



Epping Forest District Council

STANDARDS COMMITTEE **Thursday, 12th September, 2013**

You are invited to attend the next meeting of **Standards Committee**, which will be held at:

Committee Room 1, Civic Offices, High Street, Epping
on Thursday, 12th September, 2013
at 7.30 pm .

Glen Chipp
Chief Executive

Democratic Services
Officer

G Lunnun (The Office of the Chief Executive)
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Mrs P Smith (Chairman), G Chambers (Vice-Chairman), R Cohen, Ms H Kane, Mrs J Lea, Mrs C Pond, B Rolfe, D Stallan and Mrs J H Whitehouse.

Independent Persons: K Adams, P Adams, D Cooper, R Pratt.

Parish/Town Councillors: R Alvin, J Barber, R Morgan and Ms J Whybrow.

1. APOLOGIES FOR ABSENCE

R Pratt (Independent Person)

2. SUBSTITUTE MEMBERS

(Deputy Monitoring Officer) To report the attendance of any substitute members for the meeting.

3. MINUTES (Pages 5 - 8)

To approve as a correct record the minutes of the meeting held on 13 June 2013 (attached).

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. COMPLAINTS PROCEDURE (Pages 9 - 26)

Recommendation:

To review the Complaints Procedures adopted in June 2012

(Monitoring Officer) The attached complaints procedures developed by the Public Law Partnership were adopted by the District Council in June 2012, subject to review after 12 months.

6. MEMBERS' CODE OF CONDUCT (Pages 27 - 40)

(Monitoring Officer) Arising from the discussion on the previous item, members are invited to review the existing Code and Conduct.

7. PLANNING PROTOCOL (Pages 41 - 60)

(Monitoring Officer) Officers will shortly be undertaking a review of the attached Planning Protocol. The Committee is invited to express initial views for incorporation into a revised draft document which will be submitted to a future meeting.

8. TOWN AND PARISH COUNCILS - AFFILIATION TO A STANDARDS COMMITTEE AND ADOPTION OF CODES OF CONDUCT AND COMPLAINTS PROCEDURES

(Monitoring Officer) An oral update will be given at the meeting on the current position regarding (a) the affiliation of parish/town councils to a Standards Committee and (b) the adoption by parish/town councils of Codes of Conduct and Complaints Procedures required under the provisions of the Localism Act 2011.

9. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS (Pages 61 - 62)

(Monitoring Officer)

(a) To consider the attached schedule showing the current position of active cases; and

(b) To consider the following requests from a Joint Parish Standards Committee Panel hearing:

(i) inclusion of the following statement in the EFDC Bulletin, sent to all Parish Councils in the District, and passed to the Essex Association of Local Councils to be formally disseminated:

"Councillors should remember when taking Office as Councillor, they are acting in a public office and publicly representing their parishioners. As such, they should consider their actions and words, and how they may be perceived by other members of the public before making statements or comments that may be taken out of context or before clear facts are known".

(Note: As the District Council Bulletin is not sent to Parish and Town Councils, a letter has been sent to those councils and the issue was

reported to the Local Councils' Liaison Committee);

(ii) consideration should be given to including a section in the Code of Conduct suggesting members should be extremely careful about ensuring they are fully briefed on any specific issue / document before making public comment, and if a councillor is unclear he/she should seek clarification before making public comment;

(iii) the Panel would like it noted they were concerned regarding the following two issues, and ask that the Monitoring Officer addresses these issues in future:

- there was no formal statement from the Clerk in the documentation regarding these cases, despite the fact that reference was made by the investigating officer that he had spoken with the Clerk. The Panel feel that a formal statement should have been made by the Clerk;

- none of the statements was signed by the relevant party making the statement. A signature would enhance the probity of such documents.

10. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2013/14 provides for meetings of the Committee on 12 December 2013 and 13 March 2014.

Additional meetings can be arranged as and when required by the Committee.

11. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
12	Allegations Made About the conduct of District and Parish/Town Councillors – Issues Arising	1

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

Agenda Item No	Subject
Nil	Nil

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

(1) All business of the Council requiring to be transacted in the presence of the

press and public to be completed by 10.00 p.m. at the latest.

- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

12. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND TOWN/PARISH COUNCILLORS - ISSUES ARISING

(Monitoring Officer) To discuss issues arising, if any, from active cases listed on the schedule for item 9.

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards Committee

Date: 13 June 2013

Place: Council Chamber, Civic Offices,
High Street, Epping

Time: 7.30 - 8.32 pm

Members Present: Councillors Mrs P Smith (Chairman), G Chambers (Vice-Chairman), Ms H Kane, Mrs C Pond, B Rolfe, D Stallan and Mrs J H Whitehouse.

Other Councillors:

Independent Persons: P Adams, J Guth and K Adams (reserve)

Parish Council Representatives: Councillors R Morgan and Ms J Whybrow.

Apologies: District Councillor Mrs J Lea, Parish Councillor R Alvin, D Cooper (Independent Person) and R Pratt (Independent Person)

Officers Present: C O'Boyle (Monitoring Officer) and G Lunnun (Allegations Determination Manager)

1. SUBSTITUTE MEMBERS

There were no substitute members present at the meeting.

