

# CHAPTER 7 - ETHICAL GOVERNANCE

## 27. Members' Code of Conduct

### LONDON BOROUGH OF BROMLEY

#### CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

- 1.1 You are a member or co-opted member of the London Borough of Bromley and, hence, you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 1.2 Accordingly, when acting in your capacity as a member or co-opted member -
  - (i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
  - (ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- 1.3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
- 1.4 You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- 1.5 You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- 1.6 You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in Appendix 1.
- 1.7 You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 1.8 You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.
- 1.9 You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

- (i) you have the written consent of a person authorised to give it; or
- (ii) you are required by law to do so; or
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is:
  - reasonable and in the public interest; and
  - made in good faith and in compliance with the reasonable requirements of the Authority;

- 1.10 You acknowledge there may be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.
- 1.11 You will often receive information of a private nature which is not yet public or which is not be intended to be public. You must respect and comply with the requirement to keep such information private, including information deemed to be confidential by statute. You acknowledge
- (i) that legislation gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out Council duties,
  - (ii) that such information is, for your use as a councillor and must not be disclosed or in any way used for personal or party political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.
- 1.12 You must take adequate steps to familiarise yourself with your duties around GDPR complaint storage and disposal of sensitive data.
- 1.13 You must not prevent another person from gaining access to information to which that person is entitled by law.
- 1.14 You must treat all individuals with courtesy and respect when carrying out your duties as a councillor. Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code (see Appendix 2).
- 1.15 You must respect your fellow Councilors and treat them with courtesy at all times when acting as a councillor. You must not make trivial or malicious complaints about other Councillors or make a complaint to secure a political advantage.
- 1.16 You will cooperate fully with any Standards Investigation.
- 1.17 **Registering and declaring pecuniary and non-pecuniary interests**
- 1.17.1 You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a

husband or wife, or as if you were civil partners. A copy of the current Regulations which sets out details of disclosable pecuniary interests is attached to this Code and will be up-dated as necessary if the Regulations change.

1.17.2 In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

1.17.3 In addition you must:

(i) Register any gift or hospitality with a value of over £25.00 with the Monitoring Officer within 28 days of receipt. Notification should include details of the gift/hospitality and the identity of the donor;

(ii) In addition to registering your disclosable pecuniary interests, you should also register the following non-pecuniary interests, namely:

(a) membership of outside bodies (as appointed by the Council);

(b) membership of other public organisations;

(c) membership of charities;

(d) membership of campaigning groups, political parties and trade unions.

(iii) You must notify the Monitoring Officer of any change to your disclosable pecuniary or other interests within 28 days of the change occurring so that your Register of Interests may be kept up-to-date.

1.17.3 If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.<sup>1</sup>

1.17.4 Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

1.17.5 Unless dispensation has been granted, you may not participate in any discussion of, or vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You may attend a meeting where you have a disclosable pecuniary interest where that right would be available to any member of the public, provided that you do not address the meeting on the matter in which you have an interest. Additionally, you must observe the restrictions your authority places on your

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<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

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 STATUTORY INSTRUMENTS
 

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2012 No. 1464

## LOCAL GOVERNMENT, ENGLAND

 The Relevant Authorities (Disclosable Pecuniary Interests)  
 Regulations 2012

<i>Made</i> - - - - -	<i>6th June 2012</i>
<i>Laid before Parliament</i>	<i>8th June 2012</i>
<i>Coming into force</i> - -	<i>1st July 2012</i>

The Secretary of State, in exercise of the powers conferred by sections 30(3) and 235(2) of the Localism Act 2011(a), makes the following Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and shall come into force on 1st July 2012.

(2) In these regulations—

“the Act” means the Localism Act 2011;

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

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

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

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000(b) and other securities of any description, other than money deposited with a building society.

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(a) 2011 c.20.  
 (b) 2000 c. 8.

### Specified pecuniary interests

2. The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Act are the interests specified in the second column of the Schedule to these Regulations.

Signed by authority of the Secretary of State for Communities and Local Government

*Grant Shapps*  
Minister of State

6th June 2012

Department for Communities and Local Government

## SCHEDULE

Regulation 2

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of

(a) 1992 c. 52.

business or land in the area of the relevant authority; and

(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 30 of the Localism Act 2011 provides that a member or co-opted member of a relevant authority as defined in section 27(6) of the Localism Act 2011, on taking office and in the circumstances set out in section 31, must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification. These Regulations specify what is a pecuniary interest. Section 30(3) of the Act sets out the circumstances in which such an interest is a disclosable interest.

A full impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

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## 2. Bullying and Harassment

### 2.1. Introduction

2.1.1 Everybody has the right to be treated with dignity and respect and to work in an environment which is free from harassment, bullying, discrimination and victimisation. This is now reinforced by paragraph 1.14 of the Councillors' Code of Conduct 2020, which states:

*'Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code.'*

2.1.2 Harassment, bullying, discrimination and victimisation (either directly or indirectly) are unacceptable and will not be tolerated. It is important to recognise the impact such behaviour can have on any individual experiencing it, as well as on the wider organisation in terms of morale and operational effectiveness. In considering complaints of bullying and harassment an important consideration will be the impact of conduct on others and how the subject of the alleged bullying and harassment perceived the behaviour.

2.1.3 You are responsible for your own behaviour and must ensure that you are aware of, and comply with, the provision concerning bullying and harassment in the Councillors' Code of Conduct and also any policy your Council has on ensuring dignity in the workplace.

### 2.2. Harassment

2.2.1 Harassment is any unwelcome behaviour or conduct which has no legitimate workplace purpose and which makes someone feel offended, humiliated, intimidated, frightened and / or uncomfortable at work. Harassment can be experienced directly or indirectly (such as being in the room while unacceptable conduct is being displayed and being affected by it), and can occur as an isolated incident or as a course of persistent behaviour.

