a duty to circulate the report to Members, that Members had an interest or duty to receive it and that he was not motivated by malice. The Court held that the extent of publication of the report destroyed the privilege otherwise attaching to it. Ratepayers had been able to read the report in the public library and there was no interest

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or duty on their part to receive a report which was only a preliminary stage in an investigation.

Other points on Qualified Privilege to note are:-

- the disclosure of defamatory material concerning past events to new Members of a Council will not be privileged unless it is reasonably necessary to enable them to perform their duties;
- under the Public Bodies (Admission to Meetings) Act 1960 and the Local Government Act 1972 the press and public must on request be allowed access to or in certain circumstances be supplied with the agenda and certain other documentation relating to matters to be considered by the Council or a Committee. These Acts provide that where such matter is made available to the Press or to the public, the agenda and other documents are privileged unless publication is proved to have been made with malice. However, further publication by the press and/or public will not be privileged unless it satisfies the usual conditions for Qualified Privilege to attach.

**Other Defences include:-**

- (c) **Justification** - i.e. the defamatory statement is true and if so provides a complete defence.
- (d) **'Fair Comment'** - This defence is intended to allow any person (but in particular the press) to express their views honestly and fearlessly on matters of public interest even though that may involve "strong" criticism of the conduct of persons in the public arena or who hold public office. In this connection the administration of local affairs by the Council is a matter of public interest.
- (e) **Unintentional Defamation** - In cases of unintentional and non-negligent defamations, a defendant may avoid liability to pay damages if he is willing to publish a reasonable correction and apology and to pay the plaintiff's costs and expenses reasonably incurred as a consequence of the publication in question (e.g. costs of consulting a solicitor, obtaining Counsel's opinion etc.)

6. **Summary and Check-List**

Ask yourself the following questions before speaking in a Council or Committee meeting in a manner which could be construed as defamatory. If the answer to any question is "no" - do not speak unless you are absolutely sure of your facts. This will ensure that the defence of Qualified



Privilege is not lost, or if it is lost or not available that the defences of justification or fair comment will be available.

- Do I have an interest or duty to make the statement?
- Is there a corresponding interest or duty on the part of other Members to receive it?
- Is there an interest or duty on the part of the press and public to receive it?
- Do I reasonably believe in the truth of what I am about to say?
- Am I motivated to make the statement only by my interest or duty to make it?

**Remember - before speaking:-**

- Check your facts.
- Examine your motives.
- Remain courteous - even under provocation.
- Take your own legal advice if in any doubt.

**NOTE:** If you do not believe that there is an interest or duty on the part of the press and public to hear a statement it may be possible to propose a motion to exclude the press and public pursuant to The Local Government Act 1972 (as amended). The proposed statement would have to fall within the definition of exempt information as set out in the Access to Information Procedure Rules as contained in Part 4 of this Constitution.

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## **Good Practice Protocol for Councillors when Dealing with Planning Matters**





# ASHFORD

## BOROUGH COUNCIL

GOOD PRACTICE  
PROTOCOL FOR  
COUNCILLORS  
DEALING WITH  
PLANNING MATTERS

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## **GOOD PRACTICE PROTOCOL FOR COUNCILLORS DEALING WITH PLANNING MATTERS**

### **SECTION 1- INTRODUCTION**

#### **A. BACKGROUND**

1. One of the key aims of the planning system is to balance private interests in the development and use of land against wider public interests. It can therefore affect the value of land and property interests and the quality of their settings. Opposing views are often strongly held by those involved.
2. An ethos of decision-making in the public interest requires that councillors should not favour any person or entity nor put themselves in a position where they may appear to be doing so. It is important therefore that planning decisions are made openly, impartially and with sound judgment and for justifiable reasons. Indeed it may not be considered appropriate for councillors to serve on the Planning or other Committees dealing with planning matters if they have private business or other interests which are likely to bring them into frequent contact with the planning system, eg estate agents, builders, architects.
3. Planning decisions often involve complex balancing of social, economic and environmental factors. They frequently require application of national and local policies, reference to legislation and case law as well as rules of procedure and the need to comply with conduct and personal interest rules. Many decisions are subject to rights of appeal and judicial challenge and in all cases there is an expectation that decisions will be made fairly. Proper training of councillors involved in planning decision-making is therefore most important, when first appointed to serve on Planning Committee and regularly thereafter. The Council's Constitution therefore provides that formal training is a pre-requisite for membership of the Planning Committee and for acting as a substitute thereon and this includes training in procedural and probity rules.
4. In July 2012 the Borough Council adopted a new Code of Conduct for Councillors. That code applies at all times to all Councillors when acting as a councillor and not just in relation to planning matters. However, some provisions of the Code of Conduct are of special importance in the planning process. In addition to the Code of Conduct there are other legal and procedural rules which must be followed by Councillors at all times when dealing with planning matters. In particular decisions on planning matters must avoid bias or even the appearance of bias which is just as damaging to public confidence in the planning system.
5. The Local Government Association (LGA) recommends that Councils should adopt local protocols of good practice to supplement the Code of Conduct and to assist Councillors in ensuring all planning decisions are well founded and are

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reached impartially, openly and for justifiable planning reasons. In 1997 the Nolan Report on Standards in Public Life found that:

“Not everyone will understand or abide by rules of conduct. Indeed since huge profits may turn on a planning application, the risks may be greater there than elsewhere. A robust and effective system of checks and balances should be put in place to reassure the public that misconduct is kept to a minimum”.

6. The Council's Code of Conduct goes some way to meeting this objective. However it is appropriate that the code should be supplemented by this more detailed Good Practice Protocol focussing on planning matters. It has been prepared taking account of the following publications:
  - “Probity in Planning” (Nov 2013) by the LGA and Planning Advisory Service
  - “Connecting Councillors with Strategic Planning Applications” (Sept.2011) by London First and London Planning Officers Society.
  - Model Council Planning Code (April 2014) by Lawyers in Local Government (LLG)

## **B. AIM AND SCOPE OF THIS PROTOCOL**

7. The purpose of this Protocol is to support and assist the Borough Council in the proper discharge of its functions as planning authority and to ensure there are no grounds for suggestion that those participating in a decision were biased or the decision itself was unlawful, irrational or procedurally improper. This applies whether those functions are being discharged by Officers, the Cabinet, the Planning Committee, other Task or Working Groups or the full Council.
8. This Protocol applies to all Borough Councillors at all times when dealing with planning matters or involved in planning decisions. Therefore it applies not only to decisions on planning applications in Planning Committee meetings but also, for example, to decisions on enforcement and preparation of the Local Plan and documents related to it. It should also be followed on less formal occasions such as meetings with Officers or the public or consultative meetings and hearings.
9. This Protocol does not apply to parish councillors although it would be good practice for them to act in accordance with relevant parts of it when they deal with planning matters. However parish councillors who are also members of the Borough Council's Planning Committee must be conscious of the need to avoid the appearance of bias when they consider a planning matter at parish council level. This is dealt with in more detail in Section 3A of the Protocol 'Retaining an Open Mind' at para 5(c) under the sub-heading 'Dual Role Councillors'.
10. This Protocol is not part of the Borough Council's adopted Code of Conduct. However, breach of this Protocol may in some circumstances also amount to a breach of the Code of Conduct. Therefore a breach of this Protocol may result

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in a complaint to the Council's Monitoring Officer or police in the case of non-disclosure of a Disclosable Pecuniary Interest (DPI). Other breaches of the Protocol which do not amount to breaches of the Code can also be the subject of complaint to the Monitoring Officer. The issue of monitoring of this Protocol is dealt with below.

11. Members should also be aware that breach of this Protocol could place the Council at risk of Court proceedings as to the legality of a decision or a complaint of maladministration to the Local Government Ombudsman. Thus a breach could have serious consequences for the Council as well as personal consequences for the councillor.

12.

**Accordingly DO seek advice from the Monitoring Officer or his staff as early as possible and in advance of any meeting taking place, if you have any doubts about the application of this Protocol to your own circumstances.**

13. All references in this Protocol to 'he' or 'his' should be taken to include 'she' or 'her' and vice versa.

### **C. MONITORING OF THIS PROTOCOL**

14. This Protocol is part of the Council's Constitution. It is not however part of the Council's Code of Conduct. Any person whether an officer, councillor or member of the public, may make a written complaint to the Monitoring Officer that there has been a substantial failure to comply with the terms of this Protocol.

15. In the event that such a complaint also amounts to a complaint that the Council's Code of Conduct has been breached (for example because a declarable interest has not been declared) it will be considered by the Monitoring Officer in accordance with the Arrangements for dealing with Code of Conduct complaints.

16. In other cases the Monitoring Officer will consider the complaint and, where necessary, provide appropriate advice to the councillor regarding compliance with the Protocol. In serious or complex cases, the Monitoring Officer may prepare a report for the Council's Standards Committee seeking its views on whether a breach of the Protocol has taken place and/or what further action should be taken.

## **SECTION 2- THE COUNCIL'S ADOPTED CODE OF CONDUCT**

### **A. DECLARING INTERESTS**

#### **General Obligation**



1. Paragraph 3(2)(g) of the Council's Code of Conduct includes an overarching obligation that a member must not:

“(g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person an advantage or disadvantage.”

This Protocol gives guidance on what is likely to be considered “improper” in this context.

### **Disclosable Pecuniary Interests (DPIs)**

2. The Localism Act 2011 introduced the concept of DPIs, and the Council's Code of Conduct reflects the general law in relation to DPIs. In some circumstances failure to register with the Monitoring Officer (MO) or declare at meetings the existence and nature of DPIs, or participation at meetings when a DPI exists can be a criminal offence investigated by the police. All councillors must register their DPIs (and their spouse's or partner's) with the MO and keep the register updated. What is a DPI is set out in national regulations. This includes employment, contracts with the Council, land ownership and interests in the borough and shares/securities above a certain value. The Department for Communities and Local Government has published guidance for councillors entitled “Openness and Transparency on personal interests”(Sept 2013). This is available on the following link:  
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>.
3. A councillor will have a DPI in relation to a planning application if he or his spouse or partner owns, rents or licences land within the boundaries of the application site.
4. A councillor will have a DPI in relation to decisions on planning policy if he or his spouse or partner owns, rents or licences land which is or is part of a site or location under consideration or proposed for consideration within the context of preparing policy documents (or drafts or options/appraisals for such documents) such as the local plan.
5. Failure to register or declare the existence and nature of a relevant DPI at a meeting can be a criminal offence. Failure to declare could also jeopardise the validity of a decision. Under the Council's Code of Conduct, and under the Localism Act, **where a DPI exists:-**
  - **the DPI and the nature of it must be declared no later than the commencement of consideration of the relevant item of business**
  - **the councillor cannot speak on the item or participate in discussion or voting on the item**

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- **the councillor must leave the meeting room as soon as the relevant item of business is called**
  - **the councillor must not seek improperly to influence a decision on that matter (whether before or after the meeting) eg: through contact with officers or other councillors**
6. By way of illustration of the final bullet point above, if attending other public meetings, workshops or hearings organised by the Council or a third party such as a developer or parish council, the DPI should be declared to the meeting in the event the councillor wishes to participate.

If attending a private meeting organised by the Council such as a Task Group meeting or a developer briefing to members, the DPI should be declared at the start of the meeting in any event, but participation in discussion or questioning at such a private meeting will normally be inappropriate unless a dispensation has been granted (see paragraph 13 below)

7. Since a councillor with a DPI cannot make representations at a meeting or take part in any debate or vote, s/he will be unable to represent the views of constituents on the matter. It is important therefore that DPIs are identified at an early stage in the planning process, and that as early as possible the councillor makes arrangements for constituents' views to be channelled through another councillor. The councillor with the DPI may only make his personal views known on a matter by writing to the case officer and should disclose the existence of the interest in any such communications on the matter.

#### **Other Significant Interests (OSIs)**

8. The Council's adopted Code of Conduct also requires councillors to declare at meetings other non-DPI types of personal interest in matters being considered. The Code refers to these as 'Other Significant Interests' (OSIs). In short and in a planning context, an OSI is likely to arise where a decision upon a matter (eg: a planning application, or the potential inclusion of a site or location in a policy document such as a local plan) may reasonably be regarded as affecting the financial position of the councillor OR an "Associated Person"<sup>1</sup> to a greater extent than the majority of residents of the relevant area<sup>2</sup>
9. Failure to declare an OSI is a breach of the Council's adopted code of conduct and could in some circumstances jeopardise the validity of a decision taken by the Council. **Where an OSI exists:-**
- **The OSI and the nature of it must be declared no later than commencement of consideration of the relevant item of business**

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<sup>1</sup> An "Associated Person" includes a family member or your or a family member's employer or any other person or body with whom you have a "close association". This could be a friend, colleague, business associate or close social contact (who is more than a mere acquaintance). The full definition is set out in section 2c of this Protocol.

<sup>2</sup> Provided a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.

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- **The councillor must leave the meeting room when the relevant item of business is called but before doing so may make representations on the item of business in the same way as a member of the public may.**
  - **The councillor must not seek improperly to influence a decision on that matter (whether before, at or after the meeting) through contact with officers or other councillors and should follow the guidance at para 6 above.**
  - **If a councillor with an OSI chooses to express a view on the matter to the Head of Planning & Development e.g. as a consultee, s/he should do so in writing and should disclose the interest in any communications on the matter.**
10. **Although a Councillor with an OSI can make representations prior to leaving the room, and could therefore at that time also represent the views of constituents on the item of business, careful consideration should be given to this before doing so. This is because the councillor will not be able to remain in the room during debate on the item and so could not continue to represent constituents' views during debate. Furthermore, there is a risk of a conflict of interest arising where a councillor's position, possibly influenced by his interest, may be at variance with the views of some constituents. It will often be advisable therefore to make arrangements for constituents' views to be channelled through another councillor, as in the case of a DPI.**
11. The rules on OSIs are complex and councillors who think they may have an OSI are urged to take any necessary advice from the Monitoring Officer or one of the other lawyers in Legal Services at the earliest opportunity. Some examples of common OSI situations in the planning context may, however, assist councillors to consider their own individual positions:
- Where your property/land is outside the boundaries of an application site (or a site or location under consideration for the local plan for example) but its value is likely to be affected by the impact of proposed or potential nearby development, including impact on views, general amenity, traffic, noise etc.
  - Where a person whose financial position would be affected by the decision is your friend or a family member or otherwise a "close associate". This would obviously include the landowners/developers of a particular site but could also cover friends or family members whose land within or outside the site boundaries would be affected by the proposed or potential development.
  - Where you are, or your friend or family member is employed by or a shareholder in an applicant or landowner (where the decision would affect the financial position of that employer).
  - Where you are a member of another body that stands to benefit from a development such as the County Council, a Parish Council or a Housing Association that will receive money, land, facilities or housing from the developer.

