

PART 5: CODES AND PROTOCOLS

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CODE OF CONDUCT FOR COUNCILLORS

This Code of Conduct is adopted by Basingstoke and Deane Borough Council (“the Council”) pursuant to its statutory duty to promote and maintain high standards of conduct by Councillors and co – opted members of the Council.

This Code applies to you as a member of the Council when you act in your role as a Councillor. You are expected to familiarise yourself with the requirements of this Code and to adhere to those requirements.

PART 1 - GENERAL PROVISIONS

Introduction and interpretation

1. (1) This Code applies to all Members of the Council including co-opted members.
- (2) You should read this Code together with the Nolan Principles of Public Life and these principles should be used as a guide to interpretation of this code and to assist in determining whether a breach of this Code has occurred. The Principles are as follows:
 - (a) **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
 - (b) **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
 - (c) **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
 - (d) **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
 - (e) **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

(f) **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) **Leadership**

Holders of public office should promote and support these principles by leadership and example.

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

(4) In this Code:

“Meeting” means any meeting organised by or on behalf of the Council, including—

(i) Any meeting of Council, or a committee or sub-committee of the Council

(ii) Any meeting of Cabinet and any committee of Cabinet

(iii) In taking a decision as a ward member or as a member of Cabinet

(iv) At any briefing by officers

(v) At any site visit to do with the business of the Council

“Member” includes a co-opted member and an appointed member.

General Obligations

2. (1) You must treat others with respect.

(2) You must not:

(a) do anything which may cause the Council to breach any of the equality enactments (as defined in the Equality Act 2010);

(b) bully any person;

(c) intimidate or attempt to intimidate any person; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

3. You must not:

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority.
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
- 4. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 5. You:
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 ¹.
- 6. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by:
 - (a) the Council's Executive Director Finance and Resources; or
 - (b) the Council's Monitoring Officer,
 where that officer is acting pursuant to their statutory duties.

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

PART 2 – INTERESTS

7. Disclosable Pecuniary Interests

- (1) You have a disclosable pecuniary interest if:
 - (a) such interest is one which is specified by regulations made from time to time by the Secretary of State (and the current specified interests are those set out in Appendix 1 hereto) and

¹ 1986 c.10

- (b) it is an interest of yours, or
- (c) it is an interest of:
 - (i) your spouse or civil partner;
 - (ii) a person with whom you are living as husband and wife, or
 - (iii) a person with whom you are living as if you were civil partnersand you are aware that that other person has the interest.

8. Disclosure of Pecuniary Interests

You must:

- (i) Comply with the statutory requirements to register, disclose and withdraw from participating in respect of any matter in which you have a disclosable pecuniary interest (as set out at Appendix 1).
- (ii) Ensure that your register of interest is kept up to date and notify the Monitoring Officer in writing within 28 days of becoming aware of any change in respect of your disclosable pecuniary interests.
- (iii) At any Meeting of which you are present, you must make a verbal declaration of the existence and nature of any disclosable pecuniary interest, where an item of business which affects or relates to the subject matter of that interest, at or before consideration of that item of business or as soon as the interest becomes apparent.

9. Other Interests

In addition to the requirements set out in paragraph 8, if you attend a Meeting at which any item of business is to be considered and you are aware that you have a “non disclosable pecuniary interest or a non- pecuniary interest” in that item, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. The declaration will be confirmed in the minutes of the meeting.

You have a “non disclosable pecuniary interest or a non- pecuniary interest” in an item of business of the Council where:

- (i) A decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of council tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the Council’s administrative area, or
- (ii) It relates to or is likely to affect your disclosable pecuniary interest as set out in Appendix 1, but in respect of a member of your family (other than those specified at paragraph 7(c)) or a person with whom you have a close association with;

and that interest is not a disclosable pecuniary interest.

10. **Special Interests arising in relation to Overview and Scrutiny Committees**

You also have a special interest in any business before an Overview and Scrutiny Committee of the Council (or of a Sub-Committee of such a Committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by the Council's Executive or another of the Council's Committees, Sub-Committees, Joint Committees or Joint Sub-Committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (1) and you were present when that decision was made or action was taken.

11. **Effect of Disclosable Pecuniary Interests and Special Interests on participation**

- (1) Subject to sub-paragraph (2), where you have a disclosable pecuniary interest or a special interest in any business of the Council:
 - (a) you must withdraw from the room or chamber where a meeting considering the business is being held:
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence,
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting,unless you have obtained a dispensation from your authority;
 - (b) you must not exercise Executive Functions in relation to that business; and
 - (c) you must not seek improperly to influence a decision about that business.
- (2) Where you have a disclosable Pecuniary interest or special interest in any business of the Council, you may attend a meeting (including a meeting of the Overview and Scrutiny Committee of the Council or of a Sub-Committee of such a Committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- (3) If a function of your authority may be discharged by a Member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

- (4) It is a criminal offence if you fail to register or disclose a disclosable pecuniary interest.

PART 3 – REGISTRATION OF MEMBERS' INTERESTS

Registration of members' interests

12. (1) Subject to paragraph 13, you must, within 28 days of:
- (a) this Code being adopted by or applied to the Council; or
 - (b) your election or appointment to office (where that is later),
 - (c) becoming aware of any change in respect of your disclosable pecuniary interests or other interests

Notify the Monitoring Officer who is responsible for maintaining the register of members' interests (maintained under section 29(1) of the Localism Act 2011) details of:

- (i) any disclosable pecuniary interests where they fall within a category mentioned in paragraph 7(1) in so far as you are aware of the interest at that time; and
 - (ii) such other pecuniary and non-pecuniary interests as from time to time referred to on the Register of Members interest form.
- (2) Subject to paragraph 12, you must, within 28 days of becoming aware of any new disclosable pecuniary interest or change to any pecuniary interest registered under paragraph (1), register details of that new pecuniary interest or change by providing written notification to the Council's Monitoring Officer.
- (3) A copy of the register will be maintained by the Monitoring Officer and published on the Council website.

13. Sensitive Interests

- (1) Where you are concerned that disclosure of the detail of an interest, either a disclosable pecuniary interest or any other interest, which you would be required to disclose at a meeting or on the register of members' interests could lead to you or a person connected to you being subject to violence or intimidation, the member may request the Monitoring Officer to agree that the interest is a "sensitive interest".
- (2) If the Monitoring Officer is in agreement, you will be required to disclose that you have a disclosable pecuniary interest, but not the detail in the matter concerned at meetings, and the Monitoring Officer can exclude the detail of the interest from the published version of the register of members' interests.

14. Gifts and Hospitality

- (1) You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £25 which you

have accepted as a member from any person or body other than the borough Council.

- (2) The Monitoring Officer will place the notification on a public register of gifts and hospitality.

15. **Dispensations**

- (1) On written request to the Monitoring Officer you may apply for a dispensation relieving you from the requirements in paragraph 8 and 10 of this Code.
- (2) A dispensation may be granted in circumstances where:
 - (i) so many members have a disclosable pecuniary interest and are thus prohibited from participating that it would impede the transaction of the business without a dispensation; or
 - (ii) the representation of different political groups on the body would be so upset as to alter the likely outcome of any vote on the matter without a dispensation; or
 - (iii) granting of a dispensation would be in the interest of the inhabitants of the Council's area; or
 - (iv) every member of the Cabinet would be prevented from participating in Cabinet business because of a Disclosable Pecuniary Interest if no dispensation was granted; or
 - (v) it is otherwise appropriate to grant the dispensation.

Any dispensation must specify the duration up to a maximum of four years.

PART 4 – LOCAL PROVISIONS

16.
 - (1) During the period of three weeks before a pre-planned borough election, formal meetings dealing with non-urgent matters shall be avoided (and the Council's meeting calendar adjusted accordingly);
 - (2) The only decisions to be taken shall be those which have been agreed on a cross-party basis as being urgent in the interests of the Borough;
 - (3) All Political Parties shall sign up to a "protocol" that no "political capital" will be made out of such urgent decision making;
 - (4) Any necessary publicity following such urgent decisions will be strictly factual and non-political and in accordance with Paragraphs 34 and 35 of the Code of Recommended Practice of Local Authority Publicity and, in particular, there shall be no comments made by Cabinet Members in press releases etc; and
 - (5) It be accepted that avoiding meetings might be difficult (a) for the Regulatory Committees prior to any election and (b) for others in the run-up to a by-election, but that the remainder of the above principles shall be observed

Appendix 1

You or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) have a disclosable pecuniary interest for the purposes of section 30(3) of the Localism Act 2011 where you have one or more of the following:

Subject	Prescribed description
Employment, office, trade profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the Basingstoke and Deane Borough Council) made or provided within the relevant period in respect of any expenses incurred by a Member in carrying out duties as a Member, or towards the election expenses of Members.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and Basingstoke and Deane Borough Council:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the Basingstoke and Deane Borough Council.
Licences	Any licence (along or jointly with others) to occupy land in the area of Basingstoke and Deane Borough Council for a month or longer.

Corporate tenancies	Any tenancy where (to the Member's knowledge): (a) the landlord is Basingstoke and Deane Borough Council; 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 the Member's knowledge) has a place of business or land in the area of Basingstoke and Deane Borough 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 relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Interpretation

In Appendix 1 set out above, the following words or expressions mean as follows:

'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;

'Member' includes a co-opted member;

'relevant period' means the period of 12 months ending with the day on which the Member gives a notification of a disclosable pecuniary interest for the purposes of Section 30(1) or Section 31(7), as the case may be, of the Localism Act 2011;

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

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Basingstoke and Deane

Arrangements for dealing with complaints against Councillors

Title	Arrangements for dealing with complaints against Councillors
Owner	Monitoring Officer
Version	4
Issue Date	November 2016
Next Revision Date	One year from the date of issue or sooner if required to comply with legislation.

1. Introduction

- 1.1 These arrangements set out how a complaint can be made against an elected or co-opted member of the Borough, Town or Parish Council who is believed to have breached the code of conduct. The arrangements are adopted in accordance with the Localism Act 2011.
- 1.2 The Code of Conduct is the ethical standards framework that governs the conduct that is expected of councillors. The Borough Council has adopted a [Code of Conduct](#) which is available on the Borough Council's website.
- 1.3 Each Parish/Town Council may adopt their own Code of Conduct and a copy of their Code should be found on the relevant Parish/Town Council website.
- 1.4 Where reference is made in these arrangements to "the parties", this includes the complainant, the councillor whom the complaint has been made against ("the Subject Member") and where the matter relates to a Parish Council matter, the parish clerk.
- 1.5 All decisions relating to this complaints process will be reported to the Standards Committee for noting.

2. Making a complaint

It should be noted that under these arrangements steps may be taken, whenever possible to resolve complaints by way of an informal settlement.

If you wish to make a complaint please write to:

Monitoring.officer@basingstoke.gov.uk

Monitoring Officer
Basingstoke and Deane Borough Council
Civic Offices
London Road
Basingstoke
Hampshire
RG21 4AH

All complaints must be made in writing or via the [online form](#) at www.basingstoke.gov.uk. A hard copy complaints form can be obtained by calling us on 01256 844475 or e-mailing monitoring.officer@basingstoke.gov.uk

We can assist you if you have a disability that makes it difficult for you to put your complaint in writing or if English is not your first language.

