

# **PART 5 CODES AND PROTOCOLS**

## **GENERAL PRINCIPLES OF CONDUCT IN LOCAL GOVERNMENT**

### **Selflessness**

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

### **Honesty and Integrity**

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

### **Objectivity**

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

### **Accountability**

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

### **Openness**

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

### **Personal Judgement**

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

### **Respect for Others**

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

### **Duty to Uphold the Law**

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

### **Stewardship**

Members should do whatever they are able to do, to ensure that their authorities use their resources prudently and in accordance with the law.

### **Leadership**

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

# THE COUNCILLORS' CODE OF CONDUCT

## Part 1

### General provisions

#### 1. Introduction and Interpretation

- 1.1. This Code applies to **you** as a member of an authority.
- 1.2. You should read this Code together with the general principles prescribed by the Secretary of State.
- 1.3. It is your responsibility to comply with the provisions of this Code.
- 1.4. In this Code
  - 1.4.1 "meeting" means any meeting of:
    - 1.4.1.1 the authority;
    - 1.4.2.3 any of the authority's committees, sub-committees, joint committees, joint sub-committees area committees, area forums, task groups or working groups
  - 1.4.2 "member" includes a co-opted member and an appointed member.
- 1.5. 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 the District Council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

#### 2. Scope

- 2.1. Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:
  - 2.1.1. conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - 2.1.2. act, claim to act or give the impression you are acting as a representative of your authority and references to your official capacity are construed accordingly.

- 2.2. 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.
- 2.3. 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.
- 2.4. 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).
- 2.5. Where you act as a representative of your authority:
  - 2.5.1. on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - 2.5.2. on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **3. General Obligations**

- 3.1. You must treat others with respect.
- 3.2. You must observe any protocols or codes of practice adopted by your authority.
- 3.3. You must not:
  - 3.3.1. do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - 3.3.2. bully any person;
  - 3.3.3. intimidate or attempt to intimidate any person who is or is likely to be:
    - 3.3.3.1. a complainant,
    - 3.3.3.2. a witness, or
    - 3.3.3.3. 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;

3.3.4. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

3.4. You must not:

3.4.1. 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:

3.4.1.1. you have the consent of a person authorised to give it;

3.4.1.2. you are required by law to do so;

3.4.1.3. 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

3.4.1.4. the disclosure is:

3.4.1.4.1. reasonable and in the public interest; and

3.4.1.4.2. made in good faith and in compliance with the reasonable requirements of the authority; or

3.4.1.5. prevent another person from gaining access to information to which that person is entitled by law.

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

3.6. You:

3.6.1. 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

3.6.2. must, when using or authorising the use by others of the resources of your authority:

3.6.3. act in accordance with your authority's reasonable requirements;

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

- 3.6.5. must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 3.7. When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
  - 3.7.1. your authority's Chief Finance Officer; or
  - 3.7.2. your authority's Monitoring Officer, where that officer is acting pursuant to his or her statutory duties.
- 3.8. You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2 Interests

### 4. Personal Interests

- 4.1. You have a personal interest in any business of your authority where either:
- 4.1.1. it relates to or is likely to affect:
    - 4.1.1.1. 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 your authority;
    - 4.1.1.2. any body:
      - 4.1.1.2.1. exercising functions of a public nature;
      - 4.1.1.2.2. directed to charitable purposes; or
      - 4.1.1.2.3. 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;
    - 4.1.1.3. any employment or business carried on by you;
    - 4.1.1.4. any person or body who employs or has appointed you;
    - 4.1.1.5. 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;
    - 4.1.1.6. any person or body who has a place of business or land in your authority's 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);
    - 4.1.1.7. any contract for goods, services or works made between your authority 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);
    - 4.1.1.8. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

- 4.1.1.9. any land in your authority's area in which you have a beneficial interest;
- 4.1.1.10. any land where the landlord is your authority 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;
- 4.1.1.11. any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- 4.1.1.12. 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:
  - 4.1.1.12.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
  - 4.1.1.12.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

4.2. In paragraph 4.1.1.12, a relevant person is:

- 4.2.1. a member of your family or any person with whom you have a close association; or
- 4.2.2. 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;
- 4.2.3. 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
- 4.2.4. any body of a type described in paragraph 4.1.1.1 or 4.1.1.2.

## **5. Disclosure of Personal Interests**

- 5.1. Subject to paragraphs 5.2 to 5.7, where you have a personal interest in any business of your authority and you attend a meeting of your authority 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.

- 5.2. Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 4.1.1.1 or 4.1.1.2.1, you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 5.3. Where you have a personal interest in any business of the authority of the type mentioned in paragraph 4.1.1.8 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.
- 5.4. Paragraph 5.1 only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- 5.5. Where you have a personal interest but, by virtue of paragraph 10, sensitive information relating to it is not registered in your authority'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. Prejudicial Interest Generally**

- 6.1. Subject to paragraph 6.2, where you have a personal interest in any business of your authority 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.
- 6.2. You do not have a prejudicial interest in any business of the authority where that business:
  - 6.2.1. does not affect your financial position or the financial position of a person or body described in paragraph 4;
  - 6.2.2. 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 4; or
  - 6.2.3. relates to the functions of your authority in respect of:
    - 6.2.3.1. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - 6.2.3.2. 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;

- 6.2.3.3. 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;
- 6.2.3.4. an allowance, payment or indemnity given to members;
- 6.2.3.5. any ceremonial honour given to members; and
- 6.2.3.6. setting council tax or a precept under the Local Government Finance Act 1992.

## **7. Prejudicial Interests Arising in Relation to Overview and Scrutiny Committees**

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:

- 7.1. that business relates to a decision made (whether implemented or not) or action taken by another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- 7.2. at the time the decision was made or action was taken, you were a member of the 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.

## **8. Effect of Prejudicial Interests on Participation**

- 8.1. Subject to paragraph 8.2, where you have a prejudicial interest in any business of your authority:
  - 8.1.1. you must withdraw from the room or chamber where a meeting considering the business is being held:
    - 8.1.1.1. in a case where paragraph 8.2 applies, immediately after making representations, answering questions or giving evidence;
    - 8.1.1.2. in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's Standards Committee; and
  - 8.1.2. you must not seek improperly to influence a decision about that business.

- 8.2. Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority 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**

**9. Registration of Members' Interests**

- 9.1. Subject to paragraph 10, you must, within 28 days of:
- 9.1.1. this Code being adopted by or applied to your authority; or
  - 9.1.2. your election or appointment to office (where that is later), register in your authority'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 your authority's Monitoring Officer.
- 9.2. 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 your authority's Monitoring Officer.

**10. Sensitive Information**

- 10.1. Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's 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.
- 10.2. You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 10.1 is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in your authority's Register of Members' Interests.
- 10.3. 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.

# **MEMBER/OFFICER PROTOCOL**

## **1. Introduction**

- 1.1 The purpose of this Protocol is to promote positive relationships between members and officers of the Council so as to ensure the smooth running of the Council. It is not a statutory requirement and therefore has the status of guidance. However, adoption of this protocol by the Council demonstrates commitment to its principles and the Council expects all members and officers to comply with it. The protocol may also be taken into account by The Standards Board or Standards Committee when considering complaints.
- 1.2 Given the variety and complexity of member/officer relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues.

## **2. Role of Members/Officers**

- 2.1. The Council's Code of Conduct for Members sets out a number of general, mandatory obligations including the following:
- 2.2 A member must treat others with respect and must not:
  - 2.2.1 do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - 2.2.2 bully any person;
  - 2.2.3 intimidate or attempt to intimidate any person who is or is likely to be:
    - 2.2.3.1 a complainant,
    - 2.2.3.2 a witness, or
    - 2.2.3.3 involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including him/herself) has failed to comply with the Council's Code of Conduct;
  - 2.2.4 do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
- 2.3 Members undertake many different roles. Broadly these are:
  - 2.3.1 As politicians - expressing political values and supporting

the policies of the group to which they belong;

- 2.3.2 As representatives and advocates - representing the ward and the citizens who live there;
  - 2.3.3 As decision makers - on Full Council, the executive, committees or on partnership organisations;
  - 2.3.4 As policy makers - developing and reviewing policy and strategy;
  - 2.3.5 Providing scrutiny and overview - monitoring and reviewing policy implementation and service quality;
  - 2.3.6 As regulators - regulating certain activities e.g. planning, licensing;
  - 2.3.7 As employers – responsible for the employment conditions and policy direction of the paid workforce;
  - 2.3.8 As community leaders and networkers - through active partnerships with other organisations.
- 2.4 In broad terms, officers have the following main roles:
- 2.4.1 managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services and for proper practice in discharging their responsibilities;
  - 2.4.2 providing advice to the Council, the executive, committees, sub-committees and members in respect of its services;
  - 2.4.3 initiating policy proposals as well as implementing agreed Policy;
  - 2.4.4 ensuring that the Council always acts in a lawful manner.
- 2.5 Officers thus give professional advice to members who then make decisions for which they are accountable. Members' decisions are collective. They should not expect to receive information about decisions relating to individual residents except where the constituent has raised a concern with the member.

### **3. Relations between Members and Officers**

- 3.1 The General Principles of Conduct in Local Government also includes respect for others. Members should respect the impartiality and integrity of the authority's statutory officers, and its other employees.
- 3.2. These principles of the objectivity of officers and the mutual respect of roles are paramount. It is vital that any dealings between members and

officers should observe standards of courtesy and that neither party should seek to take unfair advantage of their position.

- 3.3. Officers serve the Council through the executive, committees and sub-committees of the council or the executive and working groups. They work to the instructions of their senior officers - not individual members of the Council, whatever office the member may hold. It follows, therefore, that officers must not be asked to exceed the bounds of authority they have been given by their manager nor should they have unreasonable demands placed on them in terms of support to an individual member (or members).
- 3.4. It is not enough to avoid actual impropriety. Members and officers should, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Members should declare to the Chief Executive any relationship with an officer, which might be seen as influencing their work as a member or vice-versa. This includes any family, business or close personal relationship. It is not possible to define exactly the range of relationships that would be considered as close or personal. Examples, however, would include a family or sexual relationship or regular social mixing such as holidays or meals together.