### **Further Advice on Interests and Dispensations**

12. Whilst the decision on what action to take on interests is a matter for individual councillors, any councillor who, having considered his position, on any planning matter, remains unclear or would like to seek further advice, is encouraged to contact the Monitoring Officer or one of the other lawyers in Legal Services as early as possible and well in advance of any relevant meeting.
13. A Councillor who has a declarable interest – whether DPI or OSI - may seek from the Council's Standards Committee (or Monitoring Officer in some cases) dispensation to speak and/or vote but this will take time and the grounds for doing so are limited. Any councillor who wishes to consider this should contact the Monitoring Officer for further advice well in advance of any meeting at which s/he may wish to speak. There is no presumption that a dispensation will be granted; if granted, conditions may be imposed to protect the public interest.

### **Important Notes on Declaring Interests**

14. **The above provisions on interests apply not only when councillors are dealing with planning matters, but also all other kinds of matters. In the planning context, they apply to all councillors, whether or not they are members of the Planning Committee (or another committee or task group considering a planning or planning policy matter.)**
15. **A councillor attending a meeting who has a DPI or OSI in a matter under consideration at that meeting must declare the interest and the nature of it at the commencement of consideration of the matter (or at the commencement of the meeting when the Chairman asks for interests to be declared). This applies even to a councillor who is attending only to listen to debate or speak upon a matter as a non-voting ward councillor, for example.**
16. **At meetings of the Council, Cabinet and other committees, sub-committees etc., in addition to being required to declare any relevant DPIs or OSIs, there is an opportunity for councillors to voluntarily declare other lesser “interests” for transparency reasons alone.<sup>3</sup> All meeting agendas contain brief advice on disclosure of all three categories of interest.**
17. Summary:

**DO take advice from the Monitoring Officer or one of his staff as early as possible in cases of doubt.**

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<sup>3</sup> For example, membership of outside bodies that have made representations on agenda items, or where a member knows a person involved or affected but does not have a “close association” with that person, or where an item would affect the “well-being” of a member, relative, employer or other “close associate” but not their financial position.

**DO disclose interests in accordance with the above rules at meetings of committees and also at informal meetings and discussions with officers or other members.**

**DO then act accordingly and if the interest is a DPI take no part in the decision, and leave the room. If it is an OSI you may speak before leaving the room. In the case of a DPI or OSI, do not seek to influence a decision in advance other than by writing to the case officer and disclosing the interest.**

**DO NOT lobby fellow councillors or seek to put your own views through a fellow councillor on matters where you have a DPI or OSI.**

**DO NOT try to represent ward/local views if you have a DPI. Arrange with another Councillor to do so instead.**

**DO consider carefully whether you should represent constituents' views where you have an OSI and arrange with another councillor to do so instead where it would be prudent to do so.**

## **B. PLANNING APPLICATIONS BY A COUNCILLOR OR HIS/ HER SPOUSE OR PARTNER**

1. Particular care is needed when a Councillor (or his spouse or partner) applies for planning permission. This includes an application made by you (or your spouse or partner) alone, or jointly with someone, or by someone acting on your behalf. On occasions following recommended good practice may mean a councillor is treated differently and less advantageously from other applicants for planning permission.
2. It is good practice for a councillor to notify the Monitoring Officer of his (or his spouse's or partner's) intention to submit a planning application. The Monitoring Officer can then ensure that the proper internal procedures are followed including the reporting of such applications to Committee regardless of whether they would normally fall to be determined under officer delegated powers.

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3. The applicant councillor, whether or not a member of the Planning Committee, will have an interest in the planning application and cannot participate in the decision-making process. In such cases, the councillor is likely to be regarded as having a “Disclosable Pecuniary Interest” (DPI) in such a decision and so, if present at the meeting, would have to declare the interest and then leave the meeting room and not participate in the matter at the meeting. Failure to comply with these requirements could be a breach of the criminal law under the Localism Act 2011, as well as a breach of the Borough Council’s adopted Code of Conduct.

The Councillor cannot himself make use of the public speaking facility although he can arrange for an agent to do so on his behalf.

4. The councillor must take particular care not to lobby any officer or member of the Planning Committee in respect of the application as this is likely to be regarded as improperly seeking to secure an advantage in breach of the Council’s Code of Conduct. The Ombudsman has advised that councillors should not normally seek personal meetings or undertake personal discussions or negotiations with officers regarding their own (or their spouse’s or partner’s) applications (although they may exercise the same right as any applicant to explain their proposal to an officer in writing). They should appoint an agent where discussion and negotiation with officers on policy, design or neighbour issues is likely.
5. Any member of the Planning Committee – or indeed any other councillor who may wish to speak on the application - who has a close association with the applicant member eg: as a friend, may also have an interest in the matter which must be declared at the Planning Committee as an “Other Significant Interest” (OSI) under the Council’s adopted Code of Conduct. This would be so if the friendship is so close that a member of the public, informed of the facts, might reasonably conclude that it was likely to affect the manner in which the Member would speak or vote on the matter. In such a case the councillor declaring the OSI could make representations at the meeting but could not take further part in any discussion or vote and would then have to leave the meeting room. However a member contemplating speaking at Planning Committee in such circumstances should consider carefully how the public might perceive his/her speaking. A councillor could decide not to exercise this right.

However, mere membership of the same political group or party on its own will not be sufficient to amount to such an interest. A ‘close association’ would be required eg: significant social friendship outside the Council or a close working relationship.

6. Summary:

**DO notify the Monitoring Officer of your/your partner's intention to submit a planning application to the Council.**

**DO NOT take any part in the decision-making process on applications relating to your own (or your spouse's or partner's) land.**

**DO consider carefully prior to exercising any right to speak in relation to an application made by you or your spouse/partner in relation to other land or in relation to an application of a fellow Councillor who is a close associate**

**DO NOT seek improperly to influence officers or other Councillors on applications in which you have a DPI or OSI.**

**DO appoint an agent to undertake negotiations and discussions with Officers in relation to your own applications where it is reasonable to do so.**

**C. PLANNING APPLICATIONS BY AN "ASSOCIATED PERSON" OF A COUNCILLOR.**

A councillor will have an "Other Significant Interest" under the Code of Conduct in relation to a planning application made by or on behalf of an "Associated Person".

An Associated Person is any of the following:

- (a) Family member ( but see above in relation to spouse or partner)
- (b) Other person or body with whom the councillor has a close association
- (c) Person or body employing the councillor or a person named above
- (d) Any firm or company in which the councillor or a person named above is a partner or director
- (e) Any person or body in whom the councillor or a person named above holds more than £25,000 of shares/securities at nominal value
- (f) Anybody in respect of which the councillor is in a position of control and either (1) the councillor was appointed or nominated by the Council or (2) the body exercises functions of a public nature, charitable purposes or has a principal purpose of influencing public opinion or policy (including any political party or trade union).

In such a case, the councillor is entitled to make representations to the Committee but should first declare the interest and then withdraw from the

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meeting room after making any representations and prior to debate and voting.  
(See section A9 above)

In some cases however eg: when the land the subject of the planning application is owned or rented by the councillor or their spouse/partner, the councillor will also have a DPI. In such cases the councillor does not have the right to make representations. They should declare their interest, withdraw from the meeting room and not take part in any discussion or voting.

**DO declare an 'Other Significant Interest' (OSI) in a planning application made by or on behalf of an "Associated Person" and act in accordance with the code of conduct.**



### SECTION 3-AVOIDING BIAS OR PREDETERMINATION

#### A. RETAINING AN OPEN MIND

1. Planning decisions must be taken fairly on the basis of all relevant information and ignoring any factors which are not relevant. Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 all planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
  
2. “Fair” decisions must avoid any appearance of bias. The courts have sought to distinguish between situations which involve prohibited “predetermination” or bias on the one hand, and lawful “predisposition” on the other. The former is indicative of a “closed mind” and can make a decision susceptible to legal challenge. **In effect this means that members of any Committee making planning decisions must not commit themselves to speaking and voting for or against a particular matter in advance of hearing all the information relevant to the decision at the decision – making meeting (and must not be seen to do so).**

These principles apply equally to members who substitute for Planning Committee members at any meeting. It is only after reading an officer’s report and considering all the views which have been put forward (including at the meeting) that a member of the Committee should finally determine his stance on a particular matter. Up to that point, a member of the committee should retain an open mind, even if the inclination at various stages is to support or oppose. The strength of public opinion for or against a particular proposal is but one of the material considerations. A councillor’s overriding duty is to the whole community not just to ward constituents or any particular view held by them. A single biased councillor participating in the decision may be sufficient to render a decision unlawful no matter how many unbiased councillors take part in the decision or vote in a particular way.

3. A member of a decision-making Committee on a planning matter must always be seen to retain an open mind on a matter prior to formal consideration at a meeting.<sup>4</sup> If a councillor is seen to have predetermined his view and then takes part in the decision it will put the Council at risk of a maladministration complaint or legal proceedings on the grounds of the decision being tainted with bias.

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<sup>4</sup> Section 25 of the Localism Act 2011 provides that a councillor is not to be taken to have had a closed mind when making a decision “just because” he had previously indicated what view he took or might take “in relation to a matter.... relevant to the decision”. This appears to reflect the existing law which has long distinguished between “predetermination” (or closed mind) and “predisposition” and accepted that it is not wrong for a councillor to be predisposed to a particular view on a matter and to publicly express it, provided their mind is not completely closed. For example, a councillor who says “windfarms are blots on the landscape and I will vigorously oppose each and every one that comes before this committee” would be perceived to have a closed mind on such applications, such that s/he should not participate in decision-making; whereas a councillor who says “many people consider windfarms ugly and noisy and I will need some persuading that any more should be allowed in this area” would probably be able to participate

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4. If a member of the Planning Committee decides in advance that he must take a particular view on an application (for example because it is so controversial with constituents in his ward) or acts in such a way that it amounts to the same thing then that will preclude the councillor from participating in the decision on the matter at the relevant meeting. **In practice, this means the councillor should not move or second a motion on the matter or take part in any vote on the matter or seek improperly to influence a decision on the matter through contact with officers or other members of the Planning Committee. In effect councillors have to choose between publicly supporting or opposing a particular application and retaining their ability to participate fully in the decision itself at Committee.** However a councillor will not have predetermined a decision merely by listening to and receiving representations from residents or interested parties, making limited comments to such people or being a vehicle for the expression of local opinion at a Committee meeting provided he makes it clear that he himself is not already committed to voting in accordance with those views.
  
5. The principle of Committee members retaining an open mind is of considerable importance in many common situations. Each of these is dealt with in turn below although there is inevitably some overlap between the various sub-headings:
  - (a) Lobbying: lobbying of Planning Committee members by applicants, objectors etc. is a perfectly proper part of the democratic process. However, members' response to approaches by applicants, objectors or other members of the public is of critical importance if they are to avoid having their impartiality called into question. **Accordingly when approached, Planning Committee members should never commit themselves to speak or vote in any particular manner or express such a firm point of view that it amounts to the same thing.** In practice members can respond by saying they understand the person's views and that whilst they can report that view to the Committee they cannot commit themselves until they have addressed their minds to the full range of information at the Committee. Members should also advise that the person's best interests would be served by putting their views in writing to the relevant planning officer who will include them as part of a formal report to members or take them into account if the decision is taken under delegated powers.

If members of the Committee receive lobbying material from applicants/objectors it is good practice to provide a copy to the planning case officer (if s/he has not already received it) so that appropriate account can be taken and advice given on the points raised.  
**SEE ALSO SECTION 4C ON INTERACTING WITH PUBLIC AT THE COMMITTEE MEETING**
  
  - (b) Meetings with Applicants, Objectors etc: individual members of the Planning Committee **should not attend private meetings with**

**applicants or groups of objectors on their own.** Such meetings, if considered helpful in order to clarify issues, should be arranged by and attended by relevant planning officers as well so that those present at the meeting can be advised from the outset that the discussions will not bind the authority to any particular course of action and to ensure the meeting is properly recorded on the application file.

The same principle applies to formal presentations to members which are sometimes arranged or requested by applicants particularly on very major proposals. Whilst Planning Committee members at such events may quite properly ask questions and seek clarification about the proposals, they should not express strong views or indicate how they are likely to vote when the matter comes before the Committee.

**SEE ALSO SECTION 4B ON DISCUSSIONS WITH APPLICANTS.**

- (c) Dual Role Councillors: members of the Borough Council's Planning Committee may also be members of other bodies/authorities who are consultees on a particular planning proposal eg an amenity society or a parish council. It is important that councillors wishing to retain their ability to take part fully in the ultimate decision at the Borough Council's Planning Committee do not fetter their discretion if they take part in consideration of the matter at an earlier stage when the consultee body forms its view on the matter. Such 'dual role' councillors can certainly take part at this earlier stage if they wish but should make it clear to the consultee body that any view they express on the matter at that stage is on the basis of the more limited information before that body and they do not commit themselves to vote in a particular way when the matter comes before the Borough Council's Planning Committee when fuller information and a full officer report will be available. When the matter comes before the Borough Council's Planning Committee, such councillors should consider whether any declaration of interest is needed (e.g. if the parish council of which they are a member stands to gain financially from the grant of a permission) or if they wish to make a voluntary announcement for transparency reasons alone (see section 2A)
- (d) Ward Councillors, relevant Portfolio Holders etc.: Planning Committee members who are ward councillors for major or controversial planning proposals, or relevant portfolio holders, can be placed in a particularly difficult situation. Lobbying by objectors or supporters may be particularly strong. If such a councillor who is a member of the Planning Committee decides that he must publicly take a particular position on an application in advance then that will preclude the councillor from moving or seconding a motion or voting on the matter. He would still be permitted to speak at the Committee but should do so not from the normal committee members seating area but (to avoid confusion) from another position, such as the public speaker position or the back row of seating behind members of the Committee, and his reason for doing so should be explained to the Chairman.

