

Purley on Thames Parish Council

Councillor's Code of Conduct (October 2019)

Introduction

The initial version of this Code of Conduct was adopted by the Council at its meeting on **17th October 2019 P19/106-1** pursuant to the duty to promote and maintain high standards of conduct by Councillors and others set out in the Localism Act 2011.

This document is divided into the following sections:

SECTION 1 contains definitions used in the Code of Appendices

SECTION 2 contains the Ten Principles of Public Life ('the Nolan Principles').

SECTION 3 gives guidance for declaring and registering interests.

SECTION 3a sets out the prescribed definitions relating to Disclosable Pecuniary Interests.

SECTION 3b contains a flow chart relating to the declaration of interests.

SECTION 4 sets out the rules relating to Dispensations.

SECTION 5 Gifts and Hospitality Protocol

SECTION 6 Flowchart of the process for investigating alleged breaches of this Code.

SECTION 7 Propocol for Council representation on Outside Bodies

SECTION 8 Social Media Protocol for Councillors

1. Application of this Code

- 1.1 This Code applies to Councillors (eg whenever they are acting, claiming to act, or giving the impression they are acting in their Capacity as a Councillor). Where a councillor is not acting with Capacity no breach of this Code is likely to occur.
- 1.2 It is a Councillor's personal responsibility to comply with this Code.
- 1.3 This Code is consistent with and based upon the Ten Principles of Public Life (also known as the Nolan Principles).
- 1.4 Should a complaint be made against a Councillor it will be dealt with in accordance with the Act and its supporting regulations.
- 1.5 If a Councillor needs any guidance on any matter relating to this Code, they should seek it from the Clerk or the Monitoring Officer (but it is repeated that it is entirely their personal responsibility to comply with the provisions of this Code).

2. General Obligations of Councillors

2.1 Councillors must:

(a) Treat councillors, co-opted members, officers, members of the public and service providers with courtesy and respect.

(b) When involved in the decision making of the Council: (i) ensure that they are aware of and comply with the requirements of the Bribery Act 2010; (ii) have regard to any advice provided to them by the Council's Chief Financial Officer or Monitoring Officer pursuant to their statutory duties; (iii) give reasons for decisions made in accordance with any legal requirements and/or reasonable requirements of the Council.

(c) When using or authorising the use by others of the resources of the Council, use the resources properly and in accordance with the Council's relevant policies.

(d) Have regard to the applicable Local Authority Code of Publicity under the Local Government Act 1986.

2.2 Councillors must not:

(a) Engage in bullying or intimidating behaviour or behaviour which could be regarded as bullying or intimidation.

(b) Do anything which may cause the Council to breach any of the equality enactments as defined in section 33, Equality Act 2006.

(c) Disclose information given to them in confidence or information acquired by them which they believe or are aware is of a confidential nature except where: (i) they have the consent of a person authorised to give it; (ii) they are required to do so by law; (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice; (iv) the disclosure is reasonable and in the public interest; (v) the disclosure is made in good faith and in compliance with the reasonable requirements of the Council or its professional advisers.

(d) Prevent another person from accessing information if that person is entitled to do so by law.

(e) Improperly use knowledge gained solely as a result of their role as a Councillor for the advancement of their Disclosable Pecuniary Interests.

(f) Conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute.

3. **Interests, Dispensations, Sensitive Interests and Bias**

3.1 Councillors must declare any interests (Disclosable Pecuniary Interests, Other Registrable Interests and Personal Interests) that relate to their public duties and must take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming with the procedures. Further guidance is contained within SECTION 3.

3.2 Councillors who have a Disclosable Pecuniary Interest may apply for a Dispensation to enable them to speak and/or vote at a Meeting on the specific grounds set out in the Dispensation Procedure in SECTION 4.

3.3 If the Monitoring Officer agrees that an interest is a Sensitive Interest the Councillor must disclose its existence at a relevant Meeting but is not required to provide specific details (see SECTION 3). The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Interests.

3.4 When exercising a quasijudicial function interests which do not qualify as Disclosable Pecuniary Interests or Other Registrable Interests could nevertheless lead a reasonable member of the public to conclude that there was a real possibility of bias on the part of a Councillor. In such circumstances the Councillor should not participate in the decision making process (ie the Councillor should not vote nor, unless they are requested to do so by the Chairman of the Meeting on a point of clarification, speak on the matter). The interest should be registered with the Monitoring Officer.

4. Gifts and Hospitality

Councillors must disclose and record any gift or hospitality they are offered or receive in accordance with the Councillors' Gifts and Hospitality Protocol.

5. Alleged breaches of this Code

5.1 Any allegation that a Councillor has breached this Code will initially be considered by the Monitoring Officer in consultation with one of the Independent Persons. Where a matter is referred for investigation the Governance and Ethics Committee's Advisory Panel will consider the findings of the investigation. The Advisory Panel shall be chaired by an Independent Member and make recommendations to the Governance and Ethics Committee for final decision.

5.2 SECTION 6 is a flowchart outlining the process for dealing with alleged breaches of this Code.

SECTION 1

Purley on Thames Parish Council - Councillor's Code of Conduct

Definitions

This section provides definitions to some of the words and phrases used in this Code of Conduct.

'Bullying or intimidating behaviour' means offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group.

(Such behaviour can have a damaging effect on a victim's confidence, capability and health.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs, [but within the scope of the Code of Conduct].

It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a councillor will be found guilty of bullying when both parties have contributed to a breakdown in relations.)

'Capacity' – a Councillor or Co-Opted Member is acting in their Capacity as such when they are:

- acting as a representative of the Council; or
- participating in a Meeting; or at briefing meetings with officers and members of the public
- corresponding with the authority other than in their private capacity.

'Council' means Purley on Thames Parish Council.

'councillor' means an elected member of the Council.

'Councillor' means a councillor where they are acting in their Capacity.

'Disclosable Pecuniary Interest' has the meaning given to it in the Act (see SECTION 3).

'Dispensation' has the meaning given to it in SECTION 4.

'Independent Person' means a person appointed by the Council in accordance with the Act who is consulted before the Council makes any decision on an allegation of a breach of this Code. **'Meeting'** means any meeting of:

- the Council;
- any of the Council's Standing Committees, Working or Advisory Groups.

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of councillors.

'Monitoring Officer' means the Monitoring Officer of West Berkshire Council (who has the specific duty to ensure that Councillors within the Authority of West Berkshire Council maintain the highest standards of conduct in all they do).

'Other Registrable Interest' has the meaning given to it in SECTION 3.

'Personal Interest' has the meaning given to it in SECTION 3.

'Relevant Person' has the meaning given to it in SECTION 3.

'Sensitive Interest' has the meaning given to it in SECTION 3.

SECTION 2

Purley on Thames Parish Council - Councillor's Code of Conduct

The Ten Principles of Public Life ('the Nolan Principles')

Selflessness

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

Honesty and Integrity

Councillors 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

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

Accountability

Councillors 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

Councillors 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

Councillors 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

Councillors should promote equality by not discriminating 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

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

Stewardship

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

Leadership

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

SECTION 3

Purley on Thames Parish Council – Councillor’s Code of Conduct

Interests

Introduction

Councillors must declare any interests that relate to their public duties and must take steps to resolve any conflicts arising in a way which promotes openness and transparency, including registering and declaring interests in a manner conforming to the procedures.

There are three types of interest:

- Disclosable Pecuniary Interests
- Other Registrable Interests
- Personal Interests

Councillors should also always consider whether any interest could be seen as being prejudicial to their decision making as a councillor. It is public perception that matters.

1. Disclosable Pecuniary Interests (DPIs)

1.1 Schedule 2 of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 lists the disclosable pecuniary interests specified for the purpose of the Act. This list is in SECTION 3a.