#### **4. Complaints or Concerns about Officers or Services**

- 4.1 Members have the right to criticise reports or the actions taken by officers but they should always:
  - \* avoid physical or personal attacks on or abuse of officers,
  - \* ensure that criticism is constructive and well founded, and
  - \* take up an individual concern with the officer privately, where possible.
- 4.2. Members should not raise matters relating to the conduct or capability of an officer at committee meetings or in any public forum. This could be damaging both to effective working relationships and to the image of the Council. An officer has no means of responding to such criticisms in public.
- 4.3. If a member feels he has not been treated with the proper respect, courtesy or has any concerns about the conduct or capability of an officer, and fails to resolve it through direct discussion with the officer, he should raise the matter with the appropriate Director or the Assistant Chief Executives. The Director or the Assistant Chief Executives will look into the matter and report back to the member. If the member continues to feel concern, he should then report it to the Chief Executive who will look into the matter afresh. A complaint about a Director or an Assistant Chief Executive should be raised with the Chief Executive. A complaint about the Chief Executive should be raised with the Leader and/or the chief officers. Any action taken against an officer in respect of a complaint will be in accordance with the provisions of the Council's disciplinary rules and any statutory provisions which may apply.

- 4.4. Where an officer feels that he has not been properly treated with respect and courtesy by a member, the aim should be to try to resolve the matter informally. If he feels able, the officer should in the first instance discuss it with the member concerned. He may then wish to raise the matter with his line manager, Director, Assistant Chief Executive or the Chief Executive as appropriate. In these circumstances line manager, Director, Assistant Chief Executive or the Chief Executive will take appropriate action by approaching the individual member and/or group leader. If it does not prove possible to resolve the matter informally the officer may make a complaint to the Standards Committee in accordance with the normal procedures for complaints about members.
- 4.5. Members and officers have a duty to raise any issues where they have reason to believe fraud or corruption of any sort is involved. (See the Anti-Fraud Policy Statement below and the Council's whistleblowing procedure).

## **5. Officer Advice to Members and Party Groups**

- 5.1. It must be recognised by all officers and members that in discharging their duties and responsibilities, officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual member of the Council.
- 5.2. There is 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. Officers may properly be called upon to provide information to party groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual members, treat them in a fair and even-handed manner. This means that, on occasions, information requested by one group will in fact be provided to all.
- 5.3 The support provided by officers can take many forms, including a briefing meeting with the executive or an executive member or the Chairman/Vice-Chairman of a committee prior to a committee meeting or a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 5.4 Certain points must, however, be clearly understood by all those participating in this type of process, members and officers alike. In particular:
  - 5.4.1 Officer support must not extend beyond providing information and advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not



expected to be present at meetings or parts of meetings, when matters of party business are to be discussed.

- 5.4.2 Party group meetings, whilst they form part of the preliminaries to Council decision-making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- 5.4.3 Similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the executive, executive member or relevant committee when the matter in question is considered.
- 5.5 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons are not bound by the Council's Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality). For this and other reasons officers may not attend and give information and advice as they would to a members-only meeting.
- 5.6 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they must not relate the content of any such discussion to another party group.

## **6. Officer/Executive Members/Chairman Relationships**

- 6.1. It is clearly important that there should be a close working relationship between executive members and the Chairmen of committees and the officers who report to or interact with them. 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. It is good practice for the lead officer for to brief an executive member or committee Chairman in advance of a meeting and similarly to brief an opposition spokesperson as required.
- 6.2. In respect of committees of the Council, lead officers are identified in respect of each committee and that officer is responsible for drawing up the agenda for committee meetings. The officers will always be fully responsible for the contents of any report submitted in their name. It is essential that any proposals from members in reports to committees are clearly identified as such.
- 6.3. At some committee meetings, a resolution may be passed which authorises named officers to take action between meetings in consultation with the Chairman. It must be recognised that it is the officer, rather than the Chairman, who takes the action and it is the officer who is accountable for it.

- 6.4. It should be remembered that officers within a section are accountable to their Divisional Head and that whilst officers should always seek to assist an executive member, the Chairman of a committee (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Divisional Head.

## **7. Correspondence**

- 7.1. Correspondence between an individual member and an officer, particularly when it has been initiated by the member, should not normally be copied (by the officer) to any other member. Where it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of "silent copies" should not be employed.
- 7.2. Where an officer is dealing with a specific local matter which has been raised by a member or could have significant local implications, the correspondence should be copied to the relevant ward member(s).

## **8. Media Liaison**

- 8.1 Communications with the media can be an important part of a member's workload - issuing press releases or responding to queries. In any media contact, members and officers should always have regard to the reputation of the Council. Generally, members provide comments and views and officers provide factual information. This factual information may well include explaining the Council's policy on a particular issue. If any member is unsure about the facts of any issue he should contact the appropriate officer or ask the media representative to do so. Members should avoid being seen to anticipate decisions and should not criticise officers in the media.
- 8.2 If a member contacts or is contacted by the media he should indicate in what capacity he is speaking e.g. in a personal capacity, as a member of the executive, as a ward member, as Chairman of a committee, on behalf of the Council or on behalf of his political group. Members should avoid giving the impression they are speaking on behalf of the Council when expressing a personal view. It may be useful to advise the Communications Team or other appropriate officer, of the press release or discussion.

## **9. Conclusion**

- 9.1. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its members and officers.
- 9.2. Copies of the Protocol will be issued to all members along with other documentation (e.g. Procedure Rules) upon election.

## **ANTI-FRAUD POLICY STATEMENT**

1. The Council is committed to the highest possible standards of openness, probity and accountability.
2. The Council condemns the theft of Council property and personal belongings of staff.
3. The Council has well defined procedures to deal with financial irregularity, theft and corruption whether perpetrated by its employees, councillors, members of the public, contractors or suppliers of goods and services.
4. The Council's affairs and the actions and omissions of employees are regularly open to scrutiny, for example by:
  - The external auditor
  - The public, e.g. complaints procedure, inspection of records
  - Council tax payers - annual inspection of accounts
  - The business community - annual business consultation
  - HM Revenue and Customs
  - Department of Social Security
  - Local Government Ombudsman
6. In addition, there is internal scrutiny applied by the Council, through Internal Audit services.
7. If you suspect a Council employee, councillor, member of the public, or contractor or anyone with business dealings with the Council of fraud, corruption or theft you should contact the Internal Audit Section on 01799 510610, the Monitoring Officer on 01799 510416, the Assistant Chief Executive: Finance on 01799 510628 or the Chief Executive on 01799 510400. All allegations are treated as confidential and thoroughly investigated. You will be advised of the outcome of the investigation.
8. If for any reason you feel unable to raise your concerns through any of the above routes, you may wish to raise them through Public Concern at Work (telephone 020 7404 6609), a registered charity whose services are free and strictly confidential.

# ANTI-FRAUD POLICY - GUIDANCE NOTES

## 1. Introduction

- 1.1 The Council believes that all its employees have a responsibility to be alert to the possibility of theft and fraudulent or corrupt practices. An effective policy on fraud, corruption and theft provides a means by which proper supervision and public accountability may be maintained.
- 1.2 The Council expects that individuals and organisations (eg contractors, suppliers of goods and services) with which it comes into contact will act towards the Council with integrity at all times.

## 2. Definitions

- 2.1 **Fraud** is defined by the Audit Commission as:

"the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain".

- 2.2 **Corruption** is defined by the Audit Commission as: "the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person."
- 2.3 **Theft** is defined in the Theft Act 1968 as: "A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it".
- 2.4 **Council property** includes plant and equipment, furniture, depot and office supplies, including: stationery, photocopying paper, envelopes, computer software and hardware.
- 2.5 **Personal belongings** are the responsibility of the employee. Each employee must take adequate steps to ensure the safe keeping of his belongings whilst on Council premises and/or on Council business.
- 2.6 The Council has no liability for the loss of personal belongings from its premises or vehicles.

## 3. Policies and Procedures

- 3.1 The Council has a number of policies and procedures in place which are designed to aid in the prevention, detection and investigation of fraud, corruption or theft. These are set out in the following documents:
  - a) Financial Regulations,
  - b) Gifts and Hospitality Guidance,

- c) Disciplinary Rules and Procedures,
  - d) Whistleblowing Policy,
  - e) Confidential Reporting Code, and
  - f) IT Security Policy.
- 3.2 The Council has appointed its Assistant Chief Executive: Legal to act as the lead officer in connection with its Anti-Fraud Policy. If an employee is concerned that an act which is being proposed to him, be it by another employee, a councillor, contractor or supplier may constitute fraud, corruption or theft, he should contact his Director, the Internal Audit Section, the Monitoring Officer, the Chief Finance Officer or the Chief Executive. In addition, all employees are required by the Council's Financial Regulations to report all suspected irregularities to their Director who should immediately inform the Assistant Chief Executive: Legal. Reporting is essential to the Council's Anti-Fraud Policy and Confidential Reporting Code.
- 3.3 Investigations will usually be undertaken by Internal Audit Services who will have direct and full access to all records. Where financial impropriety or theft of Council property or staff personal belongings is discovered the matter may be referred to the Police, with a view to prosecution of the perpetrator(s).
- 3.4 The external auditor also has powers to investigate independently fraud, corruption and theft and the Council can make use of these services.

#### **4. Employee Protection**

- 4.1 The Public Interest Disclosure Act 1998 promotes accountability in the public, private and voluntary sectors by encouraging people not to turn a blind eye to malpractice in the workplace. It encourages the adoption of whistleblowing procedures. It will help to ensure that organisations:
- 4.1.1 respond to the message rather than shoot the messenger;
  - 4.1.2 resist the temptation to cover up serious malpractice; and
  - 4.1.3 protect employees who report fraud or corruption from being victimised or dismissed.
- 4.2 In addition to employees, the Act covers trainees, agency staff, contractors and suppliers. The usual employment law restrictions on minimum qualifying period and age do not apply to this Act.
- 4.3 An employee disclosing information to those referred to in paragraph 9 above will be protected providing he has an honest and reasonable

suspicion that fraud, theft or corruption has occurred, is occurring or is likely to occur.

- 4.4 This Act does not protect from disciplinary action employees who make malicious and/or vexatious allegations.

# **CODE OF GOOD PRACTICE: PROBITY IN PLANNING**

## **1 Introduction**

- 1.1 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It can be highly contentious. It is important that the process is characterised by open and transparent decision-making.
- 1.2 One of the key purposes of the planning system is to control development in the public interest. Performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council makes planning decisions affecting those interests openly, impartially, with sound judgement and for justifiable reasons. There should be no grounds for suggesting that a decision has been biased, not impartial or not well founded in any way.

