

# **PART 6**

# **CODES AND PROTOCOLS**



## **PART 6 - TUNBRIDGE WELLS CODE OF CONDUCT FOR MEMBERS**

### **Part 1**

#### **General provisions**

##### **Introduction and interpretation**

1. (1) This Code applies to **you** as a member of Tunbridge Wells Borough Council (TWBC).

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) TWBC;

(b) the executive of the TWBC;

(c) any of the TWBC 's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the Monitoring Officer and the Standards Committee of TWBC which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

#### **Scope**

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of TWBC (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of TWBC,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of TWBC —
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with TWBC's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

**3.** (1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause TWBC to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings,
 in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, TWBC.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

**4.** You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
  - (i) you have the consent of a person authorised to give it;

- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
  - (aa) reasonable and in the public interest; and
  - (bb) made in good faith and in compliance with the reasonable requirements of TWBC (which include the provisions of the Council's Confidential Reporting Code); or

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

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or TWBC into disrepute.

**6.** You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of TWBC -

(i) act in accordance with TWBC 's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7. (1)** When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) TWBC's Chief Finance Officer; or

(b) TWBC's Monitoring Officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by TWBC.

## **Part 2**

### **Interests**

#### **Personal interests**

8. (1) You have a personal interest in any business of TWBC where either—

(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 TWBC;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to 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;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in TWBC area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between TWBC and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in TWBC's area in which you have a beneficial interest;

(x) any land where the landlord is TWBC and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in TWBC's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(2) In sub-paragraph (1)(b), a relevant person is—

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

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of TWBC and you attend a meeting of TWBC at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of TWBC which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of TWBC of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in TWBC's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of TWBC and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

### **Prejudicial interest generally**

- 10.** (1) Subject to sub-paragraph (2), where you have a personal interest in any business of TWBC 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.

(2) You do not have a prejudicial interest in any business of TWBC where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of TWBC in respect of—

(i).housing, where you are a tenant of TWBC 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.

(3) The determining of any approval, consent, licence, permission or registration shall include the amendment or modification of any such approval, consent, licence, permission or registration, or of any condition or term to which it is subject, or the revoking of any approval, consent, licence, permission or registration.

### **Prejudicial interests arising in relation to overview and scrutiny committees**

**11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of TWBC (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 TWBC's executive or another of TWBC'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 executive, 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.

### **Effect of prejudicial interests on participation**

**12.** (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of TWBC —

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from TWBC's Standards Committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of TWBC, you may attend a meeting (including a meeting of the overview and scrutiny committee of TWBC or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

### **Part 3**

#### **Registration of Members' Interests**

**13.** (1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to TWBC; or

(b) your election or appointment to office (where that is later),

register in TWBC's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to the Monitoring Officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to the Monitoring Officer.

#### **Sensitive information**

**14.** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and the Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify the Monitoring Officer asking that the information be included in TWBC's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## **PART 6 - OFFICER CODE OF CONDUCT**

### **1. INTRODUCTION**

- 1.1. The public is entitled to demand of a local government officer conduct of the highest standard. Public confidence in his or her integrity would be shaken were the least suspicion to arise that an officer could in any way be influenced by improper motives.
- 1.2. The purpose of this code is to lay down guidelines which will maintain and improve standards and help to protect employees from misunderstanding or criticism.
- 1.3. The code applies to all employees of the Council.
- 1.4. Contravention of this Code may result in disciplinary action being taken.

### **2. STANDARDS**

- 2.1. Employees of the Council are required to give the highest possible standard of service to the public and where it is part of their duties, to provide appropriate advice to other employees and members with impartiality.

### **3. DISCLOSURE OF INFORMATION**

- 3.1. The law requires that certain types of information must be available to members, auditors, government departments, service users and the public. Staff must familiarise themselves with the types of information which are open and which are not and act accordingly. Heads of Service must ensure their staff are well briefed on these matters. If there is any doubt the advice of the Legal Services Manager/Monitoring Officer should be sought.
- 3.2. No employee shall communicate to the public the proceedings of any Council meeting or similar such meeting from which the public are excluded, nor the contents of any document or other information relating to such a meeting, unless required by law or expressly authorised to do so by a Head of Service.
- 3.3. No employee shall use any information obtained in the course of his or her duty for personal gain or benefit, nor shall they pass it on to others who may use it in such a way.
- 3.4. Information concerning a member or fellow officer's private affairs shall not be supplied to any person without the consent of that person unless such a disclosure is required or sanctioned by law.

### **4. POLITICAL NEUTRALITY**

- 4.1. Employees of the Council must, to the best of their ability, assist all elected members of the Council not just members of any controlling group and must ensure that the individual rights of all members are respected.

- 4.2. Employees, whether or not politically restricted, must follow established Council policy and must not allow their own personal opinions to interfere with their work.
- 4.3. Officers may, if invited, attend political group meetings on the understanding that they maintain their political neutrality.

## **5. RELATIONSHIPS**

### **Members**

- 5.1. Mutual respect between employees and members is essential for good day-to-day practices. However close personal familiarity between employees and individual members can damage the relationship and prove embarrassing to other employees and members and should therefore be avoided.

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

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

### **Contractors**

- 5.3. Works orders and contracts must be awarded on merit, by fair competition against invited tenders and no favouritism should be shown to businesses run by friends, partners, or relatives of those engaged in placing or supervising such contracts or works orders. All contracts must be let in accordance with Council procedures.
- 5.4. All relationships between staff responsible for awarding or supervising contracts and any contractors or potential contractors in either a private or personal capacity must be declared to the Head of Service and the details entered in a register kept for this purpose by the Chief Executive. Failure on the part of any employee to declare such a relationship will be considered a serious breach of this Code.
- 5.5. No part of the community should be discriminated against when awarding contracts.

## **6. APPOINTMENTS AND OTHER EMPLOYMENT MATTERS**

- 6.1. Officers who are involved in the appointment of staff must ensure such appointments are made on the basis of merit. Failure to do so is likely to bring an accusation of favouritism or, more seriously, some form of discrimination.
- 6.2. In order to avoid any possible complaint of this nature, an employee should not be involved in an appointment where a candidate for that position is a relative or a personal friend of the employee.

- 6.3. Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other member of staff who is a relative, partner or close friend.
- 6.4. Every candidate for an appointment with the Council is required, when making such an application, to disclose whether to his or her knowledge they are related to any member of the Council or to any senior manager of the Council. Deliberate omission to make such a disclosure will disqualify the candidate and if the omission is discovered after the appointment is made he or she will be liable to dismissal.
- 6.5. An officer's off duty hours are their own concern but he or she must not allow private interests to conflict in any way with the duties of their employment with the Council or to cause any detriment to the interests of the Council or to undermine public confidence in that officer's integrity.
- 6.6. No employee of the Council shall undertake additional work outside of the Council or engage in any other business without first declaring to their Senior Manager their desire to do so and obtaining prior approval. In the case of a Head of Service seeking such approval the request should be addressed to the Chief Executive.

## **7. EQUALITY ISSUES**

- 7.1. This Council is committed to a policy of equal opportunities in the full context of employment issues and all officers responsible for recruiting, training, promotion and career development shall select candidates irrespective of sex, sexual orientation, marital status, race, age, religion, colour, country of origin or trade union membership.
- 7.2. All members of the community, customers and other employees have a right to be treated with fairness and equity.

## **8. CLIENT AND CONTRACTOR ROLES**

- 8.1. There should be a clear understanding by employees 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.
- 8.2. Staff who are employed in contractor or provider units must exercise fairness and impartiality when dealing with all customers, suppliers, contractors and sub-contractors.
- 8.3. 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.
- 8.4. 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.

## **9. CORRUPTION**

- 9.1. It is a criminal offence for an employee of the Council to receive 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.
- 9.2. Similarly employees should accept only offers of hospitality of a moderate nature where it can be demonstrated that the acceptance of such modest hospitality has not been corruptly obtained.
- 9.3. Further guidelines to staff on acceptance of gifts and hospitality are contained in a separate document to be found in Appendix 1 of this Code.

## **10. SPONSORSHIP**

- 10.1. The giving and receiving of sponsorship in local authorities is becoming more of an accepted practice and any employee of the Council involved with such sponsorship must abide by the basic principles concerning corruption and the acceptance of gifts/hospitality.
- 10.2. Particular care must be taken when dealing with contractors or potential contractors to the Council and staff must ensure that impartial advice is given and there is no conflict of interest involved.

## **11. PERSONAL INTERESTS**

- 11.1. Employees must declare and submit in a written form to the Chief Executive any non-financial, or financial, interests that they consider could bring about conflict with the Authority's interests.
- 11.2. Employees and managers should declare to the HR Manager through their Heads of Services, membership of any organisation which might create conflict of interest with their Council employment. The responsibility of this declaration rests with the individual employee.

## **12. MANAGEMENT BUY OUTS**

- 12.1. Employees contemplating a management buy out should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.

## **13. MALADMINISTRATION**

- 13.1. Any employee having reason to suspect that there has been an act of unlawfulness or maladministration involving any member or officer of the Council should report that matter to the Council's Monitoring Officer for investigation. There may be instances when the employee is not certain whether the circumstances amount to illegality or maladministration and in such a case he or she can obtain the advice of the Monitoring Officer.

**GUIDELINES ON ACCEPTANCE OF GIFTS/HOSPITALITY****THE GUIDELINES HAVE BEEN PREPARED AS PART OF THE OFFICER'S CODE OF CONDUCT**

- (1) In many areas of the commercial world it is common practice to offer and accept gifts, hospitality and other benefits. This practice is frequently used to influence a decision when one company is seeking business with another and it is perfectly legal to do so - but it can be quite the contrary in public service.
- (2) The acceptance of gifts, hospitality or other benefits, even on a modest scale, may arouse suspicion of impropriety and extreme caution and discretion should be exercised in accepting either. In principle you should refuse any personal gift offered to you or to your family by any person or company who has or seeks dealings of any kind with the Council.
- (3) The only reasonable exceptions to the guidance given in 2 above are (a) small gifts of a purely token value given by the way of trade advertisements (eg. calendars, diaries, articles for general use in the office), (b) small articles, again of purely a token value given at the conclusion of courtesy visits (eg. to a factory), (c) a small gift offered without warning and where refusal would give particular offence.
- (4) Should you receive an unexpected gift which falls outside the acceptable categories (see 3 above) you should consult your Head of Service who will decide the appropriate course of action. This may take the form of returning the gift, ensuring that the donor is informed in a polite way why this has been necessary, (b) passing the gift on to some charitable cause - if it is appropriate to do so, (c) agree that the gift be kept by the recipient with the details recorded in a book kept for this purpose by the Chief Executive.
- (5) Senior Managers receiving gifts which fall within paragraph 4 should consult with the Chief Executive before accepting if they are in any doubt. Any gift which is accepted by a Senior Manager should be recorded as described in paragraph 4.
- (6) Hospitality is sometimes offered to Council staff and it is not always possible or desirable to reject offers of a moderate nature. Examples of acceptable hospitality include (a) a working lunch of modest standard, provided to allow the business discussions to continue; (b) a social event eg. a Society's golf day or an open day organised by a company where other organisations are guests.
- (7) Some offers of hospitality are clearly unacceptable and these would include offers of holiday accommodation, individual offer of theatre tickets for yourself or your family, individual invitation to dinner.