1.2 The requirements to register interests apply to either an interest of the councillor or an interest of the councillor’s spouse, civil partner or partner. However, the councillor does not have to differentiate between their own or their spouse/civil partner/partners’ interests or to name them.

2. How to declare a DPI

2.1 Councillors must notify the Monitoring Officer of any DPI, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose DPIs applies to Co-Opted Members as well as to councillors.

2.2 Any interests must also be disclosed at a Meeting if they are relevant to the matters under discussion.

2.3 The Act makes participation in such matters a criminal offence if the Councillor has a DPI.

2.4 Where a Councillor may discharge a function alone, by delegated authority, and they become aware of a DPI in a matter being dealt with, or to be dealt with by them, the Councillor must notify the Clerk and Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

3. Other Registrable Interests

3.1 Councillors are required by law to register Other Registrable Interests.

3.2 An Other Registrable Interest is one which a member of the public who knows all the relevant facts relating to it would reasonably consider that interest is so significant that it is likely to prejudice or influence the councillor's judgement of the public interest.

3.3 These relate to:

(a) any body of which a councillor is a member or in a position of general control or management and to which they are appointed or nominated by their authority;

(b) any body exercising functions of a public nature; directed to charitable purposes; or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which they are a member or in a position of general control or management;

(c) any easement, servitude, interest or right in or over land which does not carry with it a right for the councillor (alone or jointly with another) to occupy the land or to receive income.

4. How to declare an Other Registrable Interest

4.1 Councillors must notify the Monitoring Officer of any Other Registrable Interests, within 28 days of taking up office or becoming aware of their interest. As with the Code, the requirement to disclose Other Registrable Interests applies to Co-Opted Members in addition to councillors.

4.2 A Councillor may participate in decision making relating to their Other Registrable Interests to make representations, answer questions or give evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. The Councillor must leave the Meeting immediately after making representations, answering questions or giving evidence.

4.3 Subject to the Councillor disclosing the interest at the Meeting, they may attend a Meeting and vote on a matter where they have an Other Registrable Interest that relates to the functions of their authority in respect of:

(a) housing, where they are a tenant of their authority provided that those functions do not relate particularly to their tenancy or lease;

(b) school meals or school transport and travelling expenses, where they 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;

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

(d) an allowance, payment or indemnity given to councillors;

(e) any ceremonial honour given to councillors; and

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

5. Personal Interests

5.1 A Councillor has a Personal Interest in any decision of their authority where the interest might reasonably be regarded as affecting their well-being or financial position or that of a Relevant Person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward

5.2 A Relevant Person is:

(a) a parent, grandparent, sibling, child, aunt, uncle, cousin (or partner/spouse of any of those people) by birth or by marriage; or

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

(c) any person or body in whom a Relevant Person has a beneficial interest in a class of securities exceeding the nominal value of £25,000.00; or

(d) any body of a type described in Other Registrable Interests.

6. How to declare a Personal Interest

6.1 Where a Councillor has a Personal Interest in any business of the Council a Councillor needs to disclose to the meeting the existence and nature of that interest when they address the meeting on that business.

6.2 Personal interests do not need to be declared to the Monitoring Officer, but Councillors should seek advice if they are not sure what type of interest they have.

7. When a Personal Interest becomes an Other Registrable Interest

7.1 As outlined in the Code, a situation may arise where a member of the public who knows all the relevant facts relating to it would reasonably consider that an interest is so significant that it is likely to prejudice or influence the Councillor's judgement of the public interest. In that circumstance their interest would be considered to be an Other Registrable Interest.

7.2 A Councillor would have an Other Registrable Interest in a planning application that their parent had submitted because that Relevant Person is likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or parish. A DPI would not cover this aspect as they relate to Councillor and their spouse/partner only. The existence of a close family tie would mean that the public might consider that it would prejudice the Councillor's view when considering the application.

7.3 In this instance the Councillor should follow the rules on how to declare an Other Registrable Interest.

8. Register of Interests

The Council will maintain a register of councillors' interests, and make it available to the public on their website.

9. Sensitive Interests

- 9.1 Where a councillor is concerned that the disclosure of the details of an interest (whether a DPI or Other Interest which the councillor is required to disclose) at a Meeting or on the Register of Members' Interests, and such disclosure would lead to the councillor or a person associated with them being subject to violence or intimidation, the councillor may request the Monitoring Officer agree that such interest is a Sensitive Interest.
- 9.2 If the Monitoring Officer agrees that the interest is a Sensitive Interest the councillor must still disclose the existence of the interest at a relevant Meeting but the councillor is not required to provide the details of the Sensitive Interest during the meeting. The Monitoring Officer shall also exclude the details of the Sensitive Interest from the published version of the Register of Members' Interests.

SECTION 3a

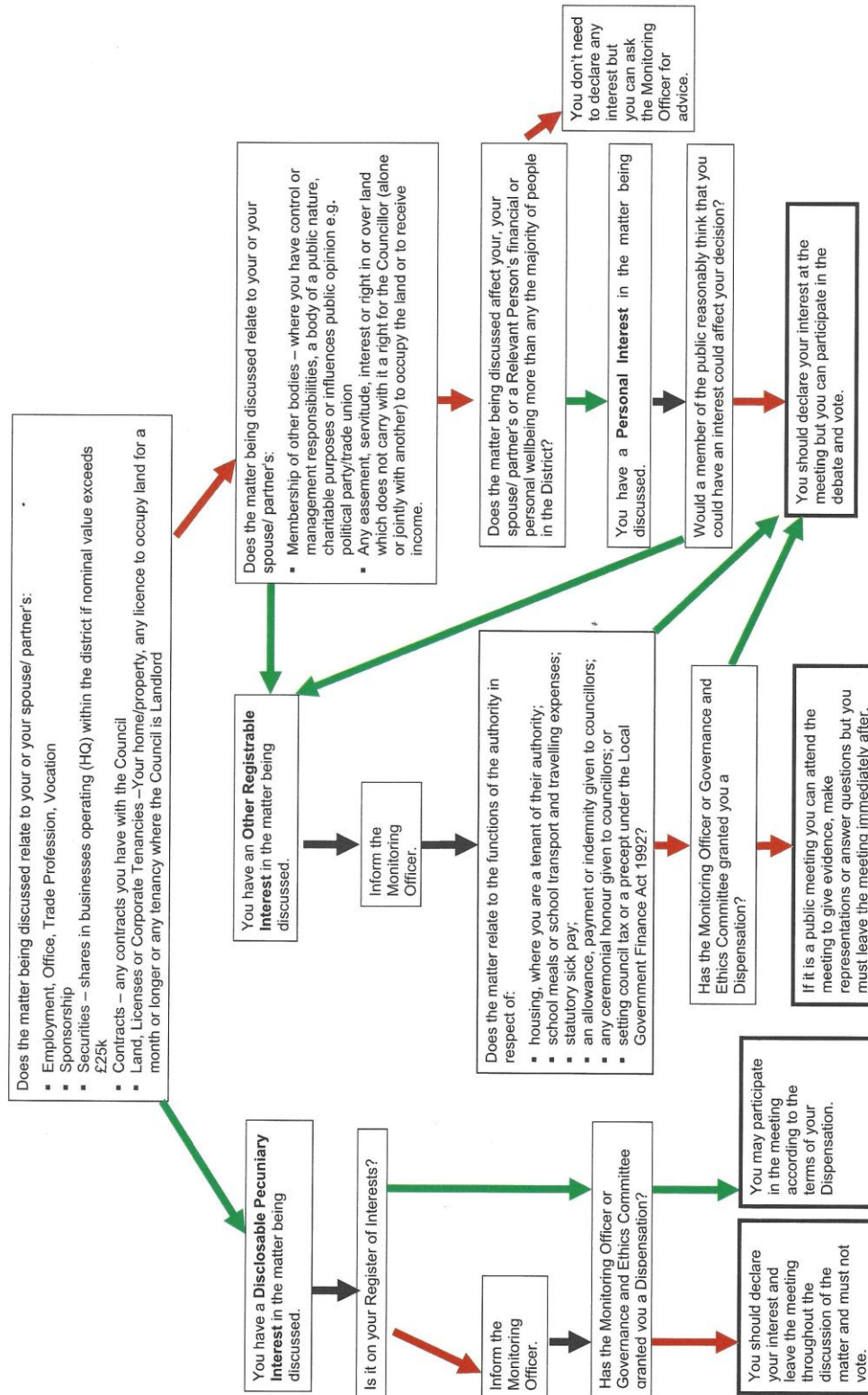
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Prescribed Definitions for Disclosable Pecuniary Interests

The following table replicates *Schedule 2 of the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012* and gives the prescribed definitions for Disclosable Pecuniary Interests.