## **2. Conduct of Councillors and Officers**

### **2.1 General**

- 2.1.1 Councillors and officers have different, but complementary roles.
- 2.1.2 Both councillors and officers are guided by codes of conduct. The Councillors Code of Conduct provides guidance and standards for councillors. Breaches of the Code may be regarded as maladministration by the Local Government Ombudsman and may lead to a councillor being reported to the Standards Committee for England. Such a report may result in sanctions being imposed upon the councillor concerned. Officers will be subject to a Statutory Employees Code of Conduct. In addition officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. In addition to these codes, the Council's Procedural Rules set down rules which govern the conduct of Council business.
- 2.1.3 Councillors must not instruct officers to make a particular recommendation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective, impartial planning advice, based on their professional judgement and not be compromised or influenced by political considerations. Chartered Town Planners may only advocate their own professional view.

## **2.2 Public Duty**

The Councillors Code of Conduct sets out the duties and responsibilities of councillors. It states that, whilst councillors have a special duty to their ward constituents including those who did not vote for them, their overriding duty is to the whole community. The Council's District Plan is adopted in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those individuals or organisations. Councillors and officers must support the Council's planning policies and make decisions in accordance with them, unless there are sound planning reasons for not doing so.

## **2.3 Voting and Impartiality**

- 2.3.1 Members of the Development Control Committee must not declare which way they intend to vote in advance of the consideration of an application. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge or a charge of maladministration. Members must not make up their minds until they have read the relevant committee reports, heard the evidence and considered the representations. It is important that members hear all the evidence and representations prior to reaching a decision. Consequently members should ensure that they are present in the Council Chamber/Committee Room at all times whilst an item is being discussed. In the event that a member arrives after consideration of a particular item has commenced or leaves the Council Chamber/Committee Room during the consideration of an item and then returns then that Member should not vote on that item.
- 2.3.2 Councillors who are also members of town or parish councils may find that they are expected to express a view at a Town or Parish Council meeting or vote on whether the town or parish council should object or comment on a proposal from its point of view. In such circumstances they should not declare outright support or opposition for a proposal and if they chose to vote should make clear that they may find themselves having to vote differently when sitting on the committee, having heard the evidence, technical and legal background from officers. In particularly contentious cases councillors are advised to abstain from the town or parish council vote to make clear that they are not prejudicing the decision they will have to make as a District Councillor. This will assist in ensuring that the propriety of their vote at the Council's committee meeting cannot be challenged.
- 2.3.3 If a councillor does declare his outright support for or opposition to a proposal at a town or parish meeting or elsewhere before the matter has been put before the committee where that councillor would be entitled to vote he should, if attending the committee meeting when the matter is being discussed or reported, make an



open declaration to that meeting to that effect and take no part in the voting on that item. This does not mean that councillors on the committee cannot make a comment or reflect local concerns about a proposal before it is considered. However, the view or comment must not pre-determine or be seen to pre-determine the way the councillor will vote.

- 2.3.4 Councillors should not organise support for or against a planning application and should not lobby other councillors since this would also signal that they had made up their mind before hearing the evidence. Each councillor should make up his own mind on the evidence and facts presented to the committee.
- 2.3.5 The basis of the planning system is the consideration of private proposals against wider public interests. Opposing views are often strongly held by those involved. Whilst councillors should take account of various views expressed on an application they should not favour or show bias against or towards any particular person, company or group or any particular site or locality. They should not put themselves in a position where they may appear to do so.

## **2.4 Gifts and Hospitality**

Councillors should be very cautious about accepting gifts and hospitality and must follow the advice in paragraph 13 of the Councillors Code of Conduct. They should also have regard to the Guidance on receipt of gifts and hospitality in part 5 of the Members' Handbook. Officers should follow that Guidance.

## **2.5 Declaration and Registration of Interests**

- 2.5.1 The Councillors Code of Conduct sets out requirements and guidance for councillors, for the registration of interests, on declaring personal and prejudicial interests and the consequences of having such interests. These must be followed scrupulously and councillors should review the situation regularly. It must be borne in mind that the Code advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. Responsibility for this rests individually with each councillor. When declaring an interest at committee this should be done at the beginning of the meeting and councillors should be clear and specific in identifying the item on the agenda in which they have a personal interest, if so whether the interest is prejudicial or not and in either event the nature of that interest.
- 2.5.2 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to councillors or other officers on them. An officer with a personal or

financial interest in a planning matter must withdraw from any relevant committee meeting whilst that matter is discussed. Planning officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental or other pressure or amenity groups.

## **2.6 Development Proposals Submitted by Councillors and Officers**

- 2.6.1 Proposals to Council by serving and former councillors and officers and their close friends and relatives could easily give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way to give no grounds for accusations of favouritism. Such applications should be reported to the committee and not dealt with by officers under delegated powers.
- 2.6.2 Serving councillors who act as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job, must declare an interest and take no part in the processing of the application or in the decision-making process. Any councillor who is a planning or similar agent will not be appointed to the committee.
- 2.6.3 Members of the committee should not act as agents or submit planning applications for other parties or voluntary bodies. To do so would give rise to suspicion that the committee was not impartial or may be influenced in the decision making process.
- 2.6.4 The procedures set out in the paragraphs 2.6.1 – 2.6.3 above shall also apply in relation to determining application and notifications to carry out works to trees.

## **2.7 Council Development**

The Council's own proposals for development and determining applications and notifications to carry out works to trees must be dealt with on exactly the same basis as applications submitted by members of the public. Officers must make recommendations having regard only to proper planning or tree matters and must not have regard to any other benefits, financial or otherwise, which may accrue to the Council as a result of any particular decision on a planning or tree proposal. Councillors must make decisions similarly. Such applications will be reported to the committee and not dealt with by officers under delegated powers.

## **2.8 Lobbying of and by Councillors**

- 2.8.1 Lobbying is an attempt to influence councillors' views in order to achieve a particular decision. It can be of councillors by applicants, agents or objectors or by other councillors. Lobbying may be verbal

or by the circulation of letters or documents to all or some councillors. Planning decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors, and members of the committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant officer in order that their opinions can be included in the officer's report to the committee. If they do express an opinion they should make it clear that they will only be in a position to take a final decision after having received and considered all the relevant evidence and arguments at committee.

2.8.2 A committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that member to argue convincingly when the committee takes its decision that he has carefully weighed the evidence and arguments presented at committee. Although not amounting to a prejudicial interest according to the Code the proper course of action for such a member would be to make an open declaration not to vote. However, this is a severe restriction on the member's wish - duty, even - to represent the views of the electorate. Thus, councillors should, generally, avoid organising support for or opposition to a planning application and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and by the public. Where a member makes a declaration that he or she will not vote then the member should withdraw from the committee table but may remain in the room and speak on behalf of his or her ward members either for or against the application.

## **2.9 Circulation of Information**

Planning applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if councillors are given information by objectors which may be misleading, untrue or irrelevant. It can be problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the committee about their

relevance or enforceability. Councillors should forward such information to the officers for consideration prior to the committee meeting.

## **2.10 No Political Decisions on Planning Applications**

Decisions on planning applications must not be taken in political group meetings prior to committee meetings. The view of the Ombudsman was that the use of political whips to influence the outcome of a planning application was contrary to the National Code and amounted to maladministration. There is nothing in the Councillors Code of Conduct which would contradict this view. It could also give rise to legal challenge.

## **3. The Decision-Making Process**

### **3.1 Pre-application Discussions**

- 3.1.2 Discussions between a potential applicant and the Council (through its planning officers) prior to the submission of the application can be of considerable benefit to both parties and is encouraged by the Audit Commission, the Local Government Association and the National Planning Forum. It should always be made clear at the outset that the discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional. Advice should be considered and based upon the development plan and material considerations. There should be no significant difference of interpretation of planning officers. In addition, all officers taking part in such discussions should make clear whether or not they are the decision maker. A written note should be made of all potentially contentious meetings and telephone discussions. A follow up letter may be advisable, especially when documentary material has been left with the Council.
- 3.1.2 Councillors should not seek to advise applicants or agents about the likely acceptability of planning proposals. They should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. They should make it clear that they will only be in a position to take a decision after having considered the officers' reports and any representations and heard any debate in the committee meeting.
- 3.1.3 Councillors should not meet applicants or agents or third parties in connection with a current or proposed application. If councillors do agree to meet they should only do so in the presence of a planning officer. In exceptional circumstances, where it is not possible to arrange a meeting in the presence of a planning officer without causing undue delay councillors should notify the relevant

planning officer of the proposed meeting beforehand and the notification recorded in the application file. Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the committee for determination.

- 3.1.4 If councillors receive information that is relevant to a planning decision they must declare that information to the relevant planning officers and to the committee. Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting.
- 3.1.5 Paragraphs 3.1.2 to 3.1.4 above do not apply to councillors when they are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job. However, they should make it clear to their clients that they cannot and will not use their position as a councillor to influence the outcome of an application.
- 3.1.6 Any councillor may request that an application delegated to officers for determination be reported to committee for determination.

## **3.2 Reports to Committee**

Officer reports to committee should be accurate and cover, amongst other things, the substance of objections and views of consultees. Relevant points should include a clear exposition of the development plan, the site, its related history and any other material considerations. Reports should contain a clear written recommendation. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur. If the report's recommendation is contrary to the provisions of the development plan the material considerations which justify this must be clearly stated.

## **3.3 Committee Procedures and Decision**

- 3.3.1 Pre-committee briefing meetings between officers and councillors are not part of a formal committee proceeding. They must always be after the agenda has been set and officers' recommendations have been made. The purpose of the meetings is to inform the Chairman/Vice-Chairman on planning issues, the reasons for officer recommendations and to give the Chairman/Vice-Chairman an

opportunity to give notice of or to be told about any potential problems or the need for more information.

- 3.3.2 Councillors should endeavour to obtain factual information from officers prior to the meeting. This can assist in reducing delays which may be caused by deferral to obtain further information.
- 3.3.3 The committee's decision must be in accordance with the provisions of the development plan unless material considerations indicate otherwise. When councillors propose to make a decision contrary to officer recommendation the proposer must set out clearly the reasons for so doing. The Chairman will ensure that the planning officer is given an opportunity to comment before a vote is taken. Any decision contrary to the provisions of the Development Plan must be clearly justified and recorded in the Minutes.
- 3.3.4 Any information received after preparation of the committee report which is relevant to the determination of an application will be summarised on the supplementary representation sheet circulated prior to the meeting. Any information or documents received after its printing will be verbally reported to the meeting. In certain circumstances consideration of the application may need to be deferred.