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- (e) Action Groups: local residents sometimes form action groups specifically to support or oppose particular planning proposals. Participation in or association with such groups by members of the Planning Committee requires particular care. Membership or active participation will give the appearance that a member is committed to the aims of the group and therefore to a particular view on the application. Accordingly a member of the Planning Committee would have to choose between being a member of or supporting such a group or participating in the Planning Committee decision. A councillor should not do both. This would not of course preclude the Councillor from receiving the views of the group. Attendance at any meetings of an Action Group would be inadvisable unless it is a public meeting and attendance is on the express basis of listening only and not being committed to vote on the matter in a particular way until all the evidence is to hand.
- (f) Group Whips: Planning decisions must be made on the basis only of material planning considerations. Both the Ombudsman and the courts have ruled that a decision on a planning matter can be unreasonable and unlawful if one or more councillors blindly follow party instructions on a particular matter. The Ombudsman has expressed the view that use of a party whip to influence a planning decision can in itself amount to maladministration since it potentially removes councillors' ability to make balanced decisions based only on material planning factors. Councillors must not have closed minds on planning decisions, whether on the grounds of party loyalty or otherwise.
- (g) The "Advocate" role: A member of the Planning Committee should not move or second a motion or vote on a planning matter if he has become so associated with a particular proposal as to be regarded as an advocate for it and, in effect, to have predetermined a decision in relation to it. This could arise, for example, when the Council itself is the applicant for consent and the councillor has taken a significant role – beyond mere membership of another relevant Council Committee – in proposing or advocating the proposal. It may also arise, for example, in relation to any proposal which has been positively promoted or supported by another body on which a member of the Planning Committee sits eg: an outside body. However if a councillor's support or advocacy for a particular proposal has been given in a way which is consistent with, and expressly acknowledges the need for, separate consideration of the planning merits of any proposal or project, s/he will normally still be able to take a full part in decision-making at Planning Committee. For this reason, resolutions of Cabinet or other Committees to support or fund development projects should (unless planning permission has already been granted) always be expressly subject to the obtaining of permission where it is required.
- (h) Gifts and Hospitality: Under the Council's Code of Conduct every councillor must within 28 days of receiving any gift, benefit or hospitality with an estimated value of £100 or more (or a series of gifts, benefits or

hospitality from the same or an associated source with an estimated cumulative value of £100 or more) provide written notification to the Monitoring Officer of the existence, nature and source of the gift, benefit or hospitality.<sup>5</sup> This applies at all times, not just in relation to planning matters.

However, any offer or acceptance of a gift, benefit or hospitality as an inducement or reward for any action a councillor may take as a member is prima facie bribery and could lead to criminal prosecution. The sensitivity of planning decisions means members should avoid accepting any gift, benefit or hospitality from an applicant, supporter or objector to any current planning proposal and should take particular care in relation to offers which may be motivated or perceived to be motivated by possible future planning proposals. Any councillor who considers he has been exposed to inappropriate offers of gifts, benefits or hospitality should inform the Monitoring Officer immediately.

- (i) Referring Delegated Planning Decisions to Planning Committee: Planning officers have delegated powers to determine most planning applications. However, the Council's Constitution allows the relevant Portfolio Holder or ward councillor to request in writing that determination of an application be elevated to the Planning Committee. It is important that a councillor who is (or may substitute as) a member of the Planning Committee so requesting does not do so on grounds which suggest he has a pre-determined view on the matter. The Constitution therefore provides that, a councillor's request should be solely on the basis that he considers the application raises "issues of significant local importance".
  
- (j) Ward Councillors as Consultees on Planning Matters: ward councillors who are also members of the Planning Committee should not express firm and fixed views e.g. by writing to the planning case officer, on planning applications as consultees in advance of formal consideration of an application. If the councillor does so he may be regarded as having predetermined a decision and be unable to move or second a motion or vote if the application is reported to Committee. In the event a ward councillor does express a fixed view in the belief that the matter will be determined under delegated powers and it is subsequently elevated to the Planning Committee the ward councillor may be regarded as biased and unable to move or second a motion or vote on the matter (unless he made it clear that his view as a consultee was on the basis of currently available information and he is not committed to that view in the event that further information becomes available e.g. through a Committee report.)

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<sup>5</sup> The gift, benefit or hospitality may also need to be declared at a meeting where it is relevant to a matter being considered at the meeting. See Paragraph 7 of the Council's Code of Conduct

6. Summary:

**As a Planning Committee member (and this includes any councillor substituting for such a member):**

**DO retain an open mind on all matters coming before the Committee and be aware of the wide range of circumstances in which there is a risk of being regarded as having a closed mind or having “predetermined” a matter, precluding you from participating fully in Planning Committee decisions.**

**DO NOT move or second motions or vote on matters where you have predetermined your view or may be seen to have done so in any of the circumstances described above and. If speaking, follow the guidance in (d) above.**

**DO base your judgements only on material planning considerations and not factors such as party loyalty.**

**DO follow the guidance set out above if you are lobbied or asked to attend meetings with applicants, objector’s groups etc.**

**DO take particular care not to be seen to form a final view on planning matters when they come before other bodies of which you are a member e.g. parish councils, amenity societies, other Council committees.**

**DO NOT join or become identified with any pressure group formed for the purpose of promoting or opposing specific planning proposals unless you wish to do so in preference to taking part in the Planning Committee decision.**

**DO NOT accept gifts, benefits or hospitality from applicants or objectors to current or proposed or potential planning applications, and DO declare any that you have accepted that are relevant to any decision you are involved in.**

**DO NOTIFY the Monitoring Officer if you consider you have been subjected to inappropriate lobbying or offers of gifts, benefits or hospitality.**

**DO make it clear if responding to consultations as a ward councillor that your view is on the basis of information currently available and you are not committed to vote in a particular way and will need to consider all further information (e.g. by way of a report to Committee) as it becomes available.**

**DO NOT request a delegated decision to be elevated to the Planning Committee on any ground other than that you consider the matter raises issues of significant local importance.**

## **B.THE COUNCIL'S OWN APPLICATIONS**

1. The law allows and requires the Council to determine its own planning applications. This can give rise to problems of public perception of favourable treatment by members or officers. There can also be internal tensions in that a member of the Planning Committee may have been involved in the decision to seek planning permission or as a portfolio holder or otherwise may have become closely identified with supporting a particular project. Therefore the Council's own applications should be handled in a way which gives no grounds for accusations of favourable treatment. All such applications will be presented to a public meeting of the Planning Committee.
2. The Council is a single legal entity and the fact that a member has been involved in the decision to seek planning permission does not of itself give rise to a declarable interest when the matter comes before the Planning Committee.
3. However the rules on bias do still apply. In taking a Council decision to authorise a project which will require planning permission and/or to apply for planning permission, members must recognise that the application has still to be considered on its planning merits and the decision to progress the project and /or to seek planning permission does not in any way commit the Planning Committee to grant permission.
4. A member of the Planning Committee (or a planning policy- making Committee) should not move or second a motion or vote on a Council planning application (or the inclusion of Council-owned land in a policy document) if they have previously committed themselves on the planning merits of the proposal or if they have become so associated with it as to be reasonably regarded as an advocate for it (see Section 3A, para 5(g)) Councillors discussing such a project at another committee meeting (such as the Cabinet) should do so in a way which expressly acknowledges the need for separate consideration of the planning merits of any proposal or project and any relevant resolution should be expressly subject to the obtaining of any necessary planning permission.
5. Summary:

**DO NOT move or second a motion or vote at the Planning Committee if, at another Committee or otherwise you have committed yourself on the planning merits of the proposal or publicly advocated the proposal, unless this has been done in a way which expressly acknowledges the need for separate consideration of the planning merits of any proposal or project**

## **C. OTHER SENSITIVE APPLICATIONS AND CASES**

1. Proposals submitted (or objections lodged) by or on behalf of serving and former councillors, officers, consultants employed by the Council, or their close

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associates or relatives can easily give rise to suspicions of impropriety. They should be handled in a way which gives no grounds for accusations of favouritism.

2. Accordingly, applications by serving councillors or their spouses/partners and serving officers or their spouses/partners will always be reported to Planning Committee for decision even if the proposals are such that they would normally fall to be dealt with by officers under delegated powers.
3. On occasions there will be other types of application which are considered sensitive and which should be dealt with in the same way. These include some applications by ex-Councillors (for example by former councillors who have served recently or are otherwise still well known political figures) and, exceptionally, some applications by former officers. Applications to which Councillors or senior Council officers (or spouses/partners) are objectors may also come within this category. In such cases the officer report will make clear the reasons for bringing the matter before Committee.
4. In all such cases Members must be aware of the potential public sensitivity of decisions and be aware of the need to declare interests if applicants are close friends or 'close associates', and follow the guidance in Section 3A in relation to predetermination.
5. Summary:

**DO be aware of the need to consider and declare interests and predetermination in accordance with the normal rules where applications by Councillors, ex-Councillors, officers etc are reported to Planning Committee for decision.**



## **SECTION 4- POTENTIAL PROCEDURAL PITFALLS**

### **A. ROLES AND RELATIONSHIPS WITH OFFICERS**

1. Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate whilst officers advise councillors and are responsible to the Council as a whole. A successful relationship is based upon mutual trust, understanding and respect of each other's positions.
2. Both councillors and officers are guided by codes of conduct. Neither should act as agents for third parties pursuing planning matters with the Council even if they are not involved in the decision-making on them.
3. Qualified planning officers preparing or approving reports and recommendations for Committee decision (and making delegated planning decisions) are subject to rigorous professional duties under conduct codes monitored by their professional body, the Royal Town Planning Institute. Councillors must be aware of and respect these duties. They include the following duties:  
"to fearlessly and impartially exercise independent professional judgement to the best of their skill and understanding" and "not to make or subscribe to any statements or reports contrary to their own bona fide professional opinion".  
They are accordingly under a professional duty to make recommendations solely in accordance with their professional judgement.
4. The Council's Code of Conduct provides at paragraph 3(2)(c) that a member must not  
"do anything which compromises, or is likely to compromise, the impartiality or integrity of those who work for or on behalf of the authority".
5. It follows from the above that councillors must not put pressure on case officers or their managers to put forward a particular recommendation regarding an application or potential allocation of land if the officer's professional judgement is at variance with the views of the councillor. This does not prevent a councillor asking questions or submitting views to the planning officer or indeed taking a different view from the officer at any Committee meeting, although a councillor who is also a member of the Planning Committee should take care not to express opinions which indicate a pre-determined view in advance of the meeting.
6. Councillors should take care not to criticise officers personally in public eg at Planning Committee meetings, even when they strongly disagree with the officer's professional opinion.
7. Summary:

**DO be aware of and respect the planning officer's professional duties.**

**DO NOT seek to improperly influence an officer's report on a planning matter or delegated decision by putting pressure on him or his manager to make a particular recommendation or decision.**

## **B. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS WITH APPLICANTS**

1. Pre-application discussions between applicants and the Council can benefit both parties. In most cases such discussions take place between (potential) applicants and officers.<sup>6</sup>
2. Particularly in the case of major strategic or potentially controversial proposals councillors can also have an important role to play at pre-application stage. They are able to offer local knowledge and expertise and an understanding of community views. This can help identify key issues at an early stage and ultimately can result in better decisions and better quality developments. However, councillors who are members of the Planning Committee should not attend meetings with applicants, developers or objectors unless they are and attended by officers. ( see Section 3A para 5 (b) above)
3. Involvement by and input from councillors can take various forms. Case officers may give briefings to ward councillors on proposals in their ward. On some major schemes officers will arrange for presentations to be given to councillors. Exceptionally, a meeting between officers and an applicant or potential applicant may be attended by a ward councillor or portfolio holder.
4. It is important that such opportunities for early councillor input and feedback should not give rise to perceptions that they are being used by applicants as part of a lobbying process or that those who will be making decisions may have made up their minds in advance of a formal decision about potential or actual proposals. Accordingly developers making a presentation will do so on the express basis that it is for information purposes only (not for negotiation) and to provide councillors with an opportunity to find out more about a scheme and ask questions. Similarly councillors will participate on the basis that if they are members of the Planning Committee they will retain an open mind throughout the process and will not indicate firm support or opposition. Any views they do express will be personal and provisional, being based on the limited information available at that stage.
5. Where councillors have a DPI or OSI in relation to a matter the subject of a presentation to members, the guidance set out in Section 2 paragraphs A6 and A9 above should be followed.

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<sup>6</sup> Although the term "pre-application" has been used, the same considerations apply to discussions which occur after an application has been made but before a decision is taken, ie, "pre-decision".

**DO take advantage of opportunities to attend presentations on major development proposals attended by officers and ask questions but take care not to express firm views in support or opposition and never indicate how you would intend to vote on a proposal at Committee.**

**DO NOT attend meetings with applicants, developers or objectors unless they are attended by officers.**

**DO follow the guidance in Section 2 para. A6 an A9 in the event you have a DPI or OSI in a matter the subject of a presentation, meeting or workshop.**

### **C. PUBLIC SPEAKING AT PLANNING COMMITTEE**

1. The Council has agreed that members of the public and parish councils and community forums can address the Planning Committee in relation to individual planning applications. The Scheme of Public Participation in the Council's Constitution includes procedural rules for speaking at Planning Committee.
2. Allowing public speaking may reduce the amount of direct lobbying of councillors and helps Committee members who are lobbied prior to the meeting to remain impartial. However councillors sitting as members of the Committee should not allow oral or written messages to be given to them by members of the public (including the applicant) during Planning Committee meetings. This can be perceived as seeking to influence a member improperly and could create a perception of bias. If unsolicited information is passed to a Planning Committee member, it is good practice to declare this at the meeting so that other Committee members, officers and the public are aware of it and officers can give any necessary advice.