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the relevant period in respect of any expenses incurred by a Councillor in carrying out duties as a member, or towards the election expenses of a councillor. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Contracts Any contract which is made between the Councillor's partner/ spouse (or a body in which the Councillor's partner/ spouse has a beneficial interest) and the Council— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.
Corporate tenancies	Any tenancy where (to the Councillor's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the Councillor's partner/ spouse has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to the Councillor's knowledge) has a place of business or land in the area of the Council; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the Councillor's partner/spouse has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

SECTION 3b – Interests Flowchart



SECTION 4

Purley on Thames Parish Council - Councillor's Code of Conduct

Dispensations under the Localism Act 2011

Introduction

Regulations came in to force on 1 July 2012 following the introduction of the *Localism Act 2011*. Section 33 of these regulations prescribes the circumstances in which the Governance and Ethics Committee and the Monitoring Officer may grant Dispensations to Councillors to speak and/or vote at a meeting in which they have a Disclosable Pecuniary Interest under Section 31 of the Act.

If a Councillor acts in accordance with the granting of such a Dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct is not a failure to comply with the authority's Code. These regulations refer to the circumstances where a Councillor, finds they are in a position where they have to declare a Disclosable Pecuniary Interest or Other Registrable Interest under the Code of Conduct which would ordinarily then require them to leave the meeting. These councillors might be able to obtain a Dispensation from the Governance and Ethics Committee or Monitoring Officer to stay in the meeting after declaring the interest and either speak or speak and vote according to any Dispensation granted.

Dispensations

1. Circumstances in which a Dispensation can be Granted

1.1 The Governance and Ethics Committee or Monitoring Officer may grant a Dispensation to a Councillor in the following circumstances:

- (a) That so many Councillors of the decision making body have Disclosable Pecuniary Interests in a matter that it would "impede" the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result].
- (b) That without the Dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (c) That the authority considers that the Dispensation is in the interests of persons living in the authority's area.
- (d) That without a Dispensation no Member of the Council would be able to participate in a particular matter. They suggest that where the Council would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Council. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (e) That the Council considers that it is "otherwise appropriate" to grant a Dispensation. This is a particularly wide provision as to some extent is (c) above.

1.2 It is considered that grounds (a) and (d) are objective. Dispensations on these grounds are delegated to the Monitoring Officer with an appeal to the Governance and Ethics Committee.

1.3 Grounds (b), (c) and (d) are rather more complex and subjective. The discretion to grant Dispensations on these grounds remains with Governance and Ethics Committee after consultation with the Independent Person.

2. Requesting a Dispensation

Requests for Dispensations **must**:

- (a) be made in writing;
- (b) be made to the Monitoring Officer of West Berkshire District Council;
- (c) be made by an individual Councillor or Co-Opted Member of the authority;
- (d) provide sufficient information to base a decision on.

3. Procedure and Considerations

3.1 The Governance and Ethics Committee or Monitoring Officer will take the following into consideration when determining whether or not a Dispensation should be granted:

- (a) They will weigh up the effect of Councillors' Disclosable Pecuniary or Other Registrable interest against the outcome of the vote if they are not participating in the vote.
- (b) They will consider whether the nature of the interest in question is such that public confidence in the authority would be damaged if that Councillor were allowed to vote.
- (c) They will look at whether the interest in question is one that is common to both the Councillor and to a significant proportion of the population.
- (d) They will take account of the expertise and knowledge of the Councillor and whether this justifies their participation in the item in question.
- (e) They will have regard to whether the business in question relates to a voluntary or public body and additionally whether the interest is a financial one.
- (f) They will consider whether a Dispensation not being granted would mean the meeting was inquorate, this might be a reason to grant the Dispensation.

3.2 This consideration may also take account of any other relevant circumstances or local criteria.

3.3 The Monitoring Officer or Governance and Ethics Committee will determine the nature of any Dispensation they are minded to grant:

- (a) Whether the applicant can speak and not vote; or
- (b) Whether the applicant can participate fully and vote.

3.4 The Monitoring Officer or Governance and Ethics Committee can also decide the length of the Dispensation (not more than four years).

3.5 The regulations do not allow for the Monitoring Officer or Governance and Ethics Committee to grant a general Dispensation to cover any situation where a Disclosable Pecuniary Interest may arise.

- 3.6 If the Monitoring Officer or Governance and Ethics Committee grants a Dispensation it should do so in writing and before the Meeting(s) in question is/are held.
- 3.7 The Monitoring Officer or Governance and Ethics Committee may decide to refuse an application for a Dispensation. This is within their discretion under the regulations.
- 3.8 A written record of the decision taken must be kept and placed with the Register of Interests maintained under Section 81(1) of the Local Government Act 2000.

SECTION 5

Purley on Thames Parish Council – Councillor’s Code of Conduct

Councillor’s Gifts and Hospitality Protocol

1. Introduction

This Protocol is intended to complement the Councillors’ **Code of Conduct**. It offers guidance to Councillors with regard to best practice and the need to preserve integrity and demonstrate good governance. It has been written to protect both individual Councillors and the Council itself. The intention of this Protocol is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.

This Protocol adopts the definitions in Appendix 1 to the Code.

This Protocol sets out Councillors’ obligations to declare any relevant gifts and hospitality which might be offered to or received by them in their Capacity as a Councillor or to their spouse or partner as a result of their relationship with the Councillor.

The corollary of this is that gifts and hospitality offered to a councillor in their private capacity, of whatever value, do not need to be registered at all. Further, this Protocol does not apply to the acceptance of any facilities or hospitality which may be provided to a councillor by the Council.

It is the Councillor’s responsibility to ensure any gifts and hospitality received or offered to them or their spouse/partner are declared to the Council’s Monitoring Officer in accordance with the agreed procedures.

TRANSPARENCY IS THE ISSUE: COUNCILLORS SHOULD ALWAYS CONSIDER WHETHER ANY GIFTS OR HOSPITALITY COULD BE SEEN AS BEING CONNECTED WITH THEIR PUBLIC ROLE AS A COUNCILLOR. IT IS PUBLIC PERCEPTION THAT MATTERS.

A breach of this Protocol amounts to a breach of the Code and a complaint can be reported to the Monitoring Officer or the Governance and Ethics Committee and dealt with in accordance with the process for alleged breached of the Code.

2. The Rules

(a) A Councillor or their spouse/ partner must never:

- accept a gift or hospitality as an inducement or reward for anything which they do as a Councillor
- accept a gift or hospitality which might be open to misinterpretation
- accept a gift or hospitality which puts them under an improper obligation
- solicit a gift or hospitality.

(b) Prior to the acceptance of any hospitality with a value of £25 or more, a Councillor should whenever possible seek authorisation from the Monitoring Officer, and only if consent has been given should the Councillor or their spouse/partner accept the hospitality.

Transparency is the issue: councillors should always consider whether any gifts or hospitality could be seen as being connected with their public role as a Councillor. It is public perception that matters.