2. MINUTES

RESOLVED:

That the minutes of the meeting of the Committee held on 28 March 2013 be taken as read and signed by the Chairman as a correct record.

3. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Conduct for Members.

4. STANDARDS COMMITTEE MEMBERSHIP

The Chairman drew attention to the membership of the Committee for 2013/14 and pointed out that Councillors R Cohen and J Lea had not previously been members of the Committee.

5. INDEPENDENT PERSONS

The Chairman advised that this would be the last meeting of the Committee attended by Jason Guth as an Independent Person as, together with all other former Independent Members of Standards Committees, he was required to relinquish his involvement in the Committee on 30 June 2013 by virtue of Government Regulations.

The Chairman, the Monitoring Officer and Councillors Stallan and Pond paid tribute to Jason's service on the Committee.

Jason thanked members and the Monitoring Officer for their kind words.

The Chairman reminded the Committee that Kim Adams had previously been appointed as a reserve Independent Person and she asked him if he was willing to take on the full role from 1 July 2013. He confirmed that he wished to do so and thanked the Committee for allowing him to be involved during the past year in a shadow capacity.

RESOLVED:

That Kim Adams be appointed as a full Independent Person from 1 July 2013.

6. TOWN AND PARISH COUNCIL REPRESENTATION

The Chairman welcomed parish council representatives, Councillors R Morgan and Ms J Whybrow to the meeting.

The Committee noted that Sheering and Matching Parish Councils would be represented at meetings by Councillor Morgan and Chigwell and Willingale Parish Councils by Councillor Alvin. In relation to the Roydon and Epping Upland Parish Councils, it had been suggested that Councillor Whybrow, a member of Roydon Parish Council, would alternate at each meeting with Councillor Barber, a member of the Epping Upland Parish Council. However, the Epping Upland Parish Council had indicated that they wished to have their own representative at all meetings.

Members were informed that the Abbess, Beauchamp and Berners Roding Parish Council had now stated that it wished to affiliate to this Committee and it had been suggested that as that Parish Council adjoined Willingale Parish Council it should be represented by Councillor Alvin provided that this was acceptable to the three Councils he would represent.

Members gave further consideration to Town and Parish Council non-voting representation on the Committee taking account of the possibility of further Parish and Town Councils indicating a desire to affiliate to the Committee.

RESOLVED:

(1) That for the remainder of the current municipal year the non-voting members representing the Parish Councils affiliated to this Committee be as follows:

Councillor R Morgan (representing Matching and Sheering Parish Councils);

Councillor J Barber (representing Epping Upland Parish Council);

Councillor Ms J Whybrow (representing Roydon Parish Council);

Councillor R Alvin (representing Chigwell and Willingale Parish Councils and, subject to (2) below, Abbess, Beauchamp and Berners Roding Parish Council);

(2) That agreement be sought from the Chigwell, Willingale and Abbess, Beauchamp and Berners Roding Parish Councils to Councillor Alvin representing the Abbess, Beauchamp and Berners Roding Parish Council on the Committee as well as the other two Parish Councils; and

(3) That the Parish and Town Council non-voting representation on the Committee be reviewed at the first meeting of the Committee in the municipal year 2014/15 in the light of any additional requests for affiliation to the Committee.

7. PARISH & TOWN COUNCILS - AFFILIATION TO STANDARDS COMMITTEE AND ADOPTION OF CODES OF CONDUCT AND COMPLAINTS PROCEDURES

The Monitoring Officer presented a schedule of decisions taken by Parish and Town Councils regarding Standards Committee affiliation and adoption of Codes of Conduct and Complaints Procedures.

She expressed thanks to District Council ward members, especially Councillors A Boyce and H Brady, for their assistance in achieving a high level of compliance with the requirements. She pointed out that having studied the complaints procedure adopted by the High Ongar Parish Council, it mirrored the National Association of Local Councils (NALC) model and was not one drawn up by the Parish Council itself.

The Committee noted that those Parish Councils yet to make decisions were giving active consideration to the requirements.

8. CODE OF CONDUCT, PLANNING PROTOCOL AND INTRODUCTION TO PLANNING - TRAINING

The Monitoring Officer reported that as a result of a mains drinking water pipe bursting considerable damage and disruption had been caused to a large part of the Civic Offices. She advised that as a result the training scheduled to take place on Saturday 15 June 2013 on the Code of Conduct, the Planning Protocol and an Introduction to Planning had been cancelled due to the need to test systems and move back and reconnect equipment to the affected offices following temporary relocation arrangements to other parts of the building.

The Monitoring Officer also pointed out that there had been a poor response to the invitation to attend the training. She advised that as well as the 58 District Councillors, all Members and Clerks of the 24 Parish and Town Councils had been invited to attend but only 13 Members and Clerks had signified their attendance.

The Committee discussed steps which could be taken in an attempt to achieve a better attendance when the training course was re-scheduled. Differing views were expressed on the days and times favoured for the training sessions and the formats. It was suggested that when re-advertising the course on Current Issues in Planning, emphasis should be placed on all members attending in view of the on-going preparation of the Local Plan.