Where a complaint is made against more than one Councillor, a separate complaint form must be completed for each respective Councillor.

3. People Involved in the Complaints Process

- 3.1 The Monitoring Officer - is a statutory appointed Officer of the Borough Council who is responsible for maintaining the register of councillors' interests and for administering the arrangements in respect of complaints relating to the conduct of councillors. The Monitoring Officer appoints a Deputy Monitoring Officer.
- 3.2 The [Independent Standards Assessors](#) are individuals who are independent lay members of the Standards Committee. Their role is to determine alleged breaches of the Code of Conduct by Councillors and where proportionate, to impose a sanction to ensure the promotion of high standards of conduct.
- 3.3 An [Independent Person](#) is appointed under section 28 (7) of the Localism Act 2011. Their view is sought and taken into consideration before any decision is taken on whether a Councillor has failed 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. The Independent Person's view may also be sought by a Subject Member.
- 3.4 The [Parish/Town Councillor representative](#) is appointed at the annual general meeting of the Basingstoke and District Association of Parish and Town Councils. Their view is sought before any decision is taken on whether a Parish/Town councillor has failed 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.
- 3.5 Where the complaint merits a formal investigation, the Deputy Monitoring Officer will appoint an Investigation Officer. They may be a senior officer of the authority, a senior officer of another authority or an external investigator with a recognised qualification.

4. The Complaint Process

Stage 1

- 4.1 A flow chart detailing the complaint process can be found at [Annex 2](#).
- 4.2 The Deputy Monitoring Officer will acknowledge receipt of the complaint within 7 working days.
- 4.3 In certain straightforward circumstances, the Deputy Monitoring Officer, in consultation with an Independent Standards Assessor, is entitled to dismiss the complaint at the outset. The complaint is likely to be dismissed if:
- a) the Subject Member is no longer a councillor;
 - b) The conduct complained about happened more than six months ago;
 - c) the conduct complained about happened in the councillor's private life, not when they were acting as a councillor;

- d) the complaint is essentially against the action of the council as a whole and cannot properly be directed against individual councillor(s);
- e) the complaint is made anonymously;
- f) there is no prima facie evidence that the Code has been breached or there is not enough information to take the matter further;
- g) the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained;
- h) the complaint is frivolous or vexatious;
- i) the complaint is relatively minor or tit for tat; or
- j) The complaint is against an officer of the Council.

4.4 If the complaint is rejected at stage 1 the Deputy Monitoring Officer will write to the complainant and the Subject Member to confirm why the complaint has not been progressed. A copy of the complaint will be provided to the Subject Member. If the complaint relates to a Town/Parish Council the clerk to that council will be provided with the same information as the Subject Member. If the complaint identifies criminal conduct at any time during this procedure, the Monitoring Officer will notify the police or other regulatory authority. Where such a notification is made the Monitoring Officer will only confirm the notification to the complainant or Subject Member when it is appropriate to do so.

4.5 No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

5. Informal Settlement

5.1 At any point in this procedure the Independent Standards Assessor/Deputy Monitoring Officer may elect to try and deal with the complaint by way of an informal settlement.

5.2 Informal settlement is a means of resolving complaints informally in appropriate cases without the need for a formal investigation. Every effort should be made to try and resolve complaints by way of informal settlement.

5.3 Such informal settlement may involve setting up a meeting between the complainant, the Subject Member, the Independent Standards Assessor/Deputy Monitoring Officer, the Independent Person and, where appropriate, the Parish Representative.

5.4 The Subject Member may accept that his/her conduct was unacceptable and offer an apology or other remedial action.

5.5 It is desirable that any informal settlement is agreed by the complainant and the Subject Member. If the Independent Standards Assessor, in consultation with the Independent Person and, where appropriate, the

Parish/Town representative, is satisfied that an informal settlement is reasonable in all the circumstances.

- 5.6 The Independent Standards Assessor/Deputy Monitoring Officer may decide to take no further action or may contact the Subject Member and complainant to see if they will accept any other action which is appropriate, to resolve the complaint and to prevent any similar issues arising in the future. Where this is determined, a decision notice shall be prepared and sent to all parties. The decision notice shall be made available for public inspection and will be placed on the council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 5.7 Where either party is aggrieved by the decision of the Independent Standards Assessor to take no further action they may appeal this decision to the Monitoring Officer.

6. Stage 2

- 6.1. Complaints will be referred to an Independent Standards Assessor/Deputy Monitoring Officer for determination. The Independent Standards Assessor/Deputy Monitoring Officer will consult the Independent Person prior to making a decision. The Independent Standards Assessor will then make a recommendation to the Deputy Monitoring Officer, as to whether there is a breach of the Code of Conduct and what sanction (if any) should be given.
- 6.2. The Independent Standards Assessor/Deputy Monitoring Officer may decide to take no further action or may contact the Subject Member and complainant to see if they will accept any other action which is appropriate, to resolve the complaint and to prevent any similar issues arising in the future. Where this is determined, a decision notice shall be prepared and sent to all parties. The decision notice shall be made available for public inspection and will be placed on the council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 6.3. The Independent Standards Assessor may request additional information from either party (to be supplied within 10 working days of the information or documents being requested). These documents can include the minutes of meetings and, where available, webcasts and recordings. This information will be reviewed in consideration of the complaint.
- 6.4. If the Subject Member fails to respond to correspondence, the complaint will be determined on the basis of the information available. If the complainant fails to respond, the complaint will be treated as withdrawn. All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept regularly updated as to how the complaint is progressing.
- 6.5. Once the Independent Standards Assessor is satisfied that he/she has all the information available to him/her, consideration will be given as to whether to determine the complaint, commence a formal investigation or

take no further action. In reaching these conclusions, the Independent Standards Assessor will have regard to the following criteria:

- a) the public benefit in investigating the alleged complaint;
- b) nature of the allegation and whether using public funds to examine the matter further would be disproportionate;
- c) whether the information submitted is sufficient to make a decision or whether to refer for investigation;
- d) whether the complaint is the same or substantially the same as a previous complaint and in that case, whether there is anything further to be gained;
- e) whether the complaint involves conduct too trivial to warrant further action;
- f) whether the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member;
- g) whether the complaint appears to be vexatious, malicious, politically motivated, a 'tit for tat' retaliation or made by a persistent complainant;
- h) whether the matter complained of is an individual act or part of a continuous pattern of behaviour which should be considered cumulatively;
- i) whether any steps have been taken or proposed to remedy the action complained of, for example, an apology has already been made by the Subject Member;
- j) the complainant's view of the action taken or proposed;
- k) where the Subject Member has made a reasonable offer of informal settlement, but the complainant is not willing to accept that offer, this may be taken into account in deciding whether the complaint merits formal investigation; and
- l) whether the complainant has requested that their identity as complainant be withheld from the Subject Member and the matter cannot reasonably be taken further in these circumstances.

6.6. A consultation meeting will be convened (either in person or electronically) with the Independent Standards Assessor, an Independent Person, the Deputy Monitoring Officer and, where appropriate, the Parish/Town

Representative. At this meeting the Independent Standards Assessor/Deputy Monitoring Officer in consultation may conclude one of the following:

- a) That no further action should be taken;
- b) Determine on the papers whether the Subject Member has breached the code of conduct and if appropriate the relevant sanction; or
- c) Refer the matter for a formal investigation.

6.7. One or more of the following sanctions, where appropriate to the breach may be imposed. No sanction can prevent a councillor functioning as a councillor.

- a) Censure or reprimand of the Subject Member;
- b) Publish the findings in respect of the Subject Member's conduct;
- c) Report the findings to Full council or Parish/Town council;
- d) Recommend training for the Subject Member;
- e) Withdraw facilities that have been provided to the Subject Member, such as limiting access to available IT tools;
- f) Exclude the Subject Member from council premises or part of (excluding committee or other meetings where appropriate);
- g) Make a recommendation to the leader of the political group that the Subject Member should be removed from a Committee or Committees or Sub-Committees of the Council.
- h) Recommend to Council that the Subject Member be replaced on appointments made by the Council; and/or
- i) Recommend to Council to remove the Subject Member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish/Town Council.

6.8. Following this meeting a decision notice will be issued. A copy of which will be provided to all parties and where appropriate to the Clerk of the Subject Member's Parish/Town Council. A copy of the decision notice will be made available on the council website, unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.

6.9. Where either party is aggrieved by the decision of the Independent Standards Assessor/Deputy Monitoring Officer they may appeal this decision to the Monitoring Officer.

7. **Stage 3**

- 7.1. A formal investigation will be carried out in circumstances where the Independent Standards Assessor decides that a complaint requires further and more thorough consideration before any decision can be made.
- 7.2. A complaint should usually be referred for investigation in the following circumstances:
- a) the Subject Member has denied the allegation, but the information presented indicates there may be a breach of the Code; and
 - b) if on the information provided, the potential breach of the Code of Conduct is sufficiently serious and taking into account the public interest, an investigation should be undertaken to establish the facts to facilitate the determination of whether there has been a breach and determine what sanction, if any, is appropriate; and taking into account the public interest, the cost of undertaking an investigation would be proportionate.
- 7.3. If the Independent Standards Assessor decides that a complaint merits formal investigation, the Deputy Monitoring Officer will appoint an Investigation Officer, who may be a Senior Officer of the authority, a Senior Officer of another authority or an external investigator, with a recognised qualification. The Investigation Officer will produce a timetable and plan for the investigation process. They will also decide what documents they wish to see and who they will need to interview.
- 7.4. At the end of his/her investigation, the Investigation Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and the Subject Member and provide an opportunity for them to identify any matter in that draft report which they disagree with or which they consider requires more consideration (In both cases any comments are to be supplied within 10 working days of the draft report being sent).
- 7.5. If the Subject Member fails to respond to correspondence from the Investigation Officer, the complaint will be determined. If the complainant fails to respond, the complaint will be treated as withdrawn. All parties are encouraged to respond promptly to any correspondence in relation to the complaint.
- 7.6. Having received and taken account of the comments made on the draft report, the Investigation Officer will send his/her final report to the Independent Standards Assessor/Deputy Monitoring Officer and Independent Person for information as well as the complainant and Subject Member. The Independent Standards Assessor and Deputy Monitoring Officer will review the report. If the report concludes no breach and this is supported by the Independent Standards Assessor/Deputy Monitoring, in consultation with the independent person and where appropriate a parish

representative, a decision notice will be issued.

- 7.7. A copy of the decision notice will be provided to the complainant and the Subject Member. The decision notice will be made available for public inspection and placed on the council's website, unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.
- 7.8. If the report finds a breach of the Code and this conclusion is supported by the Independent Standards Assessor/ Deputy Monitoring Officer the matter will be referred to a hearing by the Standards Hearing Panel.
- 7.9. Where such a referral is made the Monitoring Officer will notify the Subject Member, the complainant, the Independent Person and the complainant of the referral, the outcome of the investigation report, and that a formal decision notice will not be issued until after the Hearing Panel meeting.