(c) A Councillor must register every individual gift or item of hospitality over £25 in value that is offered to them and indicate whether or not it was accepted.

(d) A Councillor's registration of the gift or hospitality must be made within 28 days of the date of offer or receipt as the case may be.

(e) Registration is made by a declaration in writing to the Member Services Officer(s) working on behalf of the Monitoring Officer, preferably electronically (eg by email), and giving details of:

- the value (or estimated value) and details of the gift or hospitality offered or received;
- if the gift or hospitality has been accepted, the reason for that acceptance;
- whether to the Councillor's knowledge the donor of the gift has, or has had in the past, or is likely to have in the future, dealings with the Council.

(f) A Councillor should be aware of serial givers or repeat offers of hospitality as these may indicate a pattern of behaviour that might result in a breach of the Code of Conduct.

(g) An offer of a gift or hospitality that appears over-generous must be declined; it could be seen as an inducement to affect a Council decision.

(h) Even if all Councillors, or a large number of them, are offered or receive the same gift or hospitality, they must each make individual notifications.

Please note that the press and public have the right to inspect gift and hospitality declarations as submitted (and that Officers cannot edit the declarations).

Guidance

3. Should a Councillor accept gifts and hospitality?

It is not sufficient just to register gifts or hospitality; a Councillor must consider whether it is appropriate or sensible to accept them in the first place. The general test of caution is one of common sense and perception, ie would a reasonable member of the public question the appropriateness of hospitality or gifts offered to or received by the Councillor or their spouse/partner? If a Councillor is concerned the acceptance could be misinterpreted they must decline it and declare it.

A Councillor or their spouse/ partner must never solicit a gift or hospitality, or accept any gift or hospitality offered as an inducement or which puts them under any obligation.

Particular care must be taken in relation to gifts and hospitality offered by current or potential contractors for the Council. In certain cases, the acceptance of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any

offer is intended as an inducement, then the matter must be reported in accordance with established procedures.

The Bribery Act 2010 has offences of “bribing another person” (active bribery) and of “being bribed” (passive bribery). The offences consist of “promising, offering or giving” or “requesting, agreeing to receive or accepting an advantage (financial or otherwise)” in circumstances involving the improper performance of a relevant function or activity.

In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust. There is a maximum penalty of 10 years’ imprisonment or an unlimited fine for these offences.

4. Must a Councillor register all gifts and hospitality that they are offered?

A Councillor must register any gift or hospitality worth £25 or more that they or their spouse/partner are offered, and whether it was accepted. Where the value of any gift or hospitality is under £25 a Councillor may wish to declare receiving it.

5. What about gifts or hospitality that a Councillor is offered but did not accept?

A Councillor must register any offer of gifts and/or hospitality over £25 even if declined, since this protects both their position and that of the Council.

6. What is the value of the gift / hospitality?

A Councillor may have to estimate how much a gift or some hospitality is worth in their written declaration. It is suggested that they take a common sense approach, and consider how much they reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result they estimate that the value is £25 or more, then the Councillor must declare it. Where hospitality is concerned, a Councillor can disregard catering on-costs and other overheads, eg staff and room hire. If the refreshments, of whatever kind, would cost £25 or more in a comparable establishment providing food of comparable quality, the Councillor must register it. If a Councillor is not certain whether the value is under £25, the safest course of action is to register it and give an approximate value.

7. What about gifts of low value?

There is no requirement to declare gifts of a value of less than £25. However, in order to be transparent, if a Councillor or their spouse/ partner receive a series of related gifts which are all under £25, but together total above £25, then they must register them if they are from the same person. If the small gifts offered by or received from different persons are connected in some way, it is good practice to register them.

8. How does a Councillor register gifts and hospitality that they receive?

A Councillor must give the Member Services Officer(s) working on behalf of the Monitoring Officer written details about the gifts and hospitality they or their spouse/ partner are offered, preferably by email. The best advice is to get into the habit of registering things as soon as possible.

9. Which organisation does a Councillor make declarations to?

A Councillor must also consider that they might be offered gifts and hospitality in their capacity as the Council's representative on an outside body. It is a Councillor's responsibility to ensure that they declare any gifts and hospitality in accordance with that organisation's rules and procedures.

10. How to deal with the issue of when gifts or hospitality are offered or received in different capacities or where there are overlapping roles

Councillors need only declare gifts and hospitality to the Monitoring Officer where they are offered or received in their Capacity as a Parish Councillor.

If a councillor receives gifts or hospitality in another capacity, eg arising from holding another public office, they should register in accordance with whatever code is in place for that other body. If a particular body does not actually require the councillor to register anything, then they do not need to do anything in respect of the receipt of a gift or hospitality directly attributed to their role within that organisation.

If the councillor is not sure what capacity they or their spouse/partner was offered or received something in, provided they declare the gift or hospitality at least once with the body that appears to be the most appropriate, they will have fulfilled their duties. The overriding purpose is public transparency.

11. What happens if a Councillor does not register a gift or hospitality?

Failure to notify the Monitoring Officer, or the Members Service Officer(s) acting on their behalf, of the offer or receipt of a gift or hospitality with a value of £25 or more is a breach of this Protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer or Governance and Ethics Committee which could result in the matter becoming the subject of an investigation.

12. Gifts which are more likely to be considered acceptable

It is the responsibility of the Councillor to decide whether or not to declare gifts and hospitality. The Council has however agreed that in appropriate circumstances Members of the Council may choose to accept gifts and hospitality in the following circumstances:

- Civic hospitality provided by another authority;
- Modest refreshments offered or received in the ordinary course of duties as a Councillor eg at formal meetings, training or working meetings or when in contact with constituents;
- Tickets for sporting or cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value branded with the name of the company or organisation making the gift (eg pens, diaries, calendars etc);
- Modest souvenir gifts from another public body given on the occasion of a visit by or to that body;
- Hospitality offered or received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by Officers rather than the Councillors who will be benefiting and hospitality should be commensurate with the nature of the visit; and
- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases the Councillor may wish to pass the gift to the Chairman's Charity.

Offers/receipt of gifts and hospitality of these types are still subject to the requirements of this Protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 in value. The appropriateness of acceptance must always be considered beforehand. It must also be noted that the fact that a gift or hospitality does not have to be notified under this Protocol does not necessarily mean that it is appropriate to accept it.

