

PART 5

CODES AND PROTOCOLS

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WEST SOMERSET COUNCIL MEMBER CODE OF CONDUCT

INTRODUCTION AND INTERPRETATION

As a member and representative of this Council it is your responsibility to comply with this Code when you undertake or claim to be undertaking Council business or give the impression that you are undertaking Council business.

As a representative of this Council your actions impact on how the Council as a whole is viewed by the public. It is important, therefore, that you do not do anything when undertaking Council business which you could not justify to the public. It is not enough to avoid actual impropriety, you should at all times avoid any occasion for suspicion or appearance of improper conduct.

This Code is based upon the seven principles of public life which are set out at Appendix 1. You shall have regard to those principles when fulfilling your role.

An explanation of the terms used in this Code can be found in Appendix 2.

1. GENERAL OBLIGATIONS

When undertaking Council business you must:

- 1.1 treat others with respect;
- 1.2 not use or attempt to use your position as a member improperly to give yourself or any other person, an advantage or disadvantage;
- 1.3 when reaching decisions on any matter, consider any relevant advice provided to you by—
 - a) the Council's Chief Finance Officer (S151) ; or
 - b) the Council's Monitoring Officer,in accordance with his or her statutory duties;

- 1.4 give reasons for decisions in accordance with any statutory requirements and the Constitution of the Council;
- 1.5 act in accordance with the Council's Constitution and the policies contained within it and any other relevant Council policies ;
- 1.6 not use Council's resources improperly (including for political purposes);
- 1.7 avoid doing anything which may cause the Council to breach a statutory duty or any of the equality enactments (as defined in section 149 of the Equality Act 2010);
- 1.8 not bully any person;
- 1.9 not intimidate or attempt to intimidate any person who is or is likely to be—
 - a) a complainant,
 - b) a witness,
 - c) involved in the administration of any investigation or proceedings, or
 - d) any other person carrying out the functions of the Council,in relation to an allegation that a member (including yourself) has failed to comply with the Council's code of conduct;
- 1.10 avoid doing anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council;
- 1.11 not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- a) you have the consent of a person authorised to give it;
- b) you are required by law to do so;
- c) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
- d) the disclosure is—
 - i. reasonable and in the public interest; and
 - ii. made in good faith and in compliance with the reasonable requirements of the Council; and
- e) in all instances you have consulted the Monitoring Officer prior to its release;

1.12 not prevent another person from gaining access to information to which that person is entitled by law; and

1.13 not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

2. INTERESTS

Disclosable Pecuniary Interests

2.1 You must register and declare any Disclosable Pecuniary Interests that relate to your public duties as required by this Code, and set out in Appendix 3.

2.2 You must, within 28 days of this Code being adopted by the Council or your taking office as a member or co-opted member, register any Disclosable Pecuniary Interests with the Council's Monitoring Officer, where the Disclosable Pecuniary Interest is yours, your spouse's or civil partner's, or is the Disclosable Pecuniary Interest of somebody with whom you are living as a husband or wife, or as if you were civil partners. Disclosable Pecuniary

Interests will be recorded in the Council's Register of Members' Interests and made available for public inspection including on the Council's website at: www.westsomersetonline.gov.uk

2.3 Within 28 days of becoming aware of any new Disclosable Pecuniary Interest or change to any such interest already registered, you must register details of that new interest or change in writing to the Council's monitoring officer.

2.4 Where any business of the Council, relates to or affects a Disclosable Pecuniary Interest whether registered under 2.2 or 2.3 above or not, and you attend any meeting of the Council, its Cabinet or any Committee, Sub-Committee, Joint Committee at which that business is to be considered, you must:

- not seek to influence a decision about that business
- disclose to that meeting the existence and nature of that interest no later than the start of the consideration of the business in which you have that interest, or (if later) the time at which the interest becomes apparent to you. The exception to the requirement to disclose an interest is if the matter is a sensitive interest under paragraph 2.11
- withdraw from the meeting room or chamber as soon as it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from the Council's Monitoring Officer
or
Standards Advisory Committee.

2.5 Following any disclosure at a meeting or as part of a decision record, of a Disclosable Pecuniary Interest not on the Council's register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of the disclosure at the meeting or in the decision record in order for the interest to be included in the register.

2.6 Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a Disclosable Pecuniary Interest. Additionally you must observe the restrictions the Council places on your involvement in matters where you have a Disclosable Pecuniary Interest as defined by the Council and set out in this Code.

Other Interests

NOTE: It is conceivable that an interest could be categorised as both a Disclosable Pecuniary Interest and a personal or a personal and prejudicial interest. If so you must treat it as a Disclosable Pecuniary Interest and comply with the requirements set out in paragraphs 2.1 – 2.6 inclusive

2.7 (1) In addition to the Disclosable Pecuniary Interests notifiable under the Localism Act 2011, you must, within 28 days of—

- a) this Code being adopted by or applied to the Council; or
- b) your election or appointment to office (where that is later),

give written notification to the Monitoring Officer of the details of your other personal interests, as defined in 2.8(1) (i) and (ii) below, for inclusion in the register of interests. The exception to this requirement is if the detail of the personal interest is classified as sensitive – see paragraph 2.11.

(2) You must, within 28 days of becoming aware of any new personal interest or change to any such registered interest, notify the Monitoring Officer of the details of that new interest or change.

Personal Interests

2.8(1) You have a personal interest in any business of the Council where:

- (a) it relates to or is likely to affect—
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
 - (ii) any body—

- (aa) exercising functions of a public nature;
- (bb) established for charitable purposes; or
- (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;

(b) a decision in relation to any business of the Council might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a significant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division, as the case may be, affected by the decision;

(2) Subject to sub-paragraphs (3) to (5) below, where you are aware of a personal interest described in paragraph (1) above in any business of the Council, and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the start of the consideration of that business, or when the interest becomes apparent to you.

(3) Where you have a personal interest in any business of the Council which relates to or is likely to affect a significant person (see paragraph 1 (b) above and Appendix 2 for the interpretation of the term 'significant person'), or a body described in paragraph 2.8(1)(a)(ii) you need only disclose to the meeting the existence and nature of that interest if and when you address the meeting on that business.

(4) Where you have a personal interest but the interest is not detailed in the Council's register of members' interests because of the sensitive nature of the interest, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(5) Where you have a personal interest in any business of the Council and you have made an individual decision (as a Cabinet member) in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest subject to (4) above.

(6) Any personal interests notified to the Monitoring Officer will be included in the register of interests.

(7) A copy of the register will be available for public inspection and will be published on the Council's website.

Prejudicial Interests

2.9 (1) Where you have a personal interest in any business of your Council you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business—

(a) affects your financial position or the financial position of a significant person or a body described in paragraphs 2.8(1)(a)(i) and (ii) (other than another town parish district or county council or national park authority of which you are also a member); or

(b) relates to determining any approval, consent, licence, permission or registration in relation to you or any significant person or a body described in paragraph 2.8(1)(a)(ii) (other than another town parish district or county council of which you are also a member).

(2) Subject to paragraph (3) and (4), where you have a prejudicial interest in any business of your Council—

(a) You may not participate in any discussion of the matter at a meeting.

(b) You may not participate in any vote taken on the matter at a meeting.

(c) You must disclose the existence and nature of the interest to the meeting and leave the room where the meeting is held while any discussion or voting takes place on the matter. The exception to the requirement to disclose the detail of the interest is if the matter is a sensitive interest under paragraph 2.11. In these circumstances you need only state that you have a prejudicial interest and that the details are withheld because of the sensitive information involved.

(3) Where you have a prejudicial interest in any business of your Council, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business and you leave the meeting room immediately after making representations, answering questions or giving evidence.

(4) Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your Council in respect of—

(i) housing, where you are a tenant of your Council provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

(5) Where, as a Cabinet member, you may take an individual decision, and you become aware of a prejudicial interest in the matter which is the subject of the proposed decision you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek to influence a decision about the matter.

Receipts of gifts and hospitality

2.10(1) You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £25 which you have accepted as a member from any person or body other than the Council.

(2) The Monitoring Officer will place your notification on a public register of gifts and hospitality.

2.11 Sensitive Interests

2.11(1) If you have a Disclosable Pecuniary Interest or a Personal or Personal and Prejudicial Interest but you consider that disclosure of the interest could lead to you or a person connected with you being subject to violence or intimidation **and** the Monitoring Officer agrees with that assessment then instead of disclosing the interest you need only disclose that you have a Disclosable Pecuniary Interest or Personal or Personal and Prejudicial Interest (as the case may be). In such instances any published version of the

register of interests will exclude details of the interest but may state that you have an interest, the details of which are withheld.

Overview and Scrutiny

- (1) In relation to any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where—
- a. that business relates to a decision made (whether implemented or not) or action taken by your Council's Cabinet or another of your Council's committees, sub-committees, joint committees or joint sub-committees; and
 - b. at the time the decision was made or action was taken, you were a member of the Cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph a) and you were present when that decision was made or action was taken; or
 - c. that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

you may attend a meeting of the overview and scrutiny committee or sub-committee of the Council but only for the purpose of making representations, answering questions or giving evidence relating to the business.

Adopted by West Somerset Council on 27th June, 2012 as amended on 20th November, 2013

I hereby undertake to observe the above code of conduct

Signed

Dated

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

Holders of public office should act solely in terms of the public interest.

INTEGRITY

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY

Holders of public office should be truthful.

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

COUNCIL'S CODE OF CONDUCT - INTERPRETATION

In the Council's Code of Conduct the following words shall have the following meanings ascribed to them—

- “the Act” means the Localism Act 2011;
- “Disclosable Pecuniary Interest” is as defined in Appendix 3
- “meeting” means any meeting of—
 - (a) the Council;
 - (b) the Cabinet/Executive of the Council;
 - (c) any of the Council's or its Cabinet's/Executive's committees, sub-committees, joint committees, joint sub-committees, or area committees; whether or not the press and public are excluded from the meeting in question by a resolution of members
- “member” includes a co-opted member and an appointed member.
- “sensitive information” means information relating to a member's interests that the monitoring officer has determined need not be included in the member's registration of an interest or any change to that interest, by virtue of the fact that its availability for inspection by the public is likely to create a serious risk that any person may be subjected to violence or intimidation
- “bullying” means offensive, intimidating, malicious, insulting or humiliating behaviour based on abuse or misuse of power or authority which attempts to undermine
- “disrepute” means a lack of good reputation or respectability which can be reasonably regarded as reducing the public's confidence in that member being able to fulfil their role or adversely affecting the reputation of members generally in being able to fulfil their role

- “significant person” in relation to personal and personal and prejudicial Interests means

a member of your family or any person with whom you have a close association; or

any body-

(1) of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;

(2) exercising functions of a public nature;

(3) established for charitable purposes; or

(4) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management

- “wellbeing” means a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively, is likely to affect their wellbeing. It is not restricted to matters affecting a person’s financial position
- “close association” means someone that you are in regular contact with over a period of time who is more than an acquaintance or colleague. It may be a friend, a business associate or someone you know through general social contacts. It is someone who a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them.
- “member of your family” means partner i.e someone you are married to, your civil partner, or someone you live with in a similar capacity, a parent, a parent-in-law, a son or daughter, a stepson or stepdaughter, the child of a partner, a brother or sister, a brother or sister of your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece, and the partners of any of these people.

DISCLOSABLE PECUNIARY INTERESTS

This note explains the requirements of the Localism Act 2011 (Ss 29-34) in relation to disclosable pecuniary interests.

These provisions are enforced by criminal sanction.

They come into force on 1 July.

1 Notification of disclosable pecuniary interests

Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

A 'Disclosable Pecuniary Interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the following descriptions:

<i>Interest</i>	<i>Description</i>
Employment, office, trade, profession or vocation	Any employment, office trade profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a).
Contract	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council – (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Council.

Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) – (a) the landlord is the Council; and (b) the tenant is body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where – (a) that body (to M/s knowledge) has a place of business or land in the area of the Council; and (b) either – <div style="margin-left: 40px;"> <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> </div>

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

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

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

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

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the Council 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” in relation to disclosable pecuniary interests means M or M’s spouse or civil partner or a person with whom M is living as husband and wife or a person with whom M is living 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(b) and other securities of any description, other than money deposited with a building society.

2 Dispensations

The Standards Committee or Monitoring Officer [Council or Clerk] may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

3 Offences

It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As a Cabinet/Executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Guidance on Bias and Predetermination –

This is not part of the code of conduct

- Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you may participate in a decision on the issue in your political role as a member. However, you must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- When making a decision, consider the matter with an open mind and on the facts made available to the meeting at which the decision is to be taken.

ROLE OF THE INDEPENDENT PERSON – WEST SOMERSET COUNCIL

ROLE DESCRIPTION

Responsible to: The Council

Liaison with: Monitoring Officer, members of the Standards Advisory Committee, Officers and Members of West Somerset Council and Town and Parish Councillors within the district, key stakeholders within the community.

1. To assist the Council in promoting high standards of conduct by elected and co-opted members of West Somerset Council and Town and Parish Councillors and in particular to uphold the Code of Conduct adopted by the Council and the seven principles of public office, namely selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
2. To have their views sought by the Council through the Monitoring Officer and the Standards Advisory Committee before it makes a decision on an investigated allegation and to be available to attend meetings of the Hearing Panel of the Standards Advisory Committee for this purpose as appropriate.
3. To have their views sought, if requested, by the Monitoring Officer and the Standards Advisory Committee before a decision is taken as to whether to investigate a complaint or to seek local resolution of the same.
4. To be available to have their views sought by any elected Member, including Town and Parish Councillors, who is the subject of a standards complaint and otherwise assist with the process as mutually agreed with the Monitoring Officer and Standards Advisory Committee.
5. To develop a sound understanding of the ethical framework as it operates within West Somerset Council and its Town and Parish Councils.
6. To participate in training events to develop skills, knowledge and experience and in networks developed for Independent Persons.
7. To attend, as appropriate, training events organised and promoted by the Council's Standards Advisory Committee.
8. To act as advocate and ambassador for the Council in promoting ethical behaviour.

OPERATIONAL PROTOCOL

1. The independent person to be given a full background/briefing regarding the operation and decision making processes currently in operation at West Somerset Council.
2. It being recognised that it is good practice that only one independent person should have his/her views sought on each specific case. Therefore the Council should only use the reserve independent person when the appointed independent person was either unavailable or feel they have a conflict of interest in a particular case.
3. If any external parties wish to contact the independent person this should always be done via the West Somerset Council's Monitoring Officer and colleagues based at West Somerset House.
4. Whilst the detailed nature of any discussions that the independent person may have with parties can and should be kept confidential the independent person should keep a record of what views were expressed in a particular case, by them, including being date specific, such views could change/vary as a case is progressed.
5. As part of the process for undertaking the assessment of an initial complaint the Monitoring Officer in consultation with the Standards Advisory Committee will agree whether the independent can assist/their views be sought, at this initial stage. This would be in addition to the independent person having their views sought should a formal investigation be undertaken at a later stage.
6. The staff and members of West Somerset Council should at all times support the independent person to ensure that their independence is maintained.
7. If the independent person should consider that his/her views are not being properly taken into account then they have the right to approach the Chief Executive or Leader of the Council direct to voice their concerns.

Employee Code of Conduct

1. Standards

- 1.1 Where the Council or its officers are dealing with a matter in which an officer has a private interest, either pecuniary or otherwise, he/she should declare that interest to his/her Director who will decide whether or not the interest is of such a nature that it needs to be brought to the attention of the Executive officer who is dealing with it.
- 1.2 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, through agreed procedures and 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 their line manager or Director any impropriety or breach of procedure.

2. Disclosure of information

- 2.1 The Council believes that open government is best. Certain types of information are required by law to be made available to members, auditors, government departments, service users and the public. Other types of information, particularly that containing confidential or personal information may not be disclosed unless there is specific authorisation to do so. It is the responsibility of chief officers and managers to ensure that all employees can differentiate between that information which may be disclosed and that which may not.
- 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. 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 Disclosure of Information relates directly to the Data Protection Act (DPA). It is the duty of all employees to ensure that they are aware of their personal responsibilities under the DPA and that they comply with the provisions of the Act at all times.

3. Political Neutrality

- 3.1 Employees serve the Authority as a whole. It follows, therefore, that they must serve all councillors and not just those of the controlling group, and must ensure that the individual rights of all councillors are respected.
- 3.2 The practice is that officers (other than chief officers) should not be required to advise political groups. In the rare event of an employee being asked to

undertake such an activity they must do so in a manner, which does not compromise their political neutrality. Employees should also seek the Chief Executive's approval prior to attending such a group meeting.

- 3.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Authority and must not allow their own personal or political opinions to interfere with their work.

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.

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 this Authority.

4.3 Contractors

All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the Director. 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. 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 declare that relationship to their Service Area Manager or Head of Service.

5. Appointment and other employment matters

- 5.1 Employees likely to be involved in appointments must ensure that they have attended the Authority's recruitment and selection training course prior to making any appointments. All appointments must be made on the basis of merit. It would be unlawful 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 who is a relative, partner etc.

6. Outside Commitments

6.1 Senior employees are not permitted to undertake any employment outside the Authority especially where this may conflict with the Authority's interests. Any employee wishing to undertake other employment, must obtain written consent before doing so.

6.2 Intellectual property, such as inventions, creative writing and drawings, created during an employee's contractual hours of employment belongs to the Council. Employees wishing to use such intellectual property for purposes outside the Authority or for obtaining copyright should seek written permission from their line manager or where appropriate their Director in liaison with the Chief Solicitor.

7. Personal Interests

7.1 Employees must declare to their line manager any non-financial interests that they consider could bring about conflict with the Authority's interests.

7.2 Employees must declare to their Assistant Director any financial interests, which could conflict with the Authority's interests.

7.3 Employees who are in debt as a customer to the Council, i.e. Council Tax arrears should declare this to their Assistant Director (this does not include payroll debts or approved money owed to the Council, such as car loans, cycle saver scheme etc.). All debts must be declared even if a repayment plan is already in place.

7.3.1 Where the employee is in a role which involves collecting money or debts owed to the Council or advising customers about meeting payments or other financial obligations this must also be reported to the Section 151 Officer by their Assistant Director.

7.3.2 The circumstances set out in 7.3.1 above will require the employee to enter into an agreement with the Council for the repayment of all sums owing to the Council as such circumstances may involve a conflict of interest.

7.4 Employees should declare to their line manager membership of any organisation not open to the public, such as Free Masonry.

8. Equality Issues

8.1 All employees should ensure that policies relating to equality issues as agreed by this Authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees,

irrespective of their age, race, gender, marital status, sexuality and ability, have a right to be treated with fairness and equity.

9. Health and Safety

- 9.1 The Health and Safety Act places personal responsibility upon all employees to ensure the health and safety of themselves, colleagues and visitors to the Authority's buildings. All employees should ensure that they are aware of the provisions of the Act and the Authority's own policy. Employees should also alert their manager or divisional Safety Committee representative of any situation that is likely to cause a risk to health and safety.

10. Separation of Roles during Tendering

- 10.1 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 employees who have both a client and contractor responsibility must be aware of the need for accountability and openness (currently within the Authority only two senior officers have twin-hatted roles).
- 10.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and subcontractors.
- 10.3 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.
- 10.4 Employees contemplating a management buy out should, as soon as they have formed a definite intent, inform the appropriate Director and withdraw from the contract awarding process.
- 10.5 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.

11. Gifts and Hospitality

- 11.1 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. They should be properly authorised and recorded within the gifts and hospitality book held by the Monitoring Officer.
- 11.2 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Authority.

- 11.3 Employees should not accept significant personal gifts from contractors or outside suppliers, although the Authority would allow employees to keep small items of token value such as pens, diaries etc providing there was no apparent ulterior motive nor any danger of misinterpretation by the public . In any event all gifts and hospitality of £25 and over must be registered in the gifts and hospitality book.
- 11.4 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.

12. Corruption

- 12.1 Employees must be aware that it is a serious criminal offence for them to corruptly 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 it is for the employee to demonstrate that any such rewards have not been corruptly obtained. The penalty for such an offence is punishable by a fine of up to £2,500 under section 117(2) of the Local Government Act 1972.
- 12.2 Employees must refuse an offer of a gift from any person engaged in negotiating a contract or other matter with the Council, or who has negotiated such a matter and the employee is directly responsible for formulating recommendations to the Council or for monitoring the service received from the person concerned.
- 12.3 Any employee who is pestered or harassed into accepting gifts or other incentives must inform their line manager or the Council's Monitoring Officer immediately.

13. Use of Financial Resources

- 13.1 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.

14. Sponsorship - Giving and Receiving

- 14.1 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. 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.

15. Bequests

- 15.1 Employees should actively discourage clients from bequeathing property, money or other items to them. Where an employee becomes aware that a client intends to bequeath something to them, they must inform their Line Manager immediately. Wherever possible bequests should be declined, either directly to the Client or to the Solicitor responsible for the will.
- 15.2 Where it is too late to decline a bequest or to do so would cause undue offence, the employee must submit all relevant details to their Theme Manager who will authorise the employees to accept/retain the bequeathed items only if they are satisfied that no undue influence has been exerted on the Client by the employee. A record of this authorisation will be held by the Council's Monitoring Officer. Any allegation that undue influence has been brought to bear will be investigated and, if proven, will be treated as gross misconduct under the Council's Disciplinary Procedure.

Protocol for Member and Officer Relations

Principles Underlying the Protocol

The principles underlying this Protocol are as follows –

Both Members and Officers shall carry out their respective duties in the best interests of the Council.

There shall be mutual respect between Members and Officers with regard to their respective roles, as set out in this Protocol.

Members should promote equality by not discriminating unlawfully against any person, and be treating people with respect, regardless of their race, age, religion gender, sexual orientation or disability. They should respect the impartiality and integrity of the Authority's statutory Officers, and its other employees.

1. Introduction

- (a)** This protocol guides Members and Officers of the Council in their relationships with one another. To a large extent, the protocol is no more than a statement of current practice and convention. As it is in a written form, however, it should promote clarity and certainty.
- (b)** This protocol will be kept under review and amended as necessary.

2. Member/Officer Relations

- (a)** The general principles on which the Council's Code of Conduct for Councillors and co-opted Members states –

“Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.”

- (b)** The Council's Code of Conduct for Councillors and co-opted Members states –

“A member must –

- (i)** Promote equality by not discriminating unlawfully against any person.
- (ii)** Treat others with respect; and

- (iii) Not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.”
- (c) Members and Officers share a responsibility to work together to achieve decisions in the interests of the Council and the area it serves. Officers serve the Council as a whole and they act in a politically neutral way in giving professional advice and general support to all Members.
- (d) Irrespective of size, all political groups are entitled to equal treatment by Officers. All political groups are entitled to access information from Officers at any time prior to a decision being made and to call on the support of Officers to assist them.
- (e) All dealings between Members and Officers should observe reasonable standards of courtesy and neither party should seek to take advantage of their position. On occasions, Members may have reason to complain about the conduct or performance of an Officer. All such complaints should be made personally to the Head of Paid Service or if appropriate to the Leader. It is important that complaints are made in this way, and details are noted.
- (f) If an Officer is concerned about a Member’s conduct it should be brought to the attention of the Head of Paid Service and the Leader of the Council. In the absence of the Leader, the Deputy Leader should be approached. If appropriate, matters of concern will be referred to the Council’s Standards Advisory Committee.
- (g) The partnership of Members and Officers depends on mutual trust, respect and understanding of respective roles and responsibilities. **Care should be taken to ensure that dealings with an individual Member or Officer cannot be open to accusations of bias, favouritism or political partiality.**
- (h) A Member or officer may speak to the Monitoring Officer, Chairman of the Standards Advisory Committee, Chairman of the Council, Leader or Chief Executive if they are experiencing an issue/dispute with a Member or officer of the Council who will first try and mediate a solution outside of any formal complaint process.