#### **3.4 Deferments**

The decision on any application should not be deferred without proper justification. For example, the justification for deferring a decision might be to ensure that all the proper consultation procedures are being followed or to secure amendments without which the application would have to be refused. However, where an amendment would be significant a fresh application is appropriate. If councillors have concerns regarding technical advice received they may wish to defer to seek independent advice before deciding the application. The reason for deferring an application must be clearly set out by the proposer and recorded in the Minutes.

#### **3.5 Public Attendance at Committee Meetings**

- 3.5.1 All planning applications, other than those determined by officers exercising delegated powers, will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for exempting information in accordance with the Local Government Act 1972.
- 3.5.2 Applicants, agents and members of the public, representatives of parish councils and members of the Council who are not members of the committee may speak at the meeting. The procedures for notifying the Council and speaking are set out later in part 5 of the Constitution.

### **3.6 Site Visits**

Site visits can cause delay and additional costs and should only be used when the expected benefit is substantial. A site visit is only likely to be necessary if the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers. The reason for requesting a site visit must be clearly set out by the proposer and recorded in the Minutes. All site visits must be carried out in accordance with the Council's agreed procedures (set out later in part 5 of the Constitution). A site visit is not part of the formal committee proceedings and is not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or promote an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

## **4. Administrative Matters**

### **4.1 Member Training**

Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, either verbally at meetings or as briefing notes (for example in the Members' Bulletin). Officers will arrange training on planning issues. All members of the Council will be invited to attend. All members of the Development Control Committee should attend.

### **4.2 Monitoring of Decisions**

The Council should monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. Annually, councillors will visit a sample of implemented planning permissions to assess the quality of the decisions. The committee should formally consider the annual report and decide whether it gives rise to the need to review any policies or practices. The review may include information identifying the number of cases where officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring will be reported to councillors along with any recommendations to improve quality, consistency or performance.

### **4.3 Record Keeping**

The planning application files should be complete and accurate containing sufficient information and itemising events so that the reason for the decision can be easily understood. Only "background papers" as defined in the Local Government Act 1972 are automatically available as a right to third parties. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by councillors.

These principles apply equally to enforcement and development plan matters.

#### **4.4 Complaints**

Any complaints received about the way in which a planning application or other planning matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation as such. However, officers will explain the reasons for the Council's decision in any particular case.



# **DEVELOPMENT CONTROL COMMITTEE PROCEDURE FOR MEMBERS' SITE VISITS**

## **1. Procedure**

- 1.1 The decision to visit the site of a current planning application is taken by the committee and the reasons are recorded in the minutes of the meeting. The Divisional Head: Planning and Building Control is also authorised to organise a meeting if it is necessary in advance of a committee meeting.
- 1.2 The purpose of the site visit is to acquaint members with the site, not to hold a debate or take a decision other than in the Committee Room.
- 1.3 Site visits normally take place during the morning of the relevant meeting.
- 1.4 The applicant or his agent is notified of the visit and requested to make access available and peg out the proposed location of the building(s), if appropriate. The applicant may attend the site visit, but may not make any representations.
- 1.5 One representative of the town or parish council may attend but may not make representations.
- 1.6 The local District Council member(s) is/are notified and he should contact the Chairman if he wishes to attend but may not make representations at the site visit.
- 1.7 On site, the Chairman usually states the reasons for the visit and invites the planning office to run briefly through the proposal. Members should remain in one group for the duration of the visit.
- 1.8 Sometimes, neighbours and other interested persons are also at the site, particularly if it is next to public land. The landowner has the right under common law to exclude anyone from his land if he so chooses. Members are requested to ignore unauthorised representations.
- 1.9 A detailed note shall be taken of the site visit.

## **2. Notes**

- 2.1 Apologies for absence from members to the Chairman assist in the conduct of the meeting and timekeeping.
- 2.2 Should a member be delayed or in any doubt about the location of a site, he should contact the Chairman.

# **PROCEDURE FOR PARISH/TOWN COUNCIL REPRESENTATIVES/ MEMBERS OF THE PUBLIC ATTENDING MEETINGS OF DEVELOPMENT CONTROL COMMITTEE**

## **1. Agendas**

- 1.1 The Council will send out the agenda sheets for all committee meetings to all parish and town councils, unless a parish/town council has specifically requested not to receive any agendas.
- 1.2 The agenda sheets will be sent out a week before the meeting.
- 1.3 If the parish/town council would like a copy of a particular report, the clerk should telephone the committee officer listed at the end of the agenda.

## **2. Attendance by Parish/Town Councillors and Members of the Public**

- 2.1 Town/parish councils and applicants/agents, objectors and supporters may make representations on all applications.
- 2.2 A representative of the town or parish council may also attend site visits. (see Procedure for Members' Site Visits above).
- 2.3. The Town or parish council representative and members of the public may speak for up to three minutes. They must contact the committee officer at Uttlesford District Council (telephone 01799 510369) or e-mail: [mcox@uttlesford.gov.uk](mailto:mcox@uttlesford.gov.uk) by 2pm on the Tuesday before meeting to advise that they will be speaking.
- 2.4 At the meeting those making representations should sit in the public area until the relevant item is to be considered.
- 2.5 Those making representations should sit at the allotted desk alongside members to make their statement and having made their statement should then return to the public area (or leave the meeting).

# CODE OF GOOD PRACTICE: PROBITY IN LICENSING

## 1. Introduction

- 1.1 The Licensing Act 2003 transfers control of Licensing from magistrates to local authorities. Although the licensing function is by law delegated to the Licensing Committee all members of the Council may become involved in dealing with applications eg by representing the views of constituents or debating upon the Council's Licensing Policy. Decisions must be taken to promoting the licensing objectives and with regard to the Council's Licensing Policy. Applications can be highly contentious. It is important that the process is characterised by open and transparent decision-making.
- 1.2 The Licensing Act seeks to balance freedom of greater choice in how people spend their leisure time with safeguards to prevent crime and nuisance, to ensure public safety and to protect children from harm. Performing this role, licensing necessarily affects licensees, those living or carrying on business in the vicinity of licensed premises and the public at large. It is important, therefore, that the Council makes licensing decisions affecting those interests openly, impartially, with sound judgement and for justifiable reasons. There should be no grounds for suggesting that a decision has been biased, not impartial or not well founded in any way.

## 2. Conduct of Councillors and Officers

### 2.2 General

Councillors and officers have different, but complementary roles.

- 2.2.1 Both councillors and officers are guided by codes of conduct. The Councillors Code of Conduct provides guidance and standards for councillors. Breaches of the Code may be regarded as maladministration by the Local Government Ombudsman and may lead to a councillor being reported to the Standards Committee. Such a report may result in sanctions being imposed upon the councillor concerned. Officers will be subject to a Statutory Employees Code of Conduct. Breaches of the Code may be subject to disciplinary action by the Council. In addition to these codes, the Council's Procedure Rules set down rules which govern the conduct of Council business.
- 2.2.2 Officers from different departments within the council also have different roles with regard to licensing. Licensing officers are responsible for the administration of licences. As such they must be completely impartial and not express a view on applications. In particular reports from licensing officers will not contain any recommendations. Environmental Health and Planning are statutory consultees on applications. Officers from these departments will make representations on some applications and

will suggest conditions or even that a licence should be refused within those representations.

- 2.2.3 Councillors must not instruct officers from any department to make a particular representation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective professional advice, based on their professional judgement and not be compromised or influenced by political considerations.

## **2.2 Public Duty**

- 2.2.1 The Councillors Code of Conduct sets out the duties and responsibilities of Councillors. It states that, whilst councillors have a special duty to their ward constituents including those who did not vote for them, their overriding duty is to the whole community. The Council's Licensing Policy is adopted in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those of individuals or organisations. Councillors and officers must support the Council's Licensing Policy and make decisions in accordance with it unless there are sound reasons for not doing so.

## **2.3 Voting and Impartiality**

- 2.3.1 Members of the Licensing Committee must not declare which way they intend to vote in advance of the consideration of an application. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge, an appeal or a charge of maladministration. Members must not make up their minds until they have read the relevant committee reports, heard the evidence and considered the representations. It is important that members hear all the evidence and representations prior to reaching a decision. Consequently members should ensure that they are present in the Council Chamber/Committee Room at all times whilst an item is being discussed. In the event that a member arrives after consideration of a particular application has commenced or leaves the Council Chamber/Committee Room during the consideration of an application and then returns then that member should not vote on the application.
- 2.3.2 Councillors who are also members of town or parish councils may find that they are expected to express a view at a town or parish council meeting or vote on whether the town or parish council should object or comment on a proposal from its point of view. Unless the town or parish had operational premises in the vicinity of the site of an application the town or parish council has no standing to make representations in its own right. It may only do so on the basis that it is representing persons living or carrying on

business in the vicinity of premises in respect of which an application has been made. As the Council represents the entire town or parish it could only be seen to represent a small group if it were asked to do so. In such circumstances dual-hatted members who sit on the Licensing Committee should not declare outright support or opposition for a proposal and should abstain from voting to make clear that they are not prejudicing the decision they will have to make as a District Councillor. This will assist in ensuring that the propriety of their vote at the Council's committee meeting cannot be challenged. If a councillor does declare his outright support for or opposition to a proposal at a town or parish council meeting or elsewhere before the matter has been put before the committee where that councillor would be entitled to vote he should, if attending the committee meeting when the matter is being discussed or reported, make an open declaration to that meeting to that effect and take no part in the voting on that item.

- 2.3.3 Councillors should not organise support for or against a licensing application and should not lobby other councillors since this would also signal that they had made up their mind before hearing the evidence. Each councillor should make up his own mind on the evidence and facts presented to the committee.
- 2.3.4 The basis of the licensing system is often the balancing of conflicting interests. Opposing views are frequently strongly held by those involved. Whilst councillors should take account of various views expressed on an application they should not favour or show bias against or towards any particular person, company or group or any particular premises or locality. They should not put themselves in a position where they may appear to do so.

## **2.4 Gifts and Hospitality**

Councillors should be very cautious about accepting gifts and hospitality and must follow the advice in paragraph 13 of the Councillors Code of Conduct. They should also have regard to the Guidance on receipt of gifts and hospitality in Part 5 of the constitution. Officers should follow that Guidance.

## **2.5 Declaration and Registration of Interests**

- 2.5.1 The Councillors Code of Conduct sets out requirements and guidance for councillors, for the registration of interests on declaring personal and prejudicial interests and the consequences of having such interests. These must be followed scrupulously and councillors should review the situation regularly. It must be borne in mind that the Code advises that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct. Responsibility for this

rests individually with each councillor. When declaring an interest at committee this should be done at the beginning of the meeting and councillors should be clear and specific in identifying the item on the agenda in which they have a personal interest, if so whether the interest is prejudicial or not and in either event the nature of that interest.