The Committee was advised that the session on the Planning Protocol had been planned to be an open forum to establish concerns about the current Protocol with a

view to a revised version being prepared and considered by this Committee. The attention of the Committee was drawn to a Local Government Association/Planning Advisory Service publication "Probity in Planning for Councillors and Officers" which could be used with local amendment as the basis for a new Planning Protocol.

The Committee agreed that the Local Government Association/Planning Advisory Service document could be used as a basis for a new Planning Protocol but drew attention to matters included therein which were not acceptable.

RESOLVED:

(1) That the officers reschedule the proposed training on the Code of Conduct, the Planning Protocol and Current Issues in Planning taking account of the views expressed by members of this Committee and other councillors;

(2) That the suggestion in the Local Government Association/Planning Advisory Service document that Planning Committees before making a decision on a planning application which differs from the officer recommendation should adjourn for a few minutes to discuss the reasons for doing so be not supported and not included in any draft Planning Protocol; and

(3) That references in any draft Planning Protocol to the registration and disclosure of interests be consistent with the wording and the requirements of registration forms.

9. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS

The Committee received a schedule regarding an allegation made about the conduct of two Parish Councillors. The Monitoring Officer reported that on 10 June 2013 the matter had been considered at a hearing arranged by the Joint Parish Standards Committee. The two members had been found in breach of the Code of Conduct and the full decision would be published on the District Council and the Nazeing Parish Council websites.

The Committee noted that with the conclusion of that complaint there were currently no outstanding formal complaints.

10. DATES OF FUTURE MEETINGS

The Committee noted that the Council's adopted calendar for 2013/14 provided for meetings on 12 September 2013, 12 December 2013 and 13 March 2014.

The Committee noted that additional meetings could be arranged as and when required.

11. EXCLUSION OF PUBLIC AND PRESS

The Committee agreed that there were no issues which necessitated moving into private session.

CHAIRMAN

Complaints Procedure

Introduction

1.1 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Epping Forest District Council or of a parish council or town council (referred to as a parish council in this document) within the District of Epping Forest has failed to comply with the Councillors’ Code of Conduct, and sets out how the District Council will deal with allegations of a failure to comply with the Councillors’ Code of Conduct.

1.2 Under Section 28(6) and (7) of the Localism Act 2011, the District Council must have in place “Arrangements” under which allegations that a member or co-opted member of the District Council (or of a parish council within the District of Epping Forest), or of a Committee or Sub-Committee of the District Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations.

1.3 Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the District Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage, or by a member (or a member or co-opted member of a parish council) against whom an allegation has been made.

2. The Code of Conduct

2.1 The District Council has adopted a Code of Conduct for Councillors, which is available for inspection on the District Council’s website and on request from Reception at the District Council Civic Offices.

2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the Parish Council or request the parish clerk to allow you to inspect the Parish Council’s Code of Conduct.

3. Making a complaint

3.1 If you wish to make a complaint, please write to:

The Monitoring Officer
c/o The Local Assessment Officer
Epping Forest District Council
Office of the Chief Executive
Civic Offices, High Street
Epping
CM16 4BZ

or by email to:

shill@eppingforestdc.gov.uk

3.2 The Monitoring Officer is a senior officer of the District Council who has statutory responsibility for maintaining the register of members’ interests

and who is responsible for administering the system in respect of complaints of councillor misconduct.

3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the District Council's website, next to the Code of Conduct, and is available on request from Reception at the District Council Civic Offices.

3.4 Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request and if granted we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.

3.5 The District Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

3.6 The Local Assessment Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

3.7 The Complaints Procedure Flowchart is attached at Appendix 1 for your assistance.

4. Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, may consult with the Independent Person before taking a decision as to whether it:

- (a) merits no further investigation; or
- (b) merits further investigation; or
- (c) should be referred to the Standards Committee,

4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the District Council's Assessment Criteria contained at Appendix 2. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

4.3 Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of informal resolution, but you are not willing

to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5. How is the investigation conducted?

5.1 The District Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 3 to these arrangements.

5.2 If the Monitoring Officer decides that a complaint merits further investigation, he/she may appoint an Investigating Officer, who may be another senior officer of the District Council, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.

5.3 The Investigating Officer or Monitoring Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

5.4 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

5.5 Having received and taken account of any comments which you may make on the draft Investigation Report. Where an Investigating Officer has been appointed the Investigating Officer will send his/her final report to the Monitoring Officer.

6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.

(6.2) If an Investigating Officer has been appointed and if the Monitoring officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Sub-Committee or in consultation with the Independent Person seek an informal resolution.

(a) Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the District Council's Standards Committee (and the Parish Council) for information, but will take no further action.

(b) Hearing

If the Monitoring Officer considers that informal resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigation Report to the Standards Sub-Committee which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The District Council has agreed a procedure for hearing complaints, which is attached as Appendix 4 to these arrangements.

At the hearing, the Investigating Officer or the Monitoring Officer will present her/his report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Sub-Committee concludes that the councillor did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-

Committee will give the member an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Standards Sub-Committee take where a member has failed to comply with the Code of Conduct?