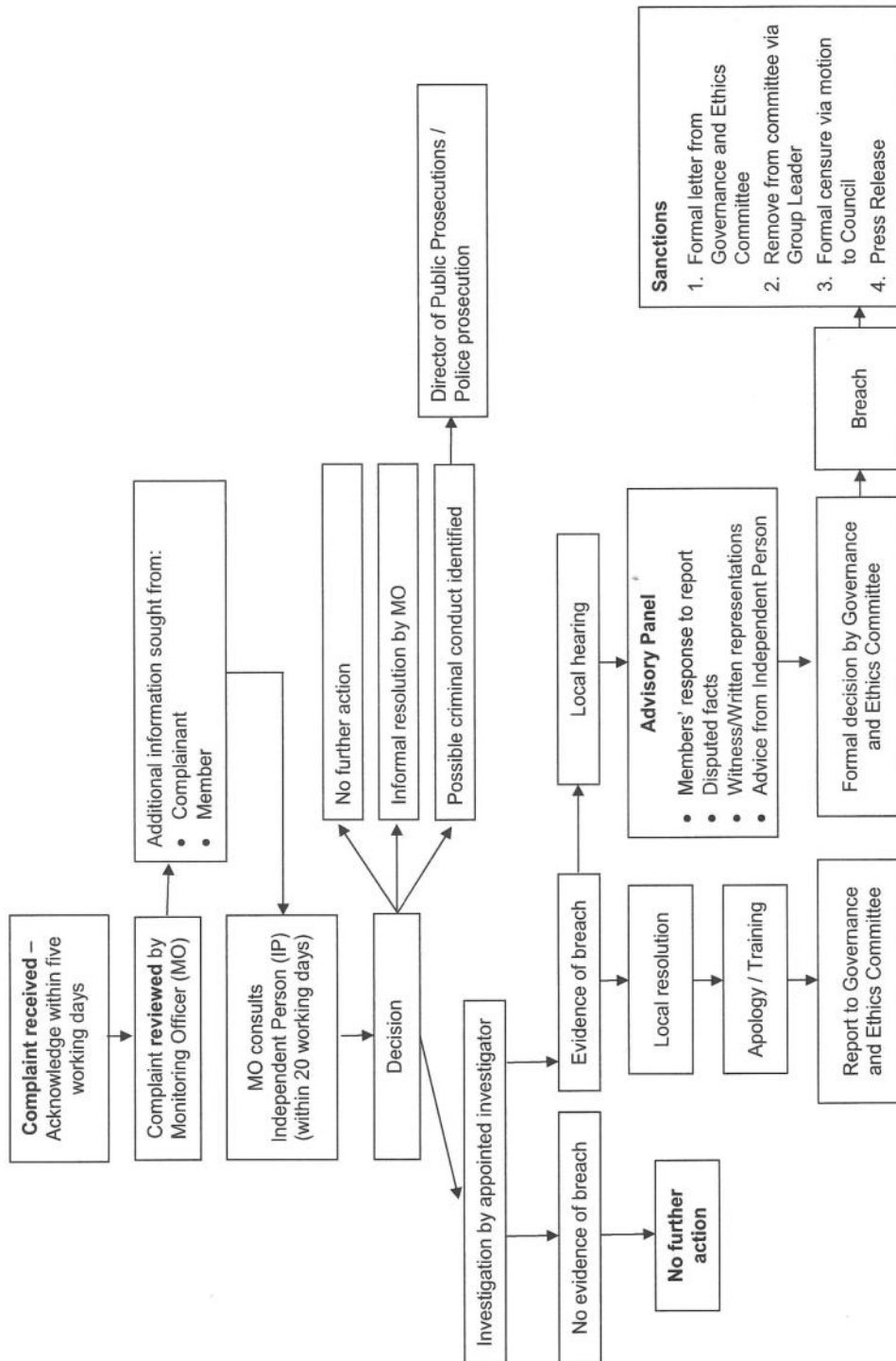
13. Will the register be open to the public?

The register is available to the public in the same way as the register of Disclosable Pecuniary Interests is. It is open for inspection at the Council Offices, Market Street. Regular updates of declarations will be reported to the Governance and Ethics Committee as part of the quarterly performance monitoring reports.

14. Further assistance

It is each Councillor's own individual responsibility to observe this Protocol, but the Monitoring Officer will help where possible. If a Councillor has any questions at all please contact the Monitoring Officer, Deputy Monitoring Officer(s) or the Democratic and Electoral Services Manager for advice and assistance.

SECTION 6 – Process for Alleged Breaches of the Code



SECTION 7

Purley on Thames Parish Council – Councillor’s Code of Conduct

Protocol for Council Representation on Outside Bodies

1. Introduction

- 1.1 Parish Councillors are appointed by the Parish Council to serve on a range of Outside Bodies. In the context of this Protocol, an “Outside Body” covers organisations such as Trusts, Voluntary Bodies, Charities, Community Associations and Companies etc.
- 1.2 Service on Outside Bodies has always been an established part of a Councillor’s role. A Member appointed to an external body will be able to use their knowledge and skills both as a Council Member, and as a representative of their communities, to assist the organisation to which they are appointed, as well as the Council which they represent.
- 1.3 This Protocol is designed to provide guidance as to the roles, experience and responsibilities as well as the liabilities that Members may attract in connection with their involvement with these organisations. Councils are increasingly working in partnership with external organisations. This means that it is important that everyone is clear exactly what the role of Councillors appointed to these bodies is. Questions of accountability and governance are likely to arise particularly as more funding may be channelled through the Council to these Outside Bodies.
- 1.4 Membership of an Outside Body brings into play different considerations to those which relate to Council membership. As members of Outside Bodies, elected Members will have different duties, obligations and liabilities depending upon the type of organisation involved. Members’ roles on these Outside Bodies may appear to conflict, sometimes with each other, and sometimes with their position as a Parish Councillor. This can be eased by giving clear guidance, which is what this document aims to do. Paragraphs 9 and 10 of this Protocol provides information on registering interest and information on dealing with conflicts of interest are set out in paragraph 11.
- 1.5 Depending on the legal nature of the body and the role fulfilled by the Member they may attract personal responsibility for decisions and actions of the body. It is a Members’ responsibility to ensure that they are aware of their liabilities and any insurance arrangements that are in place where they participate in Outside Bodies. Officers will strive to ensure that Members are provided with as much information as possible prior to their appointment. Paragraphs 4 and 5 of the Protocol set out the general roles and responsibilities for Members on Outside Bodies.
- 1.6 To aid Members further, this Protocol sets out the different types of bodies and responsibilities. More detailed information, relating to Limited Companies, Charitable Trusts, Partnerships and Unincorporated Organisations, is set out in paragraphs 12 to 15.
- 1.7 The Council will indemnify Members representing the Council on Outside Bodies in many circumstances. There are however specific statutory limitations as to the extent of **indemnification** the Council is able to provide. These are set out in paragraph 16 of the Protocol.

1.8 Members can serve on Outside Bodies in their personal capacity provided that there is no conflict of interest with their duties as Councillor of Purley on Thames Parish Council. Again, legal advice is available to help Councillors assess their position through the WBC Monitoring Officer.

2. How are Appointments made?

2.1 Representing the Council on outside bodies is a position considered and approved by the Council.

2.2 Appointments are made and approved at the Annual Parish Council Meeting.

2.3 The choice of the most appropriate representative will depend on the nature of the Outside Body, the interests and experience of the prospective representative, and why the Council wishes to be involved with that body.

2.4 All appointments will be recorded in the Minutes and a separate record kept at the Parish Office.

3. Before Accepting the Appointment

3.1 Before accepting the appointment Members should establish:

- the time commitment required by the role and whether or not they have the time and capacity to take on the responsibility;
- what the nature of the organisation is as this will affect their role and help with identifying the potential risks involved. One of the most important things is to find out if the organisation is a separate legal organisation (i.e. a body which has an identity of its own such as a company) or whether it is simply a group of people coming together with a common purpose (an unincorporated organisation). An unincorporated organisation generally poses a more significant risk to those involved in it because if something goes wrong, personal legal action can be taken against everyone managing it.
- in what capacity they are being asked to serve on the Outside Body: - as a member of an Outside Body where they represent the Council's position as a 'member' of the Outside Body but take no part in its management or governance other than to attend and vote at annual or general meetings. Here they will be mainly concerned with representing the Council and will not have responsibilities for governance of the body; or - as a member of the management committee, board of directors or committee of trustees of the Outside Body. Whilst the Member may have been appointed to the body by the Council, their primary responsibility will be to the body itself, to advance the interests of the body or of the beneficiaries of the trust, as opposed to acting as a representative of the Council. They will have detailed responsibilities which are outlined further in this guidance
- what the body has been set up to do;
- the governance arrangements of the organisation; and
- the financial position of the organisation.