- 2.5.2 Officers must declare any personal or financial interest in any licensing matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to councillors or other officers on them. An officer with a personal or financial interest in a licensing matter must withdraw from any relevant committee meeting whilst that matter is discussed. Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the licensed trade or environmental or other pressure or amenity groups.

## **2.6 Licensing Proposals Submitted by Councillors and Officers**

- 2.6.1 Unopposed proposals to the Council by serving councillors and officers and their close friends and relatives will be dealt with under delegated powers as the Council has no power to refuse a licence where no representations are made. Where representations are made from relevant bodies or interested parties the matter will be dealt with by a hearing before the Licensing Committee in the usual way. However to avoid any suspicion of impropriety in the case of member or officer applications Environmental Health and Planning officers will prepare full reports on the applications for consideration by their respective committees which will determine what (if any) representations ought to be made.
- 2.6.2 Serving councillors who act as agents for people pursuing a licensing matter with the Council or submitting licensing applications on behalf of their employers as part of their job, must declare an interest and take no part in the processing of the application or in the decision making process. Any councillor who is a licensing or similar agent will not be appointed to the committee.
- 2.6.3 Members of the committee should not act as agents or submit licensing applications for other parties or voluntary bodies. To do so would give rise to suspicion that the committee was not impartial or may be influenced in the decision-making process.

## **2.7 Council Applications**

- 2.7.1 The Council's own applications must be dealt with on exactly the same basis as applications submitted by members of the public.

Officers must make representations having regard only to the licensing objectives and the Council's Licensing Policy and must not have regard to any other benefits, financial or otherwise, which may accrue to the Council as a result of any particular decision on a licensing application. Councillors must make decisions similarly. Unless there are representations the applications will be dealt with under delegated powers. However to avoid any suspicion of impropriety in the case of a Council application Environmental Health and Planning officers will prepare full reports on the applications for consideration by their respective committees which will determine what (if any) representations ought to be made.

## **2.8 Lobbying of and by Councillors**

2.8.1 Lobbying is an attempt to influence councillors' views in order to achieve a particular decision. It can be of councillors by applicants, agents or objectors or by other councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some councillors. Licensing decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors, and members of the committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should make written representations to the relevant officer in order that their opinions can be presented with the officer's report to the committee.

2.8.2 A committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that member to argue convincingly when the committee takes its decision that he has carefully weighed the evidence and arguments presented at committee. Although not amounting to a prejudicial interest according to the Code the proper course of action for such a member would be to make an open declaration not to vote. However, this is a severe restriction on the member's wish - duty, even - to represent the views of the electorate. Thus, councillors should, generally, avoid organising support for or opposition to a licensing application and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and by the public. Where a member makes a declaration that he

or she will not vote then the member should withdraw from the committee table but may remain in the room and speak on behalf of his or her ward members either for or against the application.

## **2.9 Circulation of Information**

Licensing applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if councillors are given information by objectors which may be misleading, untrue or irrelevant. Councillors should return such information to the sender and draw attention to the fact that only officially submitted representations can be considered. As there are strict time limits for parties to make representations this should be done promptly.

## **2.10 No Political Decisions on Licensing Applications**

Decisions on licensing applications must not be taken in political group meetings prior to committee meetings. The view of the Ombudsman was that the use of political whips to influence the outcome of a planning application was contrary to the National Code and amounted to maladministration. There is nothing in the Councillors Code of Conduct which would contradict this view. By analogy the same would apply to licensing applications which are also quasi judicial in nature. The use of political whips to influence the outcome of a licensing could also give rise to an appeal or a legal challenge.

# **3. The Decision-Making Process**

## **3.1 Pre-application Discussions**

3.1.1 Discussions between a potential applicant, relevant authorities, interested parties and the Council (through its licensing officers) prior to the submission of the application can be of considerable benefit. It should always be made clear at the outset that the discussions will not bind the Council to make a particular decision and that any views expressed by officers are personal and provisional. Advice should be considered and based upon the licensing objectives and the Council's Licensing Policy. There should be no significant difference of interpretation by licensing officers. A written note should be made of all potentially contentious meetings and telephone discussions. A follow up letter may be advisable.

3.1.2 Councillors should not seek to advise applicants, agents, relevant authorities or interested parties about the likely acceptability of



licensing proposals. They should advise such parties to contact the appropriate officer for advice on both policy and procedures. They should make it clear that they will only be in a position to take a decision after having considered the officers' reports and any representations and heard any debate in the committee meeting.

- 3.1.3 Councillors should not meet applicants or agents or third parties in connection with a current or proposed licensing application. If councillors do agree to meet they should only do so in the presence of a licensing or legal officer. In exceptional circumstances, where it is not possible to arrange a meeting in the presence of an officer without causing undue delay councillors should notify the relevant officer of the proposed meeting beforehand and the notification should be recorded in the application file. Councillors should listen and may ask questions but should not comment or negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a councillor has discussed any proposal with the applicant, agent, relevant authority or interested parties must be made clear when the application is before the committee for determination.
- 3.1.4 The two paragraphs above do not apply to councillors when they are acting as agents for people pursuing a licensing matter with the Council or submitting licensing applications on behalf of their employers as part of their job. However, they should make it clear to their clients that they cannot and will not use their position as a councillor to influence the outcome of an application.

## **3.2 Reports to Committee**

Officer reports to committee should be accurate and cover, amongst other things, the substance of objections and views of consultees. Reports should be impartial and should not contain any recommendations. Oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.

## **3.3 Committee Procedures and Decision**

The committee's decision must be in accordance with the provisions of the Council's Licensing Policy unless material considerations indicate otherwise. Any decision contrary to the provisions of the Licensing Policy must be clearly justified and recorded in the Minutes.

### **3.4 Adjournments**

Hearings should not be adjourned without proper justification. In no case should a hearing be adjourned to a date after which a decision is required to be taken by legislation.

### **3.5 Public Attendance at Committee Meetings**

3.5.1 Except in exceptional circumstances where the public interest requires it licensing applications, other than those to be determined by officers exercising delegated powers, will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for exempting information in accordance with the Local Government Act 1972. However to enable members to have a free and frank debate and exchange of views the committee will normally consider it in the public interest to exclude the press and public from that part of the meeting when the members discuss the application and form their conclusions. The legal advisor will remain with the committee whilst it considers applications. However any legal advice will be given in public and the parties will be given the opportunity of commenting upon it.

3.5.2 The applicant, relevant authorities who have made representations and interested parties who have made relevant representations may speak at the meetings. They may if they wish be represented by a lawyer or some other person. With the permission of the committee these parties may also call witnesses. Permission to call a witness should not be withheld unreasonably.

### **3.6 Site Visits**

Site visits are unlikely to be necessary and may lead to accusations of bias. In the event that a member of the committee considers that a site visit is necessary he should inform the Assistant Chief Executive: Legal in writing as soon as possible setting out his or her reasons as to why a site visit is required. A site visit will only be arranged if approved by the Chairman or (in the case of the request coming from the Chairman) the Vice-Chairman. Site visits if arranged will be on the day of the meeting and should be attended by all members who will take part in the decision making process. All site visits must be carried out in the presence of a licensing and/or legal officer. A site visit is not part of the formal committee proceedings and is not a forum for debate or making licensing decisions. Site visits are not open to the public and should not be used to canvass local opinions or promote an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

## **4. Administrative Matters**

### **4.1 Member Training**

Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices, either verbally at meetings or as briefing notes (for example in the Members' Bulletin). Officers will arrange training on licensing issues. All members of the Council will be invited to attend. All members of the Licensing Committee should attend.

### **4.2 Complaints**

Any complaints received about the way in which a licensing application or other licensing matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation as such. However, officers will explain the reasons for the Council's decision in any particular case.

## GIFTS AND HOSPITALITY GUIDANCE (PPN62)

This note sets out the Council's guidance on dealing with offers of cash, gifts and hospitality from customers, contractors and those the Council regulates.

### 1. Why does the Council need guidance on gifts and hospitality?

The purpose of this guidance is to protect officers and the Council as a whole. In local government we need to be very careful to maintain public confidence in our own and the Council's actions. We are subject to public scrutiny and perception.

If you have any doubts about an offer of any gift or hospitality seek the advice of your Director or the Monitoring Officer. You should always record the offer of cash, gifts or hospitality in the Register in the Legal Section at the Saffron Walden offices.

*(The Officers' Register of Gifts or Hospitality is with the Monitoring Officer at Saffron Walden)*

### 2. What if I am offered a fee or reward?

It is a criminal offence for any local government officer to accept any fee or reward other than his proper remuneration. Any "fee or reward" can include money, gifts, presents, bribes or vouchers.

Therefore, **never** accept cash or vouchers. Even if you have declined the offer **always** record in the Gifts Register the fact that it has been offered.

### 3. Can I accept gifts?

As a general principle, you should not accept gifts. You should politely and tactfully refuse offers of gifts or return them to the giver as soon as possible. If the refusal or return of a gift would cause offence then details of the gift should be recorded in the Gifts Register and the gifts forwarded to the Personal Assistant to the Chief Executive. The gifts will be raffled and the money donated to charity.

As a general rule, you should **not** accept gifts from:

- a) contractors or potential contractors i.e. persons or businesses who supply or want to supply goods or services to the Council;
- b) those the Council regulates i.e. persons or businesses which it licenses or gives permissions or consents.

Gifts of the following type **may** be accepted:

- a) modest gifts of a promotional nature, e.g. calendars, pens, articles for use in the office;

- b) a modest gift on the conclusion of a courtesy visit to a business or which are presented at civic or ceremonial occasions;
- c) a modest gift presented to everyone at a conference or seminar.

These exceptions apply only to **modest** gifts. Expensive gifts should not be accepted.

Gifts which are intended for the Council as a corporate body or for a particular service area may be accepted, but not for personal use. Such gifts must be recorded in the Register and forwarded to the Personal Assistant to the Chief Executive.

#### 4. Can I accept hospitality?

As a general principle hospitality should not be accepted. Hospitality is more likely to be acceptable when it is offered to a group rather than to just one individual. In any case, you should consider:

- a) the person, business or organisation offering the hospitality;
- b) the scale and nature of the hospitality;
- c) the timing of the hospitality in relation to decisions to be made by the Council.