8. **Referral of the Complaint to the Standards Hearing Panel**

- 8.1 If in accordance with paragraph 7.8 the complaint is referred to a Hearing Panel then the Monitoring Officer will have delegated authority to organise the hearing.
- 8.2 The Hearing Panel will be made up of the Monitoring Officer, three Independent Standards Assessors. The Independent Person and, if it relates to a Parish/Town Council matter, a Parish/Town representative may also be present.
- 8.3 A Legal Advisor to the Hearing Panel will be appointed to advise at the hearing. The Legal Advisor will advise on legal issues and will have no involvement in the decision making process.
- 8.4 Within 5 working days of appointment, the Legal Advisor to the Hearing Panel will arrange for the hearing forms to be sent to the Subject Member, who will have 10 working days to complete the forms.
- 8.5 The Legal Advisor to the Hearing Panel will forward the completed hearing forms to the Hearing Panel within 5 working days of receipt, together with the following:
 - 8.5.1 The report of the Deputy Monitoring Officer on his/her conclusions in relation to the complaint; and
 - 8.5.2 Any additional documents received since that date.
- 8.6 On receipt of the papers the Hearing Panel may, in consultation with the Legal Advisor and Independent Person (and a Parish/Town Representative where the matter relates to a Parish/Town Council), decide to determine the matter based on the papers before them. The sanctions at paragraph 6.7 are available to the Hearing Panel. If the Hearing Panel confirms that a

hearing is necessary it will determine case management issues such as the following:

- i. whether witnesses are permitted to be called;
- ii. any evidence that should be excluded;
- iii. allocated time for the hearing;
- iv. whether any documents need to remain confidential; and
- v. whether any part of the hearing needs to be held in private.

- 8.7 If a hearing is necessary, where possible, this will be convened within a minimum of two months of the decision made at paragraph 7.8. 10 working days prior to the hearing, all the documents referred to at paragraph 8.5 and an agenda will be served on the complainant, the Deputy Monitoring Officer and the Subject Member. 5 working days prior to the hearing all the documents (unless excluded) will be made available for public inspection and placed on the council's website.
- 8.8 If a hearing is convened the procedure at [Annex 1](#) will be followed.
- 8.9 The Monitoring Officer will give effect to any decisions of the Standards Hearing Panel. There is no right of appeal against this decision.

9 **Appeals**

- 9.1 If the complainant or Subject Member is not satisfied with the decision of the Independent Standards Assessor, as described at paragraphs 5.7, 6.2 and 7.6, they have 10 working days from the date the decision notice was sent to them to appeal the decision in writing.
- 9.2 The request for an appeal by the complainant or Subject Member must include the substantive reasons to support their appeal which have not previously been provided, together with the complainant's/Subject Member's desired action following consideration of the appeal
- Reasons for requesting an appeal may include
- a) some part of the complaint was not assessed
 - b) the evidence does not support the outcome
 - c) that the sanction/no action is inappropriate
 - d) a factual or procedural error
- 9.3 Disagreement with the decision without giving substantive reasoning that have not previously been provided will result in the request for an appeal being rejected.
- 9.4 The Monitoring Officer will determine in consultation with the Independent Person (and where appropriate a parish representative) whether there are valid grounds/reasons for an appeal and reasons for this decision will be provided.

- 9.5 If there are legitimate grounds/reasons for an appeal, the Monitoring Officer will review the documents and may request further information if required. The Monitoring Officer may choose to adopt any procedure in the Arrangements in responding to the appeal.
- 9.6 All appeals will be considered on their merits and according to the facts taking into account all relevant submissions and documents and the views of the Independent Person. The assessment criteria set out in these Arrangements will be used as a guide when determining appeals with departures made where appropriate.
- 9.7 The Monitoring Officer will aim to determine the appeal within 28 working days of receiving an appeal or further information where required. If it is not possible the Monitoring Officer will write to the complainant and Subject Member to advise them of the revised timescale.
- 9.8 An appeal decision notice will be sent to the complainant, the Subject Member, and where appropriate, the Clerk of the Subject Member's council within 5 working days of the appeal being determined.
- 9.9 All appeal decision notices will be published on the council website.
- 10 **Modifications of procedures**
- 10.1 If the parties are in agreement, the Deputy Monitoring Officer/Monitoring Officer may agree to vary this procedure in any particular case where he/she is of the opinion that such a variation is necessary in order to secure the effective and fair consideration of any matter.
- 10.2 The Deputy Monitoring Officer/Monitoring Officer may extend any time limits in these arrangements where it is in the public interest to do so or in order to be fair to both parties.

Annex 1

Standards Hearing Panel Procedure

1. Introduction

- 1.1 The Chair may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
- 1.2 The expectation is that the hearing will be in public, unless the Hearing Panel determines that it is necessary for part or all of the hearing to be in private session.
- 1.3 The hearing will be webcast except for any part of the hearing that will be held in private session.
- 1.4 In accordance with other Council Committee meetings, minutes of the meeting will be taken.
- 1.5 Neither party will be able to produce further documents at the hearing without the consent of the Hearing Panel.
- 1.6 Either party may chose to be represented at the hearing.

2. Quorum

- 2.1 The Hearing Panel shall consist of 3 Independent Standards Assessors, the Monitoring Officer and at least 1 Independent Person. Where the matter relates to a Parish/Town Councillor, the Parish/Town representative must also be present. All members of the Hearing Panel must be present throughout the hearing.
- 2.2 The Hearing Panel shall nominate a Chair for that meeting.

3. Hearing Procedure

- 3.1 The Chair will introduce the Hearing Panel and identify any parties not present. If a party is not present the Hearing Panel will determine whether the hearing should be adjourned or heard in the absence of a party.
- 3.2. All other parties introduce themselves.
- 3.3 The Chair will then ask if any of the Hearing Panel members has any declarations of interest. The Chair will then ask if there are any objections to the members of the Hearing Panel.
- 3.4 The Chair will advise that:
 - 3.4.1 All representations and procedural questions go through Chair;
 - 3.4.2 Generally, no evidence may be submitted *for the first time* at the hearing unless all parties and the Hearing Panel agree;

- 3.4.3 The Hearing Panel will make its decision after hearing representations; and
- 3.4.4 The hearing will be conducted in public except when (i) exempt information about the complainant or subject member is disclosed and (ii) members of the Hearing Panel agree after considering the matter following hearing representations.
- 3.5 The Deputy Monitoring Officer will be invited to present their report including any documentary evidence and may call witnesses which the Hearing Panel has agreed can attend. The report and documentary evidence must be based on the complaint.
- 3.6 The Subject Member (or their representative) may question the Deputy Monitoring Officer upon the content of the report and any witnesses called. (This is not the Subject Member's opportunity to state their case.)
- 3.7 Members of the Hearing Panel will have the opportunity to ask questions of the Deputy Monitoring Officer and any witnesses.

4. The Councillor's case

- 4.1 The Subject Member (or their representative) may present their case and call any witnesses that the Panel has agreed may attend.
- 4.2 The Deputy Monitoring Officer may question the Subject Member and/or any witnesses.
- 4.3 Members of the Hearing Panel may question the Subject Member and/or any witnesses.

5. Summing up

- 5.1 The Deputy Monitoring Officer may sum up their case if they wish.
- 5.2 The Subject Member (or their representative) may sum up their case if they so wish.
- 5.3 The summaries of cases must not include any new evidence.

6. Decision

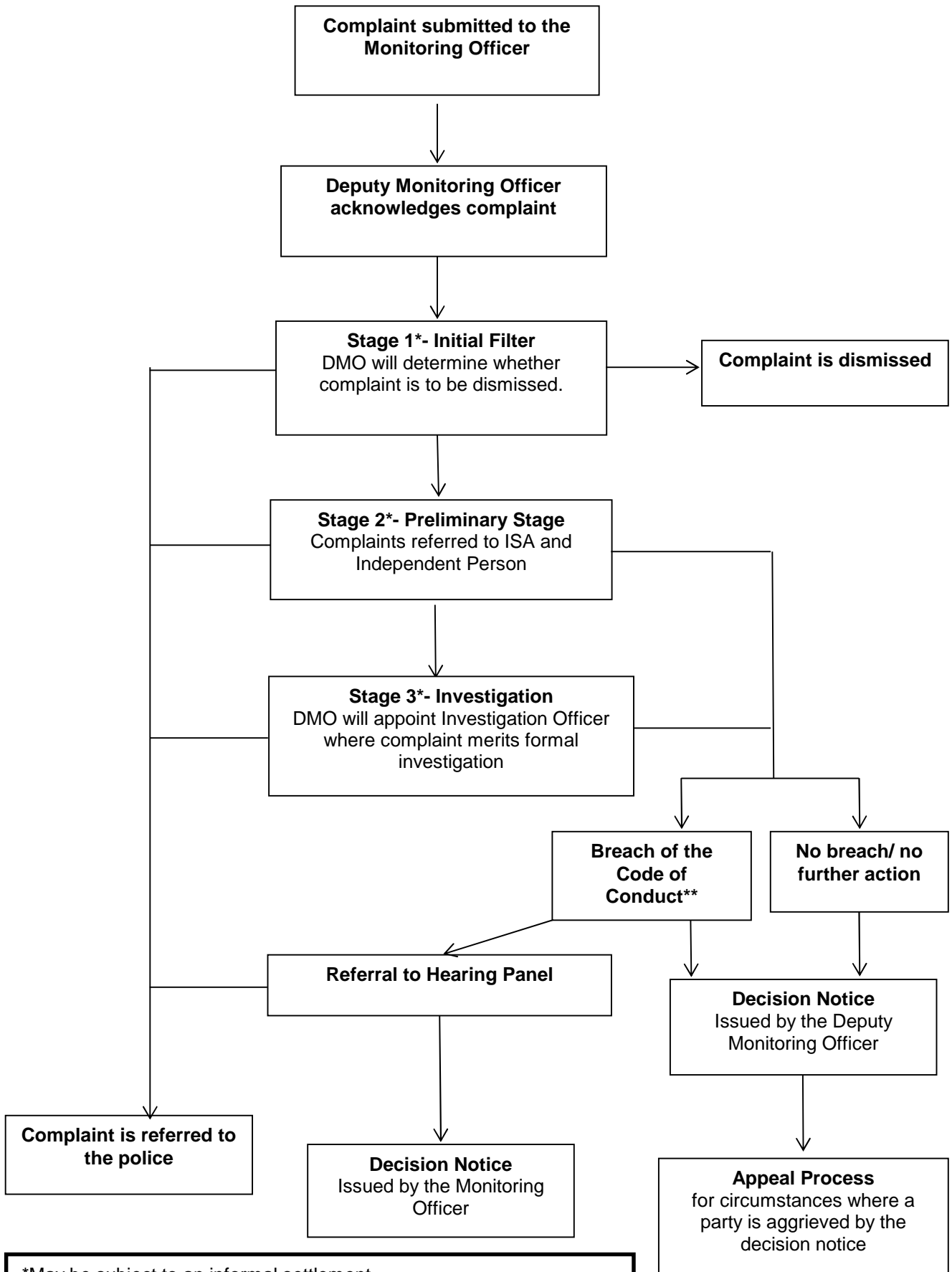
- 6.1 Members of the Hearing Panel will deliberate, with the benefit of advice from the Legal Advisor, in private to consider the complaint. All other parties shall withdraw from the meeting room, leaving only the members of the Hearing Panel and the Legal Advisor.
- 6.2 In the event of uncertainty concerning any evidence or advice already given, all parties will be recalled, regardless of the fact that the point in question relates only to the evidence/advice of one of the parties.
- 6.3 The recommendations of the Hearing Panel shall be announced by the Chair to both parties at the conclusion of the hearing in the following terms:
 - 6.3.1 The Hearing Panel has found that the Subject Member has failed to follow the Code of Conduct or