- (8) You should be particularly cautious when any form of hospitality is offered by an individual or an organisation seeking to do business with, or a decision from the Council as acceptance might affect your relations with the party offering it and how this might then be viewed by members, your managers and the public. If in any doubt at all you should consult with your Head of Service before acceptance. Senior Managers may wish to discuss any such offer they receive with the Chief Executive or the Monitoring Officer.
- (9) Acceptance of offers of hospitality - other than those of a very modest nature - must be recorded in the book kept for the purpose by the Chief Executive.
- (10) These guidelines are intended as a general overview on acceptance of gifts and hospitality but cannot cover every eventuality. If you are in any doubt you should consult your Head of Service, or in the case of a Head of Service, the Chief Executive.

## **PART 6 - PROPER OFFICERS AND DESIGNATED OFFICERS**

### **Definition**

By section 270(3) of the Local Government Act 1972, a Proper Officer is defined as, in relation to any purpose and any local authority or other body or any area, an officer appointed for the purpose. Accordingly, the Council needs to decide which of their officers should be identified to carry out particular functions which are, by primary or secondary legislation, to be carried out by a specified post which will be the Proper Officer post mentioned by the legislation concerned.

A designated officer is an officer designated by the Council to carry out a particular function but which is not prescribed as a Proper Officer function by legislation.

### **Proper Officer Posts**

The Tunbridge Wells Borough Council has specified the posts referred to in this document as Proper Officers or Designated Posts in relation to the functions specified.

### **PROPER OFFICERS AND DESIGNATED OFFICERS (PROPER OFFICER POSTS EXCEPT WHERE OTHERWISE INDICATED Chief Executive or, in his or her absence, the Head of Finance and Governance**

- (1) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Clerk of a Council or the Town Clerk of a Borough shall be construed as a reference to the Chief Executive.
- (2) The following provisions in the Local Government Act 1972: -
  - (a) Section 13(3) - The officer who together with the Chairman of the Parish Meeting shall be a body corporate by the name of 'The Parish Trustees' in a parish not having a separate parish council.
  - (b) Section 83(1) - The officer to whom a person elected to the office of Mayor, Deputy Mayor or councillor of the Council of the Borough shall deliver a declaration of acceptance of office in a form prescribed by rules made under Section 36 of the Representation of the People Act 1983.
  - (c) Section 84 - The officer to whom a person elected to any office under the Act may give written notice of resignation.
  - (d) Section 88(2) - The officer who may convene a meeting for the election of Mayor of the Council following a casual vacancy in that office.
  - (e) Section 89(1) - The officer to whom notice shall be given of any casual vacancy occurring in the office of councillor.

- (f) Section 210(6) and (7) - The officer who shall exercise the powers relating to charities conferred by these sub-sections.
  - (g) Schedule 12, Part 1, paragraph 4(2)(b) - The officer who shall sign a summons to attend a Council meeting.
  - (h) Schedule 12, Part 1, paragraph 4(3) - The officer to whom a member of the Council shall give a notice in writing desiring summonses to attend meetings of the Council to be sent to an address specified in the notice other than his or her place of residence.
- (3) The following provisions in the Representation of the People Act 1983: -
    - (a) Section 8 - The Registration Officer of any constituency or any part of a constituency coterminous with or situated in the district.
    - (b) Section 35 - The Returning Officer at an election of councillors of the district (and or parishes and communities within the district).
  - (4) Designated as Head of Paid Service in accordance with Section 4 of the Local Government and Housing Act 1989.
  - (5) With regard to any other requirement for the appointment of a proper officer, the Chief Executive is hereby appointed such proper officer in the absence of any specific appointment for that purpose.
  - (6) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

#### **Chief Executive, Directors and their Heads of Service**

- (7) Local Government Act 1972, Section 234(1) - the authentication of documents in relation to: -
  - (i) any matters which fall within the terms of any delegated powers conferred upon them by the Council; and
  - (ii) subject thereto, matters which come exclusively within the scope of their duties.

#### **Legal Services Manager/Monitoring Officer**

- (8) The officer with whom the list and revised lists of politically restricted posts under Section 2(4) of the Local Governmental and Housing Act 1989 shall be deposited.
- (9) Local Government Act 1972 Section 100B(2) - the officer who may exclude reports from being open to public inspection which, in part or wholly, relates to items during which the meeting is not likely to be open to the public.

- (10) Local Government Act 1972 Section 100C - the officer who, where in consequence of the exclusion of parts of the minutes which disclose exempt information, the document open to inspection does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, shall make a written summary of the proceedings or part thereof which provides such a record without disclosing the exempt information.
- (11) Local Government Act 1972 Section 100D - the officer who shall compile a list of background papers for a report for a meeting of the Council.
- (12) Local Government Act 1972 Section 100F - the officer who, where it appears to him/her that a document discloses exempt information of a description for the time being falling within any of paragraphs 1 to 6, 9, 11, 12 and 14 of Part 1 of Schedule 12A to the 1972 Act, subsection (1) of Section 100F of the 1972 Act does not require the document to be open to any member of the Council.
- (13) Local Government Act 1972, section 225(1) - the officer who shall receive and retain documents deposited with the Council pursuant to the Standing Orders of either House of Parliament or any enactment or instrument and shall take such action relating to these documents as may be directed.
- (14) Local Government Act 1972, section 229(5) - the officer who shall certify a photographic copy of a document in the custody of the Council, or of a document which has been destroyed whole in the custody of the Council, or of any part of any such document.
- (15) Local Government Act 1972, section 234(1) - the officer for the purpose of the authentication of documents in relation to any matters not falling within the definition referred to under the heading 'Chief Executive and Heads of Service and their Divisional Managers etc' at paragraph (7) above, following or otherwise dealt with.
- (16) Local Government Act 1972, Section 236(9) and (10) - The officer who shall send a copy of every Byelaw made by the Council and confirmed, to the Proper officer of every parish or community to which they apply, and to the County Council.
- (17) Local Government Act 1972, section 238 - the officer who shall certify a printed copy of a Byelaw of the Council.
- (18) Local Government Act 1972, Schedule 14, Part II, paragraph 25(7) - the officer who shall certify a copy of resolution of the Council has been passed applying or dis-applying the provisions of the Public Health Acts 1875 to 1925.
- (19) Local Government and Housing Act 1989, section 5 - designated as the Monitoring Officer.
- (20) Local Government Act 1974, Section 30(5), as amended by the Local Government Act 1988 - the officer who shall give public notice relating to reports issued by a Local Commissioner (an Ombudsman).

- (21) Local Government (Miscellaneous Provisions) Act 1976, section 41 - the officer to certify documents to be used in proceedings.
- (22) Local Government and Housing Act 1989, Section 19 - the officer to whom a general notice of a member's direct and indirect pecuniary interest shall be given.
- (23) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 2, Articles 3, 4 and 5 (see also Access to Information Procedure Rules) - the officer who shall ensure that records of Cabinet decisions and those made by individual Cabinet members, together with the reasons for those decisions and relevant officer reports and background papers are produced and are made publicly available as soon as possible.
- (24) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 2, Paragraph 6 (see also Access to Information Procedure Rules) - the officer to set out in every report to be made available to the public a list of those documents relating to the subject matter of the report.
- (25) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, paragraph 9 (see also Access to Information Procedure Rules) - the officer who shall make available to the public a report received by an individual member of the Cabinet which he or she intends to take into account in making any key decision.
- (26) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, Paragraph 11(2) and (7) (see also Access to Information Procedure Rules) - the officer who may, if he or she thinks fit, exclude from the copy of a report the whole or any part of the report to an item of business during which, in his or her opinion, the meeting is not likely to be open to the public and who may, on receiving a request from a newspaper, supply a copy of any document.
- (27) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, Paragraph 12 (see also Access to Information Procedure Rules) - the officer who, on instructions by the Cabinet Leader, shall publish a document which states that key decisions are to be made, a formal plan prepared etc in at least one newspaper circulating in the area of the Council.
- (28) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations Part 3, Paragraph 15 (see also Access to Information Procedure Rules) -
- (a) The officer who shall inform the relevant Overview and Scrutiny Select Committee by notice in writing of a matter about which a decision is to be made, such matter being one which is not included in the Cabinet Leader's Forward Plan and where such inclusion is impracticable and the matter would be a key decision;
  - (b) The officer who shall make available at the offices of the Council for inspection by the public a copy of the notice given pursuant to (a) above.

- (29) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 4, Article 17 (see also Access to Information Procedure Rules) - the officer who:-
- (a) where it appears to him or her that documents under the control of the Cabinet, which otherwise would be available for inspection by any member of the Council, would involve the disclosure of exempt information, then the documents concerned shall not be available as specified above;
  - (b) where it appears to him or her that documents under the control of the Cabinet which otherwise would be available for inspection by any member of the Council would involve the disclosure of advice provided by a political adviser or assistant, then the documents concerned shall not be available as specified above.
- (30) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 4 Article 19 (see also Access to Information Procedure Rules) - the officer who, when so requested by the Chairman or any five members of the Select Committees, may require the Cabinet to submit a report to the Council where he or she thinks that a key decision has taken place which was not included in the forward plan, or was not the subject of the general exception procedure or the subject of an agreement between the relevant Select Committee Chairman or the Chairman or Vice-Chairman of the Council.
- (31) Budget and Policy Framework Procedure Rule 2 - the officer for the purpose of referring Cabinet proposals to Council and related matters.
- (32) Cabinet Procedure Rules - the officer to whom the Leader, where he or she has been given the power to delegate executive functions, must give written notice.
- (33) Cabinet Procedure Rules - the officer who shall comply with requests by the Cabinet Leader, any member of the Cabinet, a Select Committee, full Council, the Monitoring Officer or the Head of Finance and Governance to place an item on the agenda of a meeting of a Cabinet.
- (34) Overview and Scrutiny Procedure Rules - the officer to whom any change in the Select Committee is to be notified.
- (35) Overview and Scrutiny Procedure Rules - the officer to whom a member of a Select Committee shall give notice if he or she wishes an item to be placed on an agenda.
- (36) Overview and Scrutiny Procedure Rules - the officer to whom a formal report is to be submitted.
- (37) Overview and Scrutiny Procedure Rules - the officer to whom a Select Committee will inform that it requires any member or officer to attend one of its meetings.

- (38) Overview and Scrutiny Procedure Rules - the officer for the purposes of receiving notice and taking action in relation to a call-in by a Select Committee.
- (39) The Local Authority (Standing Orders) (England) Regulations 2001 - Schedule 1, Part II, Paragraph 5 (see also Officer Employment Procedure Rule 5) - the officer who shall receive notice of the name and other relevant details of the person to whom it is proposed to make an offer of appointment to a post specified in the Regulations. On receipt of such notice, the office shall notify every member of the Cabinet.
- (40) The Local Authority (Standing Orders) (England) Regulations 2001 - Schedule 1, Part II, Paragraph 6 (see also Officer Employment Procedure Rule 6) - the officer who shall receive notice of the name and other relevant details of the proposed dismissal of a postholder. On receipt of such notice, the officer shall notify every member of the Cabinet. If no objection has been received by the officer within the specified period, he or she shall notify the Council, Committee, Sub-Committee or officer.