**DO note that public speaking rights may be exercised in accordance with the approved Public Participation Scheme.**

**DO NOT allow members of the public (whether supporters or objectors) to communicate with you during the course of a Committee Meeting (orally or in writing) as this may give the appearance of bias.**

### **D. PLANNING SITE VISITS**

1. Formal site visits by the Planning Committee should only be used where the benefit is clear and substantial. Officers will have visited the site already and assessed the proposal against policy and other material considerations.
2. Formal site visits must be treated as part of the Planning Committee's consideration of a planning application and should not be used as a lobbying opportunity by applicants, objectors or supporters. They are intended to enable members to evaluate the nature and impact of proposed development and are

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subject to the same restrictions as ordinary meetings of the Committee. This means:

- (a) members should declare any OSI to a senior officer or a member services officer (who should record the fact) before the site visit commences.
  - (b) A member with a DPI in a matter should not attend a site visit in relation to that matter.
3. The Council has approved a guidance note for member site visits prior to determination of planning applications and this is included in the Council's Constitution within the Planning Committee's Terms of Reference. The guidance note should be followed at all times by members.
  4. It is important to avoid any appearance of bias which could arise by entering an application site other than as part of an official site visit, even in response to an invitation. A Councillor may wish to view a site from public vantage points but it is not good practice to enter private property alone, even if invited, as it can lead to a perception that the councillor is no longer impartial.
  5. Summary:

**DO declare an OSI prior to or at site visits in the same way as you would at the Committee meeting itself.**  
**DO NOT attend a site visit if you have a DPI in the relevant application.**  
**DO follow the Council's Guidance Note in relation to site visits.**  
**DO NOT enter planning application sites on 'unofficial' visits.**

## **E. DECISIONS AGAINST OFFICER ADVICE**

1. On occasions the Planning Committee will wish to determine an application contrary to the recommendation of officers. This is perfectly proper provided the Committee substantiates its decision with proper planning reasons. A failure to do so could lead to an appeal and the award of costs against the Council and /or a legally unsound decision.
2. The Council's Constitution includes a procedure (for use in exceptional circumstances only) whereby officers can request deferral of a decision in the event that the Committee intends to reach a decision against officer advice. Such a procedure is intended to enable officers to provide further advice on conditions, obligations, reasons for refusal etc.in complex cases, in order to improve the quality and robustness of the Council's final decision.
3. In the interests of transparency and good practice, where Planning Committee wishes to grant permission or consent contrary to officer advice, it should do so for sound planning reasons expressed in the discussion at Planning Committee

in accordance with the statutory test in s.38(6) of the 2004 Act referred to in para1 of Section 3A above.

Similarly if it is moved and seconded that an application be refused contrary to officers' advice, then the reasons for the proposal to refuse planning permission must be clearly formulated before the matter is voted upon so that they can be included in the relevant decision notice. This is a statutory requirement.

4. Summary:

**DO be aware of the need to give sound planning reasons for all decisions and DO, where refusing permission contrary to advice, formulate detailed reasons at the time of the decision and prior to the vote so the same may be included in formal decision notices.**

## F. PLANNING OBLIGATIONS

1. In some circumstances it is reasonable to require a developer to offset the impacts of development or to provide or fund community benefits, affordable housing or works in connection with a grant of planning permission. This is done by requiring the landowners to sign a deed of planning obligation under s106 of the Town and Country Planning Act 1990. Regulations provide that a planning obligation can only be a reason for granting planning permission if the obligation is:
  - necessary to make the development acceptable in planning terms
  - directly related to the development
  - fairly and reasonably related in scale and kind to the development.
2. This rule is intended to bring about certainty and uniformity of approach and to avoid any perception that planning permissions can, in effect, be bought and sold. The Council's policies on planning obligations are based on these tests. If planning obligations are offered or required which have little or nothing to do with the proposed development, apart from the fact they are offered by or required of the developer, they are likely to be regarded as an improper attempt to buy or sell a planning permission. The courts have in the past quashed planning permissions where local authorities have been seen to give undue weight to the offer of extraneous benefits.
3. Furthermore government guidance urges that planning obligations be "fully justified and evidenced" and that transparency is important. Therefore, a councillor who negotiates or discusses privately with a developer the nature of possible planning benefits or obligations will put the council in breach of these principles. Such a councillor is also in danger of being seen to reach a pre-determined view on the proposed development by agreeing to support or oppose it on the basis of a developer's stance in such discussions and/ or being

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influenced by improper considerations beyond those relating to the planning merits of the proposal.

4. For all the above reasons **individual councillors should avoid discussing or negotiating planning benefits with developers.** Officers will be able to advise on what may be properly required in particular cases, and where potential benefits meet the relevant criteria officers will seek to negotiate their provision with developers in an open manner and properly documented on case files.
5. On occasions, a developer or landowner may offer ( or be solicited to offer) residents or a parish council a community benefit unrelated in planning terms to the development in the event that permission is granted for a particular development. The Borough Council would be unable to take into account or require such extraneous benefits in reaching its decision. If councillors become aware of such offers being made they should refer the issue to planning officers to consider whether they meet the relevant tests. In cases of doubt, councillors can notify the Monitoring Officer of such offers being made or solicited.
6. Summary

**DO NOT discuss or negotiate possible planning benefits with developers. Instead discuss your views with the planning case officer who will consider whether such benefits can properly be sought and, where appropriate, will discuss their provision directly with the developer.**

**DO draw to the attention of planning officers or the Monitoring Officer any offers to the local community of what may be extraneous benefits unrelated to the development.**

## Guidance Note

### Planning Committee – Members’ Site Visits Prior to Determination of Planning Applications

#### 1. Background

In determining planning applications the Council is acting in a quasi-judicial capacity and as a matter of law it must act fairly throughout the determination process and observe the rules of natural justice at all times. In recognition of this position, the Planning Committee at its meeting of 11 August 1993 adopted a procedure for all site visits made prior to the determination of a planning application. The procedure, set out below, was modified in September 2000 to take account of the Council’s obligations under the Human Rights Act to ensure equal treatment as between applicants and objectors throughout the decision-making process.

#### 2. Site Visit Procedure

- (a) The normal practice will be for Officers to obtain an applicant/landowner/s agreement to a Members’ site visit taking place on his land. Other persons invited to attend will be a Parish Council representative and the Ward Member (if not a member of the Committee). In addition relevant Council Officers will attend. Neighbours will be contacted and informed of the arrangements only where it is thought likely that Members will wish to enter their land as well in order to assess the impact of a particular proposal.
- (b) Since objectors do not have any right to attend a site visit held on private land neither the applicant nor his/her agent will be invited to take an active part in the Members’ site visit. Similarly if Members enter the property of an objector, that objector will not be invited to take any part in the site visit.
- (c) Site visit arrangements will be confirmed in writing to all interested parties. Letters of confirmation will make it clear that representations on merits will not be permitted at the site visit and that the purpose of the site visit will be simply to enable Members to familiarise themselves with relevant features of the site and surroundings.
- (d) Whilst neighbours, objectors and amenity society representatives will not be invited to site visits, where such persons nonetheless attend the site then, subject to the landowner’s consent, such persons may be allowed to remain but the limited scope of the site visit – and the fact that neither applicant nor objectors will be

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permitted to take any active part in the site visit – should be explained as necessary.

- (e) During site visits there must be no separate discussions taking place between Officers or Members and either applicants or objectors etc.
- (f) The site visit will proceed on the basis that the Strategic Development and Delivery Manager/Development Management Manager adequately describes the proposal and the issues of policy/amenity/safety involved. The Strategic Development and Delivery Manager/Development Management Manager's report will normally have been submitted to the previous meeting of the Committee and a copy of it will be sent to all parties with the letter confirming the site visit arrangements.
- (g) Members may seek clarification, where necessary, or geographical or other relevant features of the site or surroundings by way of questions of Officers. There should, however, be no discussion of or representations on the merits of proposals or objections thereto. The proper forum for any such discussion is the Committee meeting itself.
- (h) In the event that Members consider new issues have arisen from a site visit then the proper course will normally be to request Officers to seek any necessary clarification from the relevant parties and in this respect it would be helpful if interested parties could be available to provide any such clarification to Officers between the site meeting and the Committee meeting. Exceptionally, it may be necessary to defer a discussion at the Committee meeting and request a further report from the Strategic Development and Delivery Manager/Development Management Manager upon those issues. Otherwise, the Chairman at the formal Committee meeting itself will invite discussion and debate in the light of the Officers' report and site visit



## Ashford Borough Council

### Social Media Guidance for Councillors

#### 1 About this Guidance

- 1.1 Ashford Borough Council (**the Council**), recognises that social media is now one of the most popular communication tools. It provides unique opportunities for councillors to participate in interactive discussions with constituents and share information with communities about topics of interest.
- 1.2 However, your use of social media can also pose risks to your own and the Council's reputations if it is not used in the right way. Social media can also put confidential information at risk and jeopardise compliance with legal obligations. Accordingly, this Guidance has been adopted to protect both you and the Council from reputational damage, to minimise the risks to both through the use of social media and to minimise the risk of you being the subject of code of conduct complaints.
- 1.3 This Guidance applies to you when using all forms of social media, including Facebook, LinkedIn, Twitter, Wikipedia, Instagram, Snapchat, You Tube and all other social networking sites and blogs. It applies to use of social media for council purposes as well as personal use that may affect the Council in any way.

#### 2 Social Media & the Council's Code of Conduct

- 2.1 The Council's adopted Code of Conduct applies whenever you are acting in your capacity as a councillor. It may also apply when you give the impression you are acting in this capacity. For example by referring to your councillor role in the course of communications or perhaps when making general political comment. But it is not always clear-cut, especially when you are using social media platforms. However you are likely to be regarded as acting in your capacity as a councillor when you are discussing Council or Ward business with residents or other stakeholders or if you sign off your posts as "Councillor"
- 2.2 In other circumstances the position may be less clear eg when you are expressing personal views on social or general or national political issues. If your social media profile refers to the fact you are an Ashford Councillor, you leave open the possibility that others may regard you as expressing views in that capacity. You may wish to ensure therefore that your profile makes clear that views expressed by you are solely in your personal capacity unless expressly given as councillor or in relation to Councillor ward business.

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- 2.3 Since the position on capacity may not always be clear you should at all times be aware of the potential to be in breach of the code of conduct in your use of social media eg: by bullying, by bringing your office or the Council into disrepute by what you say or do, by disclosing confidential information etc. Considerable care should be taken to avoid these risks and you should always seek advice from the Monitoring Officer or the Communications Team where you are unsure.
- 2.4 In February 2018, the Council decided to include two specific provisions in its Code of Conduct to emphasise the importance of avoiding these risks when using social media.

- you must not publish on social media material that a reasonable person would consider offensive or abusive.

- you should be aware that members of the public may perceive you to be acting as a councillor even when you consider you are acting in your personal capacity. This includes when you publish material on social media. You must make it clear in your social media profile and/or in any posts/tweets etc whether you are acting in your personal capacity or as a councillor.

**DO always be aware that the Council's code of conduct may apply when you use social media and always ensure you do not say anything which could cause you to breach the code eg bullying or abusive language**

**DO ensure that when you use social media it is clear whether you are acting in your personal capacity or as a councillor eg: by making it clear in your profile (or posting) that the views you express are solely in your personal capacity unless specifically given as councillor**

### **3 Business use of social media**

- 3.1 You may wish to use social media to fulfil your responsibilities in your capacity as councillor. You must ensure that you use social media at all times in a professional and responsible manner.
- 3.2 If you are contacted for comments about the Council or about council business by the media for publication anywhere, including in any social media, you should normally direct the enquiry to the Communications Team in the usual way. You should not express views on behalf of the Council on social media unless you are specifically authorised to do so. For example, you could use a phrase such as 'speaking for myself only' or "I cannot speak for fellow councillors but" ... In the event of contact by residents on social media,

it will often be advisable to liaise with the relevant service head before responding to ensure you have the latest up to date information on the matter.

**DO direct media enquires or requests for comments on Council business to the Council's Communications Team in the usual way. DO NOT express views on behalf of the Council (or give the impression you are so doing) on social media unless you are specifically authorised to do so**

**DO liaise with relevant service heads where necessary to ensure your information is up to date prior to responding to residents on social media**

#### **4 Personal use of social media**

- 4.1 You must make sure that your personal use of social media does not involve unprofessional or inappropriate conduct and does not interfere with your responsibilities, duties and productivity as a councillor.
- 4.2 Although there may be advantages in councillors having separate social media accounts for purely personal use and councillor work, this may not be practical or desirable for everyone. Also, separate accounts may give the false impression that contentious or immoderate statements on a personal account are acceptable. In reality, such statements would be likely to be picked up by the media regardless of which "account" was being used. Therefore, it is more important to ensure that caution and common sense is used at all times on social media rather than focus on which accounts and capacity a councillor is using at the time.
- 4.3 If you do have separate social media accounts for purely personal use, you may wish to ensure appropriate privacy settings are used if you do not wish them to be accessed by the press and public. Your personal accounts should include only personal contact details such as your private email address rather than your councillor contact details.

**DO be cautious and aware of the risks at all times when using social media whether in your private capacity or as a councillor.**

**DO consider carefully the use of appropriate privacy settings and contact details on purely personal social media accounts**

## **5 Your responsibilities when using social media**

- 5.1 Any social media profile or page that you use should state that any views on that page or in any of your postings are your own views and do not represent the views of the Council. You should not use Ashford's logo or other branding material.
- 5.2 It is important to bear in mind when using social media, that you become a publisher and subject to libel laws. What you post, if unprotected, can be seen around the world instantly. This can be so even if comments are later removed or deleted as screen grabs can be taken with a single click. Journalists scour social media hourly for stories. You alone are responsible for the content you publish on social media and you should ensure you do not give the media a story! Accordingly, you must never breach the code of conduct or any of the Council's other policies including ICT or internet use policies, when you use social media. In particular you must not:
- 5.2.1 make any social media communications that could damage your or the Council's interests or reputation, even indirectly. This means you should always consider carefully not only what you say yourself but also how it might be perceived if you share or "like" or "re-tweet" immoderate or offensive posts or comments by others
  - 5.2.2 use social media to defame or disparage the Council, other councillors, staff or any third party;
  - 5.2.3 harass, bully or unlawfully discriminate against anyone;
  - 5.2.4 make false or misleading statements;
  - 5.2.5 use insulting or offensive language or engage in any conduct that would not be professionally acceptable;
  - 5.2.6 use social media to post content which infringes anyone else's rights or content which is of an illegal, sexual or offensive nature;
  - 5.2.7 use social media in any way which is hateful or abusive, including using racist, sexist or other discriminatory language;
  - 5.2.8 use any images, text or other material which you do not have consent or the right to use (for example because the copyright belongs to someone else);

- 5.2.9 express opinions on the Council's behalf via social media, unless expressly authorised in writing by the Council to do so.
- 5.2.10 cite or reference or disclose personal data of any customers, partners, suppliers or other third parties who have a relationship with you or with the Council unless you have their express consent;
- 5.2.11 post comments about sensitive or confidential council topics or do anything to jeopardise the Council's confidential information and intellectual property. You must not include the logo or letterhead or any other similar Council device or 'brand' in any social media posting or in your profile on any social media.
- 5.3 If you are unsure whether something you want to post is appropriate, you should refrain from posting it until you have been able to speak to someone about the appropriateness of the post. If you have questions about what you should and shouldn't post, please contact the Communications Team.
- 5.4 Any misuse of social media, or any social media content published by councillors that infringes this Guidance should be reported to the Council's Monitoring Officer.