Some examples where it **may** be appropriate to accept hospitality are:

- a) Working lunches/dinner if :
  - i you and others are working on a project together;
  - ii you and others are partners in community issues eg Health Authority, Police etc.;
  - iii it is necessary for you to be able to carry out your job effectively.
- b) Customary lunches/dinners at conferences or seminars where there are numerous guests;
- c) Civic or ceremonial occasions when representing the Council or accompanying the Chairman or the Council's representative.

Some examples where it will **not** be appropriate to accept hospitality are:

- a) Expensive meals, dances, other entertainments, especially where these events have nothing to do with your job;
- b) Paid or concessionary holidays, travel or accommodation;

- c) Other concessionary rates which are not openly and as a matter of practice available equally to other organisations;
- d) Frequent hospitality from one source.

#### **5. How do I record offers of cash, gifts and hospitality?**

**Always** record the offer of cash and the offer or receipt of any gift or hospitality in the Gifts Register. Forward any gifts which you felt obliged to accept to the Personal Assistant to the Chief Executive. These gifts will be raffled and the money donated to charity.

**If you have any questions on any part of this guidance do ask a Director or the Monitoring Officer.**

# **STATUTORY OFFICERS – PROTOCOL**

## **1. Statutory Officers**

### **1.1 Head of Paid Service (and Chief Executive)**

The Head of Paid Service is responsible for the corporate and overall strategic management of the authority as a whole. He/she must report to and provide information for the policy committees, the Full Council, the overview and scrutiny committee and other committees. He/she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the Full Council's decisions.

### **1.2 Monitoring Officer**

1.2.1 Pursuant to Section 5 of the Local Government and Housing Act 1989 the Council is under a duty to designate one of its officers (to be known as the Monitoring Officer) as the officer responsible for performing the duties imposed by that Section.

1.2.2 The Monitoring Officer is under a duty to prepare a report to the Council if at any time it appears to him/her that any proposal, decision or omission by the Council or one of its committees, or officers, or by a joint committee on which the Council is represented, constitutes or may give rise to a contravention of any enactment, rule of law or statutory Code of Practice, or maladministration under Part III of the Local Government Act 1974. The Monitoring Officer must consult, so far as practicable, with the Head of Paid Service and the Chief Finance Officer and arrange for a copy of the report to be sent to each member. These duties cannot be delegated. They must be performed personally or, when he/she is absent or ill, personally by a nominated deputy.

1.2.2 The officer designated as Monitoring Officer may not be the Head of Paid Service nor the Chief Finance Officer.

### **1.3 Chief Finance Officer**

1.3.1 Pursuant to Sections 113 to 116 of the Local Government Finance Act 1988, the officer referred to in the Local Government Act 1972 as the Chief Finance Officer must make a report if it appears to him/her that the authority has made or is about to make a decision to incur unlawful expenditure, or has taken or is about to take unlawful action likely to cause a loss or deficiency, or is about to enter an unlawful item of account, or will incur expenditure in excess of its resources. The Council is required to consider the report within

21 days. During the time between the report being issued and its consideration the Council is prohibited from making any payments other than those where there are contractual commitments.

- 1.3.2. The Chief Finance Officer has further duties arising from Section 151 of the Local Government Act 1972, The Local Government and Housing Act 1989 and The Accounts and Audit Regulations 1996.
- 1.3.3 He/she is responsible for the proper administration of the authority's financial affairs; setting and monitoring compliance with financial management standards; advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; providing financial information and preparing the revenue budget and capital programme.

## **2. Post Holders**

- 2.1 Reference in this note to the Monitoring Officer also includes the Deputy Monitoring Officer and, with the exception of paragraphs 1.2.1, 1.2.2 and 3.1, the Chief Finance Officer and the Deputy Chief Finance Officer.
- 2.2 The Council is under a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow his/her duties to be performed.

## **3. Protocol**

- 3.1 The Council recognises that the role of the Monitoring Officer is a positive and preventative one, relating to the avoidance of illegality and maladministration and to the observance of Codes of Practice.
- 3.2 The Council shall publish the existence and nature of the role, by including reference to it in Members' and Staff Handbooks and in training or induction sessions for members and officers.
- 3.3 Each member and officer shall use his/her best endeavours to ensure the Council does not act unlawfully or against any Code of Practice or so as to give rise to maladministration or injustice.
- 3.4 Each member and officer shall co-operate in every way possible so as to reduce the risk of a need for the Monitoring Officer to issue a formal report.
- 3.5 The Council recognises that it will be required to provide the monitoring officer with such resources as he/she requires to carry out his/her responsibilities.
- 3.6 The Council acknowledges the Monitoring Officer's entitlement to see all reports, agendas, minutes, documents and any other information he/she requires in furtherance of his/her duties.



- 3.7 The Council recognises that there is no general need for the Monitoring Officer to report on:
- (i) Minor procedural irregularities
  - (ii) Matters which have already been reported to members by another officer and where members are fully aware of the illegality or maladministration involved.
  - (iii) Matters which are being resolved by other means eg most matters which have been referred to the Council's insurers.
  - (iv) Litigation in which the Council is involved, provided the Council's case is arguable.
  - (v) Cases where the Council has been convicted of some offence and a full report on the circumstances has already been submitted to members.
  - (vi) Most matters dealt with through the Council's complaints procedure unless these raise issues of illegality or maladministration which is inherently present in the Council's systems and therefore will recur unless corrected.
  - (vii) Most cases in which the Ombudsman has made a finding of maladministration as this would duplicate a report which has, in any event, to be considered by members.

# **PROCEDURES FOR DEALING WITH COMPLAINTS OF MISCONDUCT AGAINST MEMBERS OF THE COUNCIL**

## **1. Receipt of complaints**

- 1.1 Any complaint of misconduct against a member of the Council should be made in writing to the Standards Committee of the Council c/o The Monitoring Officer, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER or electronically to mperry@uttlesford.gov.uk. Advice regarding a potential complaint can be obtained from the Monitoring Officer.
- 1.2 There is no restriction on who may make a complaint. Complaints may be made by councillors, officers of the Council or by members of the public.
- 1.3 For the purpose of these procedures, "misconduct" means any conduct by a member which is in breach of
  - the Councillor's Code;
  - the Member/Officer Protocol;
  - the Code of Practice: Probity in Planning; or
  - the Code of Practice: Probity in Licensing

any revisions to any such codes or protocols or any other protocols from time to time adopted by the Council.

## **2. Preliminary consideration**

- 2.1 A sub-committee of the Standards Committee will consider any complaint received with a view to determining whether there may be a breach of the Councillor's Code which warrants a full investigation. Any such meeting for this purpose is likely to be exempt from the Access to Information Rules.
- 2.2 If the sub-committee are of the view that it does not warrant an investigation it will notify the complainant accordingly and inform the complainant of his or her right to request a review of that decision by a differently constituted sub-committee of the Standards Committee. There is no right to challenge a second decision not to refer a complaint for investigation other than by way of an application to the High Court for judicial review.
- 2.3 If the sub-committee are of the view that the complaint does merit investigation it will either refer the case to the Council's Monitoring Officer (who will carry out an investigation or arrange for an investigation to be carried out on his or her behalf) or if it considers that its powers of sanction would not be sufficient if a breach were proved or there are other reasons why a local investigation would not be appropriate it may refer the allegation to the Standards Board for England.

- 2.4 The purpose of the preliminary consideration is to exclude complaints:
- (a) which are frivolous or unsupported by any reliable information
  - (b) which do not justify the use of the resources which would be required to carry out an investigation, or
  - (c) which fall outside the scope of the Standards Committee's remit

### **3. Full Investigation**

- 3.1 In the event that a complaint is referred to the Monitoring Officer for investigation the investigator may:
- (a) Find that there is no evidence of a failure to comply with the Councillor's Code in which case a report will be prepared for consideration by the Standards Committee. The committee may either accept the Monitoring Officer's findings or may require a hearing before the committee or
  - (b) Find that there has been a breach of the Code in which case a report will be prepared by the investigator and the Standards Committee must hold a hearing.
  - (c) Prior to holding a hearing the Standards Committee or a sub-committee thereof will meet to consider what steps need to be taken to enable the hearing to proceed fairly and expeditiously. If at that meeting the committee or sub-committee are of the view that of the allegations are substantiated then the committee's powers of sanction would be insufficient it may refer the matter to the First Tier Tribunal – Local Government Standards in England. The Tribunal may accept the reference and hold a hearing to determine whether there has been a breach and if so what the appropriate sanction should be or may refuse to accept the reference and refer the case back to the Standards Committee to hold a hearing.
- 3.2 The investigator will seek to interview and/or obtain information from any persons (within or without the Council) who can assist in establishing the facts of the matter. For this purpose, the investigators will have a right of access to any Council officer and member and any papers or other information held by the Council.
- 3.3 In the usual course of events the member who is the subject of the complaint will be informed once the complaint has been passed to the Monitoring Officer for investigation.
- 3.4 Where a complaint is referred to the Monitoring Officer, the conduct of the investigation is in the investigator's discretion. However, unless the

circumstances of the case require otherwise, the following procedure will be adopted:

- 3.5 The member against whom the complaint has been made will be -
- (a) provided with a full copy of the complaint;
  - (b) invited for interview and will be afforded the opportunity to submit any material which the member considers is relevant to the investigation and to identify any persons whom the member considers should be interviewed as part of the investigation;
  - (c) sent a copy of the report which the investigator proposes to submit to the Standards Committee at the conclusion of the investigation. The report will be sent to the member in sufficient time (at least ten working days) in advance of the committee meeting so that the member may submit any final comments for inclusion in the report; and
  - (d) entitled to attend the meeting of the Standards Committee at which the report is considered (see below).

#### **4. Standards Committee meeting (to consider the complaint)**

- 4.1 The committee should conduct its consideration of the complaint on an inquisitorial, rather than adversarial, basis.
- 4.2 The report of the investigator should normally provide the committee with all the available information which is relevant to consideration of the complaint. It should not normally be necessary therefore to call persons to provide information at the meeting. There may however be occasions when, in order to provide the committee with a full understanding of the matter and/or in the interests of fairness to the member against whom the complaint has been made, it will be necessary or appropriate to invite persons to provide information or give evidence at the meeting.
- 4.3 The main stages of the committee's consideration will be as below -
- (a) the committee will need to satisfy itself, by consideration of the report of the investigator and (where relevant) by questioning any persons invited to attend the meeting, that the complaint has been properly investigated and that the committee has been provided with sufficient information to allow it to make a properly informed judgement.
  - (b) the committee will afford an opportunity to the member against whom the complaint has been made to address the committee on the subject matter of the complaint and, with the committee's consent, to call any witnesses to speak on his/her behalf.