### **Directors**

- (41) In the event of the Chief Executive being absent, to deal with matters for which the Chief Executive has been designated the proper officer, during his/her absence except where the Chief Executive has specifically delegated a director/directors to undertake such functions.
- (42) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

### **Head of Finance and Governance**

- (43) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Treasurer of a local authority shall be construed as a reference to the Chief Financial Officer.
- (44) Local Government Act 1972, Section 115(2) - The Officer who shall receive an accounting of and all money due from any officer of the Council.
- (45) Local Government Act 1972, Section 146(1) - The officer who (upon a transfer of securities on the alteration of the name of the District) shall make a statutory declaration specifying the securities and verifying the change of name and identity of the Council, or shall give such a certificate as is prescribed by paragraph (b) of this sub-section.
- (46) Local Government Act 1972, Section 151 - The officer having responsibility for the administration of the Council's financial affairs.
- (47) Local Government Finance Act 1988 Section 116(1) - the officer who shall notify the Council's Auditor of a meeting to consider a report under Section 114 of the Act (unlawful expenditure).

- (48) Local Government Finance Act 1988 Section 116(2) - the officer who shall notify the Council's Auditor of a decision made at the meeting referred to in paragraph (46) above.

**Clinical Director of the Kent Local Health Protection Unit, the Consultant in Communicable Disease Control/Health Protection and any other Medical Officer authorised by the Clinical Director**

- (49) Any reference in any enactments passed before or during the 1971-1972 Session of Parliament, other than in the Local Government Act 1972, or in an instrument made before 26 October 1972 relating to the control of notifiable disease and food poisoning, to the Medical Officer of Health which thereafter shall be deemed to refer to the Proper Officer shall be construed as a reference to the Clinical Director of the Kent Local Health Protection Unit or any other Medical Officer authorised by the Clinical Director and the Consultant in Communicable Disease Control/Health Protection.
- (50) Without limiting the generality of the foregoing, where reference is deemed to be made in the following Acts, sections and regulations to the Proper Officer it shall be construed as a reference to the Clinical Director or any other medical officer authorised by him or her, and the Consultant in Communicable Disease Control/Health Provision as specified above: -

**National Assistance Act 1948**

Section 47(2) of the National Assistance Act 1948 as amended (removal of suitable premises of persons in need of care and attention).

- (51) The following provisions of the Public Health (Control of Disease) Act 1984
- Section 11 - Cases of notifiable disease or food poisoning to be notified to Local Health Authority. Duty of General Practitioner to notify the Proper Officer.
- 18 - Power to obtain information from occupier in case of no notifiable disease or food poisoning.
  - 20 - Power to stop employment to prevent spread of disease (compensation payable)
  - 21 - Notice to prevent child suffering from notifiable disease attending school.
  - 22 - Requisition of list of day scholars at school where notifiable disease exists.
  - 24 - Restriction on sending infected articles to laundry, etc, unless disinfected.
  - 29 - House or room to be disinfected to the satisfaction of the Proper Officer after case of notifiable disease, before letting.
  - 31 - Power to certify the need to disinfect premises.
  - 32 - Power to certify the need to remove temporarily (not themselves sick) of infected house.
  - 36 - Power to Justice to order medical examinations on receipt of written certificate issued by Proper Officer (to be a registered medical practitioner).
  - 40 - Power to Justice to order medical examination of inmates of common lodging house on complaint made to him by Proper Officer.
  - 42 - Power to certify common lodging house to be free of infection.

- 43 - Power to certify body with infectious disease not to be removed from hospital except to mortuary or to be forthwith buried or cremated.
- 48 - Power to apply to a Justice of the Peace for an Order for a dead body to be removed to mortuary or buried forthwith if health endangered.
- 59 - Authorisation of documents relating to matters where designated as Proper Officer by the Council.

(52) The following provisions of the Public Health (Infectious Disease) Regulations 1988

Regulation 6 - Cases of infectious disease to be specially reported.

Regulation 8 - Weekly and quarterly returns.

Schedule 4 - Food poisoning and food borne infection.

Regulation 10 - Immunisation and vaccination

(53) Proper Officer for all relevant environmental health matters forming part of the duties or terms of reference of the posts and for which the Clinical Director of Communicable Disease Control and any other Medical Officer are authorised by the Clinical Director.

(54) Proper Officer for the purposes of Schedule 2, paragraph 5 of the Licensing Act 1964 as amended (giving of notice of proposal to apply for the grant of a new Justices' licence).

(55) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

#### **Chief Executive**

(56) Local Government Act 1972 - Section 191(2) - the officer who shall receive an application under Section 1 of the Ordnance Survey Act 1841.

#### **Head of Planning Services**

(57) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

#### **Head of Revenue and Benefits**

(57) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

## **PART 6 - OFFICER EMPLOYMENT PROCEDURE RULES**

### **1. Recruitment and appointment**

#### **(a) Declarations**

- i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- ii) No candidate so related to a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

#### **(b) Seeking support for appointment**

- i) The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The contents of this paragraph will be included in any recruitment information.
- ii) No councillor will seek support for any person for any appointment with the Council.

### **2. Recruitment of Head of Paid Service, Statutory Chief Officers and Non-statutory Chief Officers**

Where the Council proposes to appoint any of the following:

- (i) a head of paid service
- (ii) a statutory chief officer (within the meaning of section 2(6) of the Local Government and Housing Act 1989); or
- (iii) a non-statutory chief officer (within the meaning of section 2(7) of the Local Government and Housing Act 1989)

and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
  - i) the duties of the officer concerned; and
  - ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

### **3. Appointment or dismissal of Head of Paid Service**

Where a committee, sub-committee or officer is discharging on behalf of the Council the function of appointment or dismissal of the Head of Paid Service, the Council must approve the appointment or dismissal before an offer of appointment is made or a notice of dismissal is given.

### **4. Appointment of Statutory Chief Officer, Non-Statutory Chief Officer, Deputy Chief Officer or assistant to a political group.**

Where a committee or a sub-committee is discharging on behalf of the Council the function of appointment or dismissal of any of the following:

- (a) Head of Paid Service
- (b) statutory chief officer
- (c) non-statutory chief officer; or
- (d) deputy chief officer (within the meaning of section 2(8) of the Local Government and Housing Act 1989)

at least one member of the Cabinet must be on the committee or sub-committee.

### **5. Offer of Appointment to Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer**

An offer of appointment to the Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer, whether made by the Council or by a committee, sub-committee or officer discharging the function on behalf of the Council, must not be made until

- (a) notice has been given to the proper officer of the name of the person to whom it is proposed to make the offer together with any other relevant details;
- (b) the proper officer has notified every member of the Cabinet of
  - (i) the name of the person to whom it is proposed to make the offer;
  - (ii) of any other relevant details of which he/she has been notified; and
  - (iii) the period within which any objection to the making of the offer is to be made by the Leader of the Council on behalf of the Cabinet to the proper officer; and
- (c) either
  - (i) the Leader of the Council has, within the period specified for submitting an objection, notified the Council, committee, sub-committee or officer that neither he/she, nor any other member of the Cabinet has any objection to the making of the offer; or
  - (ii) the proper officer has notified the Council, committee, sub-committee or officer that no objection was received by him/her within the specified period by the Leader of the Council; or

- (iii) the Council, committee, sub-committee or officer is satisfied that any objection by the Leader of the Council received within the specified period is not material or well-founded.

#### **6. Notice of Dismissal of Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer**

Notice of dismissal of Head of Paid Service, Statutory Chief Officer, Non-Statutory Chief Officer or Deputy Chief Officer must not be given by the Council or by a committee, sub-committee or officer discharging the function of dismissal on behalf of the Council, until

- (a) a notice has been given to the proper officer of the name of the person it is proposed should be dismissed together with other relevant details;
- (b) the proper officer has notified every member of the Cabinet of:

- (i) the name of the person it is proposed should be dismissed;
- (ii) any other relevant details of which he/she has been notified; and
- (iii) the period within which any objection to the dismissal is to be made by the Leader of the Council on behalf of the Cabinet to the proper officer; and

(c) either:

- (i) the Leader of the Council has within the period specified for submitting an objection notified the Council committee, sub-committee or officer that neither he/she nor any member of the Cabinet has any objection to the dismissal, or
- (ii) the proper officer has notified the Council, committee, sub-committee or officer that no objection was received by him/her within the period by the Leader of the Council; or
- (iii) the Council, committee, sub-committee or officer is satisfied that any objection received from the Leader of the Council within the specified period is not material or well-founded.

#### **7. Appointment, Dismissal of and Taking Disciplinary Action against Officers below Deputy Chief Officer**

The appointment and dismissal of, and taking disciplinary action against, an officer below deputy chief officer (other than assistants to political groups) must be discharged on behalf of the Council by the Head of Paid Service or an officer nominated by him/her. But for the avoidance of doubt this shall not prevent a councillor from serving on any committee or sub-committee established by the Council to consider an appeal by:

- (a) a person against any decision relating to the appointment of that person as a member of staff; or
- (b) a member of staff against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

#### **8. Assistants to political groups**

Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

**9. Disciplinary Action against the Head of Paid Service, Chief Finance Officer and Monitoring Officer**

- (a) The Head of Paid Service, Chief Finance Officer and Monitoring Officer may be suspended for the purpose of investigating alleged misconduct and any such suspension must be on full pay and terminate no later than the expiry of two months beginning with the date the suspension took effect;
- (b) No disciplinary action in respect of the Head of Paid Service, Chief Finance Officer and Monitoring Officer may be taken (other than mentioned in (a) above) by the Council, committee, sub-committee, joint committee on which the Council is represented, or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person.

## **Part 6 - Terms of Indemnity for Members and Officers**

1. Tunbridge Wells Borough Council will, subject to the exceptions set out below, indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his or her action or failure to act in his or her capacity as a member or employee of the Council.

**This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:**

- 1.1. any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee;
  - 1.2. any act or failure to act by the member or employee otherwise than in his or her capacity as a member or employee of the authority;
  - 1.3. failure by the member to comply with the Council's Code of Conduct for members.
2. The Council will, subject to the provisions set out below, indemnify each of its members and employees against the reasonable costs which he or she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he or she is subject:
    - 2.1. "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court in the United Kingdom.
    - 2.2. "Part 3 proceedings" means an investigation, hearing or other proceedings for an alleged failure to comply with the Council's Code of Conduct for members which is being conducted by an Ethical Standards Officer or before a Case Tribunal or the Adjudication Panel for England or an appeal therefrom.
    - 2.3. This indemnity applies for the defence of defamation proceedings by members and employees subject to the alleged statement being made in the member's capacity as a member or the employee's capacity as an officer; but not for the bringing of defamation proceedings (the Council will consider any particular case of the defamation of an employee, outside of this indemnity).
    - 2.4. Where any member or employee avails him or herself of this indemnity in respect of defending him or herself against any criminal proceedings or Part 3 proceedings, this indemnity is subject to a condition that if, in respect of the matter in relation to which the member or employee has made use of this indemnity –
      - 2.4.1. the member or employee is convicted of a criminal offence in consequence of such proceedings; or

- 2.4.1. a Case Tribunal or Standards Committee determines that the member has failed to comply with the Code of Conduct for members.

and the conviction or determination is not overturned on appeal, the Member shall reimburse TWBC for any sums expended by TWBC pursuant to this indemnity.