8.1 The District Council has delegated to the Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Sub-Committee may:-

- (a) Publish its findings in respect of the member's conduct;
- (b) Report its findings to Council (or to the Parish Council) for information;
- (c) Recommend to Council (or to the Parish Council) that the member be issued with a formal censure or be reprimanded
- (d) Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that the member be removed from any or all Committees or Sub-Committees of the Council;
- (e) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- (g) Recommend to Council to remove (or recommend to the Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the District Council (or by the Parish Council);
- (h) Recommend to Council to withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or
- (i) Recommend to Council to exclude (or recommend that the Parish Council exclude) the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Panel meetings.

8.2 The Sub-Committee has no power to suspend or disqualify the councillor or to withdraw the councillor's basic allowance or any special responsibility allowances.

9 What happens at the end of the hearing?

9.1 At the end of the hearing, the Chairman will state the decision of the Standards Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Standards Sub-Committee?

10.1 It is a Sub-Committee comprising of Councillors sitting on the Council's Standards Committee.

10.2 The Standards Committee has decided that it will comprise a maximum of five Councillors of the Council, including not more than one member of the Council's Executive and comprising councillors drawn from all political groups. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council. If the member complained about is a member of a Parish Council, a parish councillor who is a co-opted member of the Standards Committee will also be invited to attend the Sub-Committee.

10.3 The Independent Person is invited to attend all meetings of the Sub-Committee and their views are sought and taken into consideration before the Sub-Committee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of the District Council.

11.2 A person cannot be "independent" if he/she:

- (a) is, or has been within the past 5 years, a member, co-opted member or officer of the District Council;
- (b) is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the District of Epping Forest), or
- (c) is a relative or close friend, of a person within paragraph (a) or (b) above. For this purpose, a "relative" means:
 - (i) spouse or civil partner;
 - (ii) living with the other person as husband and wife or as if they were civil partners;
 - (iii) grandparent of the other person;
 - (iv) a lineal descendent of a grandparent of the other person;
 - (v) a parent, sibling or child of a person within paragraphs (a) or (b) above
 - (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v) above; or
 - (vii) living with a person within paragraphs (iii), (iv) or (v) above as husband and wife or as if they were civil partners.

12. Revision of these arrangements

The District Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Sub-Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

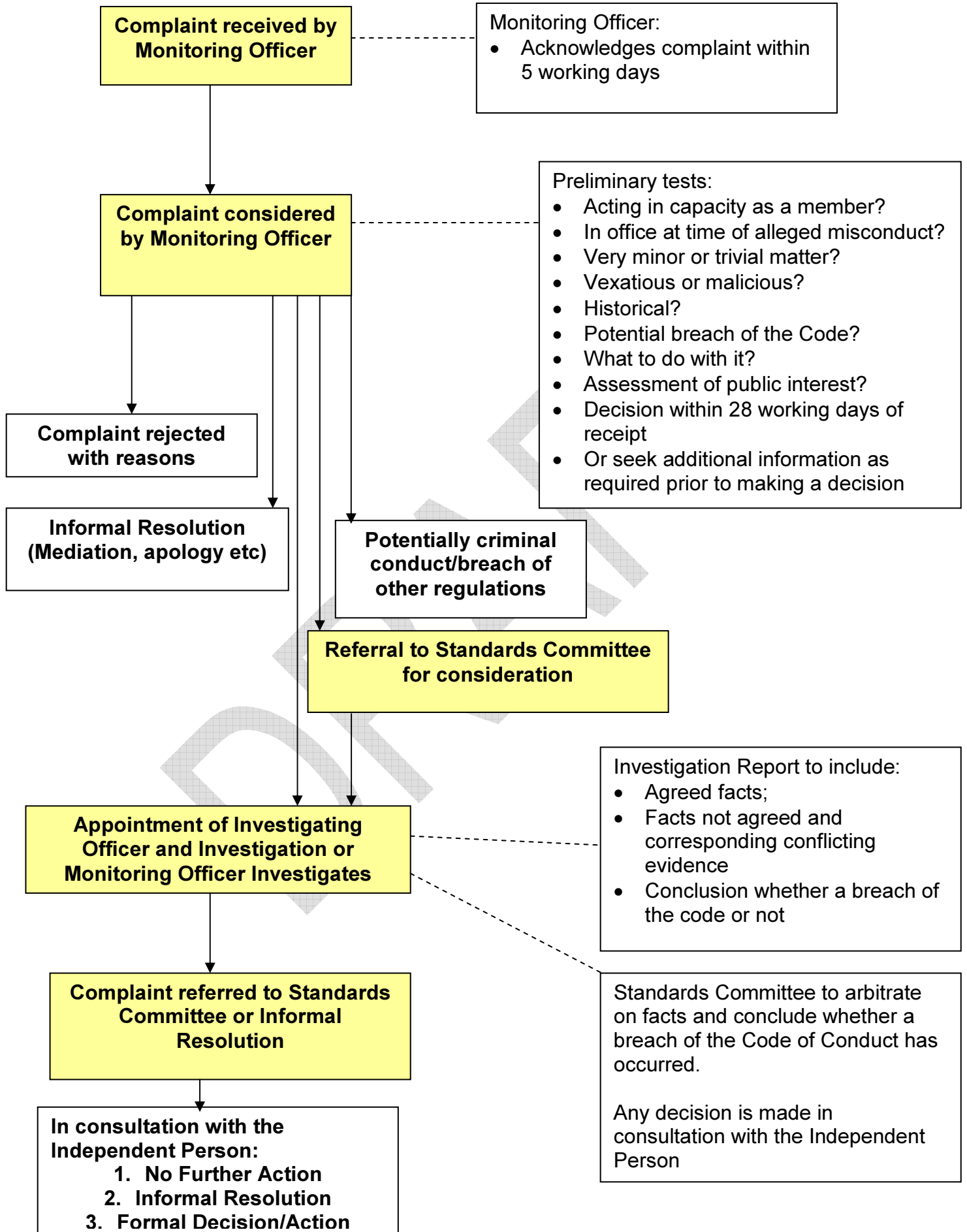
13.1 There is no right of appeal for you as complainant or for the councillor

against a decision of the Monitoring Officer or of the Sub-Committee.