3.2 The Council representatives are also advised to:

- consider if there is likely to be any significant conflict of interest between their role in the outside organisation and their Council role before accepting the office;
- clarify the insurance arrangements (does it cover the key risks of the organisation as well as the Member and is the liability limited or unlimited) and assess the possibility of any

implications on themselves as individuals (specifically consider the nature and function of the body and the amount of money it deals with – always be aware of the added risk where the organisation employs staff);

- if no insurance exists this must be weighed up in the decision to accept the appointment;
- ask about any specific legal responsibilities attached to the membership of the organisation;
- read the constitution of the organisation and be aware of its powers, duties and objectives;
- attend meetings regularly and present apologies in good time when they are unable to attend;
- satisfy themselves that they receive regular reports on the activities of the organisation and its financial position;
- satisfy themselves that the organisation has adequate Health and Safety and Equalities Policies;
- obtain a copy of the annual report and accounts to ensure that funds are spent on agreed objectives where the organisation is funded by or through the Council; and
- seek advice from the appropriate Council Officers in the event of any doubt or concerns about the running of the organisation.

4. The Responsibilities of the Councillor

4.1 In carrying out the role of a representative on the Outside Body, Councillors act both as individuals and as representatives of the Council:

4.2 Members should:

- act according to the rules, constitution and framework set by the Outside Body;
- take an active and informed role in the Outside Body's affairs;
- make independent and personal judgements in line with their duty of care to the Outside Body;
- report back to the Parish Council annually (by the 1st May) using the prescribed format;
- promote equality as an integral part of the role and to treat everyone with fairness and dignity;
- from time to time it is possible that a conflict of interest may arise between the role of the Councillor and the role they are undertaking on an Outside Body. Members are referred to in paragraph 11. Members are advised to seek legal advice before setting off on a course of action;
- behave ethically and follow as far as applicable the Code of Conduct for Members; and
- wherever possible approach the lead officer for the Outside Body for a briefing on agenda items before attending meetings of the Outside Body.

4.3 Members should not:

- consider matters purely from the Council's perspective;
- commit the Council to any expenditure; (In accordance with the Council's Financial Rules of Procedure any additional expenditure requests must be authorised by the appropriate person or body).

4.4 More Specific information pertaining to Limited Companies, Charitable Trusts, Partnerships, and Unincorporated Organisations is set out in Appendices A2, A3, A4 and A5 of this Protocol.

5. The Role of the Councillor

5.1 The role of Council representatives on Outside Bodies will vary but essentially the role will be:

- to help to secure any objectives of the Council in participating in the organisation;
- to help the organisation to achieve its aims and objectives legally, properly and effectively;
- to meet any specific legal responsibilities attached to membership of the organisation; and
- to safeguard the Council's interest on those organisations which are funded by or through the Council.

6. Expenses, Remuneration and Benefits

6.1 As a general rule Members should not benefit personally from their appointment to outside organisations.

6.2 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Councillor's Gifts and Hospitality Protocol.

6.3 Free access to a Company's facilities should only be accepted where it is necessary to discharge duties and responsibilities as a Director and should be declared to the Council.

6.4 The Code of Conduct should be followed at all times.

7. Representatives Reporting Back

7.1 Councillors are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. Where the Council provides financial assistance to a charity or voluntary organisation of over £2,000 per annum then the body is under an obligation to state in writing to the Council how the funding has been used (s137A Local Government Act 1972).

7.2 While the law now makes this a requirement for involvement in outside companies, it is self evident that the requirement to report back should apply to involvement in all Outside Bodies. It is important that anyone who is appointed to an Outside Body provides appropriate information on what the organisation is doing. Members are not required to disclose information which is commercially confidential to the body.

7.3 Accordingly Members are required to submit their annual report to the Clerk for the Annual Parish Council Meeting. The reports will then be circulated to all Members. Where there is more than one Member appointed to an outside body a joint submission should be made.

7.4 There are a number of organisations to which the Council appoints Members where more regular feedback from Members would be appropriate. In these circumstances Members or Officers attending the meeting should provide a brief summary for dissemination to all Members and relevant Officers.

8. Further Advice

8.1 Relationships between the Council, Outside Bodies and the Council's representative can be complex. In any case of dispute or difficulty, Members should seek advice from the Secretary or Clerk to the Outside Body, who can then take advice from professional advisors where necessary.

8.2 If Members are concerned about the position they find themselves in as a Councillor on an Outside Body, they should contact the Monitoring Officer for further advice.

9. Interests

9.1 Members are required to register interests in line with section 4. (Disclosable Pecuniary Interests and Interests other than Disclosable Pecuniary Interests) of Appendix H (Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

10. Council's Code of Conduct – General Provisions

10.1 The Council Code of Conduct requires that a Member must observe the Code of Conduct whenever the Member is acting as a representative of the authority.

10.2 The Code of Conduct also states: "2 (5) Where you are acting as a representative of the authority: (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or (b) on any other body, you must, when acting for that other body, comply with the authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject."

11. Conflicts of Interest

11.1 Appointment to an Outside Body can take various forms, and before taking up active membership it is advisable to establish exactly in what capacity the Member is being appointed.

11.2 If Members are appointed to an Outside Body they will have a personal interest in that body and will need to consider their position when they sit on the Parish Council, a Council committee or other decision-making body which is considering a matter which relates to that body.

11.3 If Members attend a meeting where there is an item of business which relates to or affects the Outside Body, they will need to disclose the interest at the meeting, regardless of whether or not they were appointed onto the Outside Body by the Council, or by the Outside Body itself. This may not be a report which specifically mentions the body but will affect it. For example, the budget setting meeting of Full Council can have implications for council funding of voluntary organisations.

11.4 The next issue is to consider whether they also have a Disclosable Pecuniary Interest (DPI) which would require them not only to disclose it but also to withdraw from consideration of that item of business.

11.5 If a Member does decide that they have a DPI, they must disclose this and leave the meeting room and not influence the debate or decision in any way. If the Council body making the decision has a policy of allowing members of the public to speak, Members can use this avenue legitimately to speak to the meeting but they must follow the rules of the public speaking session and then leave the room as soon as they have spoken on the matter.

11.6 Members should take advice from the Monitoring Officer if any situation arises where they think they might have a problem with an interest arising from their involvement with the Outside Body.

11.7 Whilst a failure by a Member to disclose a personal interest, or to disclose and withdraw for a DPI, may lead to sanctions against the individual Councillor, it will not of itself invalidate the decision of the authority in which the Councillor participated. However, where there is a real possibility that the decision of the Council might have been affected by bias or predetermination on the part of one or more Councillor, that decision can be held by a Court of Law to be invalid. Members therefore need also to be careful about the possibility of bias and predetermination when they are dealing with matters involving an Outside Body on which they serve.

11.8 Any Councillor who is about to take part in a decision, either collectively with other Councillors or via Individual Decision, must not allow themselves to be unduly influenced by their allegiance to any Outside Body or individual, nor should they give the impression that they might be influenced by it. That is bias and apparent bias. It arises because of a connection to an Outside Body or person.

11.9 It also follows that, whilst a Councillor may have preferences and predispositions, they must not finish the decision-making process until they have received and considered all the relevant information relating to the matter. To do so would be predetermination. Whilst it is accepted that Councillors live in the real world and will discuss matters with colleagues and constituents, and bring the benefit of those discussions to the Committee Room, they must still listen to the arguments and be prepared to change their mind if the evidence presented requires it.

11.10 From this it will be apparent that particular difficulties arise where a Councillor is a member of an Outside Body such as a pressure group, which is seeking to influence the authority's decision on a particular matter, as such membership can readily be taken as evidence of bias and/or predetermination. On occasion, and particularly in respect of local, single-issue pressure groups, a Member may have to choose whether to be a campaigning Councillor, participating in a pressure group, or to remain outside the campaign but be able to vote on the issue when it comes before the Council.

11.11 In some instances a Councillor may also find that they are unable to properly carry out their functions as a Member of the Council and a Member of the Outside Body. In these instances the Member may consider resigning from one body or another. Members should seek advice from the Monitoring Officer before taking such action.