- 2.5. If the circumstances in 2.4. above arise, the member or officer shall, if required by the Council, sign an agreement confirming the contingent repayment obligation before the release of a sum or sums by the Council.
  - 2.6. Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in 2.4 and 2.5 above shall apply as if references to the Council were references to its insurer.
3. For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the member or employee "in his or her capacity as a member or employee of the Council" where:
    - 3.1. The act or failure to act was outside the powers of the Council, or outside the powers of the member or employee, but the member or employee reasonably believed that the act or failure to act was within The Council's powers or within the powers of the member or employee (as appropriate) at the time that he or she acted or failed to act, as the case may be.
    - 3.2. The act or failure to act occurred not in the discharge of the functions of the member or employee as a member or employee of the Council but in their capacity as a member or employee of another organisation, where the member or employee is, at the time of the action or failure to act, a member or employee of that organisation either –
      - 3.2.1. in consequence of his/her appointment as such member or employee of that organisation by the Council; or
      - 3.2.2. in consequence of his/her nomination for appointment as such member or employee of that organisation by the Council; or
      - 3.2.3. where the Council has specifically approved such appointment as such a member or employee of that organisation for the purpose of these indemnities.

(Note: Members or employees of such an organisation shall include a representative of Tunbridge Wells Borough Council appointed by the Council to that organisation).

4. Tunbridge Wells Borough Council undertakes not to sue (or join in action as co-defendant) an employee of Tunbridge Wells Borough Council in respect of any negligent act or failure to act by the employee in his or her capacity as an employee of Tunbridge Wells Borough Council Tunbridge Wells, subject to the following exceptions:
  - 4.1. Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the employee; or
  - 4.2. Any act or failure by the employee otherwise than in his or her capacity as an employee of Tunbridge Wells Borough Council.

5. These indemnities and undertakings will not apply if a member or employee, without the express permission of Tunbridge Wells Borough Council or of Tunbridge Wells Borough Council's appropriate officer, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope hereof.
6. These indemnities and undertakings shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or employee has ceased to be a member or employee of Tunbridge Wells Borough Council as well as during his or her membership of or employment by Tunbridge Wells Borough Council.
7. In the event that a member or employee is threatened with proceedings, whether civil or criminal, it is incumbent on him/her to immediately inform Tunbridge Wells Borough Council (Chief Executive or his or her nominated officer and the Legal Services Manager/Monitoring Officer) thereof and to follow such reasonable instructions as may be given.



## **Part 6 - Foreword to Member Protocols**

This foreword applies to all of the Council's Constitutional Protocols.

The Constitutional Protocols do not have the force of law, but are an expression of both the standards of behaviour that the Council expects of its members, but also a statement of guidance, intended to support members in the fulfilment of their roles as representatives of the people of their ward and the Borough in general.

The Council expects all members to observe the provisions of all of the Protocols in the Council's Constitution. For ease of reference, all Protocols concerning members and the fulfilment of their roles and functions are included as chapters of this principal Protocol. The chapters set out are:

- The Protocol on Member/Officer Relations.
- The Protocol for Members taking part in the Planning Process.
- The Protocol for Hearings of the Licensing Committee.
- The Confidential Reporting Code.
- General Member Protocol

All members are obliged by law to subscribe to the member Code of Conduct, and this is also laid out in the Council's Constitution. Members should be aware that the Council is likely to view breach of the provisions of the Tunbridge Wells Borough Council General Member Protocol as evidence of breach of paragraph 5 of the Code of Conduct, although each case will always be considered on its own merits and in the light of prevailing personal and corporate circumstances.



## **PART 6 - PROTOCOL ON MEMBER/OFFICER RELATIONS**

### **1. Introduction**

1.1 The purpose of this Protocol is to guide elected members and officers (any employee of the Council) in their relations with one another.

1.2 The Council regards good working relations, with high standards of personal conduct and integrity, between members and officers as essential to its success and to its ability to serve its citizens. The Council will promote such relations and discourage behaviour that undermines them by all available means.

1.3 This Protocol to a large extent merely codifies existing practice and convention. It does not seek to be comprehensive or prescriptive but establishes general principles for good relations and defines the respective roles of members and officers with particular reference to conduct of business in areas where misunderstandings affecting relations are liable to occur.

### **2. Principles**

2.1 Members and officers have separate and distinct roles. Both members and officers should recognise this and respect their varying roles. Most problems in this area arise from misunderstandings about roles.

2.2 The basic principles underlying the member/officer relationship in both directions should be out of:

1. honesty;
2. openness and transparency;
3. mutual respect between members and officers in their separate and distinct but inter-related roles;
4. high standards of behaviour, engendering mutual trust and confidence;
5. courtesy and good manners; and
6. follow the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.

2.3 In addition, both members and officers have their own personal lives, which should be respected. Except in cases of emergency, contact out of office hours on matters relating to Council business should be avoided. Even then such contact should be confined to Senior Officers (Heads of Service and above).

2.4 Any criticisms or comment, on either side, should always be constructive, well founded and proportionate.

2.5 The members' and officers' Code of Conduct, the Council's Policy on Bullying and Harassment, its Equality Policy and Race Equality Scheme should all inform members and officers in the context of this Protocol.

### **3 Role of Members**

3.1 Members have a variety of roles which will differ depending on their particular role within the Council (e.g as a chairman of a Committee or a Board, or as a member of the Cabinet, Overview and Scrutiny Select Committees or Planning Committees).

3.2 The Council has agreed a list of key roles for members. In brief members are expected to:-

1. make policy
2. contribute to the good governance of the areas
3. represent the interests of their wards and constituents fairly and impartially
4. participate in the management of the Council; and
5. maintain the highest standards of conducts and ethics.

### **4. Role of Officers**

4.1 The Council has agreed a more detailed description of these in Part 3 of the Constitution.

4.2 Officers are responsible to the Council as a whole as their employer and must act in a politically impartial way whether or not they hold a politically restricted post.

4.3 Officers are responsible for giving advice to the Council or its constituent parts and for implementing the decisions of the Council or those parts of the Council delegated to take decisions on its behalf.

4.4 Officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs, training and managing other officers. They are also equipped with various professional and technical competencies and trained professionally to carry out the operations for which they are responsible, in accordance with Council policy. They are insured for this activity and are entitled to certain indemnity in the event of legal challenge or claim.

4.5 The Chief Executive and Directors are responsible for the day to day running of the Council in accordance with the decisions of the Council or Cabinet and under delegated authority. No member has that role. Additionally, it must be remembered that officers are accountable to their Director and whilst officers should always seek to assist a Chairman (or indeed any member) they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Director. If any officer is concerned about their position, they should report their concern to their Director and/or the Monitoring Officer. The Council has also adopted a Confidential Reporting Code.

4.6 The Chief Executive and Directors and other senior officers are responsible for the management of the officers and are responsible consequently for giving instructions and disciplining officers. Members have no staff management responsibility.

## **5. The Cabinet and Officers**

5.1 Cabinet members are elected councillors who have been given the responsibility for providing the Council's political administration. It is their role to develop and formulate policies (for approval by the Council following advice from the Select Committee) which provide clarity of purpose and direction to officers in carrying out the Council's activities and the provision of services and the Cabinet must carry out its functions in accordance with those approved policies. They also have the responsibility for matters of major principle. They are collectively politically accountable to the Council and the electorate for the functions contained within their responsibilities. It is therefore necessary for Cabinet members to have timely access to advice, support and relevant information to fulfil this role effectively.

5.2 The Chief Executive is the Head of Paid Service. He or she, with the support of the Directors, is responsible for the management of staff, the implementation of policies approved by, or on behalf of, the Council and for securing the proper undertaking of all operational matters. He or she is responsible for providing advice and guidance to the Cabinet in his or her respective professional and managerial fields. It is vitally important that this advice is, and is seen to be, objective. Members should refrain from attempting to direct the content or conclusion of such advice. Where officers need to convene internal officer level meetings other members may attend such meetings when expressly invited.

5.3 In their role, Directors are supported by Heads of Service. The latter provide more specialised and detailed advice and guidance in their field of knowledge, which is normally provided to Cabinet members through Directors. Heads of Service are primarily responsible for the management of staff within units and the operation of the Council services on a day-to-day basis.

5.4 Members are, generally, when carrying out their normal representational roles on behalf of local residents, recommended to refer their requests for information or other concerns directly to identified officer contacts across the organisation. However, in view of the special position of the Cabinet members, it is recommended that ward issues should, in their case, be dealt with through the Director or such Officer(s) nominated by him or her for this purpose in order to avoid misunderstandings.

5.5 Cabinet members should strictly avoid attempting to interfere (other than by exercising their constituency member role) or appearing to interfere with decisions which are excluded from the powers of the Cabinet, for example, Development Control or Licensing decisions.

## **6. Overview and Scrutiny**

6.1 When attending the Select Committees, officers may be questioned on facts and explanations relating to policies and decisions. Officers should be reassured that any response may be given in good faith without fear or favour.

6.2 Officers may be asked to explain and justify advice they have given to the Cabinet and may also be asked to explain and justify decisions taken under delegated powers.

6.3 However, any questions should avoid drawing into question officers' impartiality but questions on the merits of alternative courses of action may be asked.

6.4 Councillors on the Select Committees are entitled to expect the same level of help and advice from officers as is given to the Cabinet or the other non-executive committees.

## **7. Senior Member/Officer Relationships**

7.1 It is clearly important that there should be a professional working relationship between the senior members such as the Leader and Chairmen of Committees and Boards and the Directors and other senior officers of any Service. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other members and other party groups.

7.2 A Chairman's role is primarily to ensure that the business transacted at a meeting is done efficiently and effectively ensuring that members of the committee can participate equally in the discussions of the committee.

7.3 It is the Chairman's responsibility to ensure that at the end of discussion it is clear what decisions have been reached and the officers' responsibility to ensure that these decisions are correctly recorded and acted upon.

## **8. Groups**

8.1 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. However, party groups may not normally call on officers to support and contribute to such deliberations.

8.2 Members must not ask officers to act in any way which would conflict with the employee's code of conduct or which would affect or be seen to affect the political impartiality of officers.

8.3 Exceptionally it may be considered appropriate for an officer to attend a party group meeting. Such attendance should only take place if expressly authorised by the Chief Executive and, if it occurs, a similar attendance must be offered to all party groups.

## **9. Ward Members**

9.1 Whenever a meeting is organised by the Council to consider a local issue, all the members representing the ward or wards affected should as a matter of course be informed and invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue the ward members should be notified at the outset of the exercise.

9.2 Officers should provide all possible assistance to ward members in explaining Council policies to local residents and answering factual questions.

9.3 Ward members may not ask officers to provide advice or undertake work for organisations with which they are involved unless that service has been approved by the relevant Director.

## **10. Members Acting as Advocate for or Supporting Third Parties in Appeals against Council Decisions**

10.1 Members have the same rights to represent third parties on appeals against Council decisions or to support third parties in such appeals as any member of the public. However, it is important to ensure that when acting in either role should not seek to take improper advantage of their position as a member of the Council and that Council officers are not deterred from defending the Council's decision as vigorously as in any other case. For those reasons members should in such circumstances be particularly careful:

- (a) not to disclose any information which they have received from the Council in their capacity as a member which would not be available to a member of the public;
- (b) not to disclose or make reference to briefings on the relevant matter which they have received from officers;
- (c) to ensure that in the conduct of the appeal they do not seek or appear to seek preferential treatment.

10.2 Members acting as an advocate or as a supporter of any appeal against a Council decision must expect to be treated by officers in exactly the same way as any other advocate or supporter.

10.3 Members acting as an advocate or a supporter of the Council should liaise with relevant officers to ensure that their activity does not weaken the Council's case.