13.2 If you feel that the District Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

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Appendix 1 Complaints Procedure Flowchart



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APPENDIX 2

STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances eg. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction

Complaints which may be referred to the Standards Committee

1. It is serious enough, if proven, to justify the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or

3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or

4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate

5. Such other complaints as the Monitoring Officer considers it would not be appropriate for him to investigate

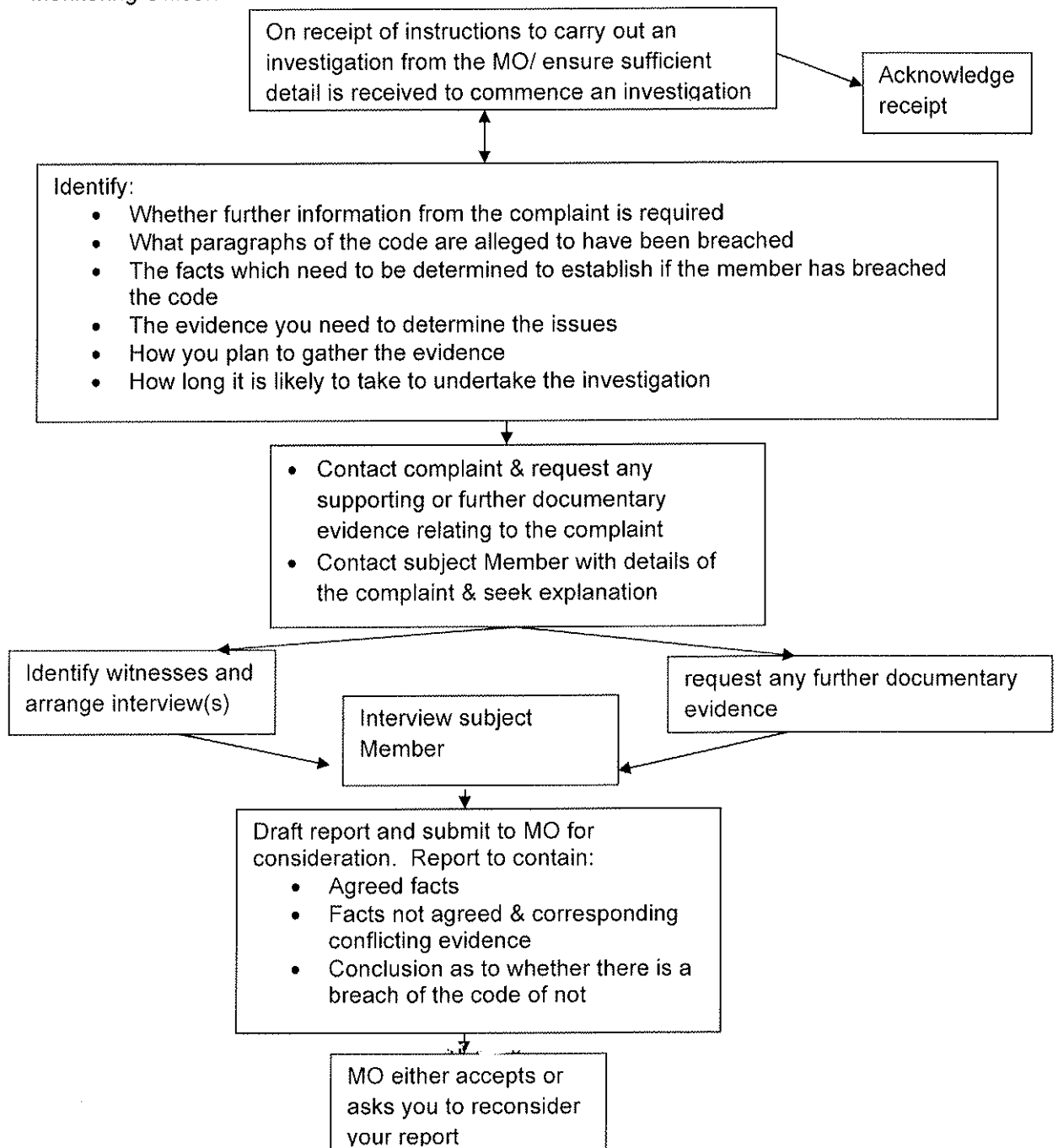
Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take further action will cost both public money and officers' and members' time. This is an important consideration where the complaint is relatively minor.