2.2.2 It is also important to note that even if behaviour is unintentional, it can still be classed as a form of harassment. Harassment is essentially about what the recipient deems to be offensive, not about what was intended. You should be aware, therefore, of the impact of your conduct on others and that what may seem harmless to you can be offensive to someone else.

2.2.3 Harassment can occur through verbal or written comments (including ones made online and on social media). The following list provides some examples but it is, by no means, exhaustive:

- Unwelcome physical contact such as touching or invading 'personal space';
- Inappropriate remarks or questioning such as comments about someone's appearance, lewd comments, and offensive jokes (such as ones of a racial, sexual or sectarian nature);



- Intrusive questioning, including the persistent discussion of a person's sexual practices, misogynistic behaviour, sexual orientation or religious beliefs (either directly or with others); and
- Sending unwelcome emails, messages or notes; circulating or displaying explicit or inappropriate images.

## **2.3. Bullying**

2.3.1 Bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. Again, it is the impact of any behaviour rather than the intent which is the key.

2.3.2 Bullying usually arises as a result of an individual misusing their power (usually derived from status or some other position of strength) and, again, can occur through all means of communication. Bullying tends to be a pattern of behaviour or can be a one off serious incident that becomes objectionable or intimidating. The examples in the following list are, by no means, exhaustive:

- Unwelcome physical, verbal or non-verbal conduct;
- Intimidatory behaviour including verbal abuse or the making of threats;
- Making someone's working life difficult;
- Disparaging, ridiculing or mocking comments and remarks;
- Physical violence; and
- Deliberately excluding an individual from conversations, work or social activities, in which they have a right or legitimate expectation to participate.

## **27. Arrangements for Complaints against Members**

### **Procedure for the consideration of Code of Conduct (Standards) complaints against elected Councillors**

Bromley has adopted a Code of Conduct for Councillors. If anyone - which can include an employee, a member of the public or even another councillor - feels that behaviour by a Councillor or co-opted member of the Council may have fallen short of the standards required by the Code of Conduct they need to tell us about this so that we can consider their complaint.

The Council has adopted procedures for considering Complaints against Councillors which were reviewed following the publication in January 2019 of the Committee for Standards in Public Life report on ethical standards in local government.

#### **1. How to make a complaint**

- 1.1 Anyone wishing to make a complaint against a councillor is asked to consider the [Councillors Code of Conduct](#) .
- 1.2 You will need to provide details about the nature of the complaint, which part of the code you think the councillor has breached and how, and evidence to substantiate your complaint.
- 1.3 Complaints can be submitted by completing our [complaints form](#) or alternatively please write to the Monitoring Officer, Civic Centre, Stockwell Close, Bromley BR1 3UH.

#### **2. What happens once a complaint has been submitted**

- 2.1 Complaints under the Code are addressed to the Monitoring Officer who will take a view on whether a complaint should be dealt with under the Council's Code of Conduct or another process. This stage of the process is routinely conducted by the Monitoring Officer's nominated representative.
- 2.2 Upon receipt of the complaint, the Subject Member will be notified of the complaint in writing and asked to provide comment.
- 2.3 Complaints which contain a request for the Complainant's identity to be withheld may be considered to be 'valid complaints', although the Complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the Complainant's identity, the Complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.
- 2.4 If the complaint identifies criminal conduct (including a failure to register disclosable pecuniary interests) or breach of other regulations by any person, the Monitoring Officer will refer the complaint to the police or other regulatory agencies. No further action will be taken in relation

to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

### **3. The Initial Assessment Process**

- 3.1 Under the Council's procedures an initial assessment known as filtering is undertaken, in consultation with the Independent Person, with complaints which do not amount to a breach of the Code of Conduct for councillors or those considered unlikely to do so following investigation being filtered out at this stage.
- 3.2 The first issue to consider is whether the Code of Conduct is engaged or not. The Standards committee has adopted criteria for considering complaints alleging Breaches of the [Code of Conduct](#).
- 3.3 The following types of complaint will usually not be considered as 'valid complaints': -
- a) Complaints which are submitted anonymously (though the Monitoring Officer reserves the right to investigate if he/she thinks appropriate).
  - b) Complaints which do not identify a Subject Member.
  - c) Complaints which relate to a Member's personal or private life including personal use of social media.
  - d) Complaints concerning a failure to respond to a request from a Constituent or other individual.
  - e) Complaints which relate to the alleged actions of employees of the Council or non-voting Co-opted Members.
  - f) Complaints which relate to dissatisfaction with a Council, Executive or Committee decision or delivery of a Council service.
  - g) Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council, or after they have resigned or otherwise ceased to be a Member.
  - h) Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now.
  - i) Complaints regarding substantially similar alleged behaviour which has already been the subject of an investigation or enquiry or some form of action. However, a series of complaints demonstrating a pattern of behaviour will be given due consideration.
  - j) Complaints which relate to conduct which is alleged to have taken place more than 3 months prior to the submission of the complaint, unless there are exceptional circumstances to justify the later submission of the complaint.
  - k) Complaints which are considered malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action.
  - l) Complaints which arise from general political activity or campaigning when the Councillor is not acting as a Councillor.
- 3.4 If the Code of Conduct is engaged the Monitoring Officer will consider whether the complaint is likely to amount to a breach of the Code of Conduct having regard to the public interest test adopted by the Committee and the criteria in paragraph 3.3. Before reaching a decision, the Monitoring Officer may request further information from the Complainant and the Subject Councillor and consider information which is readily available e.g. minutes of Council meetings

3.5 The Monitoring Officer will, after consultation with the Independent Person, either set out the outcome of the initial assessment process in writing or seek informal resolution or instigate an investigation. If the initial assessment indicates that the Code is not engaged or no breach of the Code, or indicates no further action is required, the Monitoring Officer, after consultation with the Independent Person will advise all parties accordingly. There is no Appeal Process for decisions taken by the Monitoring Officer at this stage.