- 6.3.2 The Hearing Panel has found that the Subject Member has not failed to follow the Code of Conduct
- 6.4 The Hearing Panel will give reasons for their findings.
- 6.5 If the Hearing Panel finds that the Subject Member has failed to follow the Code of Conduct, they may consider representations from the Deputy Monitoring Officer and/or the Subject Member as to whether any action should be taken and in what form.
- 6.6 The Hearing Panel will then, if necessary, deliberate in private as per paragraph 6.1 to consider what action (If any) should be taken. The Hearing Panel will discuss any decision with the Independent Person.
- 6.7 On the Hearing Panel's return, the Chair will announce their decision.
- 6.8 The Council has delegated to the Monitoring Officer such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct.
- 6.9 No sanction can prevent Subject Member functioning as a Councillor. The Hearing Panel can recommend one or more of the following sanctions; where appropriate to the breach in respect of the Subject Member.
- a) Censure or reprimand of the Subject Member;
 - b) Publish the findings in respect of the Subject Member's conduct;
 - c) Report the findings to Full council or Parish/Town council;
 - d) Recommend training for the Subject Member;
 - e) Withdraw facilities that have been provided to the Subject Member, such as limiting access to available IT tools;
 - f) Exclude the Subject Member from council premises or part of;
 - g) Make a recommendation to the leader of the political group that the Subject Member should be removed from any Committee(s) or Committees or Sub-Committee(s) of the Council;
 - h) Recommend to Council that the Subject Member be replaced on appointments made by the Council; and/or
 - i) Recommend to Council to remove the councillor from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish/Town Council.
- 6.10 The Hearing Panel will consider whether it should make any recommendations to the Borough or Parish/Town Council with a view to promoting high standards of conduct among Councillors.

- 6.11 The Monitoring Officer will implement the decision of the Hearing Panel. The Legal Advisor will issue a full written decision to the Parties within 5 working days following the hearing.
- 6.12 The Hearing Panel's finding will be published on the Borough Council's website.
- 7.** The findings and recommendations of the Hearing Panel (as implemented by the Monitoring Officer) are final.

Annex 2

Procedure for Complaints against Councillors



*May be subject to an informal settlement
** Only where a formal investigation determines a breach of the code

PROBITY IN PLANNING

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS

1. BACKGROUND

- 1.1 Planning decisions have extra rules and procedures because of the way that Individual rights may be affected. This advice is for Councillors and Officers involved in planning. It clarifies how Councillors can get involved in planning discussions on behalf of their communities in a fair, impartial and transparent way.

2. INTRODUCTION

- 2.1 This Code has been written to ensure that everyone understands the standards required of the Council in carrying out its planning function.
- 2.2 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 and national policy framework.
- 2.3 Decisions can be controversial because they affect the daily lives of everyone and the private interests of individuals, land owners, and developers. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before decisions are taken and the legal nature of the planning process. Nevertheless, it is important that the decision-making process is open and transparent.
- 2.4 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.
- 2.5 Whilst Councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that the Development Control Committee makes planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.
- 2.6 The aim of this Code of Practice is, therefore, to ensure that the Council operates an open and fair system. Any failure on the part of Councillors or Officers to follow this Code, without good reason, is likely to be taken into account during investigations into possible maladministration.

3. ADVICE FOR ALL COUNCILLORS AND OFFICERS

- 3.1 Councillors and Officers have different, but complementary roles. Both serve the public and the Council as a whole, but Councillors are also responsible to the electorate.

A successful relationship between Councillors and Officers is one based upon mutual trust and understanding of each other's position. This relationship, and the trust which underpins it, must never be abused or compromised.

- 3.2 The public is entitled to expect high standards of conduct and probity by all people holding public office and, in particular, when dealing with planning matters. Only material planning considerations should be taken into account. There are statutory provisions and codes setting standards which must be followed.
- 3.3 Both Councillors and Officers are guided by codes of conduct. The Localism Act 2011 sets out a duty for local authorities to promote and maintain high standards of conduct by Councillors. The Councillors' Code of Conduct in Part 5 of the Constitution emphasises that, whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Councillors are expected to represent their constituents as a body and vote in the interests of the Borough as a whole.
- 3.4 Whilst this Code of Practice deals primarily with planning applications, its principles also apply to the consideration of the Local Plan, planning policy guidance, development briefs, enforcement cases and all other planning matters. An overriding principle is that, when local authorities are dealing with planning matters they should only take into account material planning considerations.
- 3.5 Councillors should be aware that Officers must always act impartially. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior Officers, such as membership of political parties and serving on another Council. The Council has also adopted a staff code of conduct and incorporated those, or equivalent rules of conduct, into the contracts of employment of employees. In addition, Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's Code of Professional Conduct. Breaches of the Institute's Code may be subject to disciplinary action by the Institute.
- 3.6 Gifts and hospitality are considered in the Councillors' and Officers' Codes of Conduct. Councillors and Officers should be cautious about accepting gifts and offers of hospitality and should exercise their discretion especially in relation to gifts and hospitality from an applicant or a potential developer. Any Councillor or Officer receiving any such offers over and above £25 in value should let the Monitoring Officer know, in writing, and seek advice as to whether they should be accepted or declined.

- 3.7 Officers and serving Councillors must not act as agents for people pursuing planning matters within the authority area even if they are not involved in the decision-making.
- 3.8 Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the Council), it is 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. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Local Government Ombudsman on grounds of maladministration or a breach of the authority's Code of Conduct.

4. TRAINING

- 4.1 Following Council elections, and before sitting on the Development Control Committee, Councillors must undertake annual training. No Councillor can act as a member of the Committee without having attended annual training organised by the Council on the legal and practical aspects of the operation of the Town and Country Planning system; this training will also be required for named substitutes.
- 4.2 In addition, regular seminars, updates and workshops will be offered in relation to new issues as they arise. These sessions will be open to all Councillors. The Council will from time to time consider and review the form of training that is most appropriate. Suggestions are welcome from Councillors on any other subjects which they would like to see covered in an on-going programme of seminars and updates.

5. REGISTRATION AND DISCLOSURE OF INTERESTS

- 5.1 The law and guidance on the declaration of disclosable pecuniary interests, as set out in the Councillors' Code of Conduct, must be observed and upheld by all Councillors. At Committee meetings Councillors should make an oral declaration of significant contact with applicants or objectors.
- 5.2 If, during a committee meeting it becomes apparent to a Councillor that s/he has a disclosable pecuniary interest in a matter which is to be, or is being, considered at the meeting, that is not included on the register of interests, then:
- (a) s/he must disclose the interest to the meeting and leave the meeting for that item; and
 - (b) unless the interest is the subject of a pending notification, s/he must notify the Monitoring Officer of the interest within 28 days.
- 5.3 Councillors should bear in mind the potential for their interests to affect the decisions they may take on such matters, even if those interests do not amount to disclosable pecuniary interests. If a Councillor's interest in a matter would lead him/her to predetermine a decision, it would not be appropriate for him/her to participate in the decision, even if s/he is not subject to any specific statutory prohibition relating to disclosable pecuniary interests. If

a Councillor were to do so, s/he would be at risk of breaching the Code of Conduct and making the authority's decision vulnerable to challenge.

- 5.4 It is always best to identify a potential interest early on. If a Councillor thinks that s/he may have an interest in a particular matter to be discussed at a meeting of the Committee s/he should raise this with the Monitoring Officer as soon as possible, although the final decision whether to participate in the item rests with the Councillor.
- 5.5 Councillors who have substantial property interests, or involvement with the property market, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Development Control Committee.

6. PREDISPOSITION, PREDETERMINATION AND BIAS

- 6.1 There is an important difference between those Councillors who are involved in making a decision and those Councillors who are seeking to influence it. This is because Councillors who are not involved with making a decision are generally free to speak about the outcome that they wish to see in relation to the decision that is being made.
- 6.2 When considering whether there is an appearance of predetermination or bias, Councillors who are responsible for making the decision should apply the following test: would a fair minded and informed observer, knowing and having considered the facts, decide there is a real possibility that the Councillor had predetermined the issue or was biased?
- 6.3 Predisposition is where a Councillor holds a view in favour of, or against, an issue, for example an application for planning permission, but has an open mind to the merits of the arguments before making the final decision at the Committee meeting. This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly. A Councillor may even have been elected specifically because of his/her views on a particular issue. Members of the Development Control Committee can form a predisposition to a planning proposal but in doing so would need to carefully follow the advice and guidance laid out in this Code of Practice.
- 6.4 Predetermination, or bias, can lead to the legal challenge of a planning decision in the courts. It is where a Councillor is closed to the merits of any arguments relating to a particular issue, such as an application for planning permission, and makes a decision on the matter without taking them into account. Section 25 of the Localism Act 2011 confirms that a Councillor is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because s/he had previously done anything that directly or indirectly indicated his/her view, or the decision s/he would or might take, in relation to the decision to be made. The most important point is that Councillors should always attend the meeting with an open mind.

- 6.5 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear that s/he is willing to listen to all the considerations presented at the Committee meeting before deciding on how to vote (predisposition).
- 6.6 If a Councillor has predetermined his/her position, s/he should withdraw from being a member of the Committee for that matter. This would apply to any member of the Committee who wants to speak for or against a proposal, as a campaigner (for example on a proposal within his/her ward). As the Council allows substitutes to attend the meeting, this could be an appropriate option.

7. DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS AND COUNCIL DEVELOPMENT

- 7.1 Proposals submitted by serving and former Councillors, serving Officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or Local Plan proposals. All such proposals should be reported to the Committee for decision and not dealt with by Officers under delegated powers.
- 7.2 Ideally, all applications on behalf of Councillors or Officers should be submitted by a professional agent to avoid partiality and contact with Officers dealing with the application. The Monitoring Officer should be notified of all such proposals as soon as they are submitted.
- 7.3 A Councillor would undoubtedly have a disclosable pecuniary interest in his/her own application and should not participate in its consideration. Councillors have the same rights as any applicant in seeking to explain their proposal to an Officer, but the Councillor, as applicant, should not seek to improperly influence the decision.
- 7.4 If an application has been made by a Councillor, or one of their family or friends, s/he should not vote or speak on the application and should withdraw from the meeting. Councillors cannot use the Council's public participation scheme to speak in favour of their own application, or ask a friend or relative to present their case.
- 7.5 A judicial review of a decision to approve planning permission, may result from an interested party if it appears that there may have been some inappropriate influence in the decision-making process.
- 7.6 A Councillor who has acted in a professional capacity for any individual, company, or other body pursuing a planning matter should not vote or speak in relation to that matter and should withdraw from the meeting.