## **11. General**

11.1 Questions put by members, whether in committee meetings or in other discussions or in correspondence, should never be ignored. Officers should always reply to members' questions in reasoned terms and as fully as possible.

11.2 Officers should reply promptly to members' enquiries. Members' letters should receive a reply within five working days; where this is not possible an acknowledgement should be sent with an indication as to when a full reply can be expected.

11.3 When stating, either orally or in writing, that a particular course or action is obligatory or not permissible, officers should endeavour to cite the relevant legal or other authority (eg the Act of Parliament, Government Guidance, Council Constitution or Local Plan) which underpins their view. This practice discourages discussion of unrealistic possible courses and informs members of the constraints within which the Council works.

11.4 Members should be consulted beforehand on all administrative instructions affecting them or changing the facilities and services provided to enable them to carry out their functions.

## **12. When Things Go Wrong**

12.1 Procedure for Officers

From time to time the relationship between members and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior manager or member, officers will have recourse to the Grievance Procedure or to the Monitoring Officer, as appropriate to the circumstances. In the event of a grievance or complaint being upheld, the matter will be referred to the Chief Executive who, having advised the Leader of the Council and the appropriate Group Leader, will decide on the course of action to be taken which may include reference to the Council's Standards Committee.

## 12.2 Procedure for Members

In the event that a member is dissatisfied with the conduct, behaviour or performance of an officer, the matter should be raised with the appropriate Director. Where the officer concerned is a Director, the matter should be raised with the Chief Executive. Where the employee concerned is the Chief Executive the matter should be raised with the Monitoring Officer. If the matter cannot be resolved informally it may be necessary to invoke the Council's disciplinary procedure. Prior to a formal dispute, it may be helpful to seek mediation from an independent person.

## **PART 6 - PROTOCOL FOR MEMBERS TAKING PART IN THE PLANNING PROCESS**

### **1. Introduction**

1.1 The scope of this Protocol relates to the following areas of the Council's planning functions:

- 1.1.1 pre-application discussions.
- 1.1.2 handling planning applications.
- 1.1.3 planning appeals.
- 1.1.4 planning enforcement.

It relates to any member involved in any aspect of the above functions, whether or not they are a member of a Planning Committee or Board.

1.2 Members and Officers must carry out their duties in accordance with the Council's Constitution, which sets down the rules which govern the conduct of Council business. Members and officers must apply the rules in the Constitution first, and then apply this Protocol which seeks to supplement the Constitution for the purposes of planning.

1.3 The purpose of planning is to control the use and development of land in the public interest. The aim of this Protocol is to ensure that there are no grounds for suggesting that any planning decisions have been biased, partial or not well founded in any way.

1.4 In making planning decisions members have an overriding duty to the whole community. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise.

1.5 Attached to the Protocol, at Appendix 1, is Guidance for Members who are not sitting on an Area Planning Committee or undertaking a "Representative" Role, at an Area Planning Committee Meeting. The Guidelines do not form part of the Protocol but they do provide further advice on good practice to assist the operation of the planning process.

### **2. General Roles of Members and Officers**

2.1 Members are accountable to the electorate while officers are accountable to the Council as a whole. Officers advise members of the Council, and also carry out the Council's work.

2.2 Both members and officers are governed by Codes of Conduct. Members are governed by the Code of Conduct for members and the Protocol on Member/Officer relations which form part of the Council's Constitution.

2.3 Officers are subject to the Council's Officer Code of Conduct. In addition officers who are members of professional bodies are subject to rules of conduct, breaches of which may result in disciplinary action. Officers in Planning Services are normally members of the Royal Town Planning Institute.

2.4 It is important for members to understand whom they represent and whose views they should consider. Whilst members have a duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. They must not favour any individuals or groups. It follows therefore that when they come to vote, they must do so in the interests of the Borough as a whole rather than just those of their own ward.

2.5 Members must recognise that Planning Officers' recommendations will be presented on the basis of their overriding obligation of professional independence, which may at times conflict with the views of the Committee or its members. Members must not put pressure on officers to put forward a particular recommendation.

2.6 Members are free to seek information from Planning Officers about planning proposals. Where questions relate to factual details regarding the proposal itself or procedural issues, they must contact the Case Officer. If members wish to raise questions regarding the interpretation of policy, they must address these to the Head of Service.

2.7 When an application is decided by the Committee, members must not vote unless they have been present to hear the entire consideration of that application including the officer's presentation and any public speaking. If they need to leave the meeting for a short while they may request the Chairman to adjourn the meeting at an appropriate time to allow that to happen.

### 3. Declaration of Interests

3.1 The Code of Conduct for members sets out the requirements and guidance for declaration of personal and/or prejudicial interests. Members must disclose the existence and nature of any interest at any relevant meeting, including informal meetings with officers or other members.

#### ***Personal and Prejudicial Interests***

*If the item affects a member more than it affects most people in the area, then he/she has a personal interest.*

*If a member of the public, knowing all the facts, would think that a member's judgement would be affected by his or her personal interest, then he or she would have a **prejudicial** interest.*

3.2 A member who has both a personal and prejudicial interest must not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority. Such a member must not try to represent local views. Another member could be asked to do so instead.

3.3 A member who has both a personal and prejudicial interest must not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority. However, such a member may represent local or other views by making a statement, or answering questions at the start of the consideration of the item on the same basis as members of the public, in accordance with rights given to members by paragraph 12(2) of the Code of Conduct for members. Members will still be required to leave the Committee room as soon as they have made their statement or answered any questions.

3.4 A member who has both a personal and prejudicial interest must not seek or accept any preferential treatment, because of their position as a member. This would include using their position to discuss a proposal with officers or members when other members of the public would not have the same opportunity to do so.

3.5 A member is not prevented from seeking to explain and justify a proposal in which they have a personal and prejudicial interest to an appropriate Officer. However, the Code places greater limitations on them in representing that proposal than would apply to a normal member of the public. For example, the member would need to withdraw from the chamber whilst the meeting considers the item, after exercising his or her rights under paragraph 12(2) of the Code of Conduct to address the meeting.

3.6 Members who have prejudicial interests which will prevent them voting on a regular basis should not be nominated to serve on the Planning Committees.

#### **4. Fettering of Discretion**

4.1 Members serving on Planning Committees must approach Committee meetings with an open mind and must not decide how to vote until they have heard the presentation, any public speaking, and the evidence and arguments on either side.

4.2 Members must avoid fettering their discretion and therefore their ability to participate in planning decision by making up their mind, or clearly appearing to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Authority. Fettering discretion in this way, and then taking part in the decision, will put the Council at risk of a finding of maladministration or legal proceedings being taken against it.

4.3 Members who have fettered their discretion must declare this at the start of the meeting and must not speak in their role as a Planning Committee member nor vote on a proposal. However such a member may represent local or other views by making a statement, or answering questions at the start of the consideration of the item on the same basis as members of the public, in accordance with rights given to members by paragraph 12(2) of the Code of Conduct for members. Members will still be required to leave the Committee room as soon as they have made their statement or answered any questions.

4.4 Members may take the opportunity to exercise their right to speak as a ward/local member, where they have represented their views or those of local electors and fettered their discretion but do not have a personal and prejudicial interest. They must make their role clear to all parties by speaking from the public speaking area rather than from their normal Committee seat.

**Can a member vote on this application?**

*There is a vigorous local campaign opposing a proposed development. Three members have been approached by residents. They are all members of the Planning Committee.*

*Councillor A – Explains that he or she will explain the residents' point of view at the Committee but will not decide how to vote until the planning meeting. The councillor is free to speak and vote on the item.*

*Councillor B – Tells residents that he or she shares their concerns and will oppose the development. The councillor has fettered his or her discretion and may not vote. The councillor may attend the meeting and speak as a local member.*

*Councillor C – Agrees to join the resident's action group. The councillor has fettered his or her discretion and will need to leave the chamber when the application is discussed, but may make a statement, or answer a question about the item before doing so.*

**5. Applications submitted by or on behalf of Members**

5.1 Serving members must never act as agents for people pursuing a planning matter with the Council. Should they submit their own proposals to the Council, they must take no part in its processing.

5.2 Members submitting their own proposals should appoint a representative who can deal with officers. Members doing so are able to exercise their right to make representations to committee under paragraph 12(2) of the Code of Conduct.

5.3 Proposals submitted by members will always be determined by the appropriate Area Planning Committee.

**6. Lobbying of Members**

6.1 Lobbying takes place when an interested party seeks to influence the view of the member or, more importantly, in the way in which the councillor is to vote on an item. Members are often lobbied by applicants and their agents, other supporters of the application, neighbours of the site, objectors and fellow borough, parish or town councillors. Lobbying might be carried out by letter or e-mail, by phone or in person. Lobbying is not wrong or unethical in principle, but members must make sure that they retain an open mind about any given application, despite wide-ranging or intensive lobbying.

6.2 Problems should not arise if members simply listen to a point of view about a planning proposal and provide procedural advice (in particular referring the person to officers if he or she is a member of the public and not professionally represented).

6.3 Planning Committee members who find themselves in a situation which is developing into a lobby must take steps to prevent this happening or at least explain that whilst they can listen to what is being said, they cannot express their point of view or an intention to vote one way or another. Otherwise they may well have to declare an interest and will not be able to take part in the subsequent committee decision.

6.4 Applicants and objectors sometimes write directly to Planning Committee members, seeking to influence their vote. Any such communications must be copied by the member, to the Case Officer.

6.5 Given that the point at which a decision is made cannot occur before the Committee meeting, when all information is to hand and has been duly considered, any political group meeting beforehand must not be used to decide how members should vote. The Ombudsman considers that the use of political 'whips' could amount to maladministration. Less formal arrangements or understandings could also amount to maladministration.

6.6 Members will be asked at the beginning of Planning Committee meetings to declare whether they have been lobbied in connection with any application on the agenda, and if so, whether by, or in support of, the applicant or objectors. Details of the lobbying will not need to be declared at this stage, but members should ensure that a record of lobbying is kept in case of later challenge. Notes of phone calls and other conversations and/or copies of letters and e-mails should be passed to the Case Officer for retention.

## **7. Lobbying by Members**

7.1 Members should not lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If they do, they will have fettered their discretion and are likely to have a personal and prejudicial interest and will have to withdraw from the meeting. Members are still able to exercise their rights to make representations to committee under paragraph 12(2) of the Code of Conduct in these circumstances.

7.2 Members must not lobby fellow members regarding concerns or views, nor attempt to persuade them how to vote, in advance of the meeting at which any planning decision is to be taken.

## **8. Pre Application advice**

8.1. From time to time members of the public may approach borough councillors informally to discuss proposals that are likely to become the subject of an application. This need not cause any problems for Planning Committee members, provided that such members simply listen to the views being put forward and provide only general advice about the planning process or matters of principle, such as the importance of Areas of Outstanding Natural Beauty or Conservation Areas.

8.2. Planning Committee members should make it clear that they neither support nor object to any specific proposal at this stage. If members of the public have specific queries about the need for planning permission they should be referred to the Council's Planning Services Department. If they are asking about the likelihood of an application being approved, or the best way to present an application, they should be advised to seek independent professional advice.

8.3. The Planning Services Charter sets out the circumstances in which the Council's Planning Service can give pre-application advice. Planning Committee members should normally avoid formal meetings with applicants, developers or objectors. Where, exceptionally, Planning Committee members are involved in such meetings this should always be with an officer present.