#### **4. The Role of the Independent Person(s)**

4.1 Throughout the process, the Council's Independent Person is consulted.

4.2 The Independent Persons are people who have been appointed under the Localism Act 2011, by the Council. The Independent Person must be consulted and have their views taken into account before the Council makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member. The views of the Independent Person may also be sought at any other stages of the complaints process.

4.3 The Member complained about can seek the views of a duly appointed Independent Person.

4.4 The Independent Persons do not represent and are not advisors to the Councillor who is the subject of the complaint, but they can assist in providing factual information on the complaints process. The Independent Person must remain completely impartial and objective and cannot take sides. Their role is to assess complaints and form a view on them. There is no right for the complainant to seek the views of the Independent Person and no such contact will be permitted.

#### **5. Informal Resolution**

5.1 If following the initial Assessment Process, it is considered that a breach of the Code of Conduct may have occurred, prior to referring a matter for formal investigation, The Monitoring Officer after consulting with the Independent Person can decide whether a matter is suitable for informal resolution.

5.2 The Subject Member will be asked to consider whether he/she is prepared to agree to or propose an informal resolution of the complaint which will be communicated to the Complainant.

5.3 Whilst not an exhaustive list, types of informal resolution might include -

- a) an apology from the Subject Member
- b) an agreement from the Subject Member to attend relevant training or to take part in a mentoring process
- c) an agreement from the Subject Member to engage in a process of mediation or conciliation between the Subject Member and the Complainant.
- d) Referral of the matter to the Councillor's Group Leader or
- e) Any other action capable of resolving the complaint.

5.4 The Monitoring Officer will determine if a matter has been informally resolved.

#### **6 Referral for Investigation**

- 6.1 When it is considered after the initial assessment that a complaint may amount to a breach of the Code of Conduct which has not been informally resolved and where further action may be necessary if a breach is proven, the Monitoring Officer will either undertake or commission a formal investigation.
- 6.2 The Investigator will consider all relevant material and interview all persons they consider necessary including but not limited to the Complainant and Subject Member.
- 6.3 The Subject Member as required by the Code of Conduct must co-operate fully with the Investigation and is entitled to have a friend or representative present during any interview.
- 6.4 Where an investigation report recommends that there is no evidence of failure to comply with the Members' Code of Conduct, or that no further action is appropriate the Monitoring Officer shall prepare a report to the Standards Committee who may:
- a) accept the recommendation resolve that no further action is required and dismiss the allegation, or
  - b) remit the matter back to the Monitoring Officer for further consideration/investigation
- 6.5 If after further consideration/investigation, the Investigator concludes that there is no breach of the Code of Conduct or that further action is not required, the Committee shall dismiss the complaint.
- 6.6 Where the investigation finds evidence of a failure to comply with the Code of conduct, the Monitoring Officer in consultation with the Independent Person(s), may seek a further attempt at local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Advisory Committee. Where such local resolution is not appropriate or not possible the Monitoring Officer shall report the investigation findings to a Hearings Panel of the Standards Advisory Committee for hearing and recommendation.

## **7 Standards Hearings**

- 7.1 Where the investigation report concludes that a breach of the Code of Conduct has occurred and that further action may be appropriate the Monitoring Officer shall prepare a report to the Standards Committee who shall appoint a Hearing sub-committee of at least 3 Members to consider the complaint.
- 7.2 The Monitoring Officer will agree a date for the Hearing Sub-Committee with the Investigator and the Subject Member to be held within 28 days of the appointment of the Hearing Sub-committee. In advance of the Hearing the Monitoring Officer will:
- a. provide a timetable for the Member to provide details about whether they wish to give evidence (and whether orally or in writing) at the hearing and any witnesses they intend to call, and additional papers they may wish to provide in time for inclusion in the committee papers
  - b. establish whether the Member will be represented or accompanied at the hearing
  - c. establish whether the Member wishes any part of the investigation report to be kept confidential or the hearing itself to be held in private, and the reasons for this
  - d. provide information about the procedure to be used at the hearing
  - e. establish whether the Member disagrees with any of the findings of fact in the investigation report

- f. establish whether the investigating officer intends to call any witnesses
- 7.3 The Independent Person will be invited to attend the meeting of the Hearings Sub-Committee and his or her views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Respondent's conduct constitutes a failure to comply with the Code of Conduct, and as to any action to be taken following a finding of failure to comply with the Code of Conduct
- 7.4 The Subject Councillor may at their own cost arrange for legal or other representation at the Hearing Sub-Committee meeting or may be accompanied by a friend.
- 7.5 The Hearing will be conducted in accordance with the procedure set out in Appendix A - Member Disciplinary Hearing Procedure.
- 7.6 The Hearing Sub Committee must decide:
- a) whether the subject Member has failed to comply with the Members' Code of Conduct
  - b) whether further action is warranted; and
  - c) what form of action might be appropriate
- 7.7 If the Hearing Sub-Committee Considers that there has been a breach of the Code of conduct after consulting with the Independent Person(s) it may -
- a) decide no further action is required.
  - b) censure the Respondent.
  - c) request the Respondent to submit a written apology in a form specified by the Panel
  - d) request the Respondent to undertake such training as the Panel may specify
  - e) request that the Respondent participates in such conciliation as the Panel may specify
  - f) report to the relevant Council on the outcome of the hearing with an appropriate recommendation
  - g) require a report be submitted to Council requesting Council Issue a formal Censure notice
  - h) advise the Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include securing the removal of a member from any Council, committees
  - i) advise the Leader of the Council, and where the Member complained of is also a Member of the Executive, request the suspension from or removal from the Executive.
  - j) where permitted by law to recommend withdrawal of facilities or equipment.
  - k) any other sanction permitted by law.
- 7.8 A Member cannot be disqualified or suspended from sitting as a Member of the Council.
- 7.9 The recommendations of the Hearing Panel shall be published.
- 7.10 There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.
- 8 Appeals**
- 8.1. The complainant has no right of appeal against the decision of the Standards Committee. If the complainant feels that the Council has failed to deal with the complaint properly and that

this failure has caused injustice, they may make a complaint to the Local Government Ombudsman.