12. Limited Company

12.1 A company has a separate legal personality to its shareholders (also described as company members or subscribers). One of the main advantages of acting through a limited company is that shareholders can claim the benefit of limited liability. In the case of a company limited by shares this means that they will not be liable for the debts of the company if the company makes losses over and above the amount which they have pledged to pay the company for their shares. In a company limited by guarantee this means that the shareholders 'guarantee' to contribute a specified sum if called upon to do so (usually a nominal amount of £1) in the event that the company goes into insolvent liquidation.

12.2 An appointment as a director of a company needs to be confirmed by the completion of a form (known as '288') which needs to be signed and submitted

to Companies House. The secretary of the Outside Body should assist you with this.

12.3 The Directorship should also be recorded in the Council's Register of Members' Interests (within 28 days of the appointment). Directors take responsibility for all the main decisions in relation to the operation of the company, including entering into contracts.

12.4 The position of Council Members acting as Company Directors is that although Members have been appointed by the Council they have a duty to act in the best interest of the Company.

12.5 Although Members are advised to consider the specific rules pertaining to the Company they have been appointed to, the general legal responsibilities of Company Directors are:

- to ensure that the Company acts within its legal powers;
- to act honestly and in good faith in the best interests of the Company;
- not to make a personal profit and to take proper care of the assets;
- to avoid conflicts of interest and not to allow personal interest to influence action as a Director;
- to record personal interests in the Company's Register of Director's Interests;
- to act with reasonable competence and care;
- to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience); and
- not knowingly allow the Company to trade fraudulently, recklessly or in an insolvent position.

12.6 Council appointed Directors are advised to:

clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals;

- to be familiar with the Articles and Memorandum of Association of the Company;
- to ensure that their interests are registered with the Company;
- to attend Board meetings regularly, read the agenda in advance and seek a briefing from officers where necessary;
- to ensure that the Company has proper procedures for reporting performance and financial information to board members at each meeting;
- to take an interest in the appointment of the management of the Company to ensure that suitable qualified and experienced managers are in place;
- to ensure that the Company has adequate Health and Safety and Equalities Policies; and
- to seek advice from the appropriate Council Officers if in any doubt about the financial viability of the Company or any aspect of its operation.

12.7 Members need to be particularly careful when acting as a Company Director if there is any prospect of the company becoming insolvent i.e. not having sufficient assets to pay its debts. When a company becomes insolvent, or it is foreseeable that it will be insolvent, directors of the company have a higher duty of competence and attention to company business than when the company is still solvent. If they fail to take every possible step to minimise the company's debts, they may be personally liable for any additional losses suffered by creditors of the company ("wrongful trading"). A director may be found guilty of fraudulent trading (a criminal offence) if they allow the company to trade with an intent to defraud creditors.

12.8 If you become a Company Director there are some useful guidance documents to assist you on the websites of the Institute of Directors and Companies House.

12.9 There may be occasions where conflicts of interest arise between the Council and the Company. Some examples are:

- contracts between the two;
- negotiations on agreements, such as terms of leases;
- applications for Council permission, e.g. planning consent.

12.10 This may mean that the primary responsibility to the Company could conflict with the Council's interest.

12.11 In these circumstances, Members are advised to declare a DPI at any Council meetings or discussions and should withdraw from the decision making process.

13. Charitable Trustees

13.1 To be a Charity an organisation must operate for one of the four charitable purposes, namely: the relief of poverty and human suffering;

- the advancement of education;
- the advancement of religion; and
- another purpose for the benefit of the community.

13.2 It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

13.3 Trustees duties include: the need to act in accordance with the constitution of the Charity; not making a private profit from their position;

- acting honestly and in good faith in the best interests of the Charity;
- ensuring that information relating to the charity and trustees is registered with the Charity Commissioners and annual accounts, reports and returns are completed and sent;
- Ensuring that the body acts in accordance with the overriding duty to the beneficiaries of the Trust; ensuring compliance with all relevant legislation (e.g. in relation to tax and land matters); and Council representatives are advised to clarify the insurance arrangements and assess the possibilities of any implications on themselves as individuals.

13.4 There is now a statutory duty of care under the Trustee Act 2000 which applies when a Trustee is:

- exercising a general power of investment or any specific power of investment arising from the Trust;
- making investments in line with the Standard Investment Criteria under section 4 of the Act or taking independent advice on investments under section 5;
- exercising the power to acquire land or deal in land;
- appointing agents, custodians or nominees or in reviewing their obligations; compounding liabilities under section 15 of the Trustee Act 1925;
- Insuring Trust property; and
- Dealing with reversionary interests, valuations or audits.

13.5 The standards of care expected of Trustees is that which is reasonable in the circumstances, taking into account any particular skills or competencies possessed by the individual. Additional

information relating to the responsibilities for charitable directors and trustees is available on the Charity commission's website <http://www.charity-commission.gov.uk>.

14. Partnerships

14.1 The Council representatives on partnerships have three main roles:

- to promote the Council's objectives in participating in the partnership;
- to ensure that the Partnership delivers its own objectives;
- to safeguard the Council's interests within the partnership, particularly where the Council is a funding partner or the accountable body for External Funding.

14.2 Council representatives on partnerships are advised to:

- be clear on the Council's own objectives in participating in the partnership;
- read the Constitution of the Partnership and be aware of its objectives and powers;
- attend Partnership meetings regularly, read the agendas in advance and seek briefing from Officers where necessary;
- ensure that the Partnership has proper procedures for reporting progress and financial information; and
- take an interest in the appointment of key staff.

15. Unincorporated Organisations

15.1 Groups which are not charitable trusts or limited companies are 'unincorporated associations' and have no separate legal identity from their members. The rules governing the Members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for Management Committees to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and therefore register as a charity.

15.2 Management Committee Members must act within the Constitution of that Outside Body and must take reasonable care when exercising their powers.

15.3 If Members become involved in the administration of an unincorporated body, they need to be aware that, as the body has no separate corporate status, any liabilities will fall upon the members personally. This means that if something goes wrong and the organisation is sued, the members/owners personal assets are at risk – they cannot stand behind a company or other body which gives them some protection.

15.4 If Members take on personal responsibilities for the organisation, such as buying equipment or renting premises, they are personally liable for the entire cost, and can only recover those costs from the organisation to the extent that it actually has the money to reimburse them, or from the other members of the organisation to the extent that the membership agreement gives them the right to be reimbursed by each of them.

15.5 Members need to be very careful about the risk of personal liability and the extent to which this has been covered by insurance arrangements (either arranged by the organisation itself or by the Council or by indemnities).

16. Indemnity for Members

16.1 The Council may only indemnify Members in certain circumstances as prescribed by the Local Authorities (Indemnity for Members and Officers) Order 2004.

16.2 The Council will provide an indemnity in relation to any action or failure to act by any Member which:

- is authorised by the Council;
- forms part of, or arises from, any powers conferred, or duties placed, upon that Member at the request, or with the approval of the authority including acting as the Council's representative on an Outside Body;
- arises in respect of the cost of defending any claim for an allegation of defamation by a Member acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious or injurious falsehood);
- is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the insurer for their costs incurred in relation to those proceedings;

16.3 The indemnity includes an act or omission subsequently found to be beyond the powers of the Member in question, but only to the extent that the Member reasonably and genuinely believed that the act or omission was within their powers at the time they acted.

16.4 The indemnity does not apply to the defence of any criminal proceedings brought against a Member unless specifically approved by the Council and then only on a similar basis to that relating to proceedings for breaches of the Code of Conduct.

16.5 It is possible in some circumstances for the Council to indemnify (i.e. stand behind the Councillor and pick up any personal legal liabilities/costs/damages which the Councillor incurs as a result of his/her appointment to an Outside Body). The Council currently has Officials Indemnity insurance cover in place which covers Members on Outside Bodies but it may be necessary to consider issues on a case by case basis. Please speak to the Monitoring Officer if you have any cause for concern that an Outside Body with whom you are involved is getting into difficulty or you have any indication that you might be getting involved in potential personal liability.