## **9. Membership of Other Organisations**

9.1 It is common for borough members also to be elected or appointed to other local organisations such as town and parish councils, the County Council, school Governing Bodies, or Housing Associations.

9.2 If an application relating to such a body comes before a Planning Committee the member should take advice from the Monitoring Officer in advance of the meeting to see if they must declare a prejudicial interest, and only participate in the meeting at which any such application is discussed to the extent that they are entitled to do by paragraph 12 (2) of the Code of Conduct for members (see paragraphs 3.1 to 3.6 above).

9.3 When acting as part of a body consulted on an application such as a town or parish council, members may take part in the debate provided:

- the proposal does not substantially effect the well being or financial standing of the consultee body;
- they make it clear to the consultee body that:
  - (a) views are expressed on the information before them only;
  - (b) they reserve judgement and the independence to make up their own mind on each separate proposal, based on the overriding duty to the whole community, as and when it comes before the Borough Council's Committee and they hear all of the relevant information; and
  - (c) they disclose the personal interest regarding the dual role when the Borough Council's Committee comes to consider the proposal.

9.4 Planning Committee members may also be involved in matters which are the subject of a planning permission or other application which comes before the Planning Committees. This might arise, for example, because a member of the Planning Committee is also a member of the Licensing Committee and has previously considered an application for a licence for an activity which comes before the Planning Committee as a Change of Use application.

9.5 In these cases, it is important to note that there are different criteria against which the Licence and Planning Permission application must be judged. As long as members do not carry with them any prejudices or preconceptions about the later application they have formed as a result of considering the same facts from a different viewpoint previously, then they are quite entitled to consider the matter again. Members must not, of course, try to use the second meeting to address what they see as defects in the decision made by the first – they cannot, for example, apply conditions to a Planning Permission if they are not necessary for sound planning reasons but usefully address something not covered by the Licence which the member feels should have been included.

9.6 Membership of the Council's Cabinet can be more complicated because it is more likely that there will be associations and possibly interdependencies between the decisions of Cabinet and the decisions of the Planning Committees. This might arise, for example if Cabinet has approved the sale of a piece of Council owned land for development or agreed that it be brought forward for development by TWBC, and a Cabinet member then sits on the Planning Committee addressing the application for the necessary planning permission.

9.7 It is important that there is no actual, or perceived, pre-determination of the application by the "dual-hatted" member. Although no Code of Conduct interest arises in this case, the member's participation in the decision-making process may "taint" the Committee's decision to the extent that it would be successfully challenged on the grounds of bias. However, this is unlikely to be the case if the member in question makes it clear that s/he is aware of his or her obligations as a Planning Committee member to assess the planning merits of any given application and has kept an open mind about the matter, regardless of the potential impact on the value of the land of the grant or otherwise of planning permission. Members in this position should seek advice from the Monitoring Officer before the meeting.

## 10. Training

10.1 Members must not participate in decision making at meetings dealing with planning matters unless they have undertaken any training designated jointly by the Chief Executive and the Leader of the Council as mandatory.

10.2 Members have a general duty to attend specialised training sessions, which will be provided from time to time, (including 'Short Bite' training sessions before each Area Planning Committee) as these are designed to extend their knowledge of planning procedures, policies and practice beyond the minimum level referred to above.

## 11. Site Inspections

11.1. Members are encouraged to attend site inspections prior to an Area Planning Committee, to enable a full understanding of the material planning issues pertinent to the applications. Members' site inspections will be carried out where applications are to be determined by a Planning Committee. The Chairman, in consultation with the Head of Planning Services, will normally identify the need for any site inspections in advance of the meeting. Councillors who believe that a site inspection is appropriate in a particular case are encouraged to contact the Head of Planning Services as soon as possible. This will include selecting appropriate viewpoints. Only exceptionally should an item be deferred for a site inspection, and site inspections will only be arranged where the proposal to hold a site inspection fits at least one of the following criteria:

11.2. A Site Inspection may be determined to be necessary if:

1. Particular site factors are significant in terms of weight attached to them relative to other factors and it would be difficult to assess those factors without a site inspection
2. The characteristics of the site need to be viewed on the ground in order to assess the broader impact of the proposal

3. Objectors to and/or supporters of a proposal raise matters in respect of site characteristics, the importance of which can only reasonably be established by means of a site inspection
4. The scale of the proposal is such that a site inspection is essential to enable members to be fully familiar with all site-related matters of fact
5. There are very significant policy or precedent issues and where site-specific factors need to be carefully assessed

11.3. When requesting the Chairman of a Committee to authorise a site inspection, the person making such a request (whether the Head of Planning Services or an elected member) must state under which of the above five criteria the inspection is requested and must also provide supporting justification, to the satisfaction of the Chairman.

11.4. The purpose of a site inspection is to view the site and its surroundings and to relate the application proposals to the site. Officers will explain the submitted drawings. Neither the applicant nor any objectors should take part. Where an applicant has to be present to allow access to the site, the visiting members should stand away from him or her (or if necessary, ask the applicant to stand away) and should not engage in any discussions. Members should avoid any discussion of the merits of the case on site, on the journey to/from the site, or anywhere other than the Committee meeting.

## **12. Annual Review/Tour of Borough**

12.1. The Head of Planning Services will arrange an annual tour of the Borough to allow members to view and appraise developments and areas of the borough of relevance to the Council's function as the Local Planning Authority. Visits further afield may be arranged as appropriate. The Head of Planning Services may also arrange an associated annual review of the Committees' function and preview of anticipated matters, together with an examination of key issues and themes for the future.

## Appendix 1

### **GUIDANCE FOR MEMBERS WHO ARE NOT SITTING ON AN AREA PLANNING COMMITTEE OR TAKING A REPRESENTATIVE ROLE AT THE AREA PLANNING COMMITTEE MEETING**

*NB This Guidance is ancillary to the protocol for members taking part in the planning process and does not form part of the Protocol itself. References in this guidance to an 'Area Planning Committee' also include any 'Joint' meeting of both Area Planning Committees.*

Members who are not sitting member of an Area Planning Committee may attend a meeting of that Area Planning Committee to make representations in support of, or in opposition to, any application due to be considered by the Committee at that meeting.

#### **1. PROCEDURE**

1.1 Members who wish to exercise this right must advise both the Chairman and Vice- Chairmen of the Area Committee and Committee Services by 4pm on the last working day before the Committee meeting.

#### **2. THE CODE OF CONDUCT**

2.1 Members attending a meeting who are not sitting members are still bound by the provisions of the Code of Conduct for members at the meeting. This means that even though they are not sitting, a member who has a personal interest must declare it at the start of the meeting, and any who have a personal and prejudicial interest must declare it and must leave the room while the item is debated, although they may exercise their rights under paragraph 12 (2) of the Code of Conduct by making a statement, giving evidence or answering a question about the item before doing so.

#### **3. "FETTERING OF DISCRETION"**

3.1 Members who are not sitting members of a Committee cannot vote at meetings of that Committee. For this reason, the common law rules which prohibit members from "fettering their discretion" by committing themselves in advance of a vote to treating any given application in a particular way do not apply to non-sitting members.

3.2 It is therefore acceptable for non-sitting members to indicate in advance of a vote on any given application whether or not they support or oppose the application.

#### **4. LOBBYING**

4.1 Members who are not sitting on an Area Planning Committee may discuss particular applications with their Planning Committee member colleagues, but should be careful that any “discussions” do not become unreasonable attempts to influence. Members will inevitably be seen by members of the public as having greater influence over Committee members and all members, whether or not members of the Committee must ensure that their actions do not bring the planning system into disrepute.

4.2 When contemplating the discussion of individual applications with Area Planning Committee members, members who are not sitting must bear in mind the “General Principles” which govern the conduct of all members at all times when official business is being conducted formally or informally discussed (see the Relevant Authorities (General Principles) Order 2001).

#### **5. OFFICERS**

5.1 Members who are not sitting on a relevant Planning Committee will also need to remember the provisions of the Protocol on Member/Officer Relations. Pressure from an applicant for planning permission or a supporter or objector must not give rise to any member, whether a Planning Committee member or not, attempting to exert inappropriate influence over any Officer dealing with the application.

#### **6. INDEMNIFICATION**

6.1 All borough members are indemnified by the Borough Council in the event that they are pursued for costs or damages incurred by others as a result of the conduct in good faith of a councillor’s business as a councillor.

6.2 This means that if a member who is not sitting on a relevant Planning Committee is challenged, or faces a claim made by someone he or she represented at a Planning Committee, the Borough Council will support him or her, financially and otherwise, in dealing with that claim or challenge. However, this support is only available if the member concerned was acting within his or her remit and authority, and in good faith.

#### **7. CLARIFICATION OF ROLES**

7.1 For this reason, it is important that members who are not sitting on a relevant Area Planning Committee ensure that any person or group they agree to represent is aware of their role and standing in the planning process. They should emphasise that members who are not sitting members cannot vote at a meeting. It is also important for ward members to be clear that they are not professionally qualified Town Planners, and that there is no client/professional relationship between the “representee” and the ward members.

7.2 For the reasons outlined earlier, it is not unusual for members of the public to expect members, particularly their own ward member, to have considerable influence over all council matters, including planning permission. Members who are not sitting on an Area Planning Committee who agree to act as a representative must make it clear that their support for the “representee’s” point of view does not mean that the matter will be decided in a particular way”.

7.3 Member representatives may also find it helpful to ensure that “representees” know that as members they are always bound by the Code of Conduct and the General Principles of conduct when they are dealing with planning matters.

## **8. SOME PRACTICAL ISSUES**

8.1 Just as in litigation process there is “no property in a witness”, in the planning process there is “no property in a ward councillor” – this means that no individual or group has a right to claim any ward councillor as their representative if the ward councillor in question does not wish to take that part. Members who are not sitting members of a relevant Planning Committee should be aware when speaking to or corresponding with potential or existing “representees” that he or she is quite entitled to change his or her mind if additional information appears, and should remind “representees” about this.

8.2 For similar reasons, it may well be sensible for members who are not members of a relevant Planning Committee to delay agreeing to support or object to any given application until they have made some (at least preliminary) enquiries about the reasonableness of the potential “representee’s” position, and about other views likely to be relevant. Members will not wish to find themselves caught between neighbours already at odds over an application, particularly if the member’s involvement is going to inflame the position further.

## **9. THE HEAD OF PLANNING SERVICES AND THE LEGAL SERVICES MANAGER/MONITORING OFFICER**

9.1 The Head of Planning Services and the Legal Services Manager/Monitoring Officer will be available to discuss representation issues with members.



## **PART 6 - PROTOCOL FOR HEARINGS OF THE LICENSING COMMITTEE**

### **BACKGROUND**

Recent changes in legislation introduced by the enactment of the Licensing Act 2003 and the Gambling Act 2005 transferred substantial additional responsibilities for licensing to local government and established the Council as the Licensing Authority for the regulation of various forms of licensable activities. The new responsibilities are undertaken by the Licensing Committee and its Sub-Committees. Members act in a quasi-judicial capacity in carrying out the Council's licensing functions.

This Protocol is designed to apply the principles contained in the members' Code of Conduct to members' licensing responsibilities and to support and maintain high ethical standards in local government. It applies to the actions of the Council in its statutory capacity as the Licensing Authority via the Licensing Committee. For the purposes of this Protocol, the Council is collectively described as the Licensing Authority.