- 8.2. However, if it is resolved that the Member has breached the Code, the Member will have an opportunity to appeal against the decision by advising the Monitoring Officer in writing within 14 days of the outcome of the Standards Hearing. The Member will be required to detail the grounds upon which an appeal is sought.
- 8.3. Upon receipt of notification of appeal the Monitoring Officer will consult an Independent Person for their views. The Monitoring Officer will forward a report detailing the allegations, views of the Independent Person and the findings of the investigation to a second (Appeal) Hearing Sub-Committee who will determine the appeal case. This Sub-Committee will comprise three different Members to that of the first Sub-Committee. The decision of the Appeal Hearing Sub-Committee will be final.



## Conduct of Standards Hearings

Where a Standards Hearing is called under Section 7 the following procedure shall apply.

- i. The Investigating Officer will present their case in the presence of the Subject Member and will call any witnesses.
- ii. The Subject Member (or his/her representative) may ask questions of the Investigating Officer and witnesses (if any).
- iii. The Subject Member (or his/her representative) will put his/her case in the presence of the Investigating Officer and will call any witnesses.
- iv. The Investigating Officer may then ask questions of the Subject Member, and witnesses (if any).
- v. The Members of the Standards Hearing Sub-committee may ask questions of the Investigating Officer, the Subject Member and their witnesses at any time.
- vi. The Investigating Officer and the Subject Member (or his/her representative) can sum up their cases if they wish.
- vii. The Investigating Officer and the Subject Member, their representatives and witnesses will then withdraw.
- viii. The Sub-Committee, with the clerk and Monitoring Officer in attendance, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point-giving rise to doubt.
- ix. The Sub-Committee will consult with the Independent Member before deciding on any course of action.
- x. When the Sub-Committee has reached a decision, it will recall the parties and the Chairman of the Sub-Committee will announce the decision which will be confirmed in writing with full reasons within 10 working days.



## **28. Employee Code of Conduct**

*(To be inserted)*

## 29. Member/Officer Protocol

Councillors and Officers recognise that effective working for the benefit of people who live, work and visit Bromley is based on mutual trust and courtesy.

Within this, the following key principles are recognised:

- The different roles of Members and officers;
- The necessary political independence and impartiality of Chief Officers and officers as a whole;
- The legitimate political aspirations of Members and the need for officers to support and implement democratically made decisions of the Council, Executive and decision making Committees;
- The need for officers to provide professional advice and support to Member bodies and the right for Chief Officers to attend such meetings;
- The need for Councillors and officers to follow the respective Codes of Conduct and any standards set by the Council;
- The need for specific briefings to be provided to the Leader, Portfolio Holders and Committee Chairpersons whilst also recognising that officers are there to serve the Council as a whole;
- The need for officers to engage with Ward Councillors and to provide responses to enquiries and information to enable Ward councillors to contribute to decision making and undertake their representative role;
- To provide access to information to Members unless prohibited by law;
- That officers may on invitation attend party group meetings to provide factual and non-partisan advice, but that where this occurs the same facilities are offered equally to all parties.

## 30. Local Planning Protocol and Code of Conduct



# London Borough of Bromley Local Planning Protocol and Code of Conduct

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## 1 Introduction

1.1 Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.

1.2 The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate. Planning decisions are based on balancing competing interests and making an informed judgement against a local, regional and national policy framework.

1.3 The seven principles of public life apply to anyone who works as a public office-

holder. This includes people who are elected or appointed to public office, both nationally and locally, and as such applies to councillors and officers. The overarching principles were first set out by Lord Nolan in 1995 in the Government's First Report on Standards in Public Life. They were reasserted and refined in subsequent reports of the Committee on Standards in Public Life, most recently the Local Government Ethical Standards Report published in 2019. These principles are:

- **Selflessness:** holders of public office should act solely in terms of the public interest.
- **Integrity:** holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity:** holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness:** holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** holders of public office should be truthful.
- **Leadership:** holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

1.4 This protocol and code of conduct applies to all planning committee meetings,

currently known as Development Control Committee and Plans Sub Committees, and to all Officers and Councillors attending committee meetings. Reference to planning committee is to either of these meetings. Planning committee is a formal meeting of elected Members who make statutory decisions as the Local Planning Authority.

1.5 The purpose of this document is to help all those involved with planning committees, and in particular those making decisions, be consistent in their behaviour and approach and to ensure that the meetings are conducted fairly, transparently and in accordance with the relevant legislation. It has been produced in accordance with the Planning Advisory Service publication 'Probity in Planning' – December 2019.

1.6 Where permission is refused, applicants can appeal against planning decisions to the independent Planning Inspectorate, with a possibility of costs being awarded against the Local Planning Authority if unreasonable behaviour by the Authority can be demonstrated. Appeals can also be submitted against the imposition of planning conditions.

1.7 Planning decisions can be the subject of judicial review, and aggrieved parties can go to the Local Government and Social Care Ombudsman with complaints about maladministration. Adherence to this protocol will minimise the risk of appeals being lost, successful costs claims, lost court cases and upheld complaints.

## **1A Attendance at Planning Committee Meetings**

1A.1 Officers and Councillors attending any planning committee meetings to address or advise the committee are required to have read, understood and abide by this Protocol prior to attending a meeting.

1A.2 Substitute Members at planning committee meetings should be impartial and no more than two Members sitting on a committee should be representing any particular ward at any time. This does not include visiting Members who cannot vote.

- 1A.3 All Members who sit on a planning committee are required to have basic training before they sit on that committee, which is provided annually on the following topics and will be monitored: Introduction to Planning
- The Development Plan and Decision Making
- Predetermination and Predisposition
- Probity and Disclosure of Interests
- How Committees Work
- The Local Planning Protocol

1A.4 When more than 50% of the Members of a specific Plans Sub Committee declare at the start of the meeting (or beforehand) that they know a planning applicant, the matter would automatically be referred to the Development Control Committee. The Chairman of each committee is responsible for identifying such cases.