3. Advice and Information

- (a) Members are entitled to seek advice (sometimes at short notice) from any relevant Officer. Officers will do their utmost to assist Councillors in their information and advice needs, but may refer Members to another Officer who is better able to give the relevant advice. Any advice given to a political group, or to Members collectively or individually, and the subject of that advice, is strictly confidential to the

Members concerned unless agreed otherwise. Further, the proceedings of a political group meeting are to remain private.

- (b)** Officers are encouraged to work with all political groups and to facilitate discussions between them in order to secure decisions, whenever appropriate. In doing this, Officers must be careful to respect any information confidential to a single political group.
- (c)** The Council wishes to conduct its affairs as openly as possible and to give Members maximum access to information and documents to enable them to discharge their role as Members of the Council. Requests for information can range from general information about an aspect of the Council's work to specific requests for information on behalf of a constituent or Member of the public.
- (d)** Councillors are entitled to access (a) all information that is publicly available and (b) other information held by Officers which it is reasonable for Councillors to access in pursuit of their roles. Individual Officers are entitled to seek confirmation from the Head of Paid Service and the Leader about making sensitive information available if there is any doubt. Councillors must respect the right of Officers to seek this clarification. Officers will co-operate with Councillors in making information available promptly and in accordance with the timescale requested by the Councillor.
- (e)** Members have a statutory right to inspect any Council document (except those available only in draft form) that contain material relating to any business which is to be transacted at a Council, Cabinet or Committee meeting. This right applies irrespective of whether the Member is a Member of the Cabinet or Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. This right, however, does not extend to documents relating to items containing "exempt information" as detailed in Part 1 of Schedule 12A to the 1972 Act other than information falling within paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract) or information falling within paragraph 6 of Schedule 12A to the 1972 Act.
- (f)** The common law right of Members is much broader, and is based on the principle that any Member has a right to inspect Council documents so far as his/her access to the document is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council. This principle is commonly referred to as "the need to know" principle.
- (g)** The exercise of this common law right depends, therefore, upon the Member's ability to demonstrate that he/she has the necessary "need to know". The Courts have held that Members have no right to a

“roving commission” to go and examine documents. Mere curiosity is not sufficient. Where a question arises as to the Member’s need to know, the following procedure will apply -

- (i) The Head of Paid Service will consider in consultation with the Leader of the Council whether the request is reasonably in furtherance of the Member’s need to know. If it is then the document will be produced for the Members inspection.
 - (ii) If the request raises any legal issues, the Leader and the Head of Paid Service will consult the Council’s legal advisors or the Monitoring Officer.
 - (iii) If the matter remains unresolved it will then be referred to the Cabinet or to an appropriate Committee for decision.
- (h) Both Members and Officers must note that where information of a possible defamatory nature is contained in a document, inspection of which is permitted, such inspection is allowed on the clear understanding that neither the document nor its contents should be passed on.

4. Preparation of Agenda

- (a) Agendas for meetings of the Council, its Cabinet and Committees shall be prepared by the Proper Officer in consultation with the appropriate Chairman and Vice-Chairman. Any Member may ask for an item of business to be included on the relevant agenda and where appropriate to write a report on the matter. On receipt of such a request the Head of Paid Service in consultation with the Chairman will determine whether the matter should properly be included on the agenda.

NOTE: In practice this task is undertaken by staff of the Committee Services Team.

5. Urgent Business

- (a) The decision as to whether an item of business is urgent and should be considered by the meeting is one for the Chairman to make. As a working rule, an item of business will normally only be urgent if it has arisen since the dispatch of the agenda.
- (b) Members or Officers wishing to raise an item of urgent business should approach the Chairman and Meeting Administrator prior to the start of the meeting at which the request is to be raised. The Chairman’s ruling is binding on whether an item is urgent and is not open to discussion or debate.

6. Delegation of Functions

- (a)** The Scheme of Delegation sets out the various powers delegated to appropriate Officers and Councillors. In exercising delegated powers every person is obliged to act in accordance with -
 - (i)** The overall policies laid down by the Council or any of its Committees.
 - (ii)** Standing Orders including those relating to contracts; and
 - (iii)** Financial Regulations.
- (b)** Every Officer is expected to consult with Members as follows:
 - (i)** To maintain a close liaison with the appropriate Chairman and Vice-Chairman; and
 - (ii)** To consult as necessary/inform any other Member who has a specific local or specialist interest in the matter particularly when the issue is controversial or ongoing, i.e. more than two letters/phone calls/visits are needed to resolve the matter.
- (c)** In all cases it is open to an Officer to refer a matter to the Cabinet or appropriate Committee for decision if in his opinion the matter is of such a nature that it should more properly be referred to Members. Such referrals will include items of controversy or where a Councillor has specifically asked for the matter to be referred. If an Officer exceeds the authority given under delegated powers they could be subject to disciplinary action. (Full details of disciplinary procedures are contained in the Disciplinary Procedures booklet available from the HR Advisor.)

7. Support Services to Members

The Council can only lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, shredding of confidential waste etc) to Members to assist them in discharging their role as Members of the Council. Such support services must therefore only be used for Council business and never in connection with party and political campaigning activity, or for private purposes.

8. Relations with the Media

- (a)** Relations with the media need to be handled with care to ensure the Council's position on any issue is represented properly. Day-to-day contact with the press and media will normally be handled by the Head of Paid Service together with the appropriate Cabinet Members, Committee Chairmen and relevant Officers.

- (b) On occasions Members may be approached directly by the media and ask to make a comment or to appear for interview. Members are asked where practicable to ensure the Head of Paid Service is made aware of the approach. Unless Members have been authorised to speak on behalf of the Council they should make it clear that any views they express are not necessarily those of the Council. In all cases Members should uphold the good name and integrity of the Council.

9. Planning Applications - Members Involvement

- (a) The Council's Planning Committee (or the Planning Manager under the Scheme of Delegation) is responsible for making decisions on planning applications. Members may find themselves lobbied both by applicants and objectors. Such approaches need to be handled carefully to maintain the Council's integrity and credibility in the decision-making process. Members should follow the guidelines given below in dealing with these situations.
 - (1) Take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have heard all the evidence and arguments.
 - (2) Encourage lobbyists to write to the Officers so their views can be included in the report to Planning Committee.
 - (3) Make clear if they do express an opinion that they will only be in a position to express a final position when they have heard all the evidence and arguments at Committee.
 - (4) Be aware that the safest option may be not to express any opinion and advise that in order to keep an open mind, all views will be considered.
- (b) Members attention is drawn to the Local Government Association's document 'Probity in Planning - the role of Councillors and Officers (2002). A full copy is available for reference from the Planning Manager. Guidance notes are attached as Annex 1. Members are advised to follow this advice in their involvement with planning matters. Section 5 of the guidance - the general role and conduct of Councillors and officers is reproduced below:

Officers, during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the Council's Monitoring Officer. The requirement to register any such hospitality is likely to be a feature of the statutory code of conduct for employees.

Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

A requirement for staff to act impartially is likely to be a requirement of the statutory employees' code. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraphs 1.1 and 1.10 of the Model Code to –

- Treat others with respect; and
- Not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

Finally, planning legislation and guidance can be complex. Both the Nolan Committee's third report and the RTPI study into the role of Councillors recommended that Councillors should receive training. The LGA endorses the good practice of many Councils which ensures that their Members receive training on the planning process when first serving on the Planning Committee. It also recommends that Members must be updated regularly on changes to legislation or procedures. Whilst the LGA would regard such training as essential for those Members serving on Planning Committees, authorities should also consider providing some basic training on the planning process for all Members.

Section 8 lobbying of an officer by Councillors also states –

- Councillors should not put improper pressure on officers for a particular recommendation and, as required by the Model Code, should not do anything which compromises, or is likely to compromise, their impartiality.
- (b) Members should also be aware of the West Somerset Council Code of Good Practice for Planning attached as Annex 2 which includes advice on dual-hatted Members, discussions with developers and decisions contrary to officer recommendation.

Probity in Planning – Guidance Notes

Introduction

Planning is not an exact science. Rather it relies on reasoned judgement within a firm policy context. It is also highly contentious because its decisions affect the daily lives of everyone and the private lives of individuals, landowners and developers. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of development plans and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgments and for justifiable planning reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way.

The General Role and Conduct of Councillors and Officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. This applies equally to traditional forms of political management based on committees and to models based on forms of executives or elected mayors. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors, and it follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it must never be abused or compromised.

Both councillors and officers are guided by codes of conduct. Employees will be subject to a statutory Employees' Code of Conduct. In addition, staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. However, not all planning officers are members of the RTPI and it is therefore recommended that the Code of Professional Conduct (or those parts of it which are relevant) is incorporated into a local code of good practice. In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

The Model Code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, but also appropriate relationships with other members, staff and the public, which will impact on the way

in which councillors participate in the planning process. Of particular relevance to councillors serving on planning committees or who become involved in making a planning decision (where full council deals with a planning application) is the requirement that a member:

*“must not in his official capacity, or any other circumstances, use his position as a member **improperly** to confer on or secure for himself or any other person, an advantage or disadvantage;”* (Paragraph 5(a) of Model Code).

The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

PRINCIPLE ONE

Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

Councillors should also be very cautious about accepting gifts and hospitality. The Model Code requires any members receiving any gift or hospitality, **in their capacity as members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the monitoring officer of the council. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

Lobbying

It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member of the planning committee. As the Nolan Committee’s third report states: *“It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves”* (paragraph 288). Any code of good practice failing to take account of the realities of the political / representative process will not carry credibility with experienced elected members.

However, such lobbying can lead, unless care and common sense is exercised by all the parties involved, to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors, and members of the planning committee in particular, should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the relevant officer, in order that their opinions can be included in the officer’s report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

It should be remembered that reports of poor practices within local authorities were greatly concerned with the issue of lobbying. In a number of cases, lobbying had caused considerable public mistrust of the councils. Local Government Ombudsman cases have found maladministration even where there is only a perception of maladministration.

Councillors, and members of the planning committee in particular, need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or another before hearing all the arguments makes them vulnerable to an accusation of partiality. It is probably misleading to describe the determination of a planning application strictly as a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority). It is, nevertheless, a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or to complain to the Local Government Ombudsman on grounds of mal-administration; or to the Standards Board that a member has breached the local code.

In reality, of course, members will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward) should not openly declare which way they intend to vote in advance of the planning meeting, and of hearing evidence and arguments on both sides.

Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application. A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the committee meeting before declaring one way or another.

A planning committee member who represents a ward affected by an application is in a difficult position if it is a controversial matter around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome – or even campaigning actively for it – it will be very difficult for that member to argue convincingly, when the committee comes to take a decision on the application, that he or she has carefully weighed the arguments presented – perhaps in some respects for the first time – at the meeting. Whilst in most circumstances this would not amount to a prejudicial interest in terms of the model code of conduct, the proper course of action for such a member would be to make an open declaration and not vote.

PRINCIPLE TWO

All Members should declare at the beginning of the planning meeting whether they have been lobbied in respect of any particular application and by whom (or attended an individual site visit) and whether they intend to vote on the application.

Decisions Contrary to Officer Recommendations and / or the Development Plan

The law requires that where the development plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise (s.54 A Town and Country Planning Act 1990).

This gives rise to two main issues: first, all applications which are not in accordance with the development plan must be identified as soon as possible. They must then be advertised as such, as required by Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. Second, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan clearly demonstrated. The application may then have to be referred to the Office of the Deputy Prime Minister, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's good planning reasons be made and a copy placed on the application file. The Planning Officer and the Council's legal adviser should also be given an opportunity to explain the implications of the contrary decision. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

PRINCIPLE THREE

Where the planning committee is minded to make a decision contrary to an officer recommendation and / or the development plan, the matter should if necessary be deferred to the next meeting so that the implications of the contrary decision can be fully explained.

Reference/Acknowledgement

Probity in Planning (Update) The Role of Councillors and Officers
LGA 2002

West Somerset Council

Code of Good Practice for Planning

Annex 2

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2. Declaring interests
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12. Complaints and record-keeping
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14. Decisions contrary to officer recommendation and/or development plan
15. Consequences of failure to comply with Code

1. Introduction

- 1.1. This Code of Good Practice has been adopted by the Council to regulate the performance of its planning function.

The Code has the following objectives -

- To guide members of the Council and officers in dealing with planning-related matters.
 - To inform potential developers and members of the public generally of the standards and procedures adopted by the Council in the performance of its planning function.
 - To preserve public confidence in the integrity of the planning system by ensuring that decision-making is open, transparent and fair to all parties.
- 1.2. This Code is intended to supplement the Council's adopted Code of Conduct for Members by providing more detailed guidance on the standards applying to planning-related matters. It also deals with matters not covered by that Code.
- 1.3. This Code applies to the proceedings of the Council's Planning Committee ("the Committee") and to any other body of the Council making decisions on planning matters

- 1.4. Planning law requires local planning authorities to determine all planning applications in accordance with the Council's approved policy framework for development control unless material considerations indicate otherwise. This responsibility must be performed without members being unduly influenced by any personal interest or other considerations irrelevant to planning.
- 1.5. It is essential that members of the Committee do not give any commitment or impression of a commitment to any particular outcome for a planning matter prior to its consideration at Committee. Planning decisions must be seen to be made impartially and without bias.
- 1.6. It is recognised that members will, from time to time, be approached by developers and objectors in relation to planning proposals. Part of this Code is intended to assist members in dealing with such approaches and to ensure that the integrity of the decision-making process is preserved.

2. Declaring Interests

- 2.1. Under the Council's Code of Conduct for Members, members must declare any personal interest in any matter being considered at a meeting, and must withdraw from the meeting if that personal interest is also prejudicial and a disclosable pecuniary interest. The detailed rules on personal, prejudicial interests and disclosable pecuniary interests are set out in the Council's Code of Conduct for Members. If in doubt as to whether an interest should be declared in relation to any matter, members should take advice from the Council's Monitoring Officer

3. The Integrity of the decision making process

- 3.1. Lobbying is a normal and perfectly proper part of the planning process, and both applicants and objectors should have access to their representatives. However, to ensure that the integrity of the decision making process is not impaired, it is important that any representations made to members form part of the public information leading to any decision. If an approach is received by a member of the Committee, from any interested party in relation to a current or proposed planning application, then the member shall:
 - a) Inform that party that, in order to avoid accusations of partiality, he/she is only able to offer procedural advice and that they should either write to officers of the Council or write or speak to a member(s) who is not on the Committee. However, members on the Committee are quite free to listen to the views that the lobbyist wishes to express.
 - b) Where a member of the Committee receives written representations directly in relation to a planning application, (or proposed planning application) the member should pass a copy of the correspondence to the Planning Manager in order that those representations can be included in the officer's report.
- 3.2. Lobbying is likely to involve ward members or other members of the Council who are perceived as being interested in or having an influence over the

proposal, as well as members of the Committee. Ward members (and other members) who are not members of the Committee are in a different position to that of members of the Committee. Ward Members have a very important function in representing the interests of their area or constituents who are affected by a planning proposal. If they are not on the Committee, there is no reason why they should not have a view on planning proposals which are currently under consideration by the Council and make those views known, providing they do not attempt to exert any improper influence over Committee members or officers.

- 3.3.** Ward members who are on the Committee must remain impartial and keep an open mind about all applications coming before the Committee until the meeting when the application is to be decided. Members of the Committee have a legal duty in making planning decisions to take all the evidence and arguments into account, not to commit themselves to a fixed or final view before hearing these, and not to favour any particular person, group or locality (or appear to do so). The Local Government Association advises that **“councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee”**. Failure to comply with this duty may result in planning decisions made by the Council being quashed by the courts on the grounds of predetermination or bias. It can also damage the public perception of the impartiality and integrity of the planning process.
- 3.4.** Members of the Committee who wish to take part in a planning decision should not therefore do anything that gives the impression that they have come to a final view before the Committee meeting, such as making a firm view public, or organising support for or opposition to a planning application, or lobbying other members. It is perfectly proper for members to have a predisposition in favour of or against a particular proposal before it is discussed at Committee. It would be unrealistic to expect them to be totally neutral in all cases, and the law does not require this. What is important is that members do not close their mind to further evidence or arguments which may be put forward. Members of the Committee or ward members should also not put pressure on officers for a particular recommendation. This does not preclude members from seeking information or clarification from officers about a planning application.
- 3.5.** Members of the Committee who represent a ward affected by an application may be in a difficult position if it is a controversial matter attracting much lobbying, or on which they have strong personal views. In this situation, a member is perfectly free to choose to support one side or the other, to make their views known and to organise lobbying. **However, a member who makes this choice must not take part in the actual making of the decision.** When the matter comes before the Committee, s/he will be entitled to make representations, but should not then take any part in the debate or vote.
- 3.6.** In the interests of public participation and involvement, it can be helpful if members involved in the determination of planning applications attend public

meetings in relation to planning matters which are under consideration. It is, however, important to ensure that they make clear their position at the outset of the meeting so that there can be no question of misunderstanding or undue influence. Members should identify themselves as being members of the Committee dealing with the application, and make it clear that they are happy to hear views expressed by the public, whether for or against the proposal, but are unable to reach or express any view on the merits or otherwise of the proposal at that stage. Members of the public attending meetings should be advised to contact the relevant officer with their views so that these can be included in the officer's report.

- 3.7.** As no decision on a planning application should be made before the Committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Committee meeting should not be used to decide how members should vote, whether this be for or against an officer's recommendation. Members must be free to take decisions based on relevant planning considerations only, and any use of a political whip to influence voting may amount to maladministration.

4. Discussions with developers

- 4.1.** Discussion between developers or an applicant for planning permission and the Council, either prior to the submission of an application or during the consideration process of the application, can be of considerable benefit to both parties and is generally encouraged as assisting the planning process. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. Any involvement of members in discussions with developers or applicants should therefore only take place as part of structured arrangements agreed with officers, and the advice given in Section 3 above about the dangers of predetermination should always be borne in mind.

- **4.2.** The following guidance by the Local Government Association and the Planning Officers' Society should be followed in relation to such discussions.

The authority encourages these meetings in line with the national view that allows members to attend such meetings so long as they do not predetermine the case.

- Presentations by applicants should be limited to the development proposal and a question and answer session on factual matters. Where appropriate, they may take place on site or incorporate a site visit.
- To promote transparency of the planning process, the public will be invited to attend developer presentations wherever practicable.
- Members must maintain an impartial listening role and avoid expressing an opinion or giving advice beyond outlining local policies, although questions may be asked to clarify aspects of a proposal and policy concerns may be raised. The chair or officer should explain this role at the outset of the meeting.

- The discussions should not develop into negotiations and it must be made clear that they are not part of the determination process.
- Officers of appropriate seniority should attend the meeting, and written notes should be kept.
- For major or contentious applications, the involvement of members should be authorised by the Committee and recorded in any subsequent committee report.
- Members should not seek to influence officers or pressure them to support a particular course of action.
- The Council should set out in advance how it will deal with any commercially sensitive or confidential information, bearing in mind the requirements of the Freedom of Information Act and the need for transparency.

4.3. To minimise the risks of predetermination in championing their communities, members are encouraged to promote any community aspirations involving sites, land or community benefits from development, or other planning issues through Local Development Framework and Sustainable Community Strategy preparation at the earliest opportunity.

5. Dual-Hatted Members

5.1. Where a Member is a member of the Planning Committee and is also a parish, or town councillor, caution needs to be exercised in considering matters at the parish/ town council stage. This is because of the member's additional responsibility as a member of the Planning Committee charged with making a decision on the planning application. It is important to bear in mind that parish/ town councils are consultees in the planning process and may be asked for their comments on an application at a time when not all the relevant material planning considerations have become known and the full implications of an application investigated. Members should therefore –

- at the parish/ town level, make it clear that they will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier.
- at the district level, declare a personal interest arising from their membership of the parish/ town council, and make it clear that the council's view does not bind them and that they are considering the matter afresh.

5.2. The same procedures should be followed by members of the Committee who sit on any other body, such as a Community Partnership or a conservation advisory panel, which is considering an issue which may subsequently come before the Committee. Members may decide that in some circumstances it would be inappropriate for them to participate in the vote that decides the consultative body's comments and views on an application. A member's expertise as a member of the Committee can sometimes be put to best use in advising and guiding other bodies on which they sit on the planning issues that arise from the application. When the application comes to be decided by the Committee, the views of the parish/ town council or other consultative

body will be one of the material considerations to be considered and taken into account.

- 5.3. Ward members who are consulted on delegated planning decisions and who also sit on the Committee should keep an open mind until the matter comes before the Committee, and take all relevant considerations into account before making their decision.
- 5.4. There may be circumstances where a member of the Committee who is also a member of the Council's executive is so closely involved with a proposal coming before the Committee that s/he may not be seen as impartial in relation to the planning decision. This may occur, for example, if the member concerned is committed to the development as a result of his/her responsibilities for furthering the development of the area, and is effectively acting as an advocate for that development. In these circumstances, the member concerned may argue for the development, but should not take part in the debate or vote at the relevant Committee meeting. If in doubt, advice should be taken from the Council's Monitoring Officer

6. Applications by members, officers and the Council

- 6.1. Planning applications made by members of the Council or by Council officers, or involving land owned by them, will be determined by the Committee rather than being delegated for decision to officers under the Council's Scheme of Delegation for planning matters. The same procedure may be followed, at the discretion of the Planning Manager, in respect of applications submitted (whether as applicant or agent) by any person, firm or company closely connected with a member or a relevant officer
- 6.2. Applications where a member of the Council or an officer is personally involved as agent, consultant or in any other advisory capacity will also be determined by the Committee.
- 6.3. Members of the Committee will need to consider whether they should declare any personal or prejudicial interest in applications in which other members of the Council or officers are involved. This will normally only be necessary if the member or officer concerned is a "close associate", as that term is used in the Members' Code of Conduct. If in doubt, advice should be taken from the Monitoring Officer.
- 6.4. Proposals where the Council is the applicant (or a development involving the Council and another party) should be treated in the same way as those by private developers, in accordance with the relevant Town and Country Planning Regulations and government guidance. Current guidance requires that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the Council's approved policy framework for development control, and any other material planning considerations).
- 6.5. The same procedures also apply to private applications in respect of Council-

owned land (e.g. prior to a land sale being agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so

7. Members and decision making

7.1. Members are required to arrive at a decision on granting or refusing permission by using planning criteria and by excluding non-planning considerations. In determining planning applications, members are required to have regard to the development plan or local development framework for the area and to any other material considerations. To this end, the reports of officers to members must be accurate and cover all relevant points. These reports:

- a) Should contain a section on the relevance of the development plan, a description of the site and any related planning history and all other relevant material considerations will be outlined.
- b) Should deal with the substance of any objections received and the views of people who have been consulted or notified.
- c) Should incorporate a recommendation for the consideration of members; oral reporting (except to introduce a report or update it) should be extremely rare and carefully minuted when it does occur.
- d) Should contain a technical planning appraisal which clearly justifies the stated recommendation.
- e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this must be clearly stated.

7.2. Members of local planning authorities also have a duty to take into account any representations made to the Council as a result of consultation with interested bodies or as a result of public notices or neighbour notification. In doing so, it is necessary to decide which representations are material to the decision to be made, and if so what weight to attach to them. This conclusion should not be reached until all the facts have been presented in the officer's report to the Committee.

8. Public Speaking at Committee Meetings

8.1. Public speaking at Committee meetings allows interested parties, including the public and applicants, to address the Committee before an issue is debated. This should enhance public confidence in the process and should help reduce direct lobbying.

8.2. It is important that the public's right to speak, which is incorporated in the Council's Constitution, is operated in a clear and equitable manner. The following procedure applies:

- a) The right to speak applies to the public, community groups, applicants, town and parish councillors, West Somerset district councillors not on the Committee, or any representatives of the above.
- b) Prescribed arrangements, as set out in the Constitution, are in place for requests to speak. These are notified on the agendas and in the leaflets made available to third parties. the Chairman will ensure that so far as practical, supporters of and objectors to any application are given an equal hearing.
- c) If there are groups of people wishing to speak, wherever possible the Chairman will seek a representative to put the whole case. A dialogue will not be permitted between various parties attending at the Committee meeting.
- d) Speaking is normally limited to a maximum of 3 minutes per speaker, but the Chairman has discretion to vary this in appropriate cases.
- e) It is intended that the right to speak is operated with the minimum of bureaucracy required to enable the smooth running of the meeting. There are significant advantages to a flexible approach, but it is critical that this is operated in an equitable manner to maintain the confidence of all parties.
- f) The Chairman will announce at the commencement of the meeting how s/he will manage the meeting to facilitate people being able to put their views to the Committee. The normal order of speaking on any item will be the officer giving their report and recommendation followed by any public speakers. Only Committee members will be able to question officers and speakers for clarification. The Committee will then start to debate the item and from this point members of the public have no further opportunity to speak or be involved in the debate (unless the Chair determines there are exceptional reasons to do so for clarification).

9. Committee Site Inspections

- 9.1.** Site visits will cause delay and additional costs and should only be used where the expected benefit is substantial. A decision by the Committee to carry out a site inspection should normally only take place –
- a) If the impact of the proposed development is particularly difficult to visualise from the plans and any supporting material; or
 - b) There is considerable local concern about a proposal, allied to planning reasons for carrying out the visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

Normally officers will identify such cases in advance to avoid delay.

- 9.2.** Applications will only be deferred by the Committee for a site visit in the most exceptional circumstances. Where this occurs, clear reasons should be given at the meeting for the deferral so that the applicant and any third parties involved are able to understand the need for, and the benefit of, a site visit. This is to avoid misunderstanding either about the purpose of the site visit or the matters which are being considered.

9.3. When site inspections take place, careful arrangements must be made to ensure that all parties are treated fairly and equitably, and that the appropriate standards of propriety are seen to be upheld, particularly to avoid the visit being seen as part of a lobbying process. Accordingly, the following rules will apply:

- a) The visit will be led by a planning officer.
- b) Members should not seek to have discussions either with the applicant or with members of the public who may be present. The public should not be invited and have no right to enter a site without the consent of the occupier. However, attendance does occur from time to time and requires careful handling to ensure confidence in subsequent decision making.
- c) If discussions do take place, no view on the merits or otherwise of the proposal should be given, as to do so may lead to suspicion that the individual Member had already made up his or her mind. Members should keep together, avoiding side discussions.
- d) If at all possible, individual Members should not have discussions with the applicant or members of the public as again suspicion may arise that this is part of the lobbying process rather than the information-gathering process.

10. Individual Site Inspections by Members

10.1. Members are encouraged to look at an application site following the receipt of the agenda and prior to the date of the Committee meeting. This will enable them to acquaint themselves with the nature of the proposal and will help avoid delay and unnecessary site visits. However, Members should wherever possible conduct such site inspections from a public vantage point and should avoid discussing the application with any applicant/agent or third party. Entering a site which is subject to a planning proposal may give the impression of bias, and members should only do so if they feel that it is essential to their consideration of the proposal.

11. Training

11.1. Members of the Committee responsible for planning will receive training in the planning system as soon as possible after appointment to the Committee. Under the Council's Constitution, Members may not take part in planning decisions unless they have received appropriate training, as considered necessary from time to time by the Chairman of the Committee in consultation with the Planning Manager. This is to ensure that correct procedures are followed and proper planning considerations are employed in decision making.

11.2. Refresher training, updates, and more detailed training on specific issues will also be provided, and should be taken up by all Committee members.

12. Complaints and Record Keeping

- 12.1.** Whatever procedures the Council operates, it is likely that complaints will be made. In order that any complaints can be fully investigated, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 12.2.** The same principles of good record keeping will be observed in relation to all other planning matters. Monitoring of record keeping will be undertaken on a continuous basis by the Planning Department.

13. Officer's Function

- 13.1.** An officer's function is to advise members on all matters of planning policy and procedure in their determination of planning and related applications by:
- a) Providing impartial and professional advice which is properly recorded
 - b) Making sure that all the necessary information is available for a decision to be made.
 - c) Providing a clear and sufficient analysis of the issues including development plan policies and all other material considerations.
 - d) Giving a clear recommendation.
 - e) Carrying out the decisions made by members at meetings of the Committee.

Officers are governed by the Royal Town Planning Institute Code of Professional Conduct which states that RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions.

- 13.2.** Officers shall also comply with the following -

- a) Free and impartial advice will be given to prospective applicants prior to submitting an application. Advice will reflect approved Council planning policy. It will then be made clear that such advice will be without prejudice to any subsequent recommendation or formal decision by the Committee or a decision made under delegated powers.
- b) All application sites will be visited.
- c) Officers will endeavour to deal with applications and make final recommendations for the grant or refusal of permission
- d) All applications will be considered by at least two officers, i.e. the case officer plus the officer responsible for the final decision and/or recommendation.
- e) Members of the public and applicants will not be advised of the officer's final recommendation to Committee until agendas have been sent to Members.

- f) In all dealings with applicants, agents, and the public officers should maintain a courteous and professional relationship adhering to the Council's policies and officer codes ensuring that all parties are treated fairly and respecting people's rights.
- g) When an application is submitted by an officer involved in the planning process the officer shall advise the Planning Manager. Such applications shall not be determined under delegated powers.
- h) Where an officer has a relationship with any applicant, agent or organisation that could lead to a third party suggestion of bias, the officer will inform the Planning Manager in writing and take no part in processing or determining the application. If the Planning Manager has an interest s/he will inform the Monitoring Officer in writing and take no part in processing or determining the application.
- i) Officers should not, under any circumstances, accept gifts or hospitality beyond simple basic refreshment where necessary or unavoidable. If, however, a degree of hospitality is unavoidable, it should be ensured that this is of the minimum. All gifts and hospitality beyond simple basic refreshment should be declared to the Monitoring Officer for entry in the Council Register of Gifts and Hospitality.

14. Decisions Contrary to Officer Recommendation and/or Development Plan

- 14.1.** The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise.
- 14.2.** In discussing and then determining a planning application, members should confine themselves to the planning merits of the case and the reasons for making a final decision should be clear and convincing and supported by planning evidence. All decisions must be founded on planning reasons and there must be planning evidence to substantiate them.
- 14.3.** There is no reason in law why a Planning Committee may not make a decision contrary to the officer's recommendation, whether it is for approval or refusal. Nevertheless, the law does require that in the case of approvals and refusals of planning permission detailed reasons are given, and it is important that where members have made a decision contrary to an officer's recommendations the reasons for the decision should be made clear. In such a situation, therefore, whether the decision by members is to approve or refuse permission, the planning reasons should be clearly minuted, together with the evidence to substantiate them.

15. Consequences of Failure to Comply with Code

- 15.1.** This Code, together with the provisions of the Members' Code of Conduct, sets out the standards that the Council will operate in dealing with planning applications. Members and officers should be aware that failure to comply with this Code or the Code of Conduct may have legal consequences.

15.2. These include -

- a) A complaint to the Standards Advisory Committee of the Council, and a subsequent investigation, which may result in a member being censured.
- b) An investigation by the Ombudsman if complaints are received about the manner in which a planning application is dealt with. In determining whether or not there has been maladministration the test that is currently used is that members must "at all times avoid any occasion for suspicion and any appearance of improper conduct" and must not allow "the impression to be created that (the Member) is or may be using his position to promote a private or personal interest". Individuals involved may be named, and the Council may be found guilty of maladministration and recommended to compensate the claimant.
- c). Appeal to the Secretary of State. As well as granting planning permission s/he can award costs against the Council if it has acted unreasonably – for example, bias has been present or the decision has been taken for non-planning reasons.
- d) Court action (judicial review) to quash a planning decision, which may succeed if bias or apparent bias was present, or if it is demonstrated that a decision was taken for non-planning reasons or material considerations were ignored. Procedural errors may also have this result if any party was prejudiced. Costs will be awarded against the Council which will have to re-determine the application correctly.

PROTOCOL FOR THE MONITORING OFFICER AND SECTION 151 OFFICER
UNDERTAKING STATUTORY DUTIES

1. The Monitoring Officer and the Section 151 Officer undertakes to discharge his/her responsibilities with determination and in a manner which will enhance the reputation of the Council. In general terms his/her ability to discharge these duties depends on excellent working relations with colleagues and Councillors and also on the flow of information and access to debate, particularly at the early stages.
2. The following arrangements and understandings between the Monitoring Officer and the Section 151 Officer and colleagues and Councillors are designed to help ensure the effective discharge of their functions -
 - (a) If not a Member of the Corporate Management Team the Monitoring Officer and the Section 151 Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak.
 - (b) Advance notice of significant meetings between Members of CMT and Cabinet Members and/or Committee Chairmen will be given to the Monitoring Officer and the Section 151 Officer who will have the right to attend if they feel that any matters may arise which fall within their statutory remit.
 - (c) Members of CMT will alert the Monitoring Officer and/or the Section 151 Officer as appropriate to all emerging issues of concern including legality, probity, vires and constitutional issues.
 - (d) The Monitoring Officer and the Section 151 Officer will have copies of all reports to Councillors (Council, Cabinet and Committee reports and also reports to Lead Members).
 - (e) The Monitoring Officer and the Section 151 Officer are expected to develop good liaison and working relations with other relevant bodies such as the District Auditor, and the Ombudsman, including the giving and receiving of relevant information whether confidential or otherwise.
 - (f) The Monitoring Officer and the Section 151 Officer will have special relationships with the Chairman of Council, the Chairman of the Standards Advisory Committee and the Chairman of the Scrutiny Committee and will ensure that all the Council's statutory Officers have up-to-date information regarding emerging issues.
 - (g) Monitoring Officers will be expected to make enquiries into allegations of misconduct by Councillors upon receipt of a complaint.
 - (h) The Head of Paid Service, Section 151 Officer and the Monitoring Officer will meet regularly to consider and recommend action in connection with governance and probity issues.

- (i)** In carrying out any investigation the Monitoring Officer and the Section 151 Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions.
- (j)** Following consultation with the Head of Paid Service, the Monitoring Officer and the Section 151 Officer may from time to time report to Council on necessary or desirable changes to the Constitution.
- (k)** In consultation with the Chairman of the Council and any other relevant body the Monitoring Officer or Section 151 Officer may delay making a formal report where another investigative body is involved.
- (l)** The Monitoring Officer and the Section 151 Officer will be provided with sufficient resources to discharge their functions.
- (m)** The Monitoring Officer will appoint a deputy and keep him/her briefed on emerging issues.
- (n)** Monitoring officers will make arrangements to ensure good communication between themselves and the Clerks to Parish Councils.

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5, Local Government and Housing Act 1989
2	Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Section 5, Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5, Local Government and Housing Act 1989
4	Report on Resources	Section 5, Local Government and Housing Act 1989
5	Assessment of complaints that a Councillor may have breached the Code of Conduct	Localism Act 2011
6	Establish and maintain registers of interests and gifts and hospitality (district and parish Councillors)	Localism Act 2011
7	Advice to Councillors (parish and district) on Code of Conduct issues	Local Government Act 2000 and its subsidiary legislation
8	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance Paragraph 8.20
9	Compensation for maladministration	Section 92 Local Government Act 2000
10	Advice on vires issues, maladministration, financial impropriety, probity, policy framework and budget issues to all Members	DETR Guidance on new Council Constitutions

MEDIA RELATIONS PROTOCOL

Introduction

This document sets out how media relations should be handled across the authority.

The purpose is to clarify the roles and responsibilities of members, and provide guidance on how to handle media enquiries.

It is designed to ensure that the council maximises opportunities for positive media coverage, minimises negative coverage, and provides a fast and effective service to the media.

The Media & Comms Officer deals with media enquiries, issues press releases, organises photo-calls and broadcast interviews. To ensure all this activity is coordinated effectively, it is important that it is channelled through one central point.

The only exception to this is publicity of a political nature, which is handled by the individual political groups.

The Media & Comms Officer will also work with senior officers on internal communications designed for both staff and elected members.

The legal context

This protocol reflects the guidance contained in the Code of Recommended Practice on Local Authority Publicity 2001 (as amended).

Key points are:

- The council should not publish material designed to affect public support for a political party.
- Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts and explanations.
- Publicity paid for by the council should not in any way be designed to influence support for a political party.
- The purpose of a press release is to promote the council's services or policies and any quotes used should reflect this.

Approach to publicity

It is vital that the council communicates regularly with the media, as it plays such an important role in informing residents about what we do and how we spend their money.

Wherever possible the council will meet media requests for information and interviews. This approach will help us ensure that the council is recognised as open, accountable and accessible.

Planning / identifying newsworthy items

Media activity needs to be planned as far ahead as possible to ensure a good spread of news stories being sent out at relevant times. Members are requested to notify the Media & Comms Officer as soon as they become aware of a good or bad news story, or of any potentially controversial issues, policies, decisions or events.

Handling media enquiries / interview requests

The Media & Comms Officer will co-ordinate media enquiries that come in to the council and arrange appropriate responses, and will prioritise enquiries, source relevant information and arrange interviews.

Simple factual queries may be dealt with by the Media & Comms Officer without reference to other officers or executive members. If the relevant officer or Cabinet member is unable to supply information for a response within deadline, the officer will aim to a holding statement which avoids detail but which seek to protect the council – for example: ‘The matter is being investigated’.

The council will seek to avoid ‘no comment’ at all times, unless the issue relates to an internal staffing matter when the statement should read “this relates to an internal staffing matter and it would be inappropriate to comment”. The council is open and accountable and should always explain if there is a reason why it cannot answer a specific enquiry.

When the Media & Comms officer receives an interview request for a council representative, factors considered will include: the appropriate person; their availability; media training the person has undergone and the aptitude shown; the necessity of a brief / time available to draft a brief, and whether the interview is a live recording or pre-recorded. The person put forward for interview will depend on the situation and the information required by the journalist.

If the Media & Comms Officer contacts a member or officer with a media query

Members and officers are requested to return their call or email as soon as possible. By missing a deadline, a story will appear without a council comment – it won’t wait or go away and the council’s reputation could suffer.

Members and officers should give the media officer as much information as possible. Withholding vital details could delay things or lead to inaccurate information being released. The query is an opportunity to achieve positive publicity for your service or to correct misleading views. At the very least it is an opportunity for damage limitation.

Press releases

A press releases is one of the key tools for publicising council activities, decisions and achievements. The Media & Comms Officer will issue all press releases on behalf of the council. This ensures that releases follow a style appropriate to the

media being targeted. All releases will accurately reflect the corporate view of the cabinet and council and contain the relevant facts.

Where a press release requires a quote from a member, the relevant Cabinet member will be used.

Statements from other members will be included when they are:

- Commenting as chair of a committee
- Commenting as the chair of a quasi-judicial forum
- Representing a local area specifically affected by a change in service
- Representing an area affected by a major event or incident

A relevant officer may also be quoted to provide factual or technical information, or if the appropriate member is unavailable. In most cases the Media & PR Officer will draft a quote based on the information given and get this agreed by the member / officer.

Final approval for news releases will be sought from the originator and their service manager. In the case of sensitive, significant or controversial issues approval may also be sought from a member of the Joint Management Team (JMT).

Meetings

The media pick up stories from agendas and reports ahead of meetings. All council papers are sent to local media and are published online.

Where possible, officers and executive members should make the officer aware of any potentially newsworthy items due to be considered at public meetings the earliest possible date. This includes planning, scrutiny, licensing, area partnerships etc.

It may then be possible to issue a news release, summarising the main points of the report, at the same time that the papers go out. This type of release is usually very useful to journalists who would not otherwise read an agenda and may help secure coverage.

Press releases confirming the decisions taken at meetings will be issued at the request of Cabinet members and JMT. Such requests should be made before the meeting where possible to allow for the speedy issue of the release immediately after the meeting. Generally releases giving information on decisions taken should not be issued more than 24 hours after the meeting.

Members of the Cabinet

The Leader and Cabinet have prerogative on policy statements. These are generally based on advice from officers including the Media & Comms Officer. Cabinet members can respond directly to the press about matters relating to their responsibilities, always ensuring they represent the policies of the council when speaking on their portfolio areas.

Individual Members and Political Groups

All members are asked to bear in mind their Code of Conduct when responding to media queries and, in particular, paragraph 4 which relates to the disclosure of confidential information. Members should also have regard for the adopted Protocol for Disclosure of Confidential Information.

Nothing in this protocol precludes any political group from issuing its own media information through its own channels, or any member from speaking to the press. Where individual members wish to promote a council activity or respond to media coverage relevant to their particular ward, they should liaise with the Media & Comms Officer.

Political issues

There are times when an issue becomes 'political'. In such cases an official council response will not be given but political groups can comment directly. In this case the Media & Comms Officer will pass on the contact numbers for the political group leaders.

Publicity in election periods

The rules governing publicity change when an election has been announced. In the period between the notice of an election and the election itself, all proactive publicity about candidates or other politicians is halted. This applies to local, national or European elections.

During this period council publicity should not deal with controversial issues or report views, proposals or recommendations in a way that identifies them with individual members or groups of members. This is to make sure that no individual member or political party gains an unfair advantage by appearing in corporate publicity.

In these circumstances, where a quote is required, the relevant officer may be quoted. Proactive events arranged in this period should not involve members likely to be standing for election.

However, this does not stop the council responding to major events or service enquiries. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for member level response to an important event outside the authority's control.

Before an election, the Media & Comms Officer will circulate a briefing sheet to members and officers to make sure all are aware of the restrictions and sensitivities.

Data Protection and Media Enquiries

The Council will not be drawn into discussion on individual cases, even when members of the public provide the press with personal information about their own situation. Housing and Benefits are often the areas in which the media will enquire about specific cases; in such

situations the Media & Comms Officer will work with Officers to provide policy information but will not discuss the actual case and personal details of the individuals concerned.

Partnerships

The Media & Comms Officer will ensure that partners are included within relevant press releases and also contacted for quotes to be included. The WSC logo and a quote from the relevant spokesperson will also be provided to partners.

In Absence

If the Media & Comms Officer is on leave, another officer will deputise to provide support for members and staff. The Media & Comms Officer will email details of the person nominated to staff and members. All media enquiries should be directed to the nominated officer who will deal with them in accordance to this protocol. The officer must ensure that any statement is approved by the relevant senior officer before issuing any statement to the media.

Social media

A separate social media policy is available for both staff and members – a short guide and a full version.



West Somerset Council
West Somerset House,
Williton, Taunton
Somerset, TA4 4QA

Social Media Policy and Guidelines

West Somerset Council

Last updated: September 2014

For more information on West Somerset services visit:
www.westsomersetonline.gov.uk

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1 Introduction to this document

Social media policy and guidelines

The purpose of this social media policy and guidelines is to equip and enable West Somerset Council staff and Councillors to interact and communicate safely and lawfully online.

It applies to everyone who works for and behalf of the council, including contractors, and has been designed to guide you through what you can expect from the council. It outlines what our policies are, what we expect from you and where to get more information.

You are required to observe these guidelines when having an online conversation about the council – either personally or on behalf of one or more of the councils.

We trust our staff and Councillors and encourage you to be responsible and not bring the organisation into disrepute.

It's important to avoid ambiguity. For example, if you have a LinkedIn profile stating you work for West Somerset Council or represent a council ward, any views you share as status updates or discussions, could be seen to represent the council rather than your own view. Be mindful of that fact and act accordingly.

Remember that only designated spokespeople are permitted to communicate officially on behalf of the council.

Contact the Media and Communications Officer with any queries.

2 What is social media?

Social media is the term commonly given to Internet and mobile-based channels and tools that allow users to interact with each other and share opinions and content.

As the name implies, social media involves the building of communities or networks and encouraging participation and engagement.

West Somerset Council enables and encourages the effective use of social media to support the work we do and things we care about.

This includes West Somerset Council's values of:

- **Integrity** – be honest, do what's right and stick to it
- **Fairness** – treat everyone equally, respecting his or her individual needs and abilities
- **Trust** – show trust in our staff and members
- **Respect** – always show respect for everyone

It is important that you are also aware of our ICT Security Policy : W:/HR/General WSC policies & strategies which covers the security and safekeeping of equipment and facilities and HR policies and guidance regarding conduct, equality and diversity, harassment and bullying at work:

<http://www.westsomersetonline.gov.uk/getattachment/Council---Democracy/About-Your-Council/Constitution/Constitution-Part-5---Codes---Protocols.pdf.aspx>

2.1 Which media matter?

Social media is always evolving and is now commonplace not only for individuals to have personal social media accounts but organisations too.

Interacting with audiences and stakeholders through various social media channels is a rewarding part of building a brand online and highlighting the work that we do.

Organisations and their staff use corporate and/or official social media accounts to share ideas, offer first-hand comment, and build relationships.

This policy and guidelines cover all social media including and not limited to:

- Blogs
- Community sites
- Facebook
- Flickr
- Forums
- Google+
- Instagram
- LinkedIn
- Ning
- Pinterest
- Snapchat
- Social bookmarking sites (e.g. Diigo, StumbleUpon)
- Texts
- Tumblr
- Twitter
- Wikipedia
- Videos
- YouTube

It also includes your actions on social media e.g. liking, pinning, retweeting, direct messaging and commenting.

Effective use of social media will play an increasing role in our communication and engagement work allowing us, as organisations and individually, to develop networks of influence and participate in digital discussions.

With that in mind, it's important that everyone knows what to expect from us and what we expect from you.

3 What you can expect from us

West Somerset Council uses a number of approved social media accounts and platforms.

We use them to interact with residents and businesses, the press and interested parties. However, the primary channel for communication remains email and telephone and the organisation continues to encourage residents and businesses to log any feedback or complaints via those methods.

If you have any queries about our social media accounts please contact Debbie Rundle, Media and Communications Officer, Taunton Deane Borough Council and West Somerset Council: 01823 356407 extension 2212 or 01984 635280.

Or email Debbie: D.Rundle@tauntondeane.gov.uk.

3.1 Our official social media presence includes:

Twitter:

@WSomerset: <http://www.twitter.com/wsomerset>

Facebook:

West Somerset Council: <https://www.facebook.com/westsomerset>

3.2 Creating new accounts:

West Somerset Council has certain criteria that have to be met before official social media accounts can be approved and used.

Employees are not permitted to create social profiles bearing council names without express permission from the Media and Communications Officer.

New accounts will be considered by the Media and Communications Officer on a case-by-case basis, and any business case needs to include the following information:

1. Overall purpose for the account
2. How it links with our business strategy
3. Who will resource the account on a daily basis
4. Who will be the named person responsible for the account and the related security e.g. safe storage of passwords and access information.

3.3 Storing passwords

Official social accounts relating to West Somerset Council are managed centrally by the Media and Communications Officer. This includes storing passwords and profile information.

If you have been accepted for approval to create a social media profile on behalf of the company, your password must be kept in a central place for business continuity purposes. The Media and Communications Officer will advise you on the correct procedure should your business case for a profile be accepted.

4 Guidelines – what we expect from you

Social media guidelines – what we expect from you:

Expected and accepted behaviours

The following principles are the basis of our social media policy and guidelines.

If you are unclear about any aspect of them, talk to your line manager, HR or the Communications team.

4.1 Be honest about who you are

Best practice is always to be honest about who you are without giving out detailed personal information.

Be sure to identify yourself as working for or representing the council if the conversation is about our business or our sector. Not only is this the ethical thing to do, but in some countries, such as the USA, there may be legal personal liability if you don't.

4.2 Make it clear your opinions are your own

Unless you are authorised by the Communications team, you cannot speak on behalf of the council. Do not portray yourself as a spokesperson, even in an unofficial capacity, on any issues relating to West Somerset Council.

You can state that you work for or represent the organisation in your personal profiles, but make it clear that your opinions are your own.

To make it clear what your relationship is with the organisation, you can include the fact you work for West Somerset council in your biography, or that you represent one of the council's wards.

4.3 Share only public information

It is good business practice for organisations and individuals to keep certain information and topics confidential. Share only public information when speaking about West Somerset Council or the public sector.

Protect your colleagues by refraining from sharing their personal information or any conversations or statements unless you have their written permission to do so.

Do not bring anyone into an online conversation without their prior permission. To do so could cause misunderstanding, violate commercial contracts or confidentiality agreements or damage a relationship. Respect confidentiality and do not disclose non-public council information or the private information of others.

4.4 Be aware that what you say is permanent

Assume that everyone will be reading every post, no matter how secure or obscure the site may seem.

Therefore, consider everything you post to the Internet to be the same as making it public. Don't forget that search engines mean it is impossible to 'take anything back' so remember your posts are both public and permanent.

4.5 Be respectful of everyone and mind your manners

Treat everyone, including yourself, with respect. Acknowledge difference of opinion and avoid posting anything that could be seen as offensive, threatening, bullying, derogatory, demeaning, abusive or inappropriate.

Withdraw from any discussions that go off the topic or become disrespectful. This includes criticising or arguing with residents, businesses or staff. Remember that people can form an opinion about our councils based on your behaviour.

4.6 Keep safe online

Ensure that you choose your privacy and security settings on social networks carefully. This is important to control what information you share and who can see your updates and images. Most sites have detailed explanations to guide you through choosing what is right for you.

Be aware that 'private' is not always private – see point 4.4 above.

4.7 Same laws and rules apply

Always remember to adhere to our existing policies when participating online as a West Somerset Council employee or councillor when discussing our business.

Due to the nature of digital communications, ensure you respect intellectual property (e.g. trademarks, image ownership and copyright), stock exchange regulations and financial disclosure.

You are free to publish and comment via social media in accordance with the policies below and advice in these guidelines, which are applicable to all staff, contractors and consultants.

- HR policies and guidance regarding staff conduct, equality and diversity, harassment and bullying at work
- <http://www.westsomersetonline.gov.uk/getattachment/Council---Democracy/About-Your-Council/Constitution/Constitution-Part-5---Codes---Protocols.pdf.aspx>
Contact: Alex Groves agroves@westsomerset.gov.uk

- ICT policy and guidance regarding the use of technology, computers, email and the internet
- W:/HR/General WSC policies & strategies
Contact: Karen Penfold kpenfold@westsomerset.gov.uk

- Policies and guidance regarding the confidentiality, privacy and the protection of data applying to our staff, residents, and commercial and financial information that is not in the public domain

- W:/HR/General WSC policies & strategies
Contact: Karen Penfold kpenfold@westsomerset.gov.uk

- Copyright and intellectual property guidance
- W:/HR/General WSC policies & strategies
Contact:

Councillor Code of Conduct
- <http://www.westsomersetonline.gov.uk/getattachment/Council---Democracy/About-Your-Council/Constitution/Constitution-Part-5---Codes---Protocols.pdf.aspx>
Contact: Bruce Lang bdlang@westsomerset.gov.uk

4.8 The need for an official response

Sometimes there may be a need for an official response from the council via social media. If you spot a potential issue, bring it to the attention of the Media and Communications Officer before it reaches a crisis. Act sooner rather than later, to stop the issue escalating.

The Communications team monitors social media on behalf of both organisations. However, we all have a duty to protect our reputation, so please do flag any issues you spot.

4.9 When in doubt, ask

If you find yourself in a situation where you are unsure what the appropriate response is on social media, pause to decide whether you should refrain, ask a colleague, your line manager or the Media and Communications Officer for advice.

5 Guidelines at a glance

1. Be honest about who you are
2. Make it clear that your opinions are your own
3. Share only public information
4. Be aware that what you post is public and permanent
5. Mind your manners: be respectful of everyone
6. Keep safe online and review security settings
7. Remember the same laws and rules apply
8. Sometimes an official response will be needed
9. When in doubt, pause or ask.

6 Expected and accepted behaviours

If you're a manager

If you are a manager, familiarise yourself with this document and be prepared to answer questions from your team.

If you're an employee

Ensure you have read these guidelines thoroughly and discuss any queries with your line manager, HR or the Communications team.

Breaching West Somerset Council policies and guidance may result in disciplinary action, up to and including termination of employment.

If you're a Councillor

Familiarise yourself with this document and read the accompanying guidance for members appended to this policy. Acting without regard to this policy and guidance may result in a breach of the Members' Code of Conduct.

7 Responsibilities

Overall responsibility for this policy

Every West Somerset Council staff member and Councillor has a responsibility to adhere to these guidelines.

The Comms team will monitor, review and escalate issues, however, all employees and councillors are encouraged to raise any concerns, queries or questions they have relating to social media use.

Updating these guidelines

These guidelines will be updated annually according to the needs of the organisation, and your input and feedback is welcomed.

Contacts

Debbie Rundle, Media and Communications Officer, Taunton Deane Borough Council and West Somerset Council: 01823 356407 extension 2212 or 01984 635280.

Email Debbie: D.Rundle@tauntondeane.gov.uk.

Document last updated: July 2014.



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For more information on West Somerset services visit:
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West Somerset Council Recording Protocol: Third Party Recording of Committees, Boards and Panels:

In accordance with the Openness of Local Government Bodies Regulations 2014 recording is allowed at all formal meetings of the authority to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings.

In this Protocol references to:

- 'Recording' covers any means used to record the proceedings including filming, auto-recording and the use of photography.
- 'Reporting' covers the reporting of the business of the meeting via any social media.
- 'Council meetings' covers all formal Full Council, Cabinet and Committee meetings which are open to the press and public to attend and other meetings as agreed at the time by the Council.

Accordingly:

1. Recording and reporting of Council meetings is permitted subject to the requirements set out below.
2. Those wishing to record proceedings should, as a courtesy, inform the chair (or clerk) of the committee of their intentions prior to the beginning of the meeting.
3. Where the Council is notified in advance of an intention to record, the Chairman at the start of the meeting will announce that the meeting or part of it may be recorded by a third party and will ask if any member or member of the public objects to being recorded. If objections are raised, then the person responsible for the recording must take all reasonable steps to ensure that an individual request not to be recorded is complied with.
4. Recordings may only be taken from the area designated for the public and:
 - Recording devices must be in silent mode
 - No flash or additional lighting is permitted
 - Recordings must be taken from one fixed position and must not obstruct others from observing proceedings.
5. If a meeting includes the consideration of exempt or confidential business then recording must cease prior to the consideration of such business and the recording equipment must be removed from the meeting room for the duration of the consideration of such business. If the person doing the recording is not present then the clerk shall remove the equipment from the meeting room for the consideration of confidential or exempt business.
6. Any person can provide a written commentary during the course of a meeting that falls under this Protocol. Oral commentaries are not permitted within the meeting room during the course of the meeting.

7. The Chairman can require recording to be stopped where:
- The requirements of section 3 above are not met by the person doing the recording
 - The press and public are excluded from the meeting due to the nature of (exempt or confidential) business being discussed
 - There is public disturbance or a suspension/adjournment of a meeting
 - The recording has become disruptive or distracting to the good order and conduct of the meeting
 - Where it is considered that continuing the recording might infringe the rights of an individual or intimidate them.

Rules for use of Recordings by Third Parties

A The law applies to any information recorded and transmitted including the laws on defamation, public order, Human Rights and Data Protection and intellectual property rights. Freedom of speech within the law should also be exercised with personal and social responsibility.

B. Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion, and a clear identification of the main speakers and their role or title.

C. Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.

D Those making recordings will be responsible for any breaches of the law resulting from their use of recorded material. The Council takes no responsibility for any recording carried out by a third party or its subsequent use.

Members Code of Conduct

Protocol for Disclosure of Confidential Information

1. Principles Underlying the Protocol

- 1.1 The principles underlying this Protocol are as follows –
- 1.2 The Council adopted the Members Code of Conduct in June 2012. Paragraph 1.11 of the Code outlines the standards required of members with regard to the disclosure of and access to Council information. This protocol is intended to help Members to understand their responsibilities under Paragraph 1.11 of the Code.
- 1.3 As an elected member you are urged to seek advice from the Monitoring Officer before disclosing information given in confidence, in order that you can be advised as to whether such disclosure is reasonable and in the public interest, and whether such disclosure would be made in good faith and in compliance with the reasonable requirements of the Council.
- 1.4 This means that even though a request for exempt information would be refused under the Freedom of Information Act a councillor may be able to disclose information where, for example, he reasonably believes:
- (i) that the disclosure will indicate evidence of a criminal offence
 - (ii) that the authority is failing to comply with its legal obligations
 - (iii) that a miscarriage of justice has occurred or may occur
 - (iv) that the health and safety of a person(s) has been endangered or;
 - (v) that the environment has been damaged
- 1.5 These defences do not include disclosing properly confidential information for the purpose of political advantage.
- 1.6 Confidentiality and the right to privacy versus openness and accountability engage a number of complex areas of legislation and common law. Decisions about the disclosure of information will often need to be taken on a case-by-case basis, taking into account the potential risks and benefits.
- 1.7 This Protocol has been produced to assist in ensuring the protection of confidential information and in promoting and upholding high ethical standards.
- 1.8 It should be noted that this Protocol is complementary to but does not replace the Access to Information Procedure Rules (in particular Rule 10) which can be found in the Council's Constitution.

2. What is information?

- 2.1 It includes all recorded information held by the Council in any format. This comprises information that is held electronically or as paper records and includes photos, CCTV footage, video and audio material and email and including verbal information. Care should always be taken when sending and forwarding emails that may contain confidential information.

3 Why is some information confidential?

- 3.1 The Local Government (Access to Information) (Variation) Order 2006 provides categories of information that are exempt from public inspection so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The categories include:
Information relating to an individual
Information relating to the financial affairs of any person including the authority holding that information
Information claiming legal professional privilege
Information in connection with the prevention or prosecution of crime
- 3.2 Where it is proposed by a report author that information in the report is exempt, the committee members need to agree that the information shall be taken in closed session. Any Member who believes it to be in the public interest to disclose the information is advised to argue at the meeting that the information should not be considered in closed session.
- 3.3 Outside of committees officers will wherever possible make clear to members that some information should be regarded as confidential indeed maintaining confidentiality is important to conducting the work of the authority in a right and proper manner.

4. What does disclosure mean?

- 4.1 The disclosure of information can be defined as the 'passing, sharing, disclosure or transfer of information between two or more parties and/or between two or more individuals either within an organisation or externally'.

5. Public Interest

- 5.1 There is no legal definition of what the public interest is but the following have been identified as some of the relevant considerations.
- The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue that is subject to current national; debate
 - The issue has generated public or parliamentary debate
 - Proper Debate cannot take place without wide availability of all the relevant information
 - The issue affects a wide range of individuals or companies
 - The public interest in a local interest group having sufficient information to represent effectively local interests on an issue

- Facts and analysis behind major policy decisions
- Knowing reasons for decisions
- Accountability for proceeds of sale of assets in public ownership
- Openness and accountability for tender processes and prices
- Public interest in public bodies obtaining value for money
- Public health
- Contingency plans in an emergency
- Damage to the environment

6. What do I need to consider when disclosing Council information?

6.1 You will need to ensure that you comply with the law and act reasonably when you are considering disclosing Council information by asking the following questions:

- Is disclosure compatible with the Freedom of Information Act (FOIA) (recorded information)
- Will disclosure breach any of the principles of the Data Protection Act (DPA) (recorded and verbal information).
- Is disclosure compatible with Article 8 of the Human Rights Act (HRA) (recorded and verbal information).
- Does disclosure comply with Council policies, procedures and protocols and other written advice and guidance.

7. The FOIA

7.1 The FOIA provides a right of access to all recorded information held by the Council. However this right is subject to a number of exemptions to legitimately withhold confidential or sensitive information from disclosure. Many exemptions are qualified and subject to the public interest test. It is often a matter of fine judgement as to whether the public interest will be best served by either withholding or disclosing information.

8. The DPA

8.1 The DPA protects recorded, personal information. Personal information is any information that identifies a living individual. There are exemptions that permit the disclosure of personal information where there is an overriding public interest or justification for doing so eg prevention of crime or protection of a child.

8.2 You can be held personally liable under the DPA if you knowingly disclose personal information to a person not entitled to that information.

9. The HRA

9.1 Article 8 of the HRA states 'Everyone has a right to respect for his private and family life, his home and his correspondence'.

9.2 The disclosure of information to meet a legitimate aim that infringes on an individual's right to privacy is permitted where there is an overriding public interest for doing so.

10. Common Law Duty of confidentiality

10.1 Common law is not set in statute but is developed through legal precedents set by the courts. The common law duty of confidentiality is well recognised and is as powerful as legislation that governs access to and disclosure of information.

10.2 Information has a necessary quality of confidence when:

- It is not in the public domain or readily available from another source
- It has a degree of sensitivity and disclosure could be detrimental to a party wishing to keep it confidential
- It is communicated for a limited purpose where the individual is likely to assume an obligation of confidence eg contractor/purchaser, solicitor/client.

10.3 The disclosure of confidential information is permitted where there is an overriding public interest or justification for doing so eg prevention of crime or protection of a child.

10.4 You can be held personally liable if you disclose confidential information to a person not entitled to that information.

11. Council policies, procedures and protocols and other written advice and guidance.

11.1 References to Council policies and guidance that relate to members confidentiality and disclosure of information are identified at the beginning of this document.

Guidance for Members on Gifts and Hospitality

1. Introduction

This guidance is for members of the Authority and independent and co-opted members (voting or non-voting).

2. General Caution

Treat with extreme caution any offer or gift, favour or hospitality that is made to you personally.

Your personal reputation and that of the authority can be seriously jeopardised by the inappropriate acceptance by you of a gift or hospitality.

This acceptance of gifts and hospitality is not always unlawful or inappropriate. The decision for you in every case is whether or not it is appropriate to accept any gift or hospitality that might be offered to you, having regard to how it might be perceived. No hard and fast rules can be laid down to cover every circumstance as to what is appropriate or inappropriate. This guidance is intended to enable you to make your own decision

3. Criminal Law

It is a criminal offence corruptly to solicit or receive any gift, reward or advantage as an inducement to doing or forbearing to do anything in respect of any transaction involving the Authority.

The onus would be on you to disprove corruption in relation to a gift from a person holding or seeking to obtain a contract from the Authority.

4. Limits of Guidance

This guidance does not apply to:

- Gifts and hospitality you may receive from family and friends (as birthday or other festival presents) that are not related to your position as a member. You should however question any such gift or hospitality offered from an unusual source.
- The acceptance of facilities or hospitality provided to you by the Authority.
- Gifts given to the Authority that you accept formally on the Authority's behalf and are retained by the Authority and not by you personally.

5. Meaning of Gifts and Hospitality

The expressions 'gifts' and 'hospitality' have wide meanings and no conclusive definition is possible. Gifts and hospitality include:

- The free gift of any goods or services.

- The opportunity to acquire any goods or services at a discount or at terms not available to the general public.
- The opportunity to obtain goods or services not available to the general public.
- The offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event.

Common gifts include pens, diaries, calendars and other business stationery, articles of clothing, books, flowers and bouquets. Members should however be cautious when purchasing anything, when additional services, privileges or advantages are offered, which might be related to their position as a member.

6. Appropriate Gifts and Hospitality

There are some circumstances where you may accept gifts and hospitality as being in the normal course of your duties as a member.

- Civic hospitality provided by another public authority.
- Normal and modest refreshment in connection with any meeting in the course of your work as a member (e.g. tea, coffee and other normal beverages and refreshments).
- Tickets for sporting, cultural and entertainment events which are sponsored or promoted by the Authority or bodies to which you have been appointed by the Authority, and the tickets offered in relation to that sponsorship or promotion.
- Small low value gifts (such as pens, calendars, diaries, flowers and other mementos and tokens).
- Drinks or other modest refreshment in the normal course of socialising arising consequently from Authority business (e.g. inclusion in a round of drinks after a meeting).
- Modest meals provided as a matter of courtesy in the office or meeting place of a person with whom the Authority has a business connection.
- Souvenirs and gifts from other public bodies intended as personal gifts (e.g. arising from twin-town and other civic events).

7. Principles to Apply in Relation to Gifts and Hospitality

In deciding whether it is appropriate to accept any gift or hospitality you must apply the following principles:

- Do not accept a gift or hospitality as a inducement or reward for anything you do as a member. If you have any suspicion that the motive behind the gift or hospitality is an inducement or reward you must decline it.
- 'Reward' includes remuneration, reimbursement and fee.
- Do not accept a gift or hospitality of significant value or whose value is excessive in the circumstances.
- Do not accept a gift or hospitality if acceptance might be open to misinterpretation. Such circumstances will include gifts and hospitality:

- a) From parties involved with the Authority in a competitive tendering or other procurement process.
 - b) From applicants for planning permission and other applications for licences, consents and approvals.
 - c) From applicants for grants, including voluntary bodies and other organisations applying for public funding.
 - d) From applicants for benefits, claims and dispensations.
 - e) From parties in legal proceedings with the Authority.
- Do not accept a gift or hospitality if you believe it will put you under any obligation to the provider as a consequence.
 - Do not solicit any gift or hospitality and avoid giving any perception of so doing.

8. Gifts Received and Donated to the Chairman's Appeal

Some members receiving gifts of value may prefer not to retain these personally but to pass them to the Head of Paid Service for use in relation to the Chairman's Appeal. Members should indicate this intention to the provider and make this clear on the register of interests.

9. Registration of Gifts and Hospitality

The Code of Conduct for Members and Co-opted Members provides that

'You have a personal interest in any business of your authority where it relates to or is likely to affect the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25.'

This interest must be registered in the register of members' interests. You should register the interest as soon as possible after acceptance of the gift or hospitality. The registration should include the source and nature of the gift of hospitality.

You must disclose the existence and nature of the interest arising from a gift or hospitality at a meeting of the authority at which business is considered to which the interest relates. (i.e. business relating to the interests of the person or body giving the gift or hospitality) The disclosure requirement does not however apply to gifts and hospitality interests registered more than 3 years ago.

Whilst the registration requirement in the code is limited to gifts or hospitality over the value of £25, members are encouraged to register any significant gift or hospitality they receive below this value. There is not obligation to make a disclosure in relation to gifts and hospitality on the register which are below £25 in value.

10. Reporting of Inappropriate Gifts and Hospitality Offered

It is a criminal offence for a person corruptly to give or offer any gift, reward or advantage as an inducement or reward to you for doing or forbearing to do anything as a member of the Authority.

You must immediately report to the Monitoring Officer any circumstances where an inappropriate gift or hospitality has been offered to you.

You may thereafter be required to assist the Police in providing evidence.

11. Enforcement

The Standards Advisory Committee has responsibility for overseeing compliance with this guidance.

Allegations of any failure to meet the guidance must be made in writing to the Monitoring Officer.

SITE VISITS

1. Criteria for undertaking Site Visits

- (a)** A site visit will be considered necessary only where the buildings or site need to be seen in context as the available plans and photographs do not provide sufficient information for an informed decision to be made.
- (b)** When a site visit is proposed the reasons for making a site visit must be minuted.
- (c)** The reasons for making a site visit are –
 - (i)** The application is significant in terms of its size or impact on the local environment.
 - (ii)** Where the decision may set a precedent.
 - (iii)** The site relating to the application is of environmental or ecological importance.
 - (iv)** There are concerns over safety issues regarding the location and/or details of the application proposal.
 - (v)** Issues raised during consultation/by the local community.
 - (vi)** Deviation from the Local Plan.
 - (vii)** Deviation from current Council policy.
 - (viii)** Any specific, substantial and relevant reason where the information and facts needed for Members to make an informed decision can only be collected by a visit to the site.

2. Site visit protocol

- (a)** The site visit is for fact finding purposes only, NO DECISIONS can be made at a site visit.
- (b)** Site visits are not formal meetings and decisions cannot be made, therefore such visits do not need to follow the Council Rules of Procedure or be quorate.
- (c)** All Members of the relevant Committee and the relevant ward Member(s) will be invited to attend the visit together with the applicant and/or their agent and any person or representative of any organisation (including town/parish council) who has made representation regarding the application.

- (d) Site visits are not 'open' meetings and attendance will be by invitation of the relevant Committee Chairman. Invitations will be issued in accordance with any statutory requirements and Council policy (see also (c) above.
- (e) The officer leading the visit will record the name of all the people present at the visit, this list will be forwarded to Member Services.
- (f) Members are recommended to declare any relevant interests at the start of the site visit and these will be recorded by the lead officer. The details will be forwarded to Member Services.
- (g) The lead officer will also record any deviations from the protocol or agreed procedure. The lead officer will also make notes of the Chairman's (of the visit) summing up of the visit – such notes will be checked by the Chairman (of the visit) and be presented with the Committee paper when the application is considered.
- (h) Any written information produced by an applicant, agent or any other person at the visit will not be circulated at the visit but be received by the lead officer and circulated with the papers for the meeting at which the application will be considered.
- (i) Members should be mindful of health and safety matters when visiting sites, but lead officers will advise Members of any particular hazards and special precautions that need to be taken, including the wearing of safety clothing if appropriate. (Safety clothing will be issued by the lead officer at the start of the visit if required.)
- (j) Members should take care not to express an opinion regarding any application either at the site visit or to any member of the public prior to the meeting where the application is on the Agenda and the full information to inform decision-making is available.

3. Procedures at a Site Visit

- (a) The Committee Chairman introduces himself/herself and welcomes everyone.
- (b) The lead officer records everyone present and, if appropriate, the person or organisation whom they represent.
- (c) Chairman asks for any declarations of interest from Councillors, which are recorded by the lead officer.
- (d) The Chairman reminds those present that the site visit is for fact finding and information gathering purposes only.
- (e) The lead officer outlines the application and the issues.

- (f)** The Chairman invites any attendees who are not District Councillors to state and explain their case.
- (g)** District Councillors ask questions of the lead officer and, if the Chairman deems it in order, any other attendee.
- (h)** The Chairman sums up any points made, and the lead officer makes a note of the summing up.
- (i)** The Chairman thanks everyone for attending and ends the visit.