STANDARDS COMPLAINTS INVESTIGATION PROCEDURE

Investigation Procedure

You should maintain a written record to demonstrate what was considered at the start of each investigation and plan how you intend to carry out the investigation, the paragraphs of the code that may have been breached, the facts you need to determine to establish, the evidence you will need, how you plan to gather the evidence and how long it will take to conclude your investigation. Remember there is no provision in the Localism Act 2011 compelling Members or witnesses to co-operate with your investigation.

A written Investigation Report will need to be prepared for consideration by the Council's Monitoring Officer.



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STANDARDS SUB-COMMITTEE HEARING PROCEDURE

<u>Item No.</u>	<u>Procedure</u>
1	<p style="text-align: center;"><u>Quorum</u></p> <p>1.1. Three Members must be present throughout the hearing to form a quorum.</p> <p>1.2. Where the complaint refers to a Parish Councillor a non voting Parish member of the Standards committee may be present</p> <p>1.3. The Sub-Committee shall nominate a Chairman for the meeting</p>
2	<p style="text-align: center;"><u>Opening</u></p> <p>2.1 The Chairman explains the procedure for the hearing and reminds all parties to turn off mobile phones, audible alarms and pagers etc.</p> <p>2.2 The Chairman asks all present to introduce themselves</p> <p>2.3 The Councillor will be asked whether they wish to briefly outline their position</p>
3	<p style="text-align: center;"><u>The Complaint</u></p> <p>3.1 The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.</p> <p>3.2 The Councillor against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Councillor's opportunity to ask questions rising from the Investigators report and not to make a statement)</p> <p>3.3 Members of the Sub-Committee may question the</p>

	Investigating Officer upon the content of their report and/or any witnesses called by the Investigating Officer
4	<p style="text-align: center;"><u>The Councillor's case</u></p> <p>4.1 The Councillor against whom the complaint has been made (or their representative) may present their case (and call any witnesses as required by the Councillor or their representative)</p> <p>4.2 The Investigating Officer may question the Councillor and/or any witnesses</p> <p>4.3 Members of the Sub-Committee may question the Member and/or any witnesses</p>
5	<p style="text-align: center;"><u>Summing Up</u></p> <p>5.1 The Investigating Officer may sum up the Complaint</p> <p>5.2 The Member (or their representative) may sum up their case.</p>
6	<p style="text-align: center;"><u>Decision</u></p> <p>6.1 Members of the Sub-Committee will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision</p> <p>6.2 Upon the Sub-Committee's return the Chairman will announce the Sub-Committee's decision in the following terms:-</p> <p>6.2.1 The Sub-Committee decides that the Member has failed to follow the Code of Conduct or</p> <p>6.2.2 The Sub-Committee decides that the Member has not failed to follow the Code of Conduct</p> <p>6.2.3 The Sub-Committee will give reasons for their decision</p> <p>6.3 If the Sub-Committee decides that the Member has failed to follow the Code of Conduct the Panel will consider any representations from the Investigator and/or the Member as to:</p> <p>6.3.1 Whether any action should be taken and</p> <p>6.3.2 What form any action should take</p> <p>6.4 The Sub-Committee will then deliberate in private to consider</p>

	<p>what action if any should be taken in consultation with the Independent Person</p>
6.5	<p>On the Sub-Committee's return the Chairman will announce the Sub-Committee's decision (in relation to a Parish Councillor a recommendation to the Parish Council)</p>
6.6	<p>The Sub-Committee will consider whether it should make any recommendations to the Council or in relation to a Parish Councillor to the Parish Council with a view to promoting high standards of conduct among Members</p>
6.7	<p>The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's findings to be published.</p>

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MEMBERS' CODE OF CONDUCT

Localism Act 2011

Promoting and Maintaining High Standards of Conduct in Local Government

CODE OF MEMBER CONDUCT

COUNCILLOR CODE OF CONDUCT

PART 1 GENERAL PROVISIONS

Introduction and interpretation

As a member you are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code as a whole is consistent with “Nolan Principles” which are set out in Appendix 1 and the provisions of S29(1) Localism Act 2011

In this Code –

“meeting” means any meeting of:

- (a) the authority
- (b) the Executive of the authority
- (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees or areas committees whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members
- (d) any briefings by officers and site visits organised by the authority

“relevant period” means the period of 12 months ending with the day on which you give notification to the authority’s monitoring officer of any disclosable pecuniary interests you had at the time of the notification.

“profit or gain” includes any payments or benefits in kind which are subject to Income Tax

“beneficial interest” means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale

“member” includes a co-opted member.

1. Who does the Code apply to?

- (1) This Code applies to all members of the Epping Forest District Council, including co-opted members.
- (2) It is your responsibility to comply with the provisions of this Code.

2. What does the Code apply to?

- (1) You must comply with this Code whenever you –
 - (a) conduct the business of your authority, or
 - (b) you are acting as a representative of your authority,

- (2) This Code has effect in relation to your conduct in your official capacity.
- (3) Where you act as a representative of your authority:
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

- (1) You must treat others with respect.
- (2) You must uphold the law
- (3) You must not:
 - (a) do anything which may cause your authority to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. Confidential Information

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

5. Conferring an advantage or disadvantage

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.