## 2. Referral of Applications to Committee

2.1 Applications can be included on a committee agenda for any of the following reasons:

1. They are subject to a written 'call in' by a Councillor
2. They fall outside of the powers delegated to Planning Officers
3. Planning Officers decide to refer the application to committee

2.2 This is a summary and reference should be made to the Scheme of Delegation (Appendix 10 of the London Borough of Bromley Constitution

[https://www.bromley.gov.uk/downloads/download/211/constitution\\_of\\_the\\_london\\_borough\\_of\\_bromley](https://www.bromley.gov.uk/downloads/download/211/constitution_of_the_london_borough_of_bromley)) which provides the constitutional framework for powers of

delegation to Officers and sets out the arrangements for 'call in'.

2.3 Planning applications, tree matters and contravention reports can be considered by either Plans Sub Committee or Development Control Committee. Matters of policy and

strategic reports are only considered by Development Control Committee.

2.4 If an application is to be considered at planning committee (see 2.1 above), the following procedures apply to determining which committee to report it to:

- 'Non-major' applications are considered by Plans Sub Committee unless the Assistant Director (Planning) determines that the application is of strategic importance and refers it to Development Control Committee.
- 'Major' applications - Officers recommend a decision route and this is agreed by the Chairman and/or the Vice Chairman of Development Control Committee within 3 working days of receiving the Officer recommended decision route in writing. This will normally be via a recommendation list provided at least monthly.

2.5 Applications are placed onto committee agendas by Officers using a 'cab rank' principle whereby they are reported to the next available committee once the case officer is content that the application is ready to be reported. Members should not request to Officers that applications be considered by a particular committee or on a particular date.

### **3. Agenda and Reports**

3.1 The planning committee agenda will include planning applications in numerical order based on the application reference number.

3.2 Application reports are normally presented in a standard format provided by the Assistant Director (Planning). Reports will identify and analyse the material considerations, of which the committee will need to take account when considering the application on its planning merits. The presentation of reports for matters other than applications may vary according to their content but will present a clear recommendation where appropriate.

3.3 Planning committee agendas must be published on the Council's website a

minimum of 5 working days prior to the committee meeting.

3.4 Planning application reports will always include an officer recommendation for either approval or refusal. Non application reports will include a recommendation where appropriate.

## **4. Site Visits**

4.1 Planning Officers will normally visit each application site for cases being considered by committee and these visits are used to inform the committee report and recommendation. Photographs from these visits are often used within reports to illustrate particular important points.

4.2 For formally arranged Councillor site visits, the Chairman of the relevant committee in consultation with the Assistant Director (Planning) or Head of Development Management will decide whether a site visit for committee members is necessary in advance of any particular application being determined at committee. Such visits will not be publicised.

4.3 A site visit for committee members is only likely to be necessary if either:

- I. the impact of the proposed development is particularly difficult to visualise from the plans and any supporting material, including photographs taken by officers;  
or
- II. the proposal is particularly contentious

4.4 Formally arranged site visits are for observing the site and gaining a better understanding of the issues. They should not be used as a lobbying opportunity by applicants or their agents, local residents, objectors or supporters or for debating any aspect of the proposal or for making any decision. Councillors will usually be accompanied by a Planning Officer.

4.5 It is often useful for committee members to visit a site to familiarise themselves



with it prior to consideration of an application at committee. If Members

do encounter an applicant or neighbour during any informal visit, they should not express an opinion, either for or against the proposal.

4.6 Doing so could be misinterpreted as lobbying and may create a suspicion of bias. If such contact is made this should be declared in Committee, but this should not prevent that Member from taking part in the consideration of that application provided they have acted in accordance with the advice in this Protocol.

## **5. Late Representations**

5.1 Planning applications involve public consultation which has to comply with a legal statutory minimum requirement. In many cases the Council consults over and above the statutory minimum and our approach to this is set out in Section 4 of our published Statement of Community Involvement [https://www.bromley.gov.uk/info/1004/planning\\_policy/154/statement\\_of\\_community\\_involvement](https://www.bromley.gov.uk/info/1004/planning_policy/154/statement_of_community_involvement).

5.2 Public consultation on planning applications includes a formal period for representations to be submitted, and representations are accepted only on a discretionary basis after the expiry of the formal consultation period. Representations received after formal consultation has closed are not guaranteed to be considered in the determination of an application.

5.3 To ensure that all representations can be assessed and presented to planning committee as appropriate, it is necessary to have a cut off time for receiving representations on applications to be considered at committee and this is 12 noon on the day of the meeting. The Assistant Director (Planning) has the final decision on whether to accept late representations.

5.4 As committee reports are prepared and published some time in advance of committee meetings, any representations (including those from consultees) received after publication of the report will be uploaded to our website and may be verbally summarised by the Officer attending the meeting.

5.5 If late representations affect the conclusions of the report or recommendation this will be reported verbally to the committee.

5.6 Documents must not be distributed to committee members at the committee meeting (including by public speakers) to ensure that the material considered in the determination of the application is available to all.

## **6. Public and Visiting Councillor Speaking Procedure**

6.1 Members of the public making written comments on planning applications which are to be considered by a planning committee have the opportunity to verbally address Councillors at committee if they wish. Anyone wishing to speak must have already written in expressing their views on the application. Speakers are not normally permitted on items other than planning applications.

6.2 Members of the public wishing to speak at planning committee must give notice to the Democratic Services Team of their intention to speak no later than 10:00 am on the working day before the meeting. Requests to speak will only be registered once the relevant agenda has been published.

6.3 Should speakers wish to table any correspondence or photographs to supplement their speech to the committee, all documents must be submitted to the Democratic Services Team by 5.00 p.m. on the working day before the meeting. A permanent copy of any item must be provided and it is not acceptable to refer to

online maps, photographs on phones/ipads or similar. The Chairman`s agreement must be sought at the meeting for any items to be considered.