8. APPLICATIONS SUBMITTED BY THE COUNCIL FOR ITS OWN DEVELOPMENT.

- 8.1 Applications made on behalf of the Council for its own development must be treated with the same transparency and impartiality as those of private developers and the general public, and the same planning policy considerations should be applied in all cases.
- 8.2 The Council's current practices and procedures achieve this with identical consultation and publicity in relation to the application. Decisions must be made strictly on planning merits and without regard to any financial or other gain which may accrue to the Council if the development is permitted.
- 8.3 If Councillors are involved in the process of developing or submitting an application on behalf of the Council they should not take any part in the consideration of that application by the Development Control Committee and should arrange for a substitute to sit in their place.

9. LOBBYING OF AND BY COUNCILLORS

- 9.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision will often seek to influence it through an approach to their ward Councillor or to a member of the Committee.
- 9.2 It is essential for the proper operation of the planning system that local concerns are adequately aired. This can be done through the local elected representatives. However, lobbying can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense are exercised by all parties concerned.
- 9.3 When dealing with the public, it is quite proper for Councillors to give factual information and advice on the process and procedures followed by the Council, including who to contact for further information. Equally, it is appropriate for a Councillor to report the public's views, either to Officers or to the Committee, but it would be wrong for a Councillor to put pressure on Officers for a particular recommendation to Committee or to do anything which would be likely to compromise the Officers' impartiality or integrity.
- 9.4 Councillors who are not on the Committee or involved in making a decision on a planning matter can express a view about the proposal but should ensure that they have relevant information before them which may include hearing comments from all parties concerned. Councillors should make it clear to interested parties that they are not part of the decision-making process and that it will be for the Committee to make the final decision.
- 9.5 Councillors sitting on the Committee, when being lobbied, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In this situation Councillors should make it clear

that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at the Committee meeting.

- 9.6 Councillors should reach their own conclusions on a planning matter, rather than follow the lead of other Councillors. In this regard, any political group meetings prior to a committee meeting should not be used to decide how Councillors should vote. The view of the Local Government Ombudsman is that the use of political whips at group meetings in this way is likely to be regarded as maladministration. Decisions only can be taken after full consideration of the Officers' report, and information and discussion at the committee meeting.
- 9.7 A member of the Committee who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. Advice may be sought from the Monitoring Officer.
- 9.8 If the Councillor responds to lobbying by deciding to go public in support of a particular outcome - or even campaigns actively for it - it will be very difficult for that Councillor to argue convincingly, when the Committee comes to take its decision, that s/he has carefully weighed the evidence and arguments presented at the meeting. The proper course of action for a Councillor in these circumstances would be to make an open declaration, to leave the Committee room and not to vote. A Councillor who is a member of the Committee should avoid organising support for, or against, a planning application if s/he intends to participate in its determination at the meeting.

10. PRE-APPLICATION DISCUSSIONS

- 10.1 As community leaders and local representatives, Councillors will want to be involved in public meetings and pre-application discussions. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant. This may create some risks for Councillors, particularly those who are members of the Development Control Committee, and for the integrity of the decision-making process.
- 10.2 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties. Discussions can take place for a variety of reasons, for example: to establish whether an application can be improved in design, to overcome planning objections, to meet relevant neighbour concerns and raise matters of community interest. Early involvement can maximise the value of Councillor input into the decision-making process.
- 10.3 The Localism Act, by endorsing this approach, has given Councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that Councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

- 10.4 It should always be made clear at the outset that pre-application discussions will not bind the Council to make a particular decision, and that any views expressed are provisional, until all relevant information is submitted and consultations on it have taken place.
- 10.5 Pre-application submissions should be treated as confidential submissions. Many cases involve commercial sensitivities and it would not be appropriate for Officers or Councillors to break confidences by making submissions public.
- 10.6 Pre-application advice should be consistent, and based on the Local Plan and material planning considerations. There should be no significant difference of interpretation of planning policies between planning Officers. All Officers taking part in such discussions should make it clear whether or not they will be responsible for handling any subsequent application and explain the decision-making process, including who makes the final decision on a planning application. Planning Officers will ensure their advice is impartial, and seen to be such. A note should be made of all meetings and telephone calls. Where material has been left with the Council, confirmation of its receipt should be given in a follow-up letter.
- 10.7 When attending meetings and site visits, Councillors should take great care to maintain their impartial role as a Councillor, and listen to all the points of view expressed by the speakers and public. Those members on Development Control Committee should not predetermine the proposed application.
- 10.8 Councillors should always involve Officers and set out a structure for the discussions with developers at the sensitive pre-application stage.
- 10.9 If Councillors consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer who will, in turn, advise the appropriate Officers.
- 10.10 Councillors who also serve on Parish Councils may need to clarify their separate roles in each Council regarding Basingstoke and Deane Borough planning policies. The public and other interested parties should be clear at all times when the Councillors are acting as a Parish Councillor and when they are acting in their role as a Borough Councillor.

11. OFFICER'S SITE VISIT

- 11.1 The case Officer's site visit is a fact finding exercise to allow a careful assessment of what is proposed and what impact it will have on the surrounding area and any neighbouring properties. The site visit also allows the Officer to check that notification procedures have been carried out to include neighbour notifications and the display of a site notice.
- 11.2 Officers may be asked by neighbours and adjoining land owners to visit the property next door to the application site to assess the impact of the development. There is no requirement for Officers to carry out such a visit if the impact of the proposal can be adequately assessed from the application site

itself. Councillors should not commit Officers to carrying out such visits or encourage neighbours to attend Officer's site visits.

12. OFFICER REPORTS TO COMMITTEE

- 12.1 The Scheme of Delegation in Part 3 of this Constitution gives clear guidelines on when applications will be determined by the Planning and Development Manager. The majority of applications are dealt with under delegated powers. The remainder are dealt with by the Development Control Committee and are the subject of reports contained within schedules of applications on the agenda.
- 12.2 All reports must give a clear explanation of the relevant history, site, and the Local Plan policies, and any other material considerations. Reports must conclude with a recommendation which should be fully justified by the rest of the report. This is particularly important where the recommendation is for permission to be granted in a case where the proposal is contrary to the Local Plan but where other material considerations have been taken into account. This is particularly important where the recommendation is for permission to be granted in a case where the proposal is contrary to the Local Plan but where other material considerations have been taken into account.
- 12.3 Oral reporting (except to update a report) should be extremely rare. Additional information on items on the agenda received after the agenda papers have been prepared will be included in an 'Update Report' to be tabled at the meeting.
- 12.4 Councillors must ensure that they have read the report. If a Councillor has any points of clarification these can be raised with the author of the report prior to the meeting.
- 12.5 The Development Control Committee's decisions should be properly minuted. The Committee may wish to make a decision to grant or refuse permission contrary to the Officer recommendation in the report. Where this occurs the reasons for the decision should be clearly minuted and a copy placed on the application file.
- 12.6 The courts have expressed the view that reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide satisfactory grounds. Any reasons for refusal must be justified against the Local Plan and other material considerations. Councillors should be prepared to explain in full their planning reasons for not agreeing with the Officer's recommendation. Pressure should never be put on Officers to 'go away and sort out the planning reasons'. The Planning Officer should also be given the opportunity to explain the implications of the contrary decision.
- 12.7 The Committee will wish to record the detailed reasons as part of the mover's motion, or adjourn for a few minutes for those reasons to be discussed and then agreed by the Committee, or where there is concern about the validity of the reasons, it may choose to defer a final decision to enable the draft reasons to be tested, discussed and agreed by the Committee at its next meeting.

12.8 Where Councillors wish to add or amend conditions or reasons for refusal, the general content will be agreed at the Committee meeting and the final wording will generally be delegated to the Planning and Development Manager.

13. COMMITTEE SITE VIEWINGS

13.1 The purpose of a site viewing is for members of the Committee to gain knowledge of the application site and its relationship to adjacent sites. A decision by the Chair/Vice- Chair or the Planning and Development Manager to carry out a site viewing should only be made where there are real benefits to be gained and where objective decisions could not be taken without such a visit. A site viewing is only likely to be necessary if:

(a) the impact of the proposal is difficult to visualise from the plans and any supporting material, including photographs taken by Officers; or

(b) there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing; or

(c) the proposal is particularly contentious.

13.2 A ward Councillor may request that a site viewing is held, by using the relevant pro forma in advance of the meeting and clearly stating the reasons for the request. Ward Councillors who are members of the Committee should ensure that their request does not indicate or imply that they have predetermined the proposal. The pro forma should be sent to the Planning and Development Manager. Requests for viewings at the Committee meeting should be avoided where at all possible.

13.3 Written requests for site viewings should be agreed by the Chair/Vice-Chair or the Planning and Development Manager in advance of the Committee meeting. If agreement cannot be reached on a request for a site viewing then a request should go to the Committee for determination.

13.4 The site viewing should consist simply of a site inspection, led by the Chair or Vice- Chair, with Officer assistance, and should be attended only by members of the Development Control Committee, relevant ward Councillors and Officers, save that in parished areas a properly accredited Parish/Town Council representative may also attend. The applicant or their representative is also permitted to be present to assist with points of clarification only.

13.5 No discussion of the merits of the case should take place during the site viewing. The Chair should clarify who is present on site and ask the Officer to present the application. Ward Councillors and the Parish/Town Council representatives should also be asked if there are particular points that they wish to be examined on site. No lobbying should occur and no opinions should be put forward by these persons. The points made should be factual. The applicant, his/her agent or any objectors shall not be permitted to present a case at the viewing.

13.6 No decisions are made at the site viewings. It is essential that Councillors

and Officers ensure that those attending are not led to believe that a decision has been taken on the spot, or that conclusive views have been reached.

- 13.7 Following the site viewing, Officers will prepare a note of any relevant information obtained from the site viewing to add to the report on the application.

14. PUBLIC SPEAKING

- 14.1 Procedures for public speaking at Development Control Committee are separately available. Public speakers are allotted a specific time to present their comments and observations on a planning application. Public speakers are not permitted to show visual material to the Committee.

15. COMPLAINTS AND RECORD KEEPING

- 15.1 In order that complaints can be fully investigated, record keeping on planning matters should be complete and accurate. In particular, every planning application and enforcement file will contain an accurate account of events throughout its life.
- 15.2 Where a planning application is dealt with under the delegation procedure, a complete record will be kept of the planning considerations taken into account in determining the application.

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WORKING TOGETHER FOR LOCAL PEOPLE: PROTOCOL FOR COUNCILLOR/ OFFICER RELATIONS

1. INTRODUCTION

- 1.1 Together, Councillors and Officers (the terms used for Councillors and Council employees respectively) combine the essential skills, experience and knowledge to lead an effective public sector organisation. Councillors provide a democratic mandate and political leadership for the Council whereas Officers contribute the professional expertise and experience to deliver the policy framework agreed by Councillors.
- 1.2 Whilst collaborative working is the accepted norm for Councillor and Officer relations, it is important to recognise and take account of their different roles. This is important for day-to-day interaction between Councillors and Officers and for the public perception of the Council; by ensuring transparency between the political role of Councillors and the professional, impartial role of Officers.
- 1.3 The Protocol's purpose is to provide guidance on Councillor-officer relations,
- greater clarity on some key areas of interaction;
 - promote good working relations; and
 - enhance mutual respect.
- 1.4 Hence this Protocol is based on a series of principles, explanations and should be interpreted in a purposeful manner, noting that the document is not intended to be comprehensive, nor a prescriptive checklist. The Protocol should be read alongside other documents relevant to the interaction between Councillors and Officers.
- 1.5 To assist in providing that clarity the Protocol seeks to:
- broadly describe the respective roles of Councillors and Officers;
 - understand the different relationships between Councillors and Officers; and
 - describe a framework to facilitate enhanced working relationships.
- 1.6 The aim of this document is to help to clarify expectations and thus help promote good working relations between Councillors and Officers, e.g. enhance mutual professional respect. Hence the code applies to all Councillors, co-optees, officers and other advisors. If there any questions of interpretation please discuss those with the Monitoring Officer.