- (c) the committee will then proceed to deliberate and form a judgement on the complaint of breach of the Councillor's Code and where a breach is found to have occurred, decide upon an appropriate sanction.
- 4.4 The member against whom the complaint has been made and any Council officer called to attend the committee meeting will be entitled to be accompanied by a representative of their choice.
  - 4.5 The member against whom the complaint has been made will be entitled to be present at the meeting throughout the committee's consideration of the complaint until the point at which the committee is in a position to deliberate on its judgement. The committee will then deliberate in private, subject only to the attendance of the Monitoring Officer (or his/her representative) and the Committee Administrative Officer.
  - 4.6 Any procedural questions or issues which may arise will be determined by the committee, but within the guiding principle of ensuring fairness to the member against whom the complaint has been made.

## **5. Sanctions**

- 5.1 The sanctions available to the Standards Committee include -
  - (a) taking no action
  - (b) censuring the member
  - (a) suspending the member wholly or partially (eg from one or more committees) for a specified period not exceeding six months
  - (b) requiring the member to apologise in a form approved by the Committee
  - (c) requiring the member to undergo mediation or training
  - (d) suspending the member wholly or partially (eg from one or more committees) for a specified period not exceeding six months or until the member apologises in a form approved by the committee or undergoes mediation or training as required by the committee whichever is soonest

## **6. Announcement of the Committee's decision**

The committee will announce its decision, together with reasons, in public session and the Monitoring Officer shall send written confirmation of the decision to the member concerned and to the complainant within three working days. The Monitoring Officer will also report the outcome of the investigation to the Standards Board.

## **7. Hearings before the First Tier Tribunal – Local Government Standards in England**

- 7.1 The member concerned may appeal against a finding by the Standards Committee that there has been a breach of the Councillor's Code and/or against any sanction imposed to the First Tier Tribunal – Local Government Standards in England with the permission of the Tribunal. Written details as to how this right can be exercised will be given to the Member concerned unless the finding of the Standards Committee is that there has been no breach of the Councillor's Code.
- 7.2 In the event that the matter is referred to the First Tier Tribunal – Local Government Standards in England, the Tribunal will designate a Tribunal to hold a hearing to consider the complaint. The member concerned will be invited to attend the hearing and will have the opportunity to make written submissions prior to the hearing and/or written and/or oral submissions at the hearing. The member concerned will be entitled to be presented by a barrister, solicitor or other person of their choosing.
- 7.3 The Tribunal may find that there has been no breach of the Councillor's Code. If such a breach is found, the Tribunal may take any of the steps open to the Standards Committee (save that in the case of suspension the Tribunal may suspend for up to one year) or may disqualify the member from being a member of the Council and any other relevant authority for a specified period not exceeding five years.
- 7.4 .A member who is dissatisfied with a decision of the Tribunal may appeal against its findings to the High Court on a point of law only with the permission of the High Court.

## **CODE OF CORPORATE GOVERNANCE**

Uttlesford District Council's approach to ensuring effective Corporate Governance comprises seven key elements:

1. A corporate commitment to effective corporate governance
2. Effective planning and performance management processes
3. A commitment to openness and accessibility
4. Effective processes to ensure that the Council is accountable to its communities
5. Adequate arrangements for independent review
6. High standards of ethics and probity
7. Sound risk management practices

This Code offers particulars of how these elements are realised.

### **1. Corporate Commitment**

- 1.1 The Council expressly and explicitly commits itself to the adoption of policies, practices and procedures, which ensure openness in all its dealings, subject only to the need to preserve confidentiality where it is proper and appropriate to do so.
- 1.2 The Council commits itself to articulating a Vision for its communities, consistent with the district's Community Plan and to working towards the delivery of that Vision through:
  - The Council's own strategies and programmes
  - Partnerships with other agencies and organisations
  - Articulating and promoting that Vision to other agencies and organisations
  - Assisting others to deliver that Vision

### **2. Clarity of Role and Purpose**

- 2.1 The Council believes that a necessary prerequisite of effective governance is clarity in the roles of the various elements of the Council.

**Full Council** – the core roles being:

- to agree the Council's Budget and Policy Framework;
- various electoral matters (some of which are delegated to the Elections Committee) and

- to debate major issues affecting the district.

**The Executive** – discharges key roles in specified service areas of providing strategic leadership to the authority, and of ensuring that the authority successfully discharges its responsibilities.

**Two Overview and Scrutiny Committees** – These two overview and scrutiny committees scrutinise the policy committees’ decisions, to monitor performance, and to develop policy.

**Two Regulatory Committees** – The Development Control Committee and Licensing Committee discharge the Council’s key (non-policy) regulatory functions. The Development Control Committee considers development control matters, the Licensing Committee deals with individual applications regarding licenses.

**Two Area Forums** meet to discuss issues of local interest.

A Schedule of Meetings is agreed each year, usually in February for the coming civic year, and is published on the Council’s website, [www.uttlesford.gov.uk](http://www.uttlesford.gov.uk). Additional meetings (particularly for the Licensing Committee) are held as required to deal with applications.

The Council’s Constitution clearly sets out the respective roles of full Council, the executive, the overview and scrutiny committees, other committees and officers.

## 2.2 The Constitution also:

- 2.2.1 sets out clear processes and procedures for policy development; decision-making; reporting of decisions; scrutiny and call-in of decisions
- 2.2.2 contains procedure rules governing the conduct of the Council’s business
- 2.2.3 refers to financial regulations and procedure rules governing management of the Council’s finances and contracting for goods and services
- 2.2.4 sets out the roles and powers of the Head of Paid Service, Chief Finance Officer and Monitoring Officer, and their statutory duties with regard to the operation and management, financial management and ethical behaviour of the Council and its officers
- 2.2.5 includes a Protocol which sets out expectations of the relationship between elected members and officers, and
- 2.2.6 contains a Scheme setting out allowances and expenses payable to elected members in the discharge of their functions.



- 2.3 The Constitution sets out detailed schemes of delegation which clearly identify those matters which the Council or the Leader have delegated to committees of the Council or the executive, to executive members and to officers.
- 2.4 Complete and up-to-date job descriptions and person specifications are in place for all the Council's staff, setting out, inter alia, the purpose and key responsibilities of each employee. Also job descriptions have been agreed for the roles of councillor, Leader of the Council and committee Chairmen.
- 2.5 The staff remuneration is in accordance with a pay structure approved by the Council. The placing of individual posts on that structure is governed by job evaluation.
- 2.6 An Independent Remuneration Panel reviews members' allowances annually and makes recommendations on the appropriate level of allowances and on travelling and subsistence rates.
- 2.7 The Council is developing a corporate training programme. Roles of senior staff have been defined and a management development programme is being progressed. A series of training programmes for team leaders and supervisors has been held.
- 2.8 Induction training is also provided to all new recruits to the Council's employment.
- 2.9 A budget for elected member training has been agreed. There is an annual programme of member workshops on topical issues.

### **3. Planning and Performance Management Processes**

#### **3.1 Vision**

The Council has set out its Vision for the District. A Local Strategic Partnership, Uttlesford Futures, has been established comprising representatives from the public sector, business community and voluntary sector to develop a Community Strategy for the district. This Strategy is not restricted to the services the Council provides or is responsible for, but is intended to assist, encourage and influence all relevant agencies to take appropriate actions to realise that vision.

#### **3.2 Planning**

- 3.2.1 The Council annually adopts a Corporate Plan setting out its strategy relating to its own activities and functions, and reviews the continuing relevance of its strategies each year.

- 3.2.2 The Council conducts an annual review of the major pressures impinging upon and issues affecting the district and the Council's services.
- 3.2.3 Divisional Plans (which form the core of the annual Corporate Plan) are prepared each year for each of its areas of service, which reflect the priorities identified in the Corporate Plan and which relate to the Council's annual Revenue Budget and Capital Programme.
- 3.2.4 The Corporate Plan, Revenue Budget and Capital Programme are publicly available, and are published on the Council's website.
- 3.2.5 The annual divisional plans and budgets should inform every employee's appraisal and performance development and review which demonstrate each employee's contribution to the achievement of the Council's vision.
- 3.2.6 The performance development and reviews also identify other development needs and contribute towards the formulation of the Council's corporate training programme.

### **3.3 Performance Management**

- 3.3.1 Divisional Plans contain performance information and targets. These comprise both nationally stipulated and locally developed performance indicators.
- 3.3.2 Line managers are expected to take responsibility for the regular monitoring of their services and to report any particular concerns.
- 3.3.3 The Council's Strategic Management Board monitors performance on a monthly basis.
- 3.3.4 The Performance and Audit Committee monitors performance against specified indicators.

### **3.4 Partnership**

- 3.4.1 The Council's Procurement Strategy helps the Council when reviewing services to determine whether it is appropriate for total or partial outsourcing of a given service to be explored. The Council has a PFI contract for the management of three leisure centres within the district.
- 3.4.2 The Council also has a commitment to working in partnership with other local authorities and relevant agencies where such partnership working will improve services and/or deliver greater financial efficiency. To this end, the Council has entered into agreements with other councils for the provision respectively of

payroll facilities and the management and enforcement of off and on street car parking and is actively exploring other partnership options.

#### **4. Openness and Accessibility**

##### **4.1 Agendas, Reports and Minutes**

- 4.1.1 The Council complies with the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985 and regulations made thereunder and the Local Authorities Executive Arrangements) (Access to Information) Regulations 2000 (as amended).
- 4.1.2 As a minimum, this provides inter alia that all meetings of the Council, Council Committees and of the executive at which key decisions are taken will be held in public. Subject only to the right of the executive to decide that meetings of the executive which are not considering key decisions shall be held in private, except where exempt or confidential information (as defined in the Act) is being considered, all meetings at which decisions are taken will be held in public. Moreover, the Council will construe the definition of “exempt or confidential information” tightly, so that the public will only be excluded from meetings from the minimum number of items.
- 4.1.3 Agendas for all formal Council member-level bodies will be posted on the Council’s website [www.uttlesford.gov.uk](http://www.uttlesford.gov.uk)
- 4.1.4 Where decisions are based on officer reports, these reports (except where they include exempt or confidential information) will be posted on the Council’s website so as to be as widely available for inspection as possible.
- 4.1.5 The Council also complies with the Freedom of Information Act 2000. Its publication scheme was approved by the Information Commissioner in January 2009 and it has a detailed Freedom of Information Policy which can be found on the Council’s website.

##### **4.2 External Communications**

- 4.2.1 No-one, however, can get an accurate picture of what the Council is doing merely from access to agendas, reports and minutes.
- 4.2.2 Accordingly, the District Council publishes a Council magazine Uttlesford Life on a regular basis.