PART 2 MEMBERS INTERESTS

6. Disclosable Pecuniary Interests

6.1 You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 6.2 below and is either:

- (a) An interest of yours
- (b) An interest of your spouse
- (c) An interest of your civil partner
- (d) An interest of a person you are living with as a spouse or civil partner

And in the case of paragraphs 6.1 (b) – 6.1 (d) (“relevant persons”) where you are aware that that relevant person has the interest

6.2 It relates to or is likely to affect:

- i. Any employment, office, trade, profession or vocation carried on by you or a relevant person for profit or gain;
- ii. Any payment or provision of any other financial benefit (other than from your authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 other than from a registered political party;
- iii. Any beneficial interest in securities of a body where-
 - 1. that body (to your knowledge) has a place of business or land in the area of your authority and
 - 2. either:
 - a. the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - b. the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class
- iv. Any contract for goods, services or works which has not been fully discharged between you or a relevant person and your authority or a body in which you or they have a beneficial interest;
- v. A beneficial interest in any land in your authority’s area

- vi. any tenancy where to your knowledge (a) the landlord is your authority and (b) the tenant is a body in which you or a relevant person has a beneficial interest
- vii. a licence of any land in your authority's area (alone or jointly with others) that you or a relevant person occupy for a month or longer;

7. Other Pecuniary Interests

7.1 You have a pecuniary interest in any business of your authority where either

- (b) It relates to or is likely to affect:
 - (i) any person or body who employs or has appointed you;
 - (ii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(iii) which has been fully discharged within the last 12 months;

8. Non-Pecuniary Interests

8.1 You have a non-pecuniary interest in any business of your authority where either:-

- (a) it relates to or is likely to affect:
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
 - (ii) any body-
 1. exercising functions of a public nature;
 2. directed to charitable purposes; or
 3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);

of which you are a member or in a position of general control or management;
 - iii. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
 - iv. a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-
 - (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (b) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's areas

9. Disclosure of Interests

- 9.1 Subject to sub-paragraphs 9.2 to 9.6, where you have a disclosable pecuniary interest, other pecuniary interest or a non-pecuniary interest in any business of your authority and you are present at a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your register of Interests or for which you have made a pending notification
- 9.2 Sub-paragraph 9.1 only applies where you are aware or ought reasonably to be aware of the existence of the pecuniary or non pecuniary interest
- 9.3 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 9.1 but by virtue of paragraph 14 (sensitive interests) details of the interest are not registered in your authority's published register of members' interest and that the interest is a disclosable pecuniary interest (if that is the case) but you need not disclose the nature of the interest to the meeting
- 9.4 Where you have a pecuniary interest in any business of your authority and a function of your authority may be discharged by you acting alone in relation to that business, you must ensure you notify the authority's monitoring officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business
- 9.5 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 9.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest
- 9.6 In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

10. Disclosure of Interests generally

- 10.1 Subject to sub-paragraph 10.2 where you have a pecuniary interest in any business of your authority you also have a disclosable pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.
- 10.2 You do not have a disclosable pecuniary interest in any business of your authority where that business-
- i. does not affect your financial position or the financial position of a person or body described in paragraph 8.1 (a) i. and ii.;

- ii. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.1 (a) i and ii; or
- iii. relates to the functions of your authority in respect of-
 - i. housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - ii. school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - iii. statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - iv. an allowance, payment or indemnity given to members;
 - v. any ceremonial honour given to members; and
 - vi. setting council tax or a precept under the Local Government Finance Act 1992

11. Effect of Disclosable Pecuniary Interests on participation

11.1 You may not-

- a. if present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority and
- b. you have a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at the meeting and
- c. you are aware that sub-paragraph 11.1.b is met:
 - i. participate, or participate further, in any discussion of the matter at the meeting, or
 - ii. participate in any vote, or further vote, taken on the matter at the meeting

and must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the authority's proper officer

- d. exercise executive functions in relation to that business and
- e. seek improperly to influence a decision about that business

- 11.2 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).
- 11.3 If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered your must:-
- 11.3.1 Disclose the existence and nature of the interest in accordance with paragraph 9.1 (but subject to paragraph 9.3)
- 11.3.2 Withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from your authority's proper officer in a case where paragraph 11.3 applies immediately after making your representations or in any other case when the business is under consideration unless you have obtained a dispensation from your authority's proper officer

PART 3 REGISTER OF MEMBERS INTERESTS

12. Registration of Members' Interests

Subject to paragraph 13, you must, within 28 days of:

- (a) this Code being adopted by or applied to your authority; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the authority

register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- i. disclosable pecuniary interests¹ as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time
 - ii. pecuniary interests referred to in paragraph 7 that you have
- (c) Subject to paragraph 13, you must within 28 days of becoming aware of any new disclosable pecuniary interest as referred to in paragraph 6 that you, your spouses, civil partner or person with whom you live as if they were your spouse or civil partner or change to any disclosable pecuniary interest registered under paragraphs 12. i. or ii above

by providing written notification to your authority's Monitoring Officer

13. Sensitive Information

13.1 Where you have a disclosable pecuniary interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.

13.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 13.1 is no longer sensitive information, notify your authority's monitoring officer

- 13.3 In this Code “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

CODE OF CONDUCT

APPENDIX 1

THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

Make decisions on merit, including when making appointments, awarding Contracts or recommending individuals for rewards or benefits.