2. THE DIFFERENT ROLES OF COUNCILLORS AND OFFICERS

- 2.1 Like all effective partnerships, Councillor-officer relations are based on the following principles:
- Mutual trust and respect of the different roles of Councillors and Officers;
 - A common purpose; providing the best possible service to the residents and other stakeholders of Basingstoke and Deane; and
 - A commitment to collaborative, non-adversarial resolution of disputes.

- 2.2 Building and maintaining mutual trust and respect begins with understanding the distinct role and contribution of Councillors and officers, respect for the boundaries and duties for these distinct roles.
- 2.3 Councillors are elected by those individuals eligible and registered to vote. They are elected for a set term of office and once elected represent all the electorate in their ward, not just those who voted for them. Councillors can form political groups and the largest group or a combination of groups usually form an administration to provide the political leadership for the authority.
- 2.4 Officers (except political assistants) are required to be politically impartial; they serve the whole Council and not particular groups or Councillors. This is particularly important for senior officers, who are prevented by law from political activities beyond party membership. Some officers have mandatory statutory responsibilities including the Head of Paid Service, Monitoring Officer and Chief Finance Officer. Councillors must respect these duties and that they may be required to give advice or make decisions which Councillors may not agree with or like.
- 2.5 The remainder of this Protocol will address specific areas of Councillor-officer interaction.

3. THE RESPONSIBILITY OF COUNCILLORS

- a. Providing political leadership.
 - b. Determining the budget and policy framework for the Council.
 - c. Monitoring and reviewing the performance of the Council in implementing that policy and delivering services.
 - d. Representing the Council externally and acting as advocates on behalf of their residents.

4. THE RESPONSIBILITY OF OFFICERS

- a. Ensure the Council acts lawfully and with financial propriety, even if that is against the wishes of Councillors.
- b. The day to day management of the Authority's services, the organisation and its resources inclusive of Officers.
- c. Initiate, implement and manage policy which accords with the overall framework set by Councillors.
- d. Give professional advice to all Councillors.

5. MUTUAL RESPONSIBILITIES OF COUNCILLORS AND OFFICERS

- a. Work in partnership.
- b. Respect for respective roles, workloads and pressures.

- c. Respect, dignity, courtesy, integrity, mutual support and appropriate confidentiality.
- d. To undertake training and development in order to carry out their role effectively.
- e. Not to subject the other to bullying or harassment.

6. PERSONAL RELATIONSHIPS

- 6.1 Mutual respect between Councillors and Officers is essential for the delivery of good local government. Close personal familiarity in public between individual Councillors and Officers can damage this relationship and should be avoided as it can prove embarrassing to other Councillors and Officers. The Council recognises that such relationships may exist or develop overtime. In order to maintain the integrity of the individuals concerned and the Council, such relationships should never be hidden.
- 6.2 Councillors should declare such relationships to the Monitoring Officer and Officers should declare such relationships to their Executive Director in writing. This includes any family relationships.

7. CONTACT BETWEEN COUNCILLORS AND OFFICERS

- 7.1 Contact between Councillors and Officers should be at a level appropriate to the issue being raised. Routine matters should be raised with an appropriate officer however concerns about a service should normally be raised with an Executive Director or Head of Service.
- 7.2 Officers should not shy away from providing advice based upon their professional judgment. Where an individual Councillor may have a contrary view s/he should not seek to pressure the Officer to make a recommendation contrary to the Officer's professional view.
- 7.3 Certain Officers e.g. Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151 Officer) are Statutory Chief Officers and have responsibilities in law over and above their obligations to the Council and to individual Councillors. Councillors must:
 - respect these obligations;
 - not obstruct Officers in the discharge of these responsibilities;
 - not seek to unduly influence them in the carrying out of these responsibilities; and
 - not treat Officers any less favourably for discharging these responsibilities.

8. CABINET/ COMMITTEE CHAIRS AND SENIOR OFFICERS

- 8.1 It is important that there should be a close working relationship between a Cabinet Member or a Chair of a Committee/Sub-Committee and senior Officers. Such Councillors will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, however occasionally Officers will be under a duty to submit a report that Councillors are not supportive of. Any such divergences should be referred to the Head of Paid Service and the relevant group leader or the Leader.
- 8.2 It is a generally accepted convention in local government that the Administration and its Cabinet Councillors will be supported by Officers in policy development. Any advice provided and drafts of documents/ policies in the course of the development of proposals by the Administration and in support of its decision making will be confidential to the Administration.

9. OPPOSITION COUNCILLORS

- 9.1 All Councillors should be treated equally. However, it has to be recognised that the relationship between senior officers and the Cabinet/ Committee Chairs will differ from that with other Councillors, given the need to offer advice to support the development of policy and decision making.

10. POLITICAL GROUPS

- 10.1 Officers serve the Council as a whole and not exclusively any political group, except for Political Assistants.
- 10.2 It is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior officers may provide briefings to such groups but must at all times maintain political neutrality. In practice such officer support is likely to be in most demand from whichever political group forms the administration at the time
- 10.3 Requests for Officers to brief any political group (or Independent Forum) meeting must be made through a Head of Service or Executive Director. Where the group includes non-councillors this may restrict the information that can be disclosed. Any request for advice, together with the advice given to a political group or Councillor will be treated with strict confidentiality, however, Councillors should be aware that this would not prevent officers from disclosing such information to other officers of the Council so far as is necessary to perform their duties.

11. CRITICISM/COMPLAINTS

- 11.1 Councillors and Officers should not criticise or undermine respect for the other at any meeting where Council business is being considered or transacted, in any public forum or through any communications (email, articles, and press briefings/releases). This would damage effective working relationships and the public's confidence in the Council.

- 11.2 If Councillors feel that they have not been treated with proper respect, courtesy or have any concern about the conduct or capability of an Officer or group of Officers they should raise the matter with the relevant Executive Director. If the Councillor is not satisfied that action has been taken within a reasonable period by the Executive Director, they should raise the matter with the Head of Paid Service.
- 11.3 Except as above Councillors should not raise matters relating to the conduct or capability of an individual Council Officer or of Officers collectively, at any meetings other than those held for that specific purpose with the relevant line manager. This is a long-standing tradition in public service as Officers have no means of responding to criticisms such as this in public. Where an Officer feels that they have not been properly treated with respect and courtesy or is concerned about any action or statement relating to her/himself or a colleague by a Councillor they should raise the matter with their line manager, or other senior Officer as appropriate.

12. CORRESPONDENCE BETWEEN COUNCILLORS AND OFFICERS

- 12.1 Correspondence between an individual Councillor and an Officer on a matter relating to a single constituent should not normally be copied (by the Officer) to any other Councillor. Where, exceptionally, it is necessary to copy the correspondence to another Councillor, this should be made clear to the original Councillor before the email is sent. In other words, a system of “silent or blind copies” should not be employed. Where the Councillor/Officer has legitimately copied in others it is in order for the Councillor/Officer replying to copy in those individuals with the response.
- 12.2 In some cases issues are raised by, or with, individual Councillors relating to a matter of general interest in a Council Ward. Recognising that it is in the best interests of the Council to ensure that all Councillors are properly informed of general issues in their Ward, copies of correspondence will normally be sent to all Councillors for the particular area unless the Councillor specifically requests that correspondence is not copied to other Councillors or, there is a political, or other reason, why this is not appropriate. Where correspondence is copied to other Councillors this will be made clear to the original Councillor.
- 12.3 Letters by Officers on behalf of the Council should normally be sent out in the name of the appropriate officer, rather than in the name of a Councillor. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to be signed by a Councillor, but this should be the exception rather than the norm. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a Councillor.
- 12.4 Officers will respond to enquiries made by Councillors within agreed time frames set out in the customer charter. On occasions a response may generate a further enquiry and officers shall seek to assist Councillors with the enquiries. However where such enquiries start to impact on the officer’s workload and priorities set by their manager, the officer will refer the matter to their line manager. The line manager/ or other senior manager may seek a meeting with the Councillor so that issue can be fully aired and consideration given to a comprehensive

response to avoid a protracted exchange of emails. Where in the opinion of the Executive Director the enquiry is not a proportionate use of or is distracting Officer resource from the delivery of the Council Plan, service obligations or priorities set by their manager, the Executive Director may indicate that in the absence of a meeting to resolve the issue no further dialogue will be entered into with the Councillor on the subject. If a Councillor is not satisfied with the Officer's response (s)he should raise the matter with their group leader and the Head of Paid service.

- 12.5 Where correspondence from a Councillor or Officer is considered by the recipient to be rude, intemperate or offensive, the recipient will have the ability to decline to respond to the correspondence, notifying the author that this is the case, and to refer the matter to their Group Leader or if an Officer to their Head of Service or Executive Director as appropriate.

13. LOCAL ISSUES

- 13.1 Whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Councillors should be informed or involved, as appropriate, normally this should be as part of the initial development of the consultation. Similarly whenever a public meeting is organised by the Council to consider a local issue, all the Councillors representing the Ward or Wards affected should, as a matter of course, be given as much notice of the meeting as possible and be invited to attend the meeting. Local Councillors should normally be informed of council issued press releases prior to their release.

14. CEREMONIAL EVENTS

- 14.1 The Mayor, or in his/her absence the Deputy Mayor, will be the appropriate person to lead/ represent the Council at ceremonial events which are of particular significance or are not specifically associated with the office of the Leader, a particular Portfolio/Committee/Sub-Committee.
- 14.2 Local Councillors should always be informed of, and, where possible, invited to ceremonial events taking place within their own Wards. Any Councillor taking part in a ceremonial event must not seek disproportionate personal publicity nor use the occasion for party political advantage bearing in mind that the Councillor is representing the Council as a whole. Further guidance is contained in the Communications Handbook/ Media guidelines.

15. THE MANAGEMENT OF OFFICERS

- 15.1 The management of Officers (including Political Assistants) is the responsibility of managers and ultimately the Chief Executive as Head of Paid Service. Officers will support, advise and respond to Councillors requests but Councillors cannot instruct Officers to do any piece of work or take any course of action.
- 15.2 In some Officer appointments Councillors take part in selecting and appointing an Officer. As a matter of law the candidate who best meets the specification for the role as advertised should be appointed and a Councillor should not let his/her political or personal preferences influence their judgement. The Council has legal

obligations in relation to equal opportunities both as an employer and as a public body. Councillors are required to comply with these legal obligations and to adhere to the Council's equal opportunities policy in their dealings with staff/potential staff.

- 15.3 If, in the course of performing their duties, Councillors receive allegations of misconduct by an officer these should be referred with any supporting information to the appropriate Executive Director or Head of Human Resources and Organisational Development (HR & OD). If the above has been followed and the Councillor still has concerns, or if s/he feels the matter is very serious, then the Councillor may contact the Head of Paid Service.
- 15.4 Councillors should not seek or request personal information about individual officers nor seek to contact Officers outside of working hours or at home unless by prior agreement, an existing provision or arrangement.
- 15.5 If a Councillor or Officer believes they have been subjected to unlawful discrimination or treated in a manner that contravenes the Council's equal opportunities policy then this should be reported by a Councillor to their group leader and by an officer to the Head of HR and OD.

16. PUBLIC RELATIONS AND PRESS RELEASES

- 16.1 The Council's Communications and Marketing Officers serve the Council as a whole and must operate within the limits of the statutory framework which prohibits publishing material which appears to be designed to affect public support for a political party.
- 16.2 Council press releases drafted by officers and will often contain quotations from the Mayor, Deputy Mayor, Leader, a Cabinet Member or the Chair or Vice-Chair of the Committee or Sub-Committee whose service is involved. Such press releases will not indicate the Councillors party political affiliation.
- 16.3 Individual Councillors may issue personal press releases. If issued, these must contain a clear statement that it is a personal publication to avoid any possibility of confusion with a Council press release.
- 16.4 Further guidance on the legal constraints placed on local authority publicity during an election period can be obtained from the Communications and Marketing Office and/or the Monitoring Officer.

17. COUNCILLORS ACCESS TO INFORMATION AND TO COUNCIL DOCUMENTS

- 17.1 Further information is contained within the council's constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

17.2 Access to formal meeting Papers (including background papers)

Further information is contained within the council's constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

17.3 Confidential/Exempt Information

Further information is contained within the Council's Constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

17.4 Legal advice

Further information is contained within the Council's Constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

17.5 Policy development/ advice to political groups

Further information is contained within the Council's Constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

17.6 Requests by Councillors – Procedures

Further information is contained within the council's constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

18. USE OF COUNCIL INFORMATION – CONFIDENTIALITY

Further information is contained within the council's constitution and may be added to this protocol following a review of this subject matter by the Scrutiny Committee in 2017/18.

19. WHEN THINGS GO WRONG

19.1 Procedure for Councillors

In the event that a Councillor is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate Executive Director, or Head of Paid Service as appropriate. If the matter cannot be resolved informally, it may be necessary to invoke the Council's Disciplinary Procedures.

19.2 **Procedure for Officers**

From time to time the relationship between Councillors and Officers may become strained. Whilst it will always be preferable to resolve matters informally, through conciliation by an appropriate senior Officer (including the Monitoring Officer), the Councillor or his or her group leader, Officers will have recourse to local complaints procedures if the informal process fails.

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CHIEF FINANCE OFFICER (SECTION 151 OFFICER) PROTOCOL

1. General Introduction to Statutory Responsibilities

- 1.1. The Chief Finance Officer (CFO) is a statutory appointment under Section 151 of the Local Government Act 1972. This protocol provides some general information on how those statutory requirements will be discharged at Basingstoke & Deane Borough Council.
- 1.2. The Local Government Act 1972 requires that every local authority in England and Wales should “make arrangements for the proper administration of their financial affairs and shall secure that one of their Officers has responsibility for the administration of those affairs”
- 1.3. A summary list of the Chief Finance Officer’s statutory responsibilities is detailed in the attached Annex 2. The Chief Finance Officer’s ability to discharge these duties and responsibilities will depend, to a large extent on Councillors and Officers:
 - a. Complying with the Council’s financial procedures;
 - b. Making lawful payments;
 - c. Not taking action that would result in unlawful payments or unlawful action.
- 1.4. At Basingstoke & Deane Borough Council the current responsibilities of the Chief Finance Officer’s role rest with the Executive Director of Finance and Resources who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council. In doing so the Chief Finance Officer will also safeguard, so far as is possible, Councillors and officers, whilst acting in their official capacities, from financial difficulties.
- 1.5. The Council’s Constitution and Financial Regulations also set out specific roles and responsibilities for the Chief Finance Officer role.

2. The Role of the Chief Financial Officer in Local Government (CIPFA)

- 2.1. The ‘Role of the Chief Financial Officer in Local Government’ statement produced by Chartered Institute of Public Finance & Accountancy (CIPFA), identifies five key roles that are critical to the achievement of a Chief Finance Officer’s (CFO) statutory responsibilities (Annex 1):-
 - (i) The CFO is a key member of the Leadership Team, helping it to develop and implement strategy and to resource and deliver the authority’s strategic objectives sustainably and in the public interest.
 - (ii) The CFO must be actively involved in, and able to bring influence to bear on, all material business decisions to ensure immediate and longer term implications, opportunities and risks are fully considered, and alignment with

the authority's overall financial strategy.

- (iii) The CFO must lead the promotion and delivery by the whole authority of good financial management so the public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.
- (iv) The CFO must lead and direct a finance function that is resourced to be fit for purpose.
- (v) The CFO must be professionally qualified and suitably experienced.

3. Working Arrangements

3.1. The following arrangements and understandings between the CFO, Councillors and the Council's Strategic Leadership Team ('SLT') are designed to ensure effective discharge of the Council's business and functions.

3.2. Access to information and meetings

3.3. SLT comprises of the Chief Executive and three Executive Directors that meet weekly.

3.4. The Chief Finance Officer will:

- a) Be alerted by Councillors and Officers to any emerging issues around financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or a deficit;
- b) Have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council (including meetings at which 'Officer Delegated' decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- c) Have the right to attend (including the right to be heard) any meeting of the Council (including meetings at which 'officer delegated' decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- d) Attend SLT meetings; and
- e) In carrying out any investigation(s) and/or exercising his or her fiduciary duties have unqualified and unrestricted access to any information held by the Council and to any Officer or Councillor who can assist in the discharge of his or her functions.

Relationships

- 3.5. Having good working relations with Councillors and Officers will assist in the discharge of statutory responsibilities by the CFO. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Councillors and Officers must, therefore, work with the CFO (and staff) to discharge the Council's statutory and discretionary responsibilities.
- 3.6. The Chief Finance Officer will:
- a. Ensure the other Statutory Officers (Head of Paid Service and Monitoring Officer) are kept up to date with relevant information regarding financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;
 - b. Be a member of the Stewardship Team which considers and recommends action in connection with Corporate Governance issues and other matters of concern regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;
 - c. Develop an effective working liaison and relationship with the External Auditor, (including having authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
 - d. After consulting with the Head of Paid Service and Monitoring Officer, the CFO must make a formal report to the Council under S114 of the Local Government and Finance Act 1988 where a decision has been, or is about to be, made which will result in unlawful expenditure, unlawful loss or deficiency or an unlawful entry in the Council's accounts. The CFO must also make a formal report to Council if it appears that the Council's expenditure is likely to exceed its resources in any financial year;
 - e. Report directly to the Chief Executive and be the lead Officer for the Audit and Accounts Committee.

Resources

- 3.7. The Chief Finance Officer will;
- a. have access to sufficient resources to enable him or her to address any matters concerning their CFO functions;
 - b. Nominate a suitably qualified deputy and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the CFO; and

- c. Report to Council as necessary on the staff, accommodation and resources required to discharge statutory functions.

4. Other

- 4.1. To ensure the effective and efficient discharge of the arrangements set out in section 3 above, Councillors and Officers will report any breaches of statutory duty or procedures and other vires or constitutional concerns to the CFO, as soon as practicable.
- 4.2. The CFO is available for Councillors and Officers to consult on any issues of the Council's financial powers, possible unlawful payments, or general advice on the financial arrangements.
- 4.3. The CFO is the responsible Officer for the provision of internal audit services to the Council.
- 4.4. To ensure the effective discharge of this Protocol, the CFO will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the CFO role.

Key Roles of the Chief Finance Officer

Maintaining Strong Financial Management Underpinned By Effective Financial Controls

1. Advising on corporate risk profiling and management, including safeguarding assets, risk avoidance and insurance.
2. Advising on effective systems of internal control.
3. Ensuring there is an effective system of internal financial control.
4. Ensuring that financial management arrangements are sound and effective.
5. Ensuring a prudential financial framework is in place.
6. Ensuring that any partnership arrangements (or other innovative structures for service delivery) are underpinned by clear and well documented internal financial controls.
7. Securing effective arrangements for prudential borrowing, treasury management, pensions and trust funds.
8. Ensuring there is an effective internal audit function and assisting management in providing effective arrangements for financial scrutiny.
9. Advising on anti-fraud and anti-corruption strategies and measures.
10. Securing effective systems of financial administration.
11. Ensuring that statutory and other accounts and associated claims and returns in respect of grant are prepared.
12. Contributing to the management of the authority.
13. Ensuring that the authority's financial resources are well managed.
14. Contributing to cross-authority issues and to the development of the authority.

Contributing To Corporate Management and Leadership

15. Contributing to the effective leadership of the authority.

Supporting and Advising Democratically Elected Representatives

16. Advising on protocols setting out the respective roles and responsibilities of Councillors and officers for financial management.
17. Providing advice to Councillors on developing an overall financial strategy that serves policy and service objectives.
18. Helping Councillors to identify priorities, prepare the annual funding plan/budget and identify how resources will be used.
19. Helping Councillors to monitor financial performance against the annual funding plan/budget.
20. Ensuring that all 'branches' of the authority (including the full Council, Cabinet and Scrutiny functions where such arrangements exist, administration and opposition groups and individual Councillors) receive advice and information.

Supporting and Advising Officers in Their Operational Roles

21. Ensuring that there is an effective approach to financial management.
22. Ensuring that financial strategies serve policy and service objectives.
23. Ensuring that the authority's resources are well managed.
24. Ensuring that budgets are properly managed.
25. Ensuring that financial advice and information is provided.
26. Advising on performance management and measurement.

Leading and Managing an Effective and Responsive Financial Service

27. Securing high standards of performance and service to the public.
28. Demonstrating accountability to members of the public and the community by providing robust financial and performance information.
29. Establishing a good, professional working relationship with external auditors, inspectors and other statutory agencies.
30. Ensuring that the services provided by the finance function are in line with the expectations and needs of its internal stakeholders.
31. Ensuring there are high standards of performance throughout the finance function.
32. Leading and managing the finance function.
33. Acting as head of profession for all finance staff in the authority.

Summary of Statutory and Legislative Framework for Chief Finance Officer Protocol

	Description	Source
1	Responsibility for the proper administration of the financial affairs of the Council	Section 151 Local Government Act 1972
2	The treasurer is not merely the servant of the authority but holds a fiduciary responsibility to the local taxpayers	Attorney General v De Winton 1906
3	Duty to nominate a member of his/her staff as Chief Financial Officer (if unable to act owing to absence or illness)	Section 114 Local Government Finance Act 1988
4	Duty to report on decisions incurring unlawful expenditure, unlawful loss or deficiency to the Council, or unlawful item of account	Section 114, 114A, 115, 116 Local Government Finance Act 1988
5	Duty to report if the expenditure of the Council incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure	Section 114 Local Government Finance Act 1988
6	Duty to report on the adequacy of the Council's proposed financial reserves and report on previous years' financial reserves if it appears that controlled reserves are, or are likely to be, inadequate, including recommendations for appropriate actions to rectify	Section 25 and 27 Local Government Act 2003
7	Duty to report on the robustness of the Council's budget calculations and assist the Council in carrying out regular budget monitoring	Section 25 and 28 Local Government Act 2003

8	<p>Responsible for:</p> <ul style="list-style-type: none"> • the Council's accounting records and that they are maintained in accordance with proper practices and kept up to date • accounting control systems and ensuring that they are observed • grant claims • measures to enable the prevention and detection of inaccuracies and fraud • identification of the duties of Officers dealing with financial transactions and divisions of responsibility 	<p>Accounts and Audit Regulations 2003 (Amended 2006, 2011 and 2015) Local Authorities (Capital Finance and Accounting) (England) Regulations 2003</p>
	<ul style="list-style-type: none"> • writing off of accounts • certifying the statement of accounts • providing internal audit 	
9	<p>Responsibility for borrowing, investment accounts and financial administration</p>	<p>Sections 1-92 Local Government Act 2003</p>

CHIEF INTERNAL AUDITOR PROTOCOL

1. GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

- 1.1. Section 151 of the Local Government Act 1972 states that every local authority in England and Wales should '*make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has the responsibility for the administration of those affairs.*' Chartered Institute of Public Finance & Accountancy (CIPFA) has defined 'proper administration' in that it should include '*compliance with statutory requirements for accounting and internal audit.*'
- 1.2. The CIPFA Statement on the Role of the Chief Financial Officer in Local Government states that the Chief Financial Officer (CFO) must:
 - Ensure an effective internal audit function is resourced and maintained;
 - Ensure that the authority has put in place effective arrangements for internal audit of the control environment;
 - Support the authority's internal audit arrangements; and
 - Ensure that the Audit & Accounts Committee receives the necessary advice and information, so that both functions can operate effectively.
- 1.3. The relationship between the Chief Internal Auditor (CIA) and the CFO is therefore of particular importance in local government.
- 1.4. Accounts and Audit Regulations 2015 state that '*A relevant Authority must undertake an effective internal audit to evaluate the effectiveness of its risk management control and governance processes, taking into account public sector internal auditing standards or guidance (2(5))*
- 1.5. The internal audit service provided will comply with the CIPFA Public Sector Internal Audit Standards (PSIAS). The PSIAS came into effect on 2016 and supersedes the 2013 CIPFA.
- 1.6. The definition of 'Internal Auditing', according to Public Sector Internal Audit Standards is:

"An independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes"

2. THE ROLE OF THE CIA

- 2.1 The 'Role of the Head of Internal Audit in Public Service Organisations' statement produced by Chartered Institute of Public Finance & Accountancy (CIPFA) identifies principles that defines the governance arrangements and the core activities and behaviours that belong to the role of the CIA. These are:
- Assist in delivering the organisation's strategic objectives by objectively assessing the adequacy of governance and the management of existing risks; commenting on responses to emerging risks and proposed developments.
 - Provide an objective and evidence based opinion on all aspects of governance, risk management and internal control.
 - Have a regular and open engagement across the organisation, particularly with the Leadership Team and with the Audit & Accounts Committee.
 - Lead and direct an internal audit service that is resourced to be fit for purpose.
- 2.2 To provide this role it is essential that the CIA discharges his or her responsibilities in an independent manner and in a way, which will enhances the reputation of the Council. In doing so the CIA is expected to act in a positive manner and with determination.
- 2.3 It is therefore necessary to ensure that the CIA is a senior and experienced Officer with the independence, standing and skills to properly carry out the role.
- 2.4 The CIA's ability to carry out the responsibilities of the post effectively also depends on excellent working relationships with Officers and Councillors and so securing access to information and debate particularly at the early stages of projects and policy developments.
- 2.5 The following arrangements and understandings between the CIA and colleagues and Councillors are designed to help ensure the effective discharge of his or her functions:
- The CIA will seek to develop a close working relationship with the CFO.
 - The CIA will seek to develop a close working relationship with the Chair of the Audit & Accounts Committee and the External Auditor including the giving and receiving of relevant information whether confidential or otherwise.
 - The CIA will be a member of the Council's Stewardship Team whose role is to provide advice and guidance to the Strategic Leadership Team Senior Management Group (SMG) on the Council's governance arrangements.

3 WORKING ARRANGEMENTS

3.1 Audit & Accounts Committee

3.1.1 The CIA will:

- Produce the following annually for approval by the Audit & Accounts Committee:
 - (i) Internal Audit Charter
 - (ii) Internal Audit Plan
- Produce an annual report to the Audit & Accounts Committee which will include an opinion on the effectiveness of the Council's risk management, and control and governance processes.
- Produce progress reports throughout the year for the Audit & Accounts Committee on the work carried out by the Internal Audit team. This will include:
 - (i) A summary report, including recommendations, for each completed audit assignment.
 - (ii) An assurance statement on the controls for the system, function or process audited.
 - (iii) Summary of outstanding recommendations.
 - (iv) Carry out an annual review of the internal audit service against the Public Sector Internal Auditing Standards.

3.2. Corporate Governance

3.2.1. The CIA will:

- (i) be an active member of the Council's Stewardship Team.
- (ii) Carry out an annual audit review of the Governance arrangements of the Council against the adopted Local Code of Corporate Governance.

3.3. Rights of Access

3.3.1 The CIA will have :

- (i) The right to enter at all times any premises or land occupied by the Council and have access to all council property.
- (ii) Access to all records, documents and correspondence relating to any activities of the Council held by Councillors or employees, if necessary, immediately on demand.
- (iii) The right to receive such information and explanations as are necessary concerning any matter under examination from Councillors or employees.

- (iv) Require any Council employee or agent, on demand, to produce cash, stores or any other Council property held under their control.
- (v) Remove and hold in safe custody any books, records, vouchers or other material where they may be required as evidence in an investigation of suspected fraud or irregularity.
- (vi) Require an employee to surrender any keys or cards allowing access to Council premises or assets and to leave the Council's premises immediately.
- (vii) Where he or she considers it necessary, direct access to the Chief Executive, Leader of the Council and Chair of Audit & Accounts Committee without prior consultation with the CFO.

3.4. Confidentiality

- 3.4.1. Openness in the dissemination of information and decision-making should be the norm in the Council, however, the CIA must respect the confidentiality of the information to which he or she has access to at work and must not use it for personal gain or pass it on to others who might use it in this way.
- 3.4.2. The CIA must not inform anyone inside or outside the Council who is not entitled to know for the purpose of their job, what is discussed at Council meetings held in private or exempt sessions, nor about the contents of Council documents which are confidential or exempt.

3.5. Notifying and Consulting the CIA

- 3.5.1 Councillors and Officers will notify the CFO, CIA and Monitoring Officer of all emerging issues of fraud, corruption and impropriety.
- 3.5.2 Whenever any matter arises which involve, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the authority, the Head of Service concerned shall forthwith notify the CIA who shall take such steps as are considered necessary by way of investigation and report.
- 3.5.3 Heads of Service will ensure that new systems for maintaining financial records, or records of assets, or changes to such systems, are discussed with and agreed by the CIA prior to implementation.

3.6 Reporting

- 3.6.1. Where the CIA becomes aware of any potentially reportable incident he or she will report the matter to the CFO.
- 3.6.2. The CIA will have the right, following consultation with the Chief Executive, Monitoring Officer and CFO, to notify the Police and/or other regulatory bodies of concern in respect of any matter.

3.6.3. Where the CIA has previously given advice or otherwise been involved in a potentially reportable matter in such a way that a conflict of interest would arise should he or she carry out their CIA function then the CIA will arrange for those functions to be carried out by an independent third party.

3.7. **Risk Management**

3.7.1 The CIA will:

- (i) Maintain the Council's Risk Management Policy
- (ii) Carry out an audit of the effectiveness of the risk management process each year
- (iii) Maintain the corporate risk register
- (iv) Co-ordinate a regular update of the corporate risk register resulting in a report to Audit and Accounts Committee

3.8. **Resources**

3.8.1. The CIA will report, to the CFO, the 'resource implications' for each year. This will detail the resources required to discharge his or her functions.

3.8.2. The CIA will carry out an annual review of the Internal Audit function to ensure that it is compliant with the Public Sector Internal Audit Standards as published by CIPFA in collaboration with Chartered Institute of Internal Auditors.

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AUDIT ARRANGEMENTS

1. The Council must undertake an effective internal audit to evaluate the effectiveness of its risk management control and governance processes, taking in to account the Public Sector Internal Audit Standards as required by the Accounts and Audit Regulations 2015.
2. The Council's Chief Financial Officer is responsible for the provision of internal audit services to the Council and for maintaining an adequate and effective system of internal audit. Further information on the Council's accounting arrangements and audit are available from the Executive Director of Finance and Resources.
3. The Council is subject to external audit of its financial affairs, through auditors appointed by the Council. External auditors have an important role to play in ensuring that there is accountability for public money, stewardship of public resources and effective corporate governance. In particular the external auditor will:
 - a) provide an opinion on the accounts and financial statements of the Council;
 - b) review the arrangements for value for money;
 - c) give electors the opportunity to raise questions about the accounts and deal with any objections raised pursuant to the provisions of the Local Audit and Accountability Act 2014; and
 - d) deal with Advisory Notices under the Local Government Act 2000, where the auditor considers that there may be the potential for unlawful expenditure.
4. External auditors operate within the Code of Audit Practice and other requirements laid down by Regulations.
5. The role of Audit Committee/Audit Panel will be carried out by the Council's Audit & Accounts Committee.

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TREASURY MANAGEMENT

1. The Council is responsible for:-
 - a) Setting the Treasury Management Policy which sets out the main policy objectives.
 - b) Approving the annual Treasury Management Strategy Statement.
 - c) Approving the Annual Investment Strategy which sets out:
 - (i) the amount that can be prudently invested in long term investments.
 - (ii) the type of investment instruments that can be used.
 - (iii) any limits for each type of investment (maximum periods and amounts).
 - (iv) any limits for exposure to fixed and variable interest rates.
 - (v) the maximum amount that can be invested with a counterparty.
 - (vi) the minimum credit rating allowed for new investments.
 - (vii) the approved Prudential Indicators.
 - (viii) the Authorised Affordable Borrowing Limit.
 - (ix) a Treasury Management mid-year review from Cabinet.
2. The Cabinet is responsible for:
 - a) Recommending to Council the Treasury Management Strategy Statement and Annual Investment Strategy.
 - b) Reporting the annual and half yearly treasury management activity to the Full Council.
3. The Chief Finance Officer (Executive Director of Finance and Resources) is responsible for:
 - a) Recommending to Council via Cabinet the Treasury Management Strategy Statement and Annual Investment Strategy.
 - b) Reporting the annual and half yearly treasury management activity to the full Council via Cabinet.
 - c) Determining the delivery methodology for, and implementation of, the Treasury Management and Investment Strategies.
 - d) Deciding on the amounts to invest, instruments to use, and counterparties to invest in, subject to the limits set in the Investment Strategy.
 - e) Selecting suitable lending criteria that fulfil the requirements of the Investment Strategy.
 - f) Maintaining and updating Treasury Management Practices (TMP's) that ensure all decisions on borrowing, investment or financing are in accordance with CIPFA's Code of Practice for Treasury Management in

Local Authorities.

4. The Audit and Accounts Committee is responsible for the scrutiny of Treasury Management Activity.