Council REP Form will be provided by the Clerk.

SECTION 8

Social Media Protocol for Councillors

1. Introduction

1.1 This protocol ("Protocol") was last reviewed and updated on 6 December 2018.

1.2 This Protocol should be read in conjunction with the Councillor's Code of Conduct ("Code of Conduct" - Appendix H to Part 13 Codes and Protocols of the Council's Constitution), the Council's ICT Policy, the Council's Equalities Policy, and the Local Authority Code of Publicity under the Local Government Act 1986.

1.3 For consistency and ease of understanding this Protocol adopts the definitions used in Appendix 1 of the Code of Conduct ("Councillor", "Capacity", etc).

1.4 Advice on the use of social media can be sought from different departments across the Council but enquiries should in the first instance be directed to the Head of Strategic Support, West Berkshire Council, Market Street Offices, Market Street, Newbury, RG14 5LD.

2. Purpose and Application

2.1 This Protocol seeks to ensure that: Councillors make use of social media effectively whilst avoiding breaches of the Code of Conduct; and the reputation of the Council is not adversely affected, and that the Council is not subject to legal challenge, as a result of Councillors' use of social media.

2.2 This Protocol will apply to Councillors using social media who are acting, purporting to act, or reasonably perceived to be acting, in their Capacity as a Councillor – all references to "Councillor" below adopt this definition.

2.3 For the purposes of this Protocol, social media has a broad meaning. By way of example, this will include but will not be limited to the following types of social media: Facebook, Instagram, Twitter, Snapchat, You Tube and local internet based discussion forum

2.4 You should bear in mind that anything posted, shared (for example by retweeting), or liked on social media could end up in the public domain, regardless of any privacy settings that you have applied.

2.5 Particular care needs to be taken when sharing the views or comments of others as this could be perceived as an endorsement of the content regardless of your intention.

It is difficult to give definitive advice on the application of the Code of Conduct to social media use and there is developing case law in this area. However, if you use a social media platform where you identify yourself or can otherwise be identified as a Councillor, either in your profile or otherwise, there is a strong likelihood that you will be regarded as acting in your Capacity as a Councillor.

2.6 Bear in mind the Code of Conduct when you blog, post, use social networking sites or any other digital content publication service. You should pay particular attention to the requirements of the Code relating to: courtesy and respect; bullying or intimidating behaviour; disclosure of confidential information; conduct that could bring your office or the Council into disrepute; misuse of the Council's resources.

2.7 The content of a blog, account, page or other social networking tool and the circumstances surrounding its creation will determine whether or not you are deemed to be acting in your Capacity as a Councillor. There are however some general rules that Councillors should bear in mind when deciding on whether to publish content:

- only publish on social media what you would say verbally in public, even in an informal discussion; only publish on social media what you could defend in court if asked to do so; and
- if retweeting or forwarding the views of others, ensure that it is clear whether you are endorsing or otherwise the original content.

3. Guidance

3.1 All Councillors are required to act in accordance with the Code of Conduct.

3.2 Social media is an effective method by which Councillors can interact with constituents and support local democracy. Used effectively, Councillors can engage those who would not normally have access to local councillors and politics.

3.3 This Protocol is intended to assist Councillors in complying with the Code of Conduct and ensuring that the use of social media is well received. You should think about what you say and how you say it, in just the same way as you must when making statements in person or in writing.

3.4 Whenever you are using social media, you should be aware that such activity may be subject to the Code of Conduct. Councillors are permitted to write their own official blogs or pages as members of the Council but they must always conform to the Code of Conduct and other relevant policies and protocols of the Council.

3.5 It should be noted that privacy settings will not prevent others with access to your comments from sharing your views with a broader audience. Therefore, notwithstanding the privacy settings applied to any of your social media accounts, you must bear in mind that if you refer to council business in it, you may be viewed as acting in your Capacity.

3.6 To make sure you comply with the Code of Conduct, it is suggested that when using social media as a Councillor, you should observe the Guidelines below. You may also wish to adopt these principles even when you regard your social media activity as being conducted in your private capacity, as this should reduce the potential that allegations are made against you that you have breached the Code of Conduct.

4. Derogatory comments against you

4.1 On occasion, Councillors might find themselves the subject of offensive or defamatory remarks on other people's blogs, accounts, pages or networking sites.

4.2 If you become the subject of offensive on-line behaviour or trolling, it is suggested that you pursue a policy of indifference and, if you do wish to respond, do so in a measured manner, eg asking the blog/account/page owner/person making the remarks to remove them from the site.

4.3 If the person making the comments is a local authority, town or parish councillor, discuss the situation with the Monitoring Officer. It might be the case that the person has breached the Code of Conduct by making the remarks, and it could be appropriate to make a complaint to the Governance and Ethics Committee.

4.4 If you are subject to unacceptable on-line behaviour, you should seek advice from the Monitoring Officer as to whether there is any action that can be taken by the Council in this regard.

5. Use of social media during and after Meetings

5.1 Councillors are permitted to use social media for the reporting of proceedings of public Council meetings. Councillors will need to consider whether using social media may distract them from participating and understanding information that is being shared at the meeting prior to a decision being made to use social media at any point or points during the meeting.

5.2 Councillors should however switch their mobile phone or other equipment to silent mode, so that no disruption is caused to proceedings. If, at a meeting, a Councillor's use of an electronic communication device is causing proceedings to be disrupted any councillor may move that the Councillor should desist from using the device. If the motion is seconded it should be put to the vote without discussion.

5.3 Members wishing to record (whether in an audio or visual format) meetings will need to do so in accordance with (as pertinent) the Council Rules of Procedure, Executive Rules of Procedure, Overview and Scrutiny Rules of Procedure, and/or Regulatory and Other Committees Rules of Procedure.

Social Media Guidelines

You should always:

- conduct yourself in a manner that is respectful of others - this does not prevent you from holding opposing views and expressing political opinion, but views should be expressed in an appropriate manner;
- keep an eye out for defamatory, untrue or obscene posts from others on your blog, account or page and remove them as soon as possible to avoid the perception that you condone such views, and to prevent any potential libel action being taken against you;
- act in accordance with the Council's policies, including but not limited to the Council's Equality Policy;
- be aware that the higher your profile as a Councillor, the more likely it is you will be seen as acting in your official capacity when you blog, post or network;
- be careful about being 'friends' with service users who are vulnerable adults or children, as this could be regarded as a safeguarding issue;
- ensure you use Council facilities appropriately; and be aware that any posts you make using Council facilities will be viewed as being made in your official capacity and/or an inappropriate use of Council resources;
- consider that English Law allows court actions for libel to be brought for published statements alleged to defame a named or identifiable individual or individuals, and that blogging, social media and other forms of digital content publication are covered by the libel laws. You should never:
- blog, post, tweet, network, or otherwise use social media in haste;
- engage in any form of personal attack on an individual that may be seen as disrespectful - general comments about another political party or genuine political expression is less likely to be viewed as disrespect;

- place images or text on social media from a copyrighted source (for example extracts from publications or photos) without permission;
- post comments on social media that you would not be prepared to make in writing or face to face;
- make any comments on social media that you could not defend in court; disclose any information identified by the Council as confidential or exempt;
- disclose information given to you in confidence by anyone or information acquired by you which you believe or are aware is of a confidential nature;
- publish personal information relating to individuals, including photographs, unless you have their permission to do so;
- give the impression that you are expressing the views of the Council where it is not appropriate to do so;
- use online accounts and digital publishing services associated with a specific council office if you no longer hold that office, or during Purdah;
- if you are involved in determining planning or licensing applications or other quasijudicial decisions, publish anything on your blog, account or page that might suggest you do not have an open mind about a matter you may be involved in.