ACCOUNTABILITY

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

OPENNESS

To be as open as possible about their actions and those of the Council and should be prepared to give reasons for those actions.

HONESTY

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

LEADERSHIP

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

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**PROTOCOL FOR
COUNCILLORS AND OFFICERS
ENGAGED IN THE DETERMINATION OF
PLANNING APPLICATIONS AND OTHER
PLANNING DECISIONS**

Revised Version: 12.07

Rev 4 (1.08)

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1. Purpose of Protocol

- 1.1 This protocol has been prepared to guide Councillors and officers on the manner in which the Area Plans Sub-Committees, the District Development Control Committee (and where appropriate the full Council) will consider planning applications and related planning matters. It applies whether a Councillor is serving as a member of these bodies, as a substitute or as a non-member in attendance.
- 1.2 The protocol also deals with the involvement of Councillors and officers of the Council in the operation of the planning system outside the formal decision-making process.
- 1.3 This protocol is not part of the Council's Code of Conduct. It is designed to demonstrate how Councillors' duties and responsibilities should be met in the field of planning.
- 1.4 Planning decisions may be interpreted as any decision under planning legislation including planning permission, enforcement and related matters whether delegated to officers or reserved to Planning Committees.

2. Summary of Provisions

- 2.1 As soon as possible after they are elected, all Councillors must receive appropriate training in planning requirements if they are members or substitutes on Area Plans Sub Committees as well as the District Development Control Committee.
- 2.2 All planning decisions should be based only on relevant planning considerations.
- 2.3 Planning officers may give professional advice about any proposal to an applicant or objector subject to the general advice in 2.2 above but must explain that the advice cannot bind the Council in any way.
- 2.4 Councillors and officers should avoid giving a firm indication of the decision on any application during contact with applicants and objectors, especially at site meetings, public meetings and pre-consideration discussions in advance of formal decision.
- 2.5 Councillors should refer at a Planning Committee to significant contact with applicants or objectors (meetings, correspondence or telephone calls which are over and above the normal level of Ward Member contacts) about any planning matter under consideration by a planning body and unless this constitutes a prejudicial interest, shall be disclosed during consideration of that matter.
- 2.6 Prejudicial and personal interests in any matter due to be considered at a planning body shall be declared by members under the standing agenda item for that purpose.
- 2.7 All applications considered by the Planning Committees shall be the subject of full written reports from officers incorporating clear and reasoned recommendations.
- 2.8 The conditions for granting of consent or grounds for refusal by Planning Committees shall be approved by a show of hands for voting purposes set out in the minutes.
- 2.9 Chairmen of Planning Committees shall exercise the casting or second vote in accordance with the Council's constitution.

- 2.10 Councillors who are also members of Parish and Town Councils should declare a personal interest if the Parish or Town Council concerned has submitted representations but are not precluded from consideration of that application at District Council level unless they have another interest which is prejudicial under the Code of Conduct or they have not reserved their position on any application at Parish level.
- 2.11 Councillors must take special care with interests created as a result of being members of lobby or campaign groups.
- 2.12 Planning applications by the Council must be treated in the same way as any other decision.
- 2.13 Special care should be exercised by members and officers of the Council in relation to their own planning applications (or where they are objectors).
- 2.14 Members with a prejudicial interest in a planning application must be careful to ensure that if they intend to exercise their right under the Code of Conduct to make representations on that matter, they should do so in accordance with the advice contained in this protocol.
- ... 2.15 A summary guide to the operation of this protocol is attached at Appendix 1.

3. Status of Protocol

- 3.1 This protocol is purely advisory and designed to help both Councillors and officers. However, it is based on guidance issued by the Local Government Association which itself is based on the provisions of the Code of Conduct for Councillors (as set out in Part 5 of the Constitution), the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commissioners for Local Administration in England (the Ombudsman) and the National Planning Forum. Failure to follow the protocol without good reason could be taken into account in investigations into possible maladministration. Likewise, the conduct of any Member would be measured (for consistency) by the Standards Board for England against the requirements of the Code of Conduct.
- 3.2 The Council has decided that the operation of all codes of practice and protocols (such as this one) should be monitored by the Council's Standards Committee and that, if necessary, the Committee should be able to issue advice or adjudicate on disputes relating to their operation.

4. Training Requirements

- 4.1 It is fundamental that Councillors (including Parish and Town Council members) involved in planning should receive appropriate training, before being involved in making planning decisions. The Standards Committee will facilitate such training, which should be regarded as obligatory for all Councillors.
- 4.2 No Councillor should be involved in the planning process (whether at Area Plans Sub-Committees, the District Development Control Committee or the full Council) without having undertaken training in planning procedures; the provisions of this protocol; and attended sessions designed to keep members abreast of new developments, as specified by the Authority. This training will also be required for substitutes at the District Development Control Committee meetings.

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4.3 Even if a Councillor does not serve as a member of an Area Plans Sub-Committee or the District Development Control Committee, this training need should be regarded as a high priority, as it may sometimes be necessary for a planning decision to be taken by the full Council. Likewise, Councillors who are not serