

# **PART 7 – THE CODES, PROTOCOLS AND ADVICE**

## **A – MEMBERS’ CODE OF CONDUCT**

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### **Royal Borough of Windsor & Maidenhead Code of Conduct**

#### **Conduct expected of members and co-opted members of the authority when acting in that capacity**

You, as a member of the Royal Borough of Windsor and Maidenhead shall have regard to the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

When acting in your capacity as a Member or co-opted Member:

- i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
- ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- iii) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
- iv) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- v) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- vi) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the Appendices below.
- vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

**ix)** ~~ix)~~ You must not act in a way which a reasonable person would regard as bullying, or in any way which is intimidating to others.

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- x) Councillors must not behave in such a way that a reasonable person would regard as disrespectful to others. You should encourage and foster respect in others.
- xi) Councillors must not knowingly disclose information which they believe, or ought reasonably be aware, is confidential or where disclosure is prohibited by law, unless they have the consent of the person authorised to give it, or they are required by law to do so.

This Code of Conduct is supplemented by the provisions of Appendix 1 to [76](#)

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## Appendix 1

### Registering and Declaring pecuniary and personal interests (s.30 Localism Act 2011)

You must, within 28 days of taking office as a Member or co-opted Member, notify your authority's monitoring officer of any disclosable pecuniary interest ('DPIs') as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners. The definition of DPIs is in Appendix [65](#).

In addition, you must, within 28 days of taking office as a Member or co-opted Member, notify your authority's Monitoring Officer of any Personal Interest as defined in Appendix [56](#).

If any DPI or Personal Interest has not been entered onto the authority's Register of Interests, then the Member must disclose the interest to any meeting of the authority at which they are present, where they have an interest in any matter being considered and where the matter is not a Sensitive Interest as defined in Appendix [56](#).

Following disclosure of any interest not on the authority's Register of Interest or the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure in order that it may be placed on the Register of Interests.

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 will then be entered on the public register of gifts and hospitality.

A copy of the register will be available for public inspection and will be published on the authority's website.

## Appendix 2

### **Disclosure of interests and participation in meetings. (s.31 Localism Act 2011)**

#### Disclosure at Meetings

You are required to disclose interests at meetings when you are aware that you have either:

- (a) A DPI or a Personal Interest which is relevant to the matter being considered; or
- (b) A Personal Interest or a DPI which is not on your Register of Interests;

You are not required to (but can do so if you wish) disclose any other type of interest that you may have. If in doubt, it is always better to disclose an interest than not do so as the Council places a high value upon its public reputation for integrity.

#### Participation for Decision Makers at Meetings

If you attend a meeting as a decision maker and have:

- (a) DPI which is relevant to the matter under discussion; or
- (b) a Prejudicial Interest;

then you must not participate in any debate of the matter and/or participate in any vote at the meeting, unless you have obtained a Dispensation.

Please see Appendix [56](#) for guidance on these terms. Appendix 3 states how you can obtain a Dispensation.

If you have a DPI or Prejudicial Interest (and do not have a Dispensation) as described then you must:

- (a) Declare the interest at the start of the meeting when the Chairman asks if there are any interests to declare; and
- (b) Before the item is to be discussed, you may make representations before there is debate on the matter but, when finished, you must move to the public area or leave the room and take no further part in the discussion or vote.

You cannot avoid disclosure of a DPI or Prejudicial Interest merely by withdrawing during that part of the meeting when the matter you have a DPI or Prejudicial Interest, is to be discussed. In respect to a DPI, failure to comply is a Criminal Offence.

If you remain in the room, you must not sit with the other members of the meeting and must move to the public area. You must not speak after making your representations. It is also important that you do not express your views in a non-verbal way, for example by using body language or expressing emotion.

## Appendix 3

### How to obtain a Dispensation

If you seek a Dispensation, you must make a written request to the Relevant Officer of the Council.

The Council may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

- (a) considers that without the dispensation the number of persons from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) considers that granting the dispensation is in the interests of persons living in the Royal Borough of Windsor and Maidenhead.
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) considers that it is otherwise appropriate to grant a dispensation.

A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

The Relevant Officer is the Managing Director or in substitute the officer clerking the meeting.

## Appendix 4

### Arrangements for dealing with breaches of the Code of Conduct

Complaints in respect of this Code are made to the Monitoring Officer.

#### 1. Receipt and Acknowledgment of the Complaint

When a complainant makes a complaint they will receive:

- An acknowledgment within 3 working days.
- An initial response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution.
- The complainant will be told that full details of their complaint will be given to the Councillor concerned ('the Subject Member').
- Anonymous complaints will not be considered unless accompanied by documentary or photographic evidence, evidencing an exceptionally serious or significant matter. If the Subject Member is a Parish or Town Councillor, the clerk will be informed of the complaint on a confidential basis, where it is a Parish or Town Council matter.

#### 2. Response of the Subject Member

The Subject Member will be informed of the complaint within 3 working days of the complaint being received. The Subject Member will be asked to supply written comments within 15 working days from the complaint being received.

#### 3. Initial Assessment of the complaint by the Monitoring Officer

The purpose of the initial assessment by the Monitoring Officer, in consultation with an Independent Person where appropriate, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

- Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.
- Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or 'tit for tat'? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?
- Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?
- Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action
- Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within 20 working days of it being made. Should it

be determined by the Monitoring Officer, in consultation with an Independent Person where appropriate, that the complaint should not proceed, then ~~that is the end of the matter~~ the complaint shall be dismissed. ~~There is no right of appeal for the Complainant to the Council.~~

**4. Initial Decision of the Monitoring Officer**

Should it be determined, having regard to the criteria referred to in section 3 above, that the complaint be accepted for further consideration, the Monitoring Officer shall, subject to consultation with an Independent Person, have delegated authority to decide to take one of the following actions:

- Take no action if there is clear evidence that there has been no breach of the Code of Conduct. Nothing further will be required from the Subject Member and the matter will be closed.
- Where there has been a clear breach of the ~~e~~Code of ~~e~~Conduct, move ~~straight to paragraph 2 of~~ section 5.2 below.
- Where there has possibly been a breach of the Code of ~~e~~Conduct, to require a formal investigation and a written investigation report by an ~~Independent~~ Investigating Officer. ~~An and~~ indicative timescale for the process should be given ~~to the Complainant and the Subject Member~~. At least a monthly update report will be provided to all parties in an ongoing investigation. The investigation report shall conclude whether there has been a breach of the Code of Conduct and give clear reasons for that conclusion. Copies of the investigation report will be provided in confidence to the Independent Person, and the Subject Member.

**5. Finding on Investigation**

**5.1 No Breach of Code of Conduct**

Where ~~an formal~~ investigation finds no evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person ~~and the Chairman of the Employment and Members Standards Panel~~, shall make a decision to take no further action. The Subject Member and the complainant will both be informed. The Parish or Town Clerk, if appropriate, will be informed that there is no breach, but no further information will be supplied. There will be no appeal.

**5.2 Breach of Code of Conduct**

Where ~~a formal investigation there is finds~~ evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person ~~and the Chairman of the Employment and Members Standards Panel~~, shall make a decision ~~to: whether there has been a breach of the Code of Conduct.~~

- a) ~~resolve the matter informally by asking the Subject Member to (i) take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the Complainant are willing to do so, and/or (ii) make a written apology to the Complainant which is acceptable to the Monitoring Officer and Chairman of the Employment and Members Standards Panel, and/or (iii) attend training and/or (iv) correct an entry in a register or correct a declaration made;~~

OR

- b) ~~refer the Investigating Officer's report to a Members Standards Subcommittee. The Members Standards Subcommittee will conduct a local hearing following the~~

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procedure Appendix 5 of this Part, and make a decision in accordance with paragraph 2.2 of Appendix

The Member's Standards Subcommittee will usually hear a complaint within two calendar months of the date that the Monitoring Officer has referred the matter to the Subcommittee.

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The Subject Member and Complainant will be informed of the decision.

~~The Subject Member will be informed of the decision. The Subject Member will be asked for his or her comments on the Investigation report, to the Monitoring Officer, within 20 working days from receipt, and these comments will inform the Monitoring Officer regarding the sanction to be imposed.~~

## 6. Sanction

If the Monitoring Officer or the Member's Standards Subcommittee has decided that there has been a breach of the Code of Conduct, the Monitoring Officer shall within he or she has 15 working days from the date of decision receiving the Subject Member's comments ~~to~~ refer the matter to the Subject Member's Group Leader or his or her deputy, or Chairman or his or her Deputy if a parish or Town Councillor, with a recommendation for sanction e.g. removal from a panel or submitting a formal apology.

The Subject Member's Group Leader, or Chairman if a parish or Town Councillor will have a further 15 working days to respond to the recommendation, and to prepare a statement to be placed on the council website.

If the allegation appears to involve criminal activity, the Monitoring Officer will refer the matter to the police at any stage in this process they believe appropriate.

## 7. Support, Appeals and Transparency

### 7.1 Support to Subject Members during an Investigation

The Council will support Subject Members during the complaint investigation process as follows:

- a. Independent Person: Subject Members can seek support from one of the Independent Persons (not the Independent person who is consulted by the Monitoring Officer) with regard the complaint.
- b. Legal Support: The Council will provide reasonable financial support to allow Subject Members to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct. Subject Members will be required to sign an agreement with regard to legal support before engaging any legal support.

Any criminal acts must occur in the course of the Subject Member's duties as a Councillor. They must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. Subject Members will be required to immediately repay back all monies to the Council if they are convicted of a criminal offence or have failed to comply with the Code of Conduct.

## 7.2 Appeals

There is no right to appeal under the Code of Conduct and the decision of the Monitoring Officer or the Member's Standards Subcommittee will be final. However, Subject Members may make a statement about the complaint and the findings. This statement shall be published on the Council's website for the period stated in Transparency section below.

If the Complainant or the Subject Member is unhappy with this decision, they may write to the Local Government Ombudsman to complain. The Local Government Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

## 7.3 Transparency

The decision of the Monitoring Officer or Members Standards Subcommittee will be sent to the Subject Member and the ~~e~~Complainant. The decision will ~~and also be~~ published on the Council's website once period (of up to 30 days) in section 6 of this Appendix has expired. The decision will be publicised for the following period:

~~(a)-~~ No Breach of Code – 3 months

~~(b)-~~ Breach of Code – 24 months (or such shorter period if the Subject Member is no longer a ~~when you are no longer~~ a Member of the Council. Council, if earlier).

Unless the Monitoring Officer determines otherwise, the decision notice, the Group Leader/ Chairman's statement and the Subject Member's statement only will be published on the website.

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## Appendix 5

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### 1 Procedure for Members Standards Subcommittee

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#### 1.1 Appointment, Composition and Terms of Reference of the Members Standards Subcommittee

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The Monitoring Officer is required to convene a Members Standards Subcommittee from the membership of the Employment and Members Standards Panel as necessary. The Members Standards Subcommittee will therefore not have a fixed membership.

The Members Standards Subcommittee shall comprise of three voting members of the Employment and Members Standards Panel. If the complaint relates to a Town or Paris Councillor then a co-opted Town or Parish Councillor may also be an additional member of the Members Standards Subcommittee, but will not have voting rights.

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An Independent Person may be asked to attend any Members Standards Subcommittee and give advice to it in respect of the complaint as required by S28(7) of the Localism Act 2011.

#### 1.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Members Standards Panel and the Subject Member.

Once the date for the Members Standards Subcommittee has been arranged the Subject Member will be notified and asked if they:

- a) wish to attend the hearing;
- b) wish to be accompanied or represented at the hearing by any other person;
- c) wish to submit any written evidence or documentation to be considered by the Subcommittee. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Subcommittee;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Members Standards Subcommittee appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

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The Members Standards Subcommittee and the Subject Member, and the Independent Person will each receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report, on a strictly confidential basis.

The Members Standards Subcommittee will be held in private and this will be confirmed at the hearing. The Complainant will not attend unless the Chairman of the Members Standards Subcommittee agrees, or the Subject Member requests that they attend for the purposes of answering questions on the evidence provided.

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### 1.3 Procedure for the Members Standards Subcommittee

The procedure for the Members Standards Subcommittee will be as follows:

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- a) The Chairman will confirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Members Standards Subcommittee will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.
- b) If an Investigating Officer was used then the Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.
- c) The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Members Standards Panel, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen in the witness statements.
- e) The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Members Standards Subcommittee as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Members Standards Panel.
- g) Members of the Members Standards Subcommittee, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Members Standards Subcommittee.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The Subject Member will then be given the opportunity to sum up
- j) The Independent Person will then be invited to comment and outline their view in respect of the complaint.

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- k) The Chairman will check with the other members of the Members Standards Subcommittee whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer or Monitoring Officer will be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Member Standards Subcommittee.
- l) If the Members Standards Subcommittee is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the Democratic Services Officer and Monitoring Officer to the Subcommittee will remain.
- m) The Members Standards Subcommittee will then determine the complaint on the balance of probabilities. If the Members Standards Subcommittee determine that there has been a failure to follow the Code they shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.

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## 2 Findings of the Members Standards Subcommittee

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### 2.1 No Finding of a Failure to follow the Code of Conduct

If the Members Standards Subcommittee determine that the Subject Member has not failed to follow the Code of Conduct then the complaint will be dismissed.

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The decision notice stating the Members Standards Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the Subject Member, the Investigating Officer, the Monitoring Officer, the Complainant and the Independent Person.

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### 2.2 Finding of Failure to follow the Code of Conduct

If the Members Standards Subcommittee determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to Council or any subcommittee(s) of Council that the Subject Member be removed from any or all subcommittee(s) of the Council;
- c) Recommend to the Leader of Council that the Subject Member be removed from the Cabinet, or removed from particular portfolio responsibilities;

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- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Subject Member;
- e) Remove (or recommend to the relevant Town/Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access;
- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council or Panel meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under s30 and/or s31 Localism Act 2011.

### **2.3 Publication of the Decision on Finding a Breach of the Code of Conduct**

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Members Standards Subcommittee. A copy of the decision notice will be sent to the Complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person for their information.

The Subject Member has no right of appeal to the Council against a decision of the Monitoring Officer or the Members Standards Subcommittee.

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## Appendix ~~65~~

### Definitions used in the Code of Conduct

#### Criminal Offence

##### **(s.34 Localism Act 2011)**

It is a criminal offence if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 Localism Act 2011 to register or declare DPIs, or take part in council business at meetings or when acting alone.

If you breach the above, the Magistrates Court may, upon conviction, impose a fine of up to level 5 (currently £5,000.00), and an order disqualifying the person from being a Member of a relevant authority for up to five years.

The Council would consider that taking legal advice from the Monitoring Officer or their nominee (even if such advice was not upheld) would amount to 'reasonable excuse' for the purposes of s34(1) of the Act.

#### Disclosable Pecuniary Interest (DPIs)

Interests defined by regulations made under s30(3) of the Localism Act 2011 and described in the table below.

('M' means you and 'relevant person' means you and your partner). "Partner" means a spouse or civil partner of M, 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

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided 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.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— 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 relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in

	the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— a) the landlord is the relevant authority; and b) the tenant is a 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 relevant authority; and b) either—  i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on Disclosable Pecuniary Interests above 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 authority of which M is a member;
Relevant period	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
Relevant person	means M or any other person referred to in section 30(3)(b) of the Act;
Securities	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

### **Independent Person**



The Independent Person is the person engaged by the Council who:

- must be consulted by the Managing Director before making a decision on an allegation that the Managing Director has decided should be formally investigated.
- may be consulted by the Managing Director in respect of a complaint at any other stage.
- may provide views to a Member or co-opted Member if that Member's behaviour is the subject of an allegation.
- may assist in granting dispensations to members and co-opted members from requirements relating to interests set out in the Code of Conduct.
- will exercise all of the above functions in respect of Parish Councils and members of those Parish Councils within the Council.

### **Personal Interests**

A Personal Interest is :

- i) any body of which you are in a position of general control or management and to which you are elected appointed or nominated by the Council;
- ii) any body
  - exercising functions of a public nature; or
  - in receipt of any grant from the Council; or
  - directed to charitable purposes; or
  - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which the you are a member or have a close association or of which you are in a position of general control, influence or management.
- iii) Membership of any private club, society or association operating within the Borough Council's area, where you hold a position of general control or management
- iv) any other connection or association which a member of the public may reasonably think may influence you when you make a decision on Council matters and acting as a Councillor. e.g.. the decision relates to a close family member or friend and could have a substantial benefit to them.

You are not required to record any Personal Interest in point (iv) above on your Register of Interests (but may do so if you wish).

### **Predetermination**

Predetermination means that you have a closed mind and do not make a decision impartially and solely on the basis of the relevant facts. You have not predetermined a matter just because you have expressed a particular opinion previously or hold a view prior to any meeting. It is proper for Councillors to play an active part in local discussions and the expression of a view on a particular matter or campaigning on a particular platform

should not prevent you from participating in council business relating to such an issue. If you have an open mind, are willing to listen and are open to consider all the facts and arguments presented to you before making your decision, then you will not have predetermined a matter.

Predetermination should not be confused with Predisposition (see below)

### **Predisposition**

Any decision maker may have an initial view or opinion on a matter arising from personal experiences and preference. Simply holding an initial view or tendency in favour of a particular cause or matter does not preclude you from decision making. This is natural bearing in mind that Councillors are often elected based upon their stated views and opinions. Having a strong view on a matter will amount to only legitimate predisposition.

### **Prejudicial Interest**

This is Personal Interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it influences your judgement of the public interest. That is, your decision is influenced by your Personal Interest such that you are not able to impartially consider only relevant issues (you are biased). This would include where you have Predetermined a matter.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your Personal Interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

### **Sensitive Interest**

A Sensitive Interest occurs where you and the Monitoring Officer consider that disclosure of the details of a DPI or a Personal Interest could lead to you, or a person connected with you, being subject to violence or intimidation. If the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a DPI or a Personal Interest and that the details are withheld under Section 32(2).

## **Appendix 76 – guidance on behaviours**

### **What is ‘bullying’ and ‘intimidation’?**

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Bullying has been described by ACAS as ‘offensive, intimidating, malicious, or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient’. A victim’s obvious vulnerability will be taken into account when assessing whether bullying has occurred.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a Member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

Bullying should be contrasted with the legitimate challenges which a Member can make in challenging policy or scrutinising performance. Contributing to debates in Council meetings about policy and asking officers to explain the rationale for their professional opinions are to be encouraged. All Members should feel free to challenge fellow councillors and professional officers as to why their views are held. However, Members need to be careful about criticism which becomes offensive in nature which will cross the line of what a reasonable person would find acceptable.

### **Criticism of officers**

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The Council is under a legal obligation to ensure that officers work in a safe environment and the same rules about their interaction with the public apply equally to their work with Members. Anyone should feel free to express disagreement with officers, so long as it is done in an appropriate way. Officers should make decisions which are unbiased, and attempts to coerce them or persuade them to act in a particular way to a point where to do so would prejudice their professional integrity would not be acceptable.

This guidance is based on Standards for England Guidance, now archived after it was abolished by the Localism Act 2011, as well as guidance issued by ACAS

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### **Confidential Information**

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The Code of Conduct says: Councillors must not knowingly disclose information which they believe, or ought reasonably be aware, is confidential or where disclosure is prohibited by law, or they have the consent of the person authorised to give it, or they are required by law to do so.

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The following is based on Standards for England Guidance, now archived after it was abolished by the Localism Act 2011. This guidance was key in dealing with complaints about councillor’s behaviour by Standards for England from 2007 to 2012. We believe therefore that it is reasonable to use the same guidance when assessing similar complaints against Members under the current Code of Conduct.

It is important to remember that such behaviour will only be caught by the Code of Conduct if a Member is acting or holding out as acting as a Member of the Council, and not in his or her private capacity.

At the outset, it should be made clear that Councillors must not cause the Council to breach Data Protection legislation by releasing any personal information which is held by the Council, but comes to the knowledge of the Councillor. Such disclosure could cause the Council to be subject to severe fines.

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**What is 'confidential information'?**

Information is a broad term. It includes facts, advice and opinions. It also covers written materials, including CDs, DVDs and other all electronic media.

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Information is confidential:

- if it is about something serious and not trivial
- if the nature of the information is sensitive or personal, for example it is a business secret
- if it is information that you would expect people would want to be private
- if it was divulged in a way which implied it should be kept confidential
- if disclosing the information would be detrimental to the person who wishes to keep it confidential
- if it is a Council related document which states that it is confidential
- if it was information which a Councillor has been told is confidential

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**When can confidential information be disclosed?**

You are able to disclose confidential information when:

- the person authorised to give it has given you the consent to disclose it
- you are required by law to do so
- the disclosure is made to a third party in order to obtain professional advice.
- If you are concerned that information should be disclosed in the public interest, you must first raise your concerns through the appropriate channels set out in the Council's Whistleblowing policy, or raise the matter with the Monitoring Officer.

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**Respect - what a reasonable person would regard as disrespectful to others.**

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Everyone in normal life is very aware of what 'respect' looks like; however, in a culture of positive argument in politics and legal matters, the lines can get blurred between interacting with others to make a point, and yet remaining respectful of other's views. Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

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In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect. In an arena of political discussion, such as in Council meetings, a finding of a breach for disrespect would be exceptional.

This rule does not apply to what could be reasonable referred to as minor incidents, such as putting the phone down on someone, or failing to reply to correspondence.

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