6.4 Order of public speakers: if the recommendation is 'permission' then it will normally be the opponent first, supporter second. If the recommendation is 'refusal', the reverse order will apply.

6.5 Normally one person is permitted to speak for an application and one person permitted to speak against it. If there are more than two requests to speak for or against, people with similar views should get together and agree spokespersons. If there is no agreement, the first person to notify Democratic Services of their intention to speak will be called. Among supporters, the applicant (or if the applicant wishes, the agent) takes precedence, and if the applicant or agent do not wish to speak, the first supporters will be called.

6.6 Residents' Associations or other organisations wishing to make use of these arrangements must appoint a single spokesperson to represent their views.

6.7 Speakers are reminded that only material planning considerations are relevant to the determination of planning applications.

6.8 Each speaker will normally be given up to three minutes and this will be indicated by the warning light system in front of the speaker: - an amber light will show the passing of two-and-a-half minutes and a red light will show the completion of the three minute period. At the red light the Chairman will normally ask the speaker to cease their presentation.

6.9 Members of the Committee (but not visiting Ward Members) may ask speakers to clarify points raised. Otherwise, once members of the public have spoken, no further intervention will be permitted.

6.10 Visiting Ward Councillors should notify the Democratic Services Team of

their intention to speak at committee prior to 5:00pm the day before the meeting. Visiting Councillors do not have a formal time constraint but should aim to keep their presentation to within 3 minutes. Any representations must be limited to material planning considerations. Visiting Members must not sit with members of the committee or sub-committee after they have finished addressing the committee so it is clear that they are not part of the formal committee membership.

## **7. Order of Proceedings**

7.1 Whilst the order of consideration of items at planning committee is ultimately a matter for the Chairman, planning applications will normally be heard first, followed by other items.

7.2 The Chairman will normally vary the order of the agenda taking items with visiting Councillors and public speakers first. Speakers and visiting Councillors should leave the table once they have spoken, prior to the debate on the item commencing.

7.3 Matters will proceed for each item as follows, skipping items where there is nothing to report or no speaker present:

1. Update from Planning Officer and presentation for applications
2. Public speaker(s) (see 6.7 above)
3. Visiting Ward Councillor (see 6.13 above)
4. Committee debate
5. Chairman summarises motions put and seconded
6. Chairman to clarify reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added
7. Planning Officer opportunity to advise committee prior to motion

being considered

8. Vote taken

9. Chairman to summarise and confirm the decision

Planning, legal and other professional officers have a right to be heard and to give advice within their area of professional expertise at any point in the consideration of an application.

7.4 The Chairman should be careful to ensure that additional conditions or reasons for refusal are clearly identified prior to going to the vote and not afterwards to ensure that the committee is clear what it is voting on. The Chairman can take advice from legal, planning or other professional officers present.

7.5 Should there be differing views about the content of reasons for refusal or conditions, the Chairman may take a separate vote following the main vote to clarify the outcome.

7.6 Committee members are given the opportunity to record their vote against whatever motion is put if they wish.

7.7 It is important for the quality of decision making that the Planning Officer is provided with an opportunity to update Members and make any final comment immediately prior to the vote being taken to help ensure that the committee is fully aware of any further advice pursuant to the debate / motion.

7.8 Meetings will normally finish by 10:00pm.

## **8. Decision Making and Voting**

8.1 Councillors who have called in an application to committee should not move or second a motion on that application. The Chairman should take the motion that is proposed and seconded first and only if that motion fails move to the next motion

that is proposed and seconded.

8.2 Should votes for or against a recommendation both fail it is still open to the committee to consider whether they might defer the application for possible changes to make it acceptable to the majority of the committee. The Chairman can use her or his casting vote to decide if voting is equal for and against a motion.

8.3 Councillors should state motions they put clearly and include any specific changes they propose to the officer recommendation so that the committee understand the extent of the motion being proposed (see also 7.5 above).

8.4 When voting, committee members should raise their hands clearly to ensure an accurate count for the vote.

Motions and Votes Against Officer Recommendation:

8.5 Where a motion goes against Officer recommendation the procedure should be:

1. Chairman summarises motions put and seconded
2. Chairman clarifies reasons for refusal or permission if different to that recommended or if additional reasons / conditions are to be added
3. Chairman gives the Planning Officer the opportunity to advise committee prior to the motion being considered.

The advice from the Planning Officer will be based upon the material considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge. The solicitor advising the Committee will be called upon as necessary to give advice on legal matters.

8.6 If the Planning Officer considers that he/she is unable to give that advice immediately, or if the Planning Officer considers that a final decision to refuse could make the Council vulnerable at appeal and awards of costs, Officers should be able to seek a deferral of the item for one cycle of the committee so that a confidential report which sets out the risks can be prepared and avoids Officers having to advise on these issues in public (the final decision on the application should however always be in public), or defer the application to the next Development Control Committee.

## **9. Councillor and Officer Roles**

9.1 The PAS publication 'Probity in Planning' 2019 states: *"Councillors and officers have different but complementary roles within this system, and effective communication and a positive working relationship between officers and councillors is essential to delivering a good planning service.."*

9.2 The 7 Standards of Public Life identified in the Localism Act 2011 are:

- Selflessness – public interest
- Integrity – not open to inappropriate influence/private gain
- Honesty – truthful; declaration of interests and gifts
- Objectivity – use best evidence; impartial; non-discriminatory
- Accountability – open to scrutiny
- Openness – open and transparent decisions in public
- Leadership – uphold and exhibit standards and behaviours

9.3 The Planning Advisory Service Report for Bromley (May 2019) states: *"The role of Councillors on the Committees presents a challenge to the individual. It is often considered to be a quasi-judicial role, but has been*



*described as*

*“A formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly.”*

*(Local Government Association/Planning Advisory Service: Probity in Planning for Councillors and Officers 2013.)*

*In this role Councillors are expressly being asked to place to one side any party political interests, and their role as the representatives of a particular ward, and assess, debate, and then determine often controversial planning proposals in the wider public interest of the whole Council area, and in line with national and local planning policy. They must do so in a way which demonstrates they have understood their role and have approached the decision point open to considering and weighing the merits of all the material issues.”*

Members must never be involved in decision making for applications submitted by themselves, a family member or a close personal associate, and must comply with the Members Code of Conduct at all times when such applications are submitted.

If on consideration of a planning application a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that a Member was biased the Member must recuse themselves from consideration of that application.

9.4 The role of the committee Chairman is to lead and manage the committee and in particular:

- determine the order in which questions may be addressed from the committee members following the officers presentation;
- ensuring that the public speaking procedure is followed;

- managing the committee debate about applications including the order in which Councillors who wish to address the committee may speak;
- determining when the debate has come to a close and votes should be cast in the order in which the motions were first completed (i.e. where the motion has been moved and seconded by Members of the Committee).
- ensuring that debate and decisions made are suitably focused on relevant planning considerations.

9.5 Councillors sitting on the planning committee should:

- make planning decisions on applications presented to the Committee openly, impartially, with sound judgement and for sound planning reasons.
- consider only material planning considerations in determining applications
- exercise their responsibilities with regard to the interests of the London Borough of Bromley as a whole rather than with regard to their particular Ward's interest and issues;
- Come to meetings with an open mind.
- Not allow anyone (except officers, other committee Members and public speakers when they are addressing the committee) to communicate with them during the meeting (orally or in writing) as this may give the appearance of bias. For the same reason, it is best to avoid such contact immediately before the meeting starts.
- Consider the advice that planning, legal or other officers give the committee in respect of the recommendation or any proposed amendment to it.
- Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires the Local Planning Authority to make decisions in accordance with the development plan unless there are good planning reasons to come to a different decision.

- Come to their decision only after due consideration of all of the information available to them, including the local information that Members are uniquely placed to access, but always remembering to take decisions on planning grounds alone. If Members feel there is insufficient time to digest new information or that there is insufficient information before them, then they should seek an adjournment to address these concerns.
- Not vote on a proposal unless they have been present to hear the entire debate, including the officer update and any public speaking.
- Make sure that if they are proposing, seconding or supporting a decision contrary to the officer's recommendation or the development plan, that they clearly identify and understand the planning reasons leading to this conclusion and that they take into account any advice planning, legal or other officers give them. Their reasons must be given prior to the vote and be recorded. Be aware that they may have to justify the resulting decision by giving evidence in the event of challenge.
- Members should avoid requests for officers to speed up or delay the determination or assessment of particular applications or for items to be reported to particular meetings for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.
- seek to attend relevant training and briefing sessions organised from time to time for them.

9.6 The role of Planning Officers at committee is:

- to use professional judgement when recommending decisions on applications and other planning matters.

- to provide professional advice to the committee on planning applications and other matters at any point in the meeting.

## **31. Code of Governance**

*(To be added)*

## 32. Guidance to Councillors: Membership of Outside Bodies

An important part of the role for many Councillors is the oversight or management of outside bodies. In the majority of cases things work well and there are benefits to the Council, the outside body and the individual Councillor. However, there are pit falls and this guidance note has been produced to help avoid risks which may arise, particularly when things do not work out.

### What to do when nominated to an outside body

- Satisfy yourself as to the type of body it is. For example is it a joint committee, an informal association or a legally constituted company or trust?
- Clarify the role you have been appointed to. Are you a Trustee, Company Director, Member of a Committee or just an observer?
- Be aware of the risks and pit falls. Check what indemnities are available from the Council and the body if things go wrong. Check your duties and be clear on anything that you may be personally liable for.

### What types of bodies are there?

#### Incorporated Associations

- A club, group or society may be an incorporated association. This can be an informal organisation existing where several people join together to carry out a mutual purpose other than for profit. If appointed as a member, a Councillor will have responsibilities to other members of the organisation which should be set out in the association's Constitution. This is simply an agreement between members of the association as to how the organisation will operate.
- If you are appointed to the management committee of such an association, you must act within its Constitution and use reasonable care. If the association holds any property or has any accommodation that needs to be held by one or more individuals as the organisation does not have a legal existence of its own.
- As a member of the management committee, you will be personally liable for acts of that organisation but are entitled to an indemnity from the funds of the organisation as long as you act properly. If the organisation does not have enough funds, then Committee members are personally liable for the shortfall.
- Care is needed where one person is appointed by the Constitution of an association to act as agent of the organisation for certain purposes. That person acts as agent for all members of the organisation who all have joint responsibility for the agent's actions.
- Members of a Committee of Management will have personal liability if they act outside the authority given to them or if they do not act within the law, for example if there is non-payment of tax and National Insurance for any employees of the association.
- Members of Management Committees are entitled to an indemnity if they act in accordance with the Constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the Constitution.

The Council cannot pay the cost of an insurance policy or give an indemnity for circumstances where the Councillor is acting in the capacity as a member of the Management Committee and not in their capacity as a Councillor.

### Observers

- If appointed as an observer to an outside body, you will just be watching what happens. The position of an observer has no legal status and you have no special duty to the outside body. You are simply there to represent the Council's interests and will be covered by the Council's indemnities and insurances.
- It is important that you do not become involved unofficially in running the body as that could take you outside of these indemnities. For similar reasons you should avoid appearing to take part **inf** decision making or accepting work or tasks on behalf of the body.

### Consultative or Advisory Bodies

- You could be appointed to an external Committee which advises the Council on various issues. Your **primar**ye role will be as a representative of the Council. Difficulties can arise if you champion a position taken by the external Committee **but** that is likely to cause difficulties in taking part in council business rather than giving rise to financial liabilities.

### Steering Groups, Joint Committees and Partnerships

- You may be appointed as a member or observer to a steering group or partnership body. You need to establish at the outset whether you are acting as a delegate/representative of the Council to promote the Council's interests **,-** or whether you have an independent role to fulfil on behalf of the group or partnership.
- You should avoid committing yourself on behalf of the Council or holding yourself out to be able to do so where you do not have any authority.

### Company Directors

- Companies are legally constituted bodies and there is a range of legislation which regulates the conduct and responsibilities of **Companies and** Company Directors. If you are appointed as a Company Director, you will have the following duties.
  - When acting as a Director you own a fiduciary duty to act honestly and in good faith and in a way you consider most likely to promote the success of the company for the benefit of its members as a whole.
  - You are under a duty as a Director to exercise independent judgement, although it is permissible to take account of third party interests **s** you may represent. You cannot simply vote in accordance with the Council's mandate as to do so would be a breach of your duty to the company.
  - You have a general duty of care and skill to the company. As a Director you will not be deemed to be an expert but you should be diligent and obtain expert advice when necessary.

- You will have to have a duty not to create conflict – where there is conflict between the interests of the Council and the interests of the company, you should not take part in discussions upon such topics both as a Councillor and as a Director. If the conflict is serious or one which repeatedly presents itself, the most appropriate course of action would be for you to resign as a Director of the company.
- You have a duty not to make a private profit from the position. Any interest you or your family may have in relation to the company's contracts must be declared. Whether or not you can vote following declaration will depend upon the Articles of Association of the Company.
- As a Director you must ensure compliance with relevant company legislation in relation to keeping of accounts and making relevant returns to the Registrar of Companies. Failure to do so incurs fines for which you are personally liable and persistent default can lead to disqualification as a Director.
- You have a duty to ensure the company complies with other legislation, for example health and safety legislation if the company employs staff or contractors to undertake work.

#### Liabilities attached to being a Company Director

- The Council cannot provide indemnities or insurance for liabilities a Councillor incurs whilst acting as a Director. It is lawful and common practice for companies to purchase insurance to protect Directors against claims of negligence, breach of duty, trust or default. You are advised to satisfy yourself that such a policy of insurance is maintained at all times whilst you are a Director.
- When you are acting as a Director, you cannot be indemnified by either the Council or the company against liability which arises out of negligence, default or breach of duty or trust. However, you should check the Articles of Association of the company as this will often allow Directors to be indemnified by the company for the cost of defending any proceedings where you are granted relief by the Court or acquitted.
- When a company becomes insolvent, unless Directors have given personal guarantees they will usually not be liable for losses generally or to creditors of the Company. This will not apply where wrongful trading can be proved, e.g.i.e.: if there is no possibility of avoiding liquidation, Directors should ensure that the company does not continue to trade otherwise you could be personally liable for losses due to creditors. Also, if a company trades fraudulently and carries on trading with an intent to default creditors, you may also be personally liable whether you were aware of the fraud or not.
- Directors can be personally liable if the company acts outside its permitted powers.
- Although company liability ceases on the dissolution of the company, the liability of Directors may still be enforced after that dissolution.

#### The position of Charitable Trustees

- The Council often has a right to appoint Councillors to charities or charitable trusts it may have set up or gives funding to or which operate generally in the area.



- Charities and charitable trusts are regulated by the Charity Commission which provides a range of useful information.
- As a trustee you will have the following duties:
  - The duty to act in accordance with the Trust Deed and to protect the charity's assets;
  - A duty to comply with the [Charities Act 2011](#) and other legislation affecting the charity;
  - A duty not to make a private profit from the position;
  - A duty to act with a standard of care which an ordinary prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- Trustees must ensure that information relating to the trust and trustees are registered with the Charity Commission and that annual accounts and returns are sent;
- If the charitable income exceeds £5,000, there is a duty to ensure that letters, adverts, cheques, etc., bear a statement that the organisation is a registered charity.
- Trustees are under a duty to ensure compliance with all relevant legislation, for example in relation to tax and health and safety at work.

### Trustees' Liabilities

- Many trusts do not have corporate status and have no separate identity from the trustees. If appointed as a trustee you should check whether this is the case. If-as-if it is the case then you, together with the other trustees, are personally liable for losses on contracts or claims by third parties, although trustees are entitled to an indemnity from the trust's assets provided they have acted properly in incurring the liability.
- As a trustee you will also have the following liabilities:
  - A liability to make good any deficiencies where trust property is used for a trustee's own benefit or for purposes not in accordance with the purposes of the trust;
  - Personal liability for losses or claims where a trustee has acted outside the scope of the Trust Deed;
  - Personal liability where a trustee has not shown the required standard of care;
  - Personal liability for fines if the trust does not comply with duties to make returns, etc.
- It is important to remember that often trustees remain personally liable even after they have retired, for example where they have previously entered into a contract on behalf of a trust. It is important that when you stand down from a trust you seek an indemnity from your successors. You do not need to do this if a charity is a company when the trustees for the time being will be responsible.
- An indemnity can be given from the trust provided the trustee has acted properly and within their powers. Trustees can take out insurance to protect themselves against personal liability but not for criminal acts and fraud. If the charity pays the premium you will need to check the Trust Deed as the consent of the Charity Commission will be needed unless the Trust Deed expressly does not require it.

### The Council Code of Conduct

- If you are appointed to an outside body and take an active part in it, this may limit the extent to which you can take part in some debates or votes in your role as a Councillor. You will have to have regard both to the Council's Code of Conduct and any rules governing your role on the outside body. If there are regular conflicts of interest you should resign from the outside body.

### Council Indemnities

- Since November 2004 it has been possible for an indemnity to be provided in relation to any action or failure to act as a Councillor which is authorised by the Council, or where the Councillor is carrying on any functions at the request of, or with the approval of, or for the purposes of the Council. However, it does not extend to situations where a Councillor is acting other than as a Councillor, e.g. where the Councillor is fulfilling personal obligations as a company director or trustee. Then you must ensure that the outside body provides the necessary indemnities.