### **4.3 Consultation**

- 4.3.1 The Council will comply with the following principles when consulting the public on proposals.
- 4.3.2 Consultation by the Council with its citizens will be:
- (i) Representative – so that the views of those consulted really do represent those of the wider community
  - (ii) Reliable – so that findings from consultation can be relied on within certain limits of confidence
  - (iii) Sensitive to trends – so that the Council will know whether or not it is improving over time and responding to the community's aspirations.
  - (iv) Actionable – so that the Council has a chance to make the changes or improvements that residents want to see.
- 4.3.3 The aim and purpose of the Uttlesford Futures Partnership is to encourage extensive participation by key stakeholders in shaping a vision for the district and in influencing the future strategy of the District Council and its partner organisations.
- 4.3.4 In addition, the overview and scrutiny committees have the power to seek the views of, take evidence from and co-opt members of the public/stakeholders when carrying out investigations, policy reviews etc.
- 4.3.5 The Council has established a citizens' panel within the district to enable the views of residents to be gathered on a range of issues.

### **4.4 Liaison**

- 4.4.1 The Council liaises with the various Chambers of Commerce and major employers to ascertain the views of the business community in the district on the Council's activities, and annual service and financial proposals. Additional meetings are held from time-to-time with representative bodies or individual businesses in key employment sectors, to discuss issues of concern and priorities.
- 4.4.2 The Council also undertakes regular liaison with representatives of service users. These include welfare agencies in connection with both housing and housing benefit services. The Council facilitates meetings of the Uttlesford Benefits Forum when representatives of voluntary organisations meet the Council to discuss mutual issues.
- 4.4.3 Periodic meetings are held of Uttlesford Local Agenda 21 to ascertain views on sustainability.

- 4.4.4 The Council co-ordinates service focused forums for transport, arts, sport and tourism. There is regular liaison with the voluntary sector.

#### **4.5 Public Accessibility/Participation**

- 4.5.1 Members of the public are encouraged to contact their local councillor on any matter concerning the District Council's activities or any other matter affecting the district.
- 4.5.2 After giving advance notice members of the public are permitted to speak at the start of any formal meeting of the Council, the executive or their committees. They are also allowed to make representations on planning applications at meetings of the Development Control Committee.
- 4.5.3 The Council's website also has a facility where citizens can make their views known.

### **5. Accountability**

#### **5.1 Access to Information**

The cornerstone of the Council's accountability is its commitment to ensuring that citizens are aware of its activities, and have access to information about the decisions which the Council is taking – see under "Openness and Accessibility" above.

#### **5.2 The Council's Performance**

- 5.2.1 The Council is committed to ensuring that its citizens are aware of its performance. Performance is monitored by the Performance and Audit Committee. Reports to the committee and minutes of its meetings are published on the Council's website.
- 5.2.2 The Council publishes a comprehensive Statement of Accounts every year. This is prepared in accordance with accounting rules and practices agreed by the Chartered Institute of Public Finance and Accountancy and endorsed by the Council's external auditors. The Statement is posted on the Council's website.

#### **5.3 Complaints**

Citizens have the right to complain to:

- 5.3.1 the Council itself under its complaints procedure (a copy of which can be obtained from the Council Offices during normal office hours).

- 5.3.2 the Ombudsman if not satisfied with the outcome of using the Council's own complaints scheme;
- 5.3.3 the Information Commissioner (on data protection, freedom of information or environmental information issues) if not satisfied with the outcome of using the Council's own complaints scheme;
- 5.3.4 the Council's Standards Committee about a breach of the Councillor's Code of Conduct.

## **6. Independent Review**

### **6.1 Internal Audit**

- 6.1.1 The Council's internal audit team is charged with independently monitoring the Council's activities; to review and report on compliance with policies, plans and procedures; to ensure good standards of financial management; the soundness of accounting and other internal controls; the safeguarding of the Council's assets; and the prevention and detection of fraud.
- 6.1.2 The audit team is responsible to The Performance and Audit Committee. The Internal Audit Manager reports to the Assistant Chief Executive: Legal. Copies of audit reports are issued to relevant Officers and Members for action and information.
- 6.1.3 External audit (see below) reports annually on the adequacy of internal audit arrangements.

### **6.2 External Audit**

- 6.2.1 The Council's activities are also monitored by external auditors. Their responsibilities are set out in the Statement of Responsibilities of Auditors and of Audited Bodies published by the Audit Commission ([www.audit-commission.gov.uk](http://www.audit-commission.gov.uk))
- 6.2.2 The External Auditors monitor the effectiveness of the Council's service and financial planning and performance management processes and practices.
- 6.2.3 They annually review the Council's financial standing, legality of financial transactions, systems of internal financial control, standards of financial conduct and the prevention and detection of fraud and corruption. They also audit and give an opinion on the Council's financial statements, and certify grant claims to Government.
- 6.2.4 They also issue periodic reports on matters which they have considered, and publish an annual Audit Letter which is issued to all members of the Council and discussed at a meeting of the

Performance and Audit Committee and is posted on the Council's website.

- 6.2.5 All external audit findings are drawn to the attention of and recommendations agreed with, relevant staff, and, where appropriate, members. The implementation of agreed recommendations is monitored during the following audit.

### **6.3 Inspection**

- 6.3.1 The Department of Work and Pensions carry out periodic reviews of the accuracy of the Council's Housing and Council Tax Benefit processing, and the effectiveness of measures in place to prevent and detect benefit fraud. Major inspection reports will be publicly available.
- 6.3.2 The Food Standards Agency undertakes inspections of local authority food enforcement services.
- 6.3.3 The Food and Veterinary Office of the European Commission carries out regular inspections on the control of imported animal products at Stansted Airport. It has a programme of inspections on the control of imported food of non-animal origin.

## **7. ETHICS AND PROBITY**

- 7.1 The Council's Standards Committee, which comprises members of the Council, independent persons, and representatives of parish councils in the district, has overall responsibility for promoting high standards of ethics and probity in the Council.
- 7.2 It does so by promoting awareness and understanding of codes of conduct for both district and parish/town councillors.
- 7.3 The Council also has in place a Fraud and Corruption Policy aimed at ensuring adherence to the highest standards of ethics and probity, and a Whistleblowing Policy which encourages officers to report any action which they consider to be improper or unethical.
- 7.4 In order to ensure that members and officers understand and respect each others' roles, the Council has also introduced a Member-Officer Protocol which forms part of the Council's Constitution.
- 7.5 The Assistant Chief Executive: Legal holds the role of "Monitoring Officer". He has the task of advising the Council should it propose to do anything which is illegal, improper, unethical, contrary to any code of practice or would amount to maladministration.

## 8. RISK MANAGEMENT

8.1 Uttlesford District Council adopts a risk-averse approach to the management of the public money within its control. It also takes all reasonable steps to minimise the risk of loss, damage or injury to its staff and to members of the public visiting its buildings and other property.

8.2 The Council recognises that it needs to maintain a high level of public confidence in its decisions and its role as a provider of services.

To facilitate this it:

- Will maintain high standards of public accountability and openness;
- Comply with legal requirements;
- Safeguard public and staff health and safety, so far as is reasonably practicable; and
- Maintain systems to identify acts or omissions which would increase the Council's risks

8.3 However, a totally risk-averse approach is not appropriate if the authority wishes to deliver efficient and effective services to its public and to exercise proper community leadership of the district. Accordingly, where the adoption of a risk-averse approach is not relevant, the Council will include in its decision-making processes an assessment of the nature, probability and impact of potential risks, and weigh them against the potential benefits of alternative courses of action.

8.4 It also seeks to manage such risks. Such management may include:

- controlling them through seeking specialist advice or adopting rigorous controls;
- transferring risk (e.g. by insurance);
- sharing the risk (e.g. by entering into partnership arrangements); and
- manage or mitigate the risk through internal controls.

8.5 Internal Controls and Procedures

- The Council maintains rigorous and effective systems to monitor financial transactions. Clear and effective Financial Regulations and Procedure Rules are referred to in the Council's Constitution and are available on the Council's website.
- It takes a medium-term view of its financial planning to ensure that resources are likely to be available to meet future demands.



- It ensures that policies and procedures are in place so as to secure, so far as possible, a safe and healthy working environment for its staff.
- It maintains a culture of compliance with legal requirements, and the Legal Services Section has the express role of ensuring that the Council is aware of its legal obligations.
- It endeavours to be open, accessible and accountable in all its dealings and it maintains and publicises procedures so that individuals feel secure in reporting perceived wrongdoing.
- It maintains codes of ethical conduct and offers guidance to members and staff on standards of good behaviour.
- It ensures, so far as is practicable, that its policies and decisions are publicised.
- It adopts standards for the maintenance of its buildings, property, plant and equipment and vehicles which ensure that they are as safe as is reasonably practicable.
- It uses the service plan and appraisal development procedures to attempt to ensure that adequate staff resources are available to deliver the Council's programme and that those staff are adequately supported and trained.
- It maintains effective emergency planning arrangements, and exercises and trains its staff in responding to potential civil emergencies, so as to ensure that the authority has the capacity to assist its communities to cope with and recover from disaster.

## LOCAL AUTHORITY MEMBERS – RESTRICTIONS ON VOTING

1. In addition to the steps that may be taken directly against a local authority member who is in arrears with amounts of Council Tax, S106 of the Local Government Finance Act 1992 imposes a duty on a councillor whose payments are two months overdue to make a declaration to that effect and to refrain from voting, at any meeting where certain matters are being dealt with.
2. Section 106 applies at any time to a member of a local authority, or a member of a committee of a local authority or of a joint committee of two or more local authorities if, at that time, an amount of council tax has become payable by him and has remained unpaid for at least two months. If such a member is present at a meeting of the authority or committee and specified matters concerning the calculation of budget requirements, council tax amounts or precepts are to be considered he must, at the meeting and as soon as practicable after its commencement, disclose the fact that the section applies to him and that he cannot vote in the matter.
3. In the event that a member fails to comply with his duty under S106, he will, for each offence be liable on summary conviction to a fine not exceeding level 3 in the standard scale, unless he proves that he did not know that the section applied to him or that the matter in question was the subject of consideration at the meeting. Prosecution for an offence under this provision may only be instituted by or on behalf of the Director of Public Prosecutions.
4. If members require any clarification on the above please contact Stephen Joyce, Assistant Chief Executive: Finance, on 01799 510628 or email [sjoyce@uttlesford.gov.uk](mailto:sjoyce@uttlesford.gov.uk)