**DO be aware of the legal and reputational risks of inappropriate use of social media, including libel, code of conduct breaches etc.**

**DO avoid doing any of the things listed in para 5.2 above when using social media**

## 6 Online safety

- 6.1 You must be aware of your own safety and the safety of others whenever you post on social media and you must not post any information which could put your safety at risk. If you receive threats, abuse or harassment through social media, you should report this to the Communications Team and/or to the police.
- 6.2 You must use a secure password for all social media accounts and must never share your login details with anyone.

**DO take account of safety issues when using social media.**

**DO use secure login details when using social media**

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## 7 Data protection

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Social Media Guidance for Councillors

- 7.1 Always remember that as a councillor you are a data controller in your own right with regard to certain information you hold. Where you use social media in your capacity as councillor to collect and use personal data about users, you have obligations to protect that personal data. These obligations apply even if the information collected is publicly available (for example because a user has included it in a public post or a public profile).
- 7.2 Personal data includes any information that can be used to identify an individual.
- 7.3 You must always comply with your obligations under data protection legislation when collecting personal data through social media. This includes
- 7.3.1 only using personal data for purposes that you have told people about or that they would reasonably expect;
  - 7.3.2 taking measures to keep personal data secure, such as encrypting portable devices that you store data on and keeping hardcopy documents containing personal data locked away;
  - 7.3.3 not keeping personal data for longer than you need it;
  - 7.3.4 ensuring that you correct personal data if someone informs you it is inaccurate for example updating their name and/or address etc.;  
and
  - 7.3.5 complying with individuals' rights, such as their right to see copies of personal data you hold about them.
- 7.4 You should also remember never to post personal data that you obtain elsewhere on social media without that person's knowledge or permission. For example, you should not post a photograph of someone without their consent, or post a copy of a letter that someone has sent you without blanking out any identifying details first or disguising the identity of an individual or individuals in a photograph.
- 7.5 As well as this Guidance, you should also familiarise yourself with Ashford's Data Protection Policy, which details what constitutes personal data and what you should do to protect it.

**DO be aware of your obligations regarding processing personal data when using social media and follow the 'rules' in this Guidance..**

## **8 Breach of this Guidance**

- 8.1 Failure to follow this Guidance may result in a complaint against you, including for breach of the Code of Conduct. You may also suffer civil or criminal action or a regulatory fine for example where this also amounts to defamation or a breach of your data protection obligations.
- 8.2 You may also be asked on behalf of the Council to remove social media content which is in breach of this Guidance.
- 8.3 Councillors are therefore urged to seek advice or guidance at the earliest opportunity if they are unsure about any issues regarding use of social media.

## **9 Questions about this Guidance**

- 9.1 If you have any questions about this Guidance, please direct them to the Council's Monitoring Officer/Director of Law & Governance or the Council's Communications Team.

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Part 5  
Codes and Protocols  
Civic Protocol

## **Civic Protocols**



## Notes on Civic Protocols

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**A. Selection of Mayor and Deputy Mayor and Terms of Office**

The selection of Mayor and Deputy Mayor will not be confined to any one party. He/she will be chosen on merit. Where the political balance of the Council, however, might depend on the Mayor's casting vote it is not unreasonable to expect this factor to play a part in the selection procedure.

The term of office of Mayor and Deputy Mayor will normally be for one year. Although not compulsory for Members to serve a full term as a Councillor before becoming eligible for nomination as Mayor or Deputy Mayor, it is desirable that they do.

The Deputy Mayor will normally succeed the Mayor (subject to review in an election year).

There is also a presumption that Opposition Groups will have an opportunity to nominate candidates.

**B. Procedure for Selection**

The procedure for the selection of the Mayor and Deputy Mayor will be as follows:-

- (a) Early in the calendar year, nominations for Mayor and Deputy Mayor should be discussed by Group Leaders prior to discussion within the Groups themselves. Group Leaders will then meet informally to discuss the nominations for Mayor and Deputy Mayor for the ensuing year, and normally their recommendations will be reported to the Selection and Constitutional Review Committee immediately preceding the Annual Meeting of the Council. The name of the Mayor and Deputy Mayor elect may then be made public. This process does not preclude nominations of any other Councillor for Mayor or Deputy Mayor being made at the Annual Meeting, but the expectation is that this should be avoided wherever possible.
- (b) Group Leaders will also make recommendations to the Selection and Constitutional Review Committee held immediately preceding the Annual meeting of the Council as to which Members are to propose and second nominations for the offices of Mayor and Deputy Mayor.
- (c) In an election year, however, the above procedure may need to be revised to include a further meeting of Group Leaders in the week

following election week, in the event of the nominated candidates for Mayor and Deputy Mayor not having been re-elected.

**Note:** Amended by virtue of Minute No. 220/9/09 and Minute No. 293/12/10.

### C. **Responsibilities of the Mayor**

The Mayor must be non-partisan in all that s/he does. The main duties of the Mayor are set out below however a detailed guidance note is issued to the Mayor and Deputy Mayor following the Annual Meeting of the Council. (Minute No 556/4/03 refers). A copy is available from the Member Services Manager (Operational).

#### **Council Duties**

- To represent and promote the Council as a whole in all Civic and Ceremonial matters.
- To preside over and Chair meetings of the Full Council.
- The Mayor should encourage fair debate but s/he has the casting vote.
- To uphold and promote the purposes of the Constitution and to interpret when necessary.
- To publicise events of the Council and encourage involvement in the Council's activities.
- To promote the work of the Council.
- To determine, in the absence of a relevant Overview and Scrutiny Committee Chairman whether an urgent decision which is contrary to the policy framework may reasonably be regarded as urgent in the

circumstances. If the Mayor does not agree, then the matter must be referred to the Full Council for decision.

### **Public Duties**

- To be the First Citizen of the Borough and the focus of local democracy: to be visible, to listen to and engage with the community.
- To represent the people of Ashford Borough, both within the Borough area and externally.
- To support voluntary organisations.

### **Borough Duties**

- To represent the Borough.
- To promote the Borough as a place to live: through appropriate external contacts.
- To promote the Borough as a place to visit: through external contacts, and tourism events.
- To promote business in/into the Borough: both in terms of existing businesses and potential inward investors. (The Mayor should be briefed by the Economic Development team and other appropriate

Officers on a regular basis and, in turn, feed back to appropriate Officers on contacts, issues, etc).

- To be involved in events marking the achievement of major milestones in Ashford's growth (Minute No. 293/12/10 refers).

#### D. **Annual Meeting of the Council**

The following represents the procedure and order of business for the Annual Meeting.

##### (a) **Election of Mayor**

- (i) Retiring Mayor enters wearing robes and Chain and takes the Chair.
- (ii) Prayer.
- (iii) Retiring Mayor calls for nominations.
- (iv) Nomination moved by Councillor.....
- (v) Nomination seconded by Councillor.....
- (vi) Retiring Mayor declares result of election (where one nomination only it must be put to the vote).
- (vii) Chief Executive then reads out Declaration of Acceptance of Office and the new Mayor signs Declaration after signifying acceptance.
- (viii) The Robing Party then retires from the Council Chamber in the following order:-

Mace Bearer

Retiring Mayor

Chief Executive

New Mayor

Chaplain (Retiring Mayor's Chaplain)

**NOTE: \*** It is essential that the retiring Mayoress and the new Mayoress are present in the Council Chamber from the commencement of the Annual Meeting, and in order that the new Mayoress may receive her Chain of Office, both the retiring Mayoress and the new Mayoress should leave the Council Chamber, together with the new Mayor's Chaplain at the rear of the Robing Party. On return, in advance of the newly

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elected Mayor, they should be escorted along with the retiring Mayor, into the Council Chamber and take

their respective seats.

Where appropriate for “Mayoress” please read  
“Mayor's Escort/Consort”.

- (ix) The Robing Party then return to the Council Chamber in the following order:-

Mace Bearer

Mayor

Chief Executive

Chaplain (new Mayor's Chaplain)

- (x) Prayer.

**(b) Appointment of Mayor’s Chaplain**

**(c) Vote of thanks by the Mayor for his/her election**

**(d) Votes of Thanks to the Retiring Mayor and Mayoress**

- (i) Moved by Councillor.....

- (ii) Seconded by Councillor.....

- (iii) Presentation of badges by the new Mayor to the retiring Mayor and Mayoress.

- (iv) Presentation of floral gift by the new Mayoress to the retiring Mayoress.

- (v) Retiring Mayor's Response (to include Vote of Thanks to Chaplain - where applicable).

- (vi) Presentation of floral gift by retiring Mayoress to new Mayoress.

**(e) Election and Appointment of the Deputy Mayor**

- (i) Mayor calls for nominations.

- (ii) Nomination moved by Councillor.....

- (iii) Nomination seconded by Councillor.....

- (iv) Mayor declares result of election (which must be put to the vote even if only one nomination).

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- (v) Chief Executive then reads out Declaration of Acceptance of Office and the Deputy Mayor signs Declaration after signifying acceptance.
- (vi) Deputy Mayor invested with his/her Chain of Office by the Mayor.
- (vii) Deputy Mayoress invested with her Chain of Office and presented with a floral gift by the Mayoress.

(f) **Apologies**

(g) **Declarations of Interest**

(h) **Minutes**

- (i) **Election of the Leader of the Council** (Note: in election years only as Leader will normally serve a four year term. Minute No. 324/12/10 refers).

Moved by Councillor..... ) no formal arrangement for  
Seconded by Councillor ..... ) selecting mover or seconder

- (j) To note the number and names of those Members appointed by the Leader to the Cabinet (Executive).
- (k) To note the Member appointed by the Leader as Deputy Leader.
- (l) To consider the Minutes of the meeting of the Selection and Constitutional Review Committee

- NOTE:**
- (i) The Head of Legal and Democracy is responsible for determining the political balance and allocation of seats to political parties on Committees and Sub-Committees in accordance with the provisions of the Local Government and Housing Act 1989 and associated Regulations. The figures arising from these calculations are notified to Group Leaders.
  - (ii) Group Leaders make nominations to fill their allocations on Committees and Sub-Committees. The majority party or groups forming the administration should also indicate in its/their list(s) the names of the Chairman and Vice-Chairman Designate for each Committee and Sub-Committee.
  - (iii) The Selection and Constitutional Review Committee will receive a report upon these issues and make recommendations to the Annual Meeting of the



Council as to the appointment of Chairmen and Vice-Chairmen; the names of Ex-Officio Members and of persons to represent the Council on other bodies.

- (l) At the conclusion of business included on the Summons for the Annual Meeting of the Council, the Mayor will invite all present to take refreshments with him/her.

## E. Civic Services

Order of precedence for Civic Services:-

- (a) The Vicar
- (b) The Mace Bearer
- (c) His/Her Worshipful the Mayor and the Mayoress\*
- (d) Chief Executive and Mayor's Chaplain if not the Vicar
- (e) High Sheriff (and Chairman of Kent County Council if attending)
- (f) Deputy Mayor (and Chairman of the Parish Council/Meeting if not in Ashford)
- (g) The Town Mayor of Tenterden
- (h) The Leader of the Council and Member of Parliament
- (i) Members of the European Parliament
- (j) Other Group Leaders

\*Where appropriate for "Mayoress" please read "Mayor's Escort/Consort".

**NOTE:** (i) If the Lord Lieutenant of Kent is present, s/he will accompany the Mayor in Civic Procession. The Mayoress would then accompany the Chief Executive.

- (ii) If the Chairman of Kent County Council is an Ashford Member, s/he should be included within the Procession.
- (iii) The MEPs and Town Mayor of Tenterden.

The remainder of the Members with their families should take their places prior to the arrival of the procession, in seats reserved beforehand for this purpose.

The Member Services Liaison Manager will determine seating arrangements in consultation with the Mayor. If it is required by the Vicar that His/Her Worshipful the Mayor should be the last person to enter the Church, then the procession will start at (d) above. In this event (a) - (c) above follow in that order at the end of the procession. Arrangements will be made for refreshments following the service in accordance with the Mayor's wishes.

With the exception of the above, arrangements for the Civic Service are at the discretion of the Mayor and his/her nominated Chaplain.

#### **F. Visits by Royalty**

Protocol regarding visits by Royalty to be considered when the occasion arises.

#### **G. Church Services**

The Council should be represented at the Remembrance Day Service in Ashford, and the Ashford and Stanhope Members should be asked to support the Mayor. All other Members should be notified of the service recognising, however, that they may wish to attend services in their own wards. The Member Services Liaison Manager is responsible for making the necessary arrangements for the attendance of the Civic Party at the Remembrance Day Service, although it must be borne in mind that the laying of the wreaths is organised by the Royal British Legion. Changes to the Order of Procession from the Parish Rooms to the Memorial Gardens were made in 1998 by which the British Legion Standard Bearers, the President and Vice President of the British Legion, all wreath holders and the Heads of the respective Service Units formed up and processed with the Borough Council Procession. Refreshments are provided for the Civic Party in the Church Hall prior to the procession to the War Memorial.

## H. Mayor's Civic Garden Party

If financial provision is made for a Civic Garden Party the guidance set out below will apply:-

The Garden Party is recognised as the principal civic function in each Mayor's year of office.

The following points are to be borne in mind when making the necessary arrangements for the event:-

- (a) Invitations to bear the Coat of Arms
- (b) Venue is normally decided by the Mayor
- (c) Lists of guests to be compiled by the Mayor in consultation with the Chief Executive and Group Leaders.
- (d) There is no formal table plan as it is normally a 'buffet style' Garden Party
- (e) All Mayors/Chairmen and escorts from other Kent Districts, Members and spouses, Directors and spouses to be invited to the Mayor's Garden Party with distinguished guests from the public service such as the Member of Parliament and the High Sheriff, the Chairman and Leader of the County Council, County Councillors, together with representatives of the local community and the Mayor's personal guests.

## I. Mayor's Charity Work - "The Ashford Mayor's Charity"

The Mayor of Ashford's Charity is a registered Charity (registration number 1071343) and was formed in 1998.

The objects of the Charity are:-

- (a) to promote any charitable purpose for the benefit of the community and the Borough of Ashford and, in particular, the advancement of education, the protection of health and the relief of poverty, distress and sickness;
- (b) such or any charitable purpose for the general benefit of the inhabitants of the Borough of Ashford as the Trustees shall think fit.

The Constitution of the Charity provides that the Trustees shall be:-

- (a) the holder for the time being of the post of Chief Executive;

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- (b) the Leader for the time being of Ashford Borough Council;
- (c) the current Mayor;
- (d) an external person who shall be invited by the Trustees to hold the position of Trustee on a yearly basis.

The main purpose of the Charity is to oversee the fundraising of the year's Mayor. In this respect the Trustees have decided that any beneficiary should generally:

- (i) Be located within the Borough of Ashford;
- (ii) Provide services/facilities for the people of the Borough of Ashford;
- (iii) Not be National Charities.

On the assumption that the Deputy Mayor becomes the Mayor, the Deputy Mayor should note that any proposed beneficiary from their fundraising should be approved by the Trustees of the Charity, prior to their Mayoral year.

The advantages of the Mayor's Charity are:-

- (a) its designation as a registered Charity is conducive to fundraising and a comfort to donors in knowing that they are dealing with an organisation overseen by the Charity Commissioners;
- (b) the accumulated fund can earn tax-free interest;
- (c) the structure of the Charity offers flexibility as it allows instantaneous recognition of disasters or newly recognised deserving causes;
- (d) it reduces the prospect of "impossible objects" as funds can be carried over into future mayoral years;
- (e) it allows any Mayor with the consent of other Trustees to declare a specific recipient for the year's funds.

The Secretary of the Mayor's Charity is the Head of Legal and Democracy who provides legal and administrative support to the Charity.

The Civic Engagement Officer will not be involved in any Charity fundraising events other than the Mayor's Charity Ball. The private hire company will, however, drive the Mayor to and from an event connected with the Charity. The Civic Engagement Officer will, should the Mayor wish, bank monies in connection with the Mayor's Charity.

## J. **Gifts Received by the Mayoralty**

The Code of Conduct makes it clear that the acceptance of gifts should be treated with extreme caution and accordingly the following guidelines should be borne in mind:-

- (a) Gifts received by the Mayoralty which are clearly not of a token or personal nature, other than gifts donated for the benefit of the Mayor's nominated charity, are to become the property of the Council and should be placed in the Mayor's Parlour for use or enjoyment there, or failing that, placed elsewhere in the Civic Suite.
- (b) Gifts that are not suitable for placing in the Mayor's Parlour or the Civic Suite are to be used or otherwise disposed of as the Council may direct.
- (c) The acceptance of gifts and hospitality by the Deputy Mayor which are not of a token or personal nature should also be carefully considered and recorded in the Register of Gifts, Hospitality by Members kept by the Member Services Manager (Operational). This is particularly important in view of the Deputy Mayor's continued role in the committee decision - making processes. The Deputy Mayor will also need to consider whether to declare interests at Council and Committee meetings where matters affecting the interests of the donor of such gifts or hospitality could be under consideration.

## K **Mayoral Transportation Arrangements**

The Civic Engagement Officer will make all the transportation arrangements for the Mayor and will advise on collection times etc.

## L **Mayor's Cadet/Mayor's Civic Sentinel**

The Mayor is encouraged to invite the four Military Services to each nominate an individual to be appointed annually as a Mayor's Cadet or Civic Sentinel for his/her Term of Office. The post will require the appointees to attend such engagements with the Mayor as seen appropriate, including Civic Events, Church Services, Full Council Meeting & Special Occasions (Minute No. 160/10/21 refers) and more details of the role can be found in the report to the Selection and Constitutional Review Committee of 7<sup>th</sup> October 2021.

## **Officers' Code of Conduct**

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## **Officers' Code of Conduct**

### **Introduction**

The public is entitled to expect the highest standards of conduct from all employees who work for local government. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist employees in their day-to-day work. The Code is produced in the light of the challenges that employees face in the new and more commercially oriented environment. This includes Best Value, market testing, changes in the management of housing services, care in the community, management buyouts, etc.

This Code lays down minimum standards for employees which will help maintain and improve standards and protect employees from misunderstanding or criticism. Failure to meet such standards can result in adverse public comment to the detriment of the Council and the service and in certain circumstances can have serious consequences for the employee and put his/her job at risk.

Although this code cannot be exhaustive it contains sufficient guidance to make employees aware of what is required. If circumstances arise which leave an employee in doubt as to what should be done, he or she should immediately arrange to obtain advice from his or her manager or an appropriate Senior Officer. In the case of Directors, reference to Director shall mean the Chief Executive.

### **1. Standards**

- 1.1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality.

Employees will be expected, without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedure.

### **2. Disclosure of information**

- 2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. The authority itself may voluntarily decide to disclose other types of information when the law permits such disclosure. Employees must be aware of the information their authority must make available, the information that it is prepared to make openly available voluntarily, and that which it is not prepared to disclose. (See 2.3 below.)
- 2.2 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to



others who might use it in such a way otherwise than might reasonably be expected in the normal course of their duties. Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the authority should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required or sanctioned by the law.

2.3 All confidential or exempt information and material (oral as well as written) must be treated accordingly unless and until it becomes public in the course of the Council's business.

2.4 In certain circumstances, employees may have a legal or professional duty to disclose information to a third party, (for example, in the course of legal proceedings).

If employees are asked by a third party to give evidence in legal proceedings about something that has happened in the course of their employment with the Council, they should immediately seek the advice of the Head of Legal and Democracy or, in the case of an Industrial Tribunal, the Head of HR and Customer Services.

2.5 Information concerning an employee's private affairs shall be treated sensitively and confidentially and shall not be supplied to any person outside the service of the employing authority unless the consent of such employee is first obtained.

2.6 All the above must be read in conjunction with the Council's Whistleblowing Charter.

### **3. Political neutrality**

3.1 Employees serve the authority as a whole. It follows, therefore, that employees serve all Councillors and not just those of the controlling group or groups, and must ensure that the individual rights of all Councillors are respected.

3.2 Employees shall not be required to advise any political group of the employing authority either as to the work of the group or as to the work of the authority neither shall they be required to attend any meeting of any political group.

3.3 Employees, whether or not "politically restricted", (see paragraph 3.5 below) must follow every lawful expressed policy of the authority and must

not allow their own personal or political opinions to interfere with their work.

3.4 Any political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989, shall be exempt from the standards set in paragraphs 3.1 to 3.3.

### 3.5 **Politically Restricted Posts**

The Local Government and Housing Act 1989, Pt 1, contains provisions to stop 'twin-tracking', (where a senior local authority employee is also an elected member of another local authority), and to restrict the political activity of senior employees. Local authority employees holding politically restricted posts are disqualified from membership of any local authority, other than a parish or community council (s1(1)) from being an MP, or MEP, and are subject to prescribed restrictions on their political activity (s1(5), (6)).

The Local Government Officers (Political Restriction) Regulations 1990 and the Local Government (Politically Restricted Posts) (No2) Regulations 1990 cover the posts which are politically restricted. These are:

- (a) specified posts, such as the Head of Paid Service, the Monitoring Officer, Directors, and Heads of Services, all of whom are restricted without exemption or appeal;
- (b) all posts which reach or exceed a prescribed remuneration ceiling. These are automatically included on a list which employing authorities are under a duty to prepare unless exemption for individuals is granted;
- (c) all posts which meet the duties-related criteria for determining a 'sensitive' post irrespective of remuneration level unless the post holder appeals successfully against determination. This applies to those posts where the holder gives regular advice to the employing authority, to any committee or sub-committee or another joint committee on which the authority is represented (but excluding

purely factual information) or speaks on behalf of the authority on a regular basis to journalists and broadcasters.

The political restrictions are deemed to be incorporated in the contract of employment of every local authority employee who holds a politically restricted post.

## **4. Relationships**

### **4.1 Councillors**

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the authority's work. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

The above paragraph is a mirror image of the Code for Councillors which is set out below.

The Local Government and Housing Act 1989, s31, gives statutory status to the National Code of Local Government Conduct (for the guidance of Councillors of local authorities). The Code includes within paragraphs 23 and 24 the following statements as to the role of Councillors and Officers:

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

the council's work under the direction and control of the council, their committees and sub-committees.

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

#### 4.2 **The Local Community and Service Users**

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.

#### 4.3 **Contractors**

All relationships of a business or private nature with external contractors, or potential contractors, should be disclosed in writing to the Head of HR and Customer Services. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

- 4.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should disclose in writing that relationship to the Head of HR and Customer Services.

#### 5. **Appointment and other employment matters**

- 5.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.
- 5.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee with

whom they have a close personal relationship, for example, a relative, partner etc.

## 6. Outside Commitments

- 6.1 Employees' off-duty hours are, for the most part, their personal concern, but they should not subordinate their employment relationship with the Council to their private interest or put themselves in a position where there is a conflict of interests. The Council, subject to 6.2, will not normally prevent an employee from undertaking additional employment or other commitments, but any such employment etc must demonstrably not conflict with or in any way weaken public confidence in the conduct of the authority's business.
- 6.2 Employees above Spinal Column Point 30 shall normally be expected to devote their whole time service to the work of the Council and shall not engage in any other additional employment without the express prior written consent of the Head of HR and Customer Services.
- 6.3 To avoid any risk of conflict or detriment, employees must consult their manager before committing themselves to any additional employment and to inform the Head of HR and Customer Services in writing in accordance with 6.4 below.
- 6.4 A confidential register is kept by the Head of HR and Customer Services of all employees who have declared their additional employment and for whom permission to carry out such employment has been granted.
- 6.5 Additional guidance may be given from time to time by the Council as to the categories of employment, which may or may not be acceptable. In all cases, such employment or other commitments must comply with all other requirements of this Code. In considering applications for consent, regard will be had to the views expressed in the Report of the PM's Committee on Local Government Rules of Conduct (Cmd5636).

We recognise that employees sometimes undertake work outside their own official duties, whether or not for payment, which is clearly in the public interest and is to be encouraged; participation in the work of an Officer's professional institution, for example, or lectures at a local college. But we understand that employees of the Planning or Architectural departments of some planning authorities are allowed to undertake, for payment, technical or presentational work for an applicant for planning permission. Such work is no doubt done in good faith and does not in fact lead to any kind of special treatment for the application once it is submitted. Nevertheless, the potential risks here are so great, and the effect on the good name of local government so unfavourable, that we think that the practice should be prohibited outright, in relation not only to planning applications but also to all other applications involving professional or technical work. This view accords with advice given to

their members by the Local Authority associations in England and Wales in 1961-1962.

We recommend that authorities should ensure that their employees at all relevant levels are aware of the present standard conditions of service and that they should invariably refuse permission when the employee is to be paid by a member of the public for work that is in any way connected with the scope of his/her official duties.

- 6.6 The Council has decided, with the exception of employees preparing applications in respect of their own property, that no applications of any kind which come before them for approval should be prepared privately by an employee, even where a reward is not involved, (e.g. when an employee wishes to assist a friend the Council considers that the rule should apply).

The Council consider that without this rule:

- (1) There could arise on occasion accusations by the public that:
  - (a) plans prepared by Officers have received more favourable treatment than plans which they consider to be very similar;
  - (b) plans receive more favourable write up to Committee even where the employee concerned with the preparation of the plan is in no way concerned with the report to Committee.
- (2) Employees might be called on to advise the Council on aspects of a case where they may be acting for the private individuals involved.
- (3) Difficulties will arise where appeals occur. Employees concerned would not be able to act for their client against the Council, while an appellant might put forward in their grounds of appeal that they have been advised by an employee of the Council.
- (4) An employee of the Council may have to advise a committee that the work of a fellow employee of the Council is unsatisfactory.
- (5) If decisions on applications are delegated to employees for them to have to decide applications prepared by colleagues. The rule will

not preclude private work which involves only applications to other local authorities, subject to the conditions set out in paragraph 6.1.

Any breach of this additional guidance will be regarded as a serious breach of discipline.

## **7. Personal Interests**

- 7.1 All employees must forthwith give notice in writing to the Proper Officer of any financial interests or non-financial interests which are clear and substantial and which could bring about a conflict with the Authority's interests. Any change must be similarly notified. Such interests must also be disclosed in writing to the Head of HR and Customer Services who will notify the Monitoring Officer where there are such interests [See also 10.2].
- 7.2 The personal interests to be disclosed would include membership or acting as an Officer (honorary or otherwise) of a body funded by the Council, membership of a National Health Service Trust Board, involvement with an organisation or pressure group or secret society as defined below or any other involvement with an organisation which may seek to influence the Council's policies.
- 7.3 For the purposes of this code, a secret society is defined as being:
- ‘Any lodge, chapter, society, trust or regular gathering or meeting, which:
- (a) is not open to members of the public who are not members of that lodge, chapter, society or trust
  - (b) includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, gathering or meeting; and
  - (c) includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules membership or conduct of the lodge, chapter, society, trust, gathering or meeting.

A lodge, chapter, society, trust, gathering or meeting as defined above, should not be regarded as a secret society if it forms part of the activity of a generally recognised religion.

## **8. Equality Issues**

- 8.1 All employees shall ensure that the Council's Race Equality, Equal Opportunities and Fair Service Policies are complied with in addition to the requirements of the law. All members of the local community, customers

and other employees have a right to be treated equally and with fairness regardless of, for example, their race, colour, religion, ethnic origin, national or regional origin, gender, marital status, sexuality, age or class.

## 9. Separation of Roles During Tendering

- 9.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior Officers who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 9.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 9.4 Employees contemplating a management buyout, trade sale, hosting or other arrangements with an outside provider should, as soon as they have formed a definite intent, inform the appropriate manager and the Proper Officer in writing (see paragraph 7.1 above) and withdraw from the contract awarding processes.
- 9.5 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## 10. Corruption

- 10.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. If an allegation is made the law requires the employee to demonstrate that any such rewards have not been corruptly obtained.
- 10.2 Local government Act 1972 117 - (Pecuniary Interests). This section provides that if an employee knows that a contract in which he has a pecuniary interest is before the local authority, he must give notice of his interest to the authority. This does not, of course, apply to a contract with him in his own name because the authority will then know of his interest. Section 117(2) forbids an Officer "under colour of his office or



employment" to accept "any fee or reward" whatsoever other than proper remuneration.

**Note:** The notice must be addressed to the Section 151 Officer who will record it in a book open to inspection by any member of the Council. If further guidance is required in relation to specific cases, reference should be made to the Section 151 Officer.

10.3 The Prevention of Corruption Acts 1906 and 1916 deal with the acceptance of gifts by way of inducements or rewards:

- (a) Under the Prevention of Corruption Acts, 1906 and 1916, it is an offence for employees corruptly to accept any gifts or consideration as an inducement or reward for:
- doing, or refraining from doing, anything in their official capacity; or
  - showing favour or disfavour to any person in their official capacity.
- (b) Under the Prevention of Corruption Act 1916, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves to the contrary.

(See also the Public Bodies Corrupt Practices Act 1889)

## 11. Use of Financial Resources

11.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the authority. Actions should at all times be in compliance with Financial Regulations and Contract Procedure Rules.

## 12. Hospitality

12.1 A particular source of conflict between the private and the public interest is the offer of gifts, hospitality and other benefits. Whatever common practice may be in the commercial world, public employment requires a standard of its own.

The situations concerned are so diverse that no precise rule can cover all eventualities. The following guidance is given on that basis, but the

practice should always be to err on the side of caution. Additional guidance may be given from time to time.

- 12.2 Employees should only accept offers of hospitality if there is a genuine need to impart information or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the authority should be seen to be represented. It must be properly authorised and recorded in the register kept for this purpose by the employee's manager. If an employee is in any doubt he/she should take advice from his/her manager before acceptance who, in turn, may wish to seek advice from the Proper Officer.
- 12.3 When hospitality has to be declined the offeror should be courteously but firmly informed of the procedures and standards operating within the authority.
- 12.4 Employees or their families must not accept significant personal gifts from contractors, outside suppliers, other persons or bodies who have or are known to be seeking dealings of any kind whatsoever with the Council, and the fact of such an offer should be disclosed to the manager and Proper Officer.
- 12.5 Where the gift is only of token value, e.g. an official or trade diary or calendar, it may be accepted and in other cases where it is considered that refusal would give unnecessary offence, employees must consult their manager and follow his/her advice.
- 12.6 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking affecting those providing the hospitality. If there is any risk of conflict or criticism, the hospitality etcetera must be declared to the employee's manager and Proper Officer.
- 12.7 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal or where the Council gives consent in advance and where any purchasing decisions will not be compromised. Where visits to inspect equipment, etc are required, employees should

ensure that the Council meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

- 12.8 No employee may seek, for his or her own use or, for the use of any other person specified by them, goods or services, etc from the Council's suppliers and contractors as a result of their employment with the Council.
- 12.9 Any gifts/hospitality, etc offered (other than that offered/accepted under 12.5) should be notified to an employee's manager and details of the same including whether they were accepted or declined shall be recorded in a register which shall be open for inspection by the Chief Executive and Proper Officer.

13. **Sponsorship - Giving and Receiving**

- 13.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 13.2 Where the authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the authority through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

Part 5  
Codes and Protocols -  
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## **Protocol on an Effective Councillor/Officer Relationship**

## A Protocol for an Effective Councillor/Officer Relationship

### 1. Introduction

- 1.1. Building a constructive and collaborative working relationship between councillors and officers is an essential ingredient in any successful Council. It is a unique relationship not replicated in any other type of business organisation and it takes understanding and hard work on both sides.
- 1.2. Mutual trust and respect with clear and honest communication between councillors and officers underpin good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective Council. In broad terms, councillors provide leadership with a democratic mandate to develop a policy framework for the Council; whilst officers contribute the professional and managerial expertise needed to deliver it.
- 1.3. However, in practice there are sometimes overlapping or blurred boundaries which can create problems and misunderstandings if councillors and officers do not fully appreciate or respect each other's roles.
- 1.4. Reports of negative interactions between councillors and officers can readily cascade through an organisation and bring disproportionate damage to confidence and working relations. Accordingly it is important to our corporate health that clear rules and expectations are in place to mitigate this risk.
- 1.5. This Protocol forms part of the Council's Constitution. It reflects the principles underlying the respective codes of conduct which apply to councillors and officers. It describes the different roles and responsibilities of councillors and officers and makes clear the values and expectations on which an effective working relationship should be built. In line with the practice of the best Councils, we will monitor and review the working relationship to ensure it takes account of developments and remains fit to support good governance within the Council.
- 1.6. In July 2018, following an LGA Peer Review, the Leader of the Council prepared a "Best Practice Guidance" note for all elected Members. This includes guidance on relationships with officers and to that extent it is complementary to this Protocol. A copy is **attached as an APPENDIX**.

### 2. Roles and Responsibilities

- 2.1. The Council operates a Leader and Cabinet executive governance model. In simple terms:

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Councillors are elected and answerable to the electorate; and collectively

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- provide democratic leadership, set the direction of the Council and ensure adequate resources and management arrangements are in place
- provide community leadership and represent members of the public (customers/citizens) and other community stakeholders by interpreting and expressing their wishes and needs
- scrutinise service delivery

Officers are employees of the Council and, although they work closely with the ruling administration of the Council, they are accountable to the Council as a whole; and

- manage operational delivery of policies agreed by councillors
- organise and deliver services and provide day to day management of staff
- ensure the Council acts in a lawful way
- provide politically impartial professional support and advice to councillors, serving the whole Council rather than particular groups or councillors<sup>a</sup>

2.2. Whilst aspects of the roles of councillors and officers are clearly different, together they have a collective corporate role and responsibility. Tackling challenges effectively is not about a rigorous separation of duties but an appreciation and respect for the skills, knowledge and experience each brings to the leadership role. In reality roles are rarely truly distinct and it is increasingly common for both to collaborate in a shared responsibility for key issues such as developing the detail of workable policies and monitoring performance and service delivery.

2.3. Some councillors have roles as members of the Cabinet some as Committee Chairs and some as members of other committees. These roles are explained in more detail in the functions section of the Constitution.

2.4. Some councillors will have roles as appointees to outside bodies. These roles vary from representing the views of the Council to acting according to individual judgement. Details of such roles will be provided at or before the time of such appointments.

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<sup>a</sup> See also sections 5 6 and 7 below on Advice from and Access to Officers, Statutory Roles and Responsibilities and Briefings by Officers.

### 3. Expectations

- 3.1. In order to ensure effective working relationships, councillors and officers have certain basic expectations of each other in terms of high standards of conduct and ethical governance.
- 3.2. The LGA has identified that a “golden rule” in an effective and trusting working relationship is the mutual expectation of effective forward planning with “no surprises” in either direction. This applies to the provision of information or advice or the development of policy. There are also other basic expectations:

#### WHAT COUNCILLORS CAN EXPECT FROM OFFICERS

- compliance with the adopted Officer Code of Conduct
- a commitment to the Council as a whole
- a working partnership to deliver Council policy
- timely provision of relevant information to enable councillors to fulfil their role(s)<sup>a</sup>
- timely response to enquiries and complaints
- impartial and professional advice not influenced by political views or preference
- integrity, mutual support and appropriate confidentiality

#### WHAT OFFICERS CAN EXPECT FROM COUNCILLORS

- compliance with the adopted Code of Conduct for Members and the ‘Nolan Principles’ of ethical standards and probity
- political leadership and direction
- a working partnership to deliver Council policy
- non-involvement in day to day staff management
- no special considerations
- respect for officer political neutrality

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- ~~respect for the professional role and judgements of officers~~

<sup>a</sup> See also section 8 below in relation to Members’ Rights of Access to Documents.

#### 4. Working Relationships

- 4.1. As already stated, mutual respect, trust and good communication are essential to establishing good working relationships between councillors and officers. Close personal familiarity between an officer and an individual councillor, where an officer's ability to deal impartially with other councillors or groups can be brought into question, must be avoided. Such close familiarity can also prove embarrassing to other officers and councillors and should be avoided for this reason as well.
- 4.2. In order to protect both members and officers, a degree of formality should be used in addressing each other at formal public meetings. The holders of office should be addressed by their office e.g. chairman and otherwise by surname and title e.g. Cllr Brown or Mr Smith. In less formal environments the use of first names is normally acceptable. However some individual councillors and officers may feel more comfortable using the more formal modes of address and such individual preferences must be respected.
- 4.3. An ethical culture starts with tone. A civil tone when conducting business is the basic starting point for a healthy ethical culture. This is true both for the relationship between different councillors and the relationship between councillors and officers. Accordingly, dealings between councillors and officers must always be respectful and observe normal standards of courtesy. Behaviours such as bullying, harassment or manipulation are not acceptable. In particular councillors and officers commit to not undermining each other's role through personal attack. This applies equally to written communications such as email as to face to face or telephone interactions.
- 4.4. It is made clear in the Appendix to this Protocol (the Leader of the Council's Best Practice Guidance Note) that councillors should never remonstrate with an officer of the Council in front of other councillors or officer colleagues nor at public or other meetings in a way which could cause embarrassment or humiliation. The appropriate channels should be used by councillors for raising concerns regarding officer conduct or performance.
- 4.5. Undue pressure in the working relationship must be avoided at all times:
  - a. It is easy for officers, particularly more junior officers, to be overawed in their dealings with councillors, especially with councillors who hold political office. Accordingly wherever possible the point of contact with officers should be a more senior officer.
  - b. A councillor should never ask an officer to do anything s/he is not empowered to do, nor to cease any action s/he is properly taking or to undertake work outside normal duties or to change professional advice or recommendations in a report. In the event of disagreement between a councillor and report author, for example, the matter should be referred to the appropriate Head of Service or Director. *Version 3 – 21/3/19CS*



- c. Similarly an officer must neither seek to use undue influence on an individual councillor to make a decision in their favour nor to raise personal matters to do with their job or make allegations about other officers. The Council has proper procedures for consultation, grievance and discipline which should be used when required.
- 4.6 The Council has a good track record of being flexible in responding to unplanned risks and opportunities. However, in the absence of agreed priorities being changed through proper channels, councillors and officers should respect and work together within current corporate and service priorities agreed by the Council. Councillors are encouraged to engage with corporate and service planning processes if they wish to seek agreement to particular schemes or projects. To do so after plans have been agreed should normally be avoided as it can be disruptive and lead to approved work and projects being delayed or not delivered.
- 4.7 On occasions, councillors may disagree with the views or advice of an officer. Valid differences often lie behind conflicting positions and it is important in such situations that the 'problem' is separated from the 'person' and that any differences do not become personal. In this way issues can be properly questioned and debated without damaging working relationships. Questioning and debate can be – indeed should be – probing but should never be bullying or aggressive. Further reference is made to questioning officer advice in para. 5.3 below.

#### Summary

**DO strive to develop positive working relationships based on mutual respect, trust and good communication, always conducting business in a civil tone.**

**DO ensure an appropriate degree of formality in addressing each other at formal meetings.**

**DO use appropriate channels to express any concern about officer conduct or performance by referring matters to relevant Director or Head of Service.**

**DO respect and work together within current corporate and service plan priorities and only seek to change priorities through proper channels.**

**DO NOT allow close personal familiarity between officer and councillor which can affect perceptions of impartiality.**

**DO NOT take part in bullying behaviour or remonstrate with officers in front of others or at public or other meetings or in writing in a way which is disrespectful or could cause embarrassment or humiliation.**

**DO NOT allow use of undue pressure in the working relationship e.g. by a councillor asking an officer to take action they are not empowered to take or an officer seeking to influence a councillor to make a decision in their favour.**

## 5. Advice from and Access to Officers

- 5.1. Officers serve the Council as a whole. This means all councillors, not just those of any controlling group(s), and the individual rights of all councillors must be respected. For this reason, officers will not normally be required to attend any meeting of a political group or advise any political group on the Council either as to the work of the group or the Council.<sup>a</sup>
- 5.2. Officer advice to councillors in any of their roles will always be given in the following contexts:
- agreed Council policy
  - an appreciation of local and national priorities
  - national law and guidance
  - best professional practice
- 5.3. If a councillor is unhappy with advice received, they should refer this to the relevant Director or Head of Service who will provide further advice or guidance. Any disagreement following this step should be referred to the Chief Executive.
- 5.4. Councillors are obviously welcome to visit the offices to meet with officers to discuss services or plans. However, officers obviously have work commitments and sometimes it is not possible for an officer to be available at very short notice. Where possible councillors should pre-plan visits by contacting the officer in advance. Officers accept that on rare occasions special urgency may mean prior notice is not practical.
- 5.5. Most officers work within normal office hours. It is recognised that on occasions a councillor may need to contact a senior officer outside these times but it is important that undue work pressure is not placed on officers by councillors or senior managers to respond in evenings or at weekends outside of agreed out of hours procedures.

## 6. Statutory Roles & Responsibilities

- 6.1. Councillors are required to have regard to relevant advice of the three "statutory officers" in their decision making roles. It is especially important, therefore, that the roles of 'Head of Paid Service', the 'Chief Financial Officer' (or s151 Officer) and the Monitoring Officer are fully understood and that working relationships and flows of information between those officers, and between those officers and councillors, are strong and positive.
- 6.2. In summary the roles of the statutory officers are:

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<sup>a</sup> This does not apply to political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989. See also paragraph 7.5 below regarding requests to the Chief Executive for group briefings by officers.

Head of Paid Service (HOPS) - The HOPS is under a duty to report to the Council in relation to how the discharge of the Council's functions is co-ordinated, the staff required to discharge functions and their organisation and management. This statutory post is currently held by the Chief Executive.

Chief Finance Officer (CFO) (s151 Officer) - The CFO is responsible for arrangements for the proper administration of the Council's financial affairs. The CFO has a statutory duty to report to the Council in relation to any unlawful expenditure (actual or proposed) or if it appears expenditure in any financial year is likely to exceed resources available to meet the expenditure. This statutory post is currently held by the Director of Finance and Economy.

Monitoring Officer (MO) – The MO has a statutory duty to report to the Council (or Cabinet) if it appears the Council is acting or likely to act illegally or, in some circumstances, with maladministration. The MO also has a statutory role central to the ethical standards regime for borough councillors and in some respects, parish councillors in the borough. It is important that the confidentiality and independence which attaches to the latter functions are understood and respected. This statutory post is currently held by the Director of Law & Governance.

- 6.3. The Leader of the Council is appointed by the Council under statutory provisions for a four year term. The office of the Leader of the Council carries personal statutory responsibilities, including the appointment of a Cabinet. The office also carries strategic leadership functions under the Council's Constitution including
- To provide visible political leadership in the overall co-ordination of the Council's policies.
  - To uphold the Constitution and ensure adherence of proper standards of behaviour by Councillors
- 6.4. Councillors and officers should be aware of these statutory roles and responsibilities and have appropriate regard for the advice and actions of the office holders when discharging these duties.

## 7. **Briefings by Officers**

7.1. Since officers serve all members of the Council, they must provide information, offer advice and give assistance in the formulation of policy proposals impartially to all who seek such information advice and assistance. Officers also have to recognise the position and roles of Committees, Portfolio Holders and Chairmen and the need to work with them to facilitate the discharge of the Council's functions and delivery of services.

7.2. Whilst, therefore, working relationships between senior officers and Portfolio Holders, for example, will need to be close, the relationships must not:

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- compromise officers' duties to all members of the Council

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- be so close as to give the appearance of partiality or over-familiarity by the officer
  - undermine or compromise officers' professional responsibilities to give appropriate advice impartially in the interests of the Council
- 7.3. Briefings of councillors by officers occur regularly within the committee and decision-making process. For example, prior to the despatch of each Cabinet agenda, the Leader of the Council and relevant Portfolio Holders, will be briefed by relevant officers and the content of an agenda discussed and so far as possible agreed with the Leader as Chairman in accordance with the Council's Constitution. Similarly, prior to the despatch of each Overview & Scrutiny Committee agenda, the Chairman and Vice Chairman will be briefed by the Senior Policy and Scrutiny Officer and the agenda agreed with them so far as possible.
- 7.4. The Chairmen of regulatory committees will not normally be briefed upon items proposed to be included on meeting agendas but may be briefed by relevant officers upon the content of agendas once settled by the Proper Officer.
- 7.5. There may be additional briefings given by officers to councillors on specific topics or to particular committees. However briefings will not be given by officers to individual party groups unless the same briefing is also offered to other party groups and any independent councillors. Requests for group briefings should be made to the Chief Executive. Normally only officers of appropriate seniority, such as heads of service or Directors, would attend such briefings. Briefings may only relate to Council business not group or party business.
- 7.6. In the event that a briefing is given, officer(s) will leave the meeting before the group decide what view to take on the matter. If a group meeting includes non-members of the Council, the officer may not be able to provide the same level of information and advice as to a "councillors only" meeting.

**Summary**

**DO pre-plan visits to the offices to meet with officers by appointment wherever possible.**

**DO NOT ask officers to advise or attend meetings of a political group except for any all-group briefings arranged through the Chief Executive.**

**DO NOT place undue work pressure on officers to respond in evenings or at weekends outside of agreed out of hours procedures.**

## 8. Councillors' Rights of Access to Documents

- 8.1. Councillors are normally entitled to have access to information and documents reasonably necessary to enable them to carry out their councillor duties. This is often referred to as 'the need to know'. This does not normally apply to working or draft documents or internal management documents. Nor does it apply if a councillor has or is reasonably considered to have an improper purpose in accessing the information e.g. to act contrary to the Council's interests. The Council's Monitoring Officer will decide in the event of any dispute.
- 8.2. Confidential documentation such as that provided in relation to named individuals for Appeals or Appointments committee meetings, will normally be made available on a confidential basis only to councillors serving on the relevant panel or committee.
- 8.3. Councillors should not disclose information or documents provided to them by officers on a confidential basis. Nor should they disclose any information provided as 'exempt' or 'confidential' under the Access to Information legislation. Such disclosure may be in breach of the law or the Council's Code of Conduct for Members.

## 9. Press and Media Statements

- 9.1. Official press statements relating to the functions and business of the Council may be issued by the Communications and Marketing Manager on the authority of the Mayor (on matters relating to that office) and on all other matters in consultation with the Leader of the Council (or Deputy Leader in absence of the Leader) or the relevant Portfolio Holder (after discussions with the Leader or Deputy Leader) or the relevant Chairman of a committee (or Vice Chairman in absence of the Chairman) after discussion with the Leader or Deputy Leader.
- 9.2. All Council media communications will follow the Code of Recommended Practice on Local Authority Publicity. This means they will not contain party political views or material. Any party political communications should be through councillors' own channels such as their own party newsletters or social media channels rather than supported by officers.
- 9.3. Expression of opinion or views by councillors on behalf of the Council to the press, radio or television or to MPs or other public bodies on matters relating to the work of the Council shall be given only by the Leader of the Council or Deputy Leader or Portfolio Holder or Chairman or Vice Chairman of a Committee in the same manner described at 9.1 above.

- 9.4. Paragraph 9.3 does not prevent councillors expressing opinions or views on such matters in a personal or ward councillor or political group capacity provided this capacity is made clear in the communication. <sup>a</sup>
- 9.5. All media enquiries and requests for comment/interview made direct to an officer must be directed to the Council's Communications team for consideration and advice. Media enquiries and requests for comment/interview made direct to a councillor should also normally be directed to the Council's Communications team, for consideration and advice. In any event para 9.3 above still applies to any views expressed.

#### Summary

**DO ensure media enquiries and requests to officers for comment are always directed to the Council's Communications Team for advice and that such requests to councillors are normally so directed**

**DO NOT seek to include party political material in any Council media communication.**

**DO NOT express views on behalf of the Council to press, radio, TV or MPs or other public bodies on Council business unless you are specifically authorised to do so.**

## 10. Modelling and Monitoring Positive Behaviours

- 10.1. The Council's political leadership and Senior Management Team commit to model the highest standards of personal conduct in undertaking the Council's business. This is intended to set an appropriate example for others to follow.
- 10.2. It is important, however, that if councillors or officers have concerns about the behaviour or actions of others they should feel able to raise them in an appropriate way without fear of reprisal. This reflects the Council's legal obligations to promote and maintain high standards of conduct.
- 10.3. If an officer feels this Protocol has been breached they should discuss their concerns with the Council's Chief Executive or Monitoring Officer. As far as possible there should be an informal resolution to the concerns by discussion with the relevant councillor and/or Group Leader. However, if on initial investigation, the situation appears to be sufficiently serious it may need to be resolved by following the procedures of relevant Council policies (such as the harassment policy) or through the formal Code of Conduct complaints process.

- 10.4. If a councillor considers an officer has breached this Protocol, this should normally be dealt with first through line management arrangements. This

<sup>a</sup> Article 2.06 of the Constitution provides additional guidance in relation to such communications by councillors.

means raising the matter with the relevant Director or Head of Service. Again, where possible an informal resolution should be sought or, if the matter is sufficiently serious, it should be handled within the Council's approved employment procedures. It is important to follow such procedures because, (as is made clear in the Appendix to this Protocol), it is inappropriate for councillors to remonstrate with or criticise officers at public or other meetings or in front of fellow councillors or officers.

#### **Summary**

**DO at all times seek to model the highest standards of officer and councillor conduct in undertaking the Council's business.**

**DO raise concerns about behaviour or actions of councillors in breach of this Protocol with the Chief Executive or the Monitoring Officer in accordance with para 10.3.**

**DO raise concerns about behaviour or actions of officers in breach of this Protocol in accordance with para 10.4.**

## APPENDIX

### Best Practice Guidance for all Elected Members of the Council

#### Collective & Individual Responsibilities

#### 1. Introduction:

- 1.1 **Your election to serve on Ashford Borough Council, demonstrates that the electorate has put their faith and trust in you. Therefore you are democratically accountable to the residents of your Ward and have a special duty to represent them. However, as an Elected Member you also have an overriding duty to the whole community of Ashford. These duties include assisting in the collective creation of policies that define the strategy and corporate approach to the functions of this Authority.**
- 1.2 This guidance explains the expectations that complements the key roles and duties of all elected members of the Authority as defined in **Article 2 Section 2.03 of the Constitution** and in addition the more specific duties of Elected Members serving on various committees as defined in **Part 3**.
- 1.3 As an Elected Member you have accepted a number of responsibilities that you will wish to discharge in a credible way. In order to do so you will need to gain a good understanding of the Council's statutory and non - statutory responsibilities and just how these are discharged.
- 1.4 It is also important to fairly quickly gain an understanding of the organisation of the Council and the key officers, who are there to assist you. There is also a need to understand the relationship of the Council with other organisations.
- 1.5 Clearly certain duties as an elected Councillor are such that they must be your priorities and they are emphasised in the sections that follow.
- 1.6 It is quite understood that many Councillors are employed and have other pressing demands on their time. It is therefore important to differentiate between what are your key duties and what are rather more optional. It is important that you do not take on more than you can do well and effectively.
- 1.7 Elected Councillors may also have a duty to their respective group on the Ashford Borough Council and to their political organisation.



## **2. Councillors Collective Responsibilities:**

- 2.1 Whilst, the administrative party will set the policies and drive forward their agenda, which opposition members are free to challenge, it must be remembered that all elected members are working not only for their wards but also for the good of the entire Borough.
- 2.2 All Elected Members have a duty to contribute to the good governance of the Ashford area and encourage citizen involvement in their wards. Accordingly you have a prime duty to attend the Full council meetings when called to do so by the Mayor. Indeed, under Section 85 of the Local Government Act 1972, any Elected Member who fails to attend any meetings of the Council or its Committees for a six month period would automatically be disqualified and lose their seat. A By-Election would then have to be held.
- 2.3 You also have a collective and personal duty to attend any committee to which you have agreed to be appointed. If you are unable to attend a meeting it is good practice to send apologies via Member Services. You also have the opportunity to arrange a substitute (Part 4, Appendix 4 of the Constitution refers). This should be done via your Political Group. You should remember that membership of the various committees, forums, task groups, boards, panels or sub committees is optional and you should not accept an appointment to any that you cannot attend on a regular basis.

## **3. Individual Responsibility:**

- 3.1 Collective responsibility is not the same as individual responsibility, which means that elected members have certain personal responsibilities.
- 3.2 In order for elected members to be effective, they must become knowledgeable and fully understanding of the methods and practices used by Council officers to deliver the Council's corporate plans and policies. If there are any issues that are unclear or of concern they should approach the relevant Portfolio Holder, Senior Officer or a Senior Member of the Authority. Induction and training is offered to all Elected Members and you are encouraged to make every effort to attend such sessions. Attendance at training in Planning and Licensing is mandatory for Members appointed to serve on those Committees.

Part 5  
Codes and Protocols -  
Councillor/Officer Relationship

- 3.3 Elected Members must understand that it is as much their responsibility to keep themselves informed of what is going on in the Council as it is of others to inform them. Unfortunately, it is sometimes the case that Elected Members remonstrate, stating that they are unaware of certain matters only to find that they have been so informed, but have failed to either attend the briefing or have failed to read the documents provided.
- 3.4 The Leader of the Authority is keen to ensure that the Council has as an inclusive approach as possible and to that end has introduced the practice of producing a series of numbered "Leader's Briefings". These briefings are circulated to all Members of the Authority irrespective of party affiliation.
- 3.5 The Administration is responsible for corporate policy formation under the cabinet system, all Elected Members of the Authority must share in the responsibility of ensuring that these Council policies are being executed in an effective and timely manner.
- 3.6 Whilst the robust nature of British politics is well understood and whilst it is reasonable to robustly challenge differing political views and decisions, good manners, good behaviour and respect are the order of the day. Your attention is drawn to the Council's adopted Code of Conduct for Members in Part 5 of the Constitution. As Elected Members representing the people of Ashford, you have a duty to set that good example in your day to day activities. You need to think about what you say and what you write and the use of inappropriate or inflammatory language is not acceptable.
- 3.7 It is particularly inappropriate for elected members to remonstrate with individual staff for any perceived shortcomings. It is however, important that you take up any such matters of concern with the respective Service Head and or Portfolio Holder. Elected Members should not be hovering around the workplace of the officers or becoming involved with their detailed activities, because they have line managers to whom they report.
- 3.8 If any Elected Member is unhappy or concerned with any process or procedure or indeed performance of any department or officer of the Council, then it may be appropriate to take it up with the Leader, CE or the appropriate Head of Service, dependent on the nature of the issue.
- 3.9 Under no circumstance is an Elected Member to remonstrate with any officer of the Council in front of either other Elected Members, or indeed other officer colleagues. At public or closed meetings it is also unacceptable to remonstrate with officers in a way that would cause embarrassment or humiliation, because that is in

effect bullying and is not acceptable in this Authority. It is also likely to be a breach of the Council's adopted Code of Conduct which could lead to a formal complaint, investigation and sanctions.

- 3.10 Elected Members have an inherent duty to effectively represent the interests of their ward and individual constituents. However, in doing so they will often have to balance competing interests both in the ward and with the wider interests of the Borough.
- 3.11 It should be remembered that if, you are approached by a member of the public about a Council matter that they are concerned about, Members should first check that they are indeed resident in your ward. If not it is important that you refer them to the appropriate ward member and do not yourself get involved, unless invited to do so by the ward member.
- 3.12 In terms of elected members wishing to make or express a view on behalf of the Council, your attention is drawn to **Part 2, Article 2 Section 2.06 of the Constitution**. In addition Members will need to adhere to any group rules applicable in this area.

**Gerry Clarkson**  
**Leader - Ashford Borough Council (Rev: May 2018)**