This Protocol has regard to the Local Authorities Coordinators of Regulatory Services' (LACORS) guidance on the role of elected members in relation to Licensing Committee hearings under the Licensing Act 2003.

### **INTRODUCTION**

The aim of the Protocol is to ensure that in the operation of the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives as defined in the legislation. In addition, the authority must have regard to statutory guidance issued by the Secretary of State and the Gambling Commission.

The role of a member of the Licensing Authority is to make decisions, impartially, with sound judgement and for justifiable reasons. However members will deliberate and determine applications having excluded the press, the public and applicant.

This Protocol also applies to members at all times when involving themselves in the licensing process. It applies equally to licensing enforcement and licensing policy issues as it does to licensing applications. This includes taking part in decision-making meetings of the licensing authority and when involved in less formal occasions, such as meetings with officers or the public and consultative meetings.

References to officers in this Protocol relate to employees of the Council and employees of other councils that are members of the Licensing partnership who have been duly authorised to act on behalf of the Council.

If there are any doubts about the application of this Protocol to members' own circumstances they must seek advice from the Monitoring Officer or one of his or her staff, preferably well before any meeting takes place.

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

- Members must apply the rules in the members' Code of Conduct first: these must always be complied with.
- They must then apply the rules in this Licensing Protocol, which seek to explain and supplement the members' Code of Conduct for the purposes of dealing with all licensing matters. If members do not abide by this Protocol, they may put:
  - (a) the Licensing Authority at risk of allegations of maladministration or proceedings as to the legality of the related decision; and
  - (b) the member at risk of either being named in an Ombudsman's report of maladministration made to the Council or, if the failure is likely to be a breach of the Code of Conduct, a complaint being submitted.

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

A members' interest in a licensing matter may take a variety of forms:

- As a member of the Cabinet or by being the relevant executive councillor;
- They may have either collective or individual responsibility for premises in the Council's ownership or a licensable activity which the Council is promoting for which a licence is required or has already been granted;
- They may be a member of another organisation or body that is applying for a licence or is carrying out a licensable activity;
- They may be an employee of a responsible authority defined in the legislation or may be an interested party because they live or have business premises in the vicinity of an application site or licensed premises;
- They may be a member of a lobby group or campaign;
- They may be the applicant for a licence or the provider of a licensable activity or a member of a registered club that is doing so;
- They may be a supplier of goods to an applicant or an existing licensee or club or they may act in some capacity on their behalf;
- They may also be an existing licensee or a member of a club whose business may be affected if a licence or club premises certificate is granted for a similar activity elsewhere.

Whatever a members' interest, a member must:

- Disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with employees and other members.

- Then act accordingly.

Where an interest is personal and prejudicial:-

- The member must disclose the interest and withdraw immediately from the room or chamber where a meeting is being held immediately, or immediately after they have exercised their rights under paragraph 12(2) of the Code of Conduct (if they have chosen to do so), for the duration of any discussion and/or voting in the matter;
- The member must not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Licensing Authority;
- The member must not represent an applicant or responsible authority at a Licensing Sub-Committee hearing;
- The member must not try to represent an interested party if they have played an active role in supporting or opposing an application for a licence. The member must ask another member to do so in their place;
- The member must not get involved in the processing of the application or the review of a licence or certificate that has already been issued;
- The member must not seek or accept any preferential treatment, or place themselves in a position that could lead the public to think they are receiving preferential treatment, because of their position as a councillor. This would include, where they have a personal and prejudicial interest in a proposal, using their position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so;
- The member must be aware that, whilst they are not prevented from seeking to explain and justify a proposal in which they have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on them in representing that proposal than would apply to a normal member of the public (for example, where they have a personal and prejudicial interest in a proposal to be put before a hearing or meeting, they will have to withdraw from the room or chamber whilst the hearing or meeting considers it, whereas an ordinary member of the public would be able to observe the meeting's consideration of it from the public gallery);
- The member must notify the Monitoring Officer in writing of their own interest and note that:
  - notification to the Monitoring Officer should be made no later than submission of the application; and
  - it is advisable that they employ an agent to act on their behalf on the proposal in dealing with officers.

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

- The member must not fetter their discretion and therefore their ability to participate in licensing decision-making by making up their mind (particularly in relation to an external interest or lobby group), as to how they will vote on any licensing matter prior to its formal consideration at a hearing or meeting of the Licensing Authority and hearing the representations and evidence on both sides. Fettering their discretion in this way and then taking part in the decision will put the licensing authority at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- The member must be aware that they are likely to have fettered their discretion where the Council is the landowner, developer or applicant and they have acted as, or could be perceived as being, a chief advocate for a proposal. (This is more than a matter of membership of both the proposing and licensing determination bodies, but because through their significant personal involvement in preparing or advocating the proposal they will be, or could be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)
- The member must not sit as a member of a Licensing Sub-Committee if the premises are situated in the ward that they represent or if an application is being made to review a licence or certificate held by a premises in their ward.
- The member must not sit as a member of the Licensing Sub-Committee where they have fettered their discretion. Because of the limited size of the Licensing Sub-Committee, they should advise officers as soon as it becomes apparent to them that they have fettered their discretion and certainly before the meeting commences to enable an alternative member to be found. They do not have to withdraw from the room where the meeting is taking place, but it would be preferable for them to do so.
- Members may take the opportunity (if they are not sitting on the Licensing Sub-Committee or they do not have a personal and prejudicial interest) to exercise their rights as a member to speak on behalf of an applicant or interested person even if they have represented their views or those of others before the meeting and fettered their discretion.

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

- The member must refer those who approach them for licensing, procedural or technical advice to officers.
- The member must not attend any meeting with applicants or interested parties if they are a member of the Sub-Committee. Pre-application discussions, if held for clarification purpose will involve officers only who will ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Sub-Committee.

- The member must meet with an applicant or interested party if the member is considering representing their interests or speaking on their behalf at a hearing of the Sub-Committee of which they are not a member.

## 5. Lobbying of Councillors

- The member must explain, if they are a member of the Sub-Committee, to those who may be attempting to lobby them that they cannot listen to what is said as this will prejudice their impartiality and therefore their ability to participate in the decision making process.
- The member must remember that, as a member of the Licensing Committee, they will probably be unaware whether an application will be determined by the Sub-Committee or whether they will be a member of that determining body until they have been notified by officers. If the member has been lobbied by an applicant or interested party, they should notify officers as soon as it comes to their attention that they have been invited to sit on a relevant Sub-Committee. In such circumstances, the member should not take part in that hearing or meeting and officers will make arrangements for another member to take their place on the Sub-Committee.
- The member is not to feel constrained, if they are not a member of the Sub-Committee, to receive an approach from an applicant or interested party and, having considered the information they have supplied, to agree to speak or make representations on their behalf at a meeting of a Sub-Committee.
- The member must remember, if they are a member of the Sub-Committee, that their overriding duty is to the whole community and, taking account of the need to make decisions impartially, that they should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- The member must not accept gifts or hospitality from any person involved in or affected by a licensing application or who may be providing a licensable activity. If a degree of hospitality is entirely unavoidable, they must ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £25, in accordance with the members' Code of Conduct.
- The member must copy or pass on any lobbying correspondence they receive if they are a member of the Sub-Committee to the Head of Environment and Street Scene at the earliest opportunity in order that it can be placed on the appropriate licensing file and is open for inspection before a decision is made.
- The member must inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- The member must note that, unless they are a member of the Sub-Committee or they have a personal and prejudicial interest, they will not have fettered their discretion or breached this Licensing Protocol through:
  - listening or receiving viewpoints from residents or other interested parties as long as the member makes themselves equally available to those of differing viewpoints if requested to do so;

- making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and the member makes clear they are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting in support of an application or in expressing representations on behalf of an interested party.

## **6. Lobbying by Councillors**

- The member must not become a member of, lead or represent, an organisation whose primary purpose is to lobby to promote or oppose licensing proposals. If they do, they will have fettered their discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- The member may join general interest groups which reflect their areas of interest and which concentrate on issues beyond particular licensing proposals, such as a local civic society, but are required to disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the licensing authority that they have reserved judgement and the independence to make up their own mind on each separate proposal.
- The member must not excessively lobby fellow members regarding their concerns or views nor attempt to persuade them how they should vote in advance of the meeting at which any licensing decision is to be taken.
- Political group meetings should never dictate how members should vote on any licensing application.

## **7. Site Visits**

- If necessary, a site visit will be organised for the Licensing Sub-Committee members by the Licensing Team Manager, in consultation with the Chairman. If a site visit is organised and a member is unable to take part they will be unable to take part in the Sub-Committee meeting. They should therefore notify the Licensing Team Manager as soon as it comes to their attention that they are unable to attend such site visit. Where a site visit takes place, members will be accompanied by officers of the authority.
- The member must ensure they treat the site visit only as an opportunity to observe the site.
- The member may ask the officers at the site visit questions, or seek clarification from them on matters which are relevant to the site inspection.
- The member must not hear representations from the applicant or an interested party at the site visit. Where they are approached by the applicant or an interested party, the member must direct them to, or inform, the officer present.

- The member must not express opinions or views to anyone.
- The member must exercise their discretion, if they are not a member of the Sub-Committee, as to whether to accept an invitation to visit a site which is the subject of an application or provides a licensable activity. Where a Member does accept an invitation, they must exercise caution and ensure they comply with these good practice rules.
- Details of those attending the visit, questions asked and answers given must be recorded and retained by an officer of the Authority.

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

- The member must not to allow members of the public to communicate with them in isolation, if they are a member of the Sub-Committee during the hearing or meeting proceedings (orally or in writing) as this may give the appearance of bias.

## **9. Officers**

- The member must not put pressure on officers to put forward a particular recommendation. This does not prevent them from asking questions or submitting views to the Head of Environment and Street Scene but hearing or meeting reports will contain only representations that have been submitted in the manner prescribed by the legislation. Attention is drawn to the danger of fettering discretion on a matter which is covered in Section 3 of this Protocol.
- The member must recognise that officers are part of a management structure and discuss a proposal, outside any arranged meeting, only with the Head of Environment and Street Scene or those officers who are authorised by them to deal with the proposal at member level.
- The member must recognise and respect that officers involved in the processing and determination of licensing matters must act in accordance with the Council's Code of Conduct for Employees and the requirements of the licensing legislation. As a result, Licensing Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence and the promotion of licensing objectives, which may on occasion be at odds with the views or opinions of members.

## **10. Decision-Making**

- Members must come to meetings with an open mind and demonstrate they are open-minded;
- Members must comply with the licensing legislation and make decisions in accordance with statutory licensing objectives, having regard to guidance that has been issued under the relevant legislation and the authority's statement of licensing policy;

- Members must come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If they feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information and, if necessary, adjourn the hearing or meeting until the information has been provided and they have had an opportunity to consider it;
- Members must not vote or take part in the hearing or meeting on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter.
- Members must make sure if they are proposing, seconding or supporting a decision contrary to the licensing objectives or the statutory guidance issued by the Secretary of State or Gambling Committee or the authority's statement of licensing objectives, that they clearly identify and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote being taken and be recorded; and
- Be aware that the member may have to justify the resulting decision by giving evidence in the event of any challenge.

## **11. Training**

- Members must not participate in decision making at hearings and meetings dealing with licensing matters unless they have attended suitable licensing training provided by the Head of Environment and Street Scene.
- Members must endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of licensing law, regulations, procedures, statutory guidance and licensing policy beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.

## **PART 6 - CONFIDENTIAL REPORTING CODE**

### **1. Introduction**

- 1.2 Officers and members are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 This Code applies to all employees, agency staff, contractors working for the Council and members. It also covers suppliers. It is incorporated into the Council's Anti-Fraud and Corruption Policy, but it should be noted that the code covers action on a range of issues as illustrated in paragraph 2.2.
- 1.2 These procedures are in addition to the Council's complaint procedures and other statutory reporting procedures applying to some departments. Managers are responsible for making staff and members of the public aware of the existence of these procedures. Political Group Leaders are encouraged to bring the Code to the attention of members.

### **Culture**

- 1.2 Tunbridge Wells Borough Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect officers, members and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.
- 1.2 This document makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. Employees are protected by law under the Public Interest Disclosure Act 1998, as long as the rules set out in the Act are complied with. This Confidential Reporting Code is intended to encourage and enable officers and members to raise serious concerns within the Council rather than overlooking a problem or having to go outside the Council to raise these concerns.

### **2. Aims and scope of this code**

2.2 This Code aims to:

- Encourage you to report concerns you have about practices within the Council
- Reassure you that your concerns will be dealt with in confidence
- Encourage you to feel confident in raising concerns and to question and act upon concerns about practice
- Tell you how to raise your concerns and how you will receive feedback on any action taken

- Ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied
- Reassure you that your anonymity will be maintained, providing it is felt that any disclosures have been made in good faith.

2.2 There are existing procedures in place to enable officers to lodge a grievance relating to their employment. The Confidential Reporting Code is intended to cover major concerns that fall outside the scope of other procedures. These concerns include:

2.2.1 Conduct which is an offence or a breach of law

- Disclosures related to miscarriages of justice
- Health and safety risks, including risks to the public and Members, as well as other employees
- Damage to the environment
- The unauthorised use of Council funds and property
- Possible fraud and corruption
- Discrimination issues
- Bullying and harassment
- Sexual or physical abuse, or
- Other unethical conduct.

2.3 Thus, any serious concerns that you have about any aspect of service provision or the conduct of officers or members of the Council or others acting on behalf of the Council can be reported under the Confidential Reporting Code. This may be about something that:

- Makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or
- Is against the Council's Standing Orders and policies; or
- Falls below established standards of practice; or
- Amounts to improper conduct.

2.4 This Code does not replace the corporate complaint procedure.

### **3. Safeguards**

#### **Harassment or Victimisation**

3.2 The Council is committed to good practice and high standards and wants to be supportive of officers, agents, contractors and members.

3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If what you are saying is true, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service, or to the Council and those electors you represent.

3.2 The Council will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith.

- 3.2 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you if you are an employee.

#### **4. Confidentiality**

- 4.1 All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At the appropriate time, however, you may need to come forward as a witness.

#### **5. Anonymous allegations**

- 5.2 This Code encourages you to put your name to your allegation whenever possible.

- 5.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.

In exercising this discretion the factors to be taken into account will include:

- The seriousness of the issues raised
- The credibility of the concern; and
- The likelihood of confirming the allegation from attributable sources.

#### **6. Untrue allegations**

- 6.2 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you.

#### **7. How to raise a concern**

- 7.2 As a first step, you should normally raise concerns with your immediate manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example if you believe that management is involved, you should approach the Chief Executive, Section 151 Officer (Head of Finance and Governance), Monitoring Officer, or the Internal Audit Manager. Members can go directly to these officers, or can raise their concerns through their Political Groups.

- 7.2 Concerns may be raised verbally or in writing. Anyone who wishes to make a written report is invited to use the following format –

- The background and history of the concern (giving relevant dates)
- The reason why you are particularly concerned about the situation.

- 7.2 The earlier you express the concern the easier it is to take action.

- 7.2 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.

7.2 You can obtain advice/guidance on how to pursue matters of concern from:

<b>Name</b>	<b>Job Title</b>	<b>Telephone number</b>
William Benson	Chief Executive	01892 554211
Lee Colyer	Head of Finance and Governance/ Section 151 Officer	01892 554132
Paul Cummins	Legal Services Manager/Monitoring Officer	01892 554257
Ian Cumberworth	Internal Audit Manager	01892 554020

7.2 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) or you who have had the same experience or concerns.

7.2 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.

## **8. How the Council will respond**

8.2 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.

8.2 Where appropriate, the matters raised may:

- Be investigated by management, internal audit, or through the disciplinary process
- Be referred to the police
- Be referred to the external auditor
- Form the subject of an independent inquiry

8.2 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, discrimination issues) will normally be referred for consideration under those procedures.

8.2 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

8.2 Within ten working days of a concern being raised, the person dealing with the concern will write to you:

- Acknowledging that the concern has been received
- Indicating how we propose to deal with the matter
- Giving an estimate of how long it will take to provide a final response
- Telling you whether any initial enquiries have been made
- Supplying you with the information on staff support mechanisms, and

- Telling you whether further investigations will take place and if not, why not.
- 8.2 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.
- 8.2 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union or professional association representative or a friend.
- 8.2 The Council will take steps to minimise any difficulties, which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.
- 8.2 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

## **9. The Responsible Officer**

- 9.2 The Chief Executive has overall responsibility for the maintenance and operation of this Code. He or she maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will report as necessary to the Council.

## **10. How the matter can be taken further**

10.1 This Code is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:

- The external auditor
- Audit Commission Disclosure Line 0845 052 2646
- Your trade union
- Your local Citizens Advice Bureau
- Relevant professional bodies or regulatory organisations
- A relevant voluntary organisation e.g. Concern at Work 0207 404 6609
- The police

10.2 If you do take the matter outside the Council, you should ensure that you do not disclose confidential information. Check with the contact point about that.

## **11. REVIEW**

- 11.1 The Council has in place a network of systems and procedures to assist it in the fight against misconduct. It is determined that these arrangements will keep pace with any future developments, in both preventative and detection techniques.
- 11.2 To this end, the Council maintains a continuous overview of such arrangements and will review this code to ensure its effectiveness.
- 11.3 This Policy Statement will be subject to review to ensure its effectiveness.



## PART 6 - GENERAL MEMBER PROTOCOL

1. On behalf of the people of the Borough, the Council has high expectations of its elected and co-opted, independent members.
2. In return, the Council and its officers provide members with a wide range of support and information.
3. The Council's general expectations of all members are laid out below:
  - 3.1. Members must produce their duly signed and witnessed declaration of acceptance of office promptly on their election. Members are in any event required by law to do so within two calendar months of their election, and cannot act as a member or receive any member allowances before they do so.
  - 3.2. *Officers will support members in meeting this expectation by making arrangements for newly elected members to make their declaration in the first two weeks after their election, and notifying new members of those arrangements on the night of their election if they attend the count or in the following 48 hours if they don't. Officers will also make alternative arrangements for new members to make their declaration if the first offered plans are not suitable.*
  - 3.3. Members are expected to use all reasonable endeavours to attend at least 66% of the meetings of Council and the committees of which they are a member. Members who fail to maintain a 66% attendance record will be expected to account to the Standards Committee for their attendance rates.
  - 3.4. *Officers will support members by maintaining records of members' attendance at Council and committee meetings. The Council will support members in meeting this expectation by keeping meeting times and venues under review from year to year.*
  - 3.5. Members are expected to use all reasonable endeavours to attend all of the training and development activities booked for them personally in line with the results of their training and development needs analysis. Members who find they are unable to attend such training through ill-health or other unavoidable later commitment are expected to advise the Committee Services Team immediately, and to assist, so far as possible with finding another attendee.
  - 3.6. Members are expected to use all reasonable endeavours to attend all training and development activities that the Leader and the Chief Executive jointly declare to be compulsory. Members are expected to use all reasonable endeavours to attend 66% of the member briefing sessions provided by the Council.

- 3.7. *Officers will support members by maintaining records of members' attendance at training events. The Council will support members in meeting this expectation by keeping training times and venues under review from year to year. The Council will also support members by making sure that compulsory training is provided on more than one occasion, and that members' availability is taken into account when making alternative arrangements.*
- 3.8. Members will present a written report to the Monitoring Officer each year outlining the activities they have undertaken in the course of fulfilling their role as a member. The report should cover matters such as training and development activities undertaken, ward and community level action and involvement, Council and committee meetings attended, information about external bodies on which members represent the Council, regional and national events and programmes attended in the members' capacity as a representative of their ward or borough, and any other matters that have consumed members' time, attention and resources. The report is also expected to include confirmation that the author has checked his/her declarations of interest and can confirm that the Register of Interests is up to date.
- 3.9. *Officers will support this by maintaining records of Council and committee meetings attended by members, providing templates for the reports to the Monitoring Officer well in advance and by co-ordinating the production and presentation of the reports to the Monitoring Officer.*
- 3.10. Members are expected to notify the Council's Committee Services Team and the Council/Committee Chairman if they are unable to attend a Council/Committee meeting, as soon as they become aware that they will not be present.
- 3.11. *Officers will support members in meeting this expectation by ensuring that there is a dedicated Committee Clerk for Council and each committee to ensure that members are aware of their appropriate point of contact. Officers will accept notification of members' apologies to the Council/committee by letter, telephone or e-mail, and officers will ensure that these forms of communication are appropriately forwarded in the event of officer absence. Committee Chairmen will set their own arrangements for receiving notification of anticipated absence from Council/committees directly from members.*
- 3.12. Members who are members of committees which include substitutes amongst their membership are expected by the Council to arrange for a substitute member to attend in their stead if they become aware that they are unlikely to be able to attend a particular meeting.
- 3.13. *Officers will support members in meeting this expectation and in making the substitute system work effectively by ensuring that all full members and all substitute members of each relevant committee are kept fully apprised of committee dates and venues and that substitute committee members also receive copies of agenda and reports.*

- 3.14. Members are expected to use all reasonable endeavours to engage with the Council's processes for assessing their training and development needs and with the arrangements for officers to draw up a programme of activities intended to meet these needs. Members are also expected to participate in any programme of training and development activities they have agreed with officers.
- 3.15. *Officers will support members in meeting this expectation by arranging for the training and development needs of all members to be assessed within 6 months of their election (and thereafter within 6 months of their re-election), and by designing, in conjunction with each participating member, a programme intended to meet members' training and development needs, and where possible, training and developmental aspirations.*
- 3.16. Members are expected to use all best endeavours to prepare adequately for the fulfilment of their roles and functions by undertaking appropriate training, seeking advice and support whenever they feel they need it (from officers and/or from fellow members and Group Chairmen) and by considering Council/committee agenda and reports in advance of the meetings at which they will be discussed.
- 3.17. *Officers will support members in meeting this expectation by ensuring that all members are apprised of the contact details of the officers who can assist them with queries and advice on the full range of Council activities; by keeping members up to date about Council events and activities; by providing information packs and other resources; by providing training and development opportunities and by providing Council/committee agenda and reports in a variety of formats. The Council also supports members in meeting this expectation by providing financial assistance to members for the purchase and use of Information and Communication Technology (ICT) equipment for the home, ICT equipment in the Town Hall and a Members' Room which includes a library of useful materials, internet access and a printer and paper.*
- 3.18. All members attending external meetings in their capacity as a member should make it known to the Chairman of that meeting that they are members of the Council and the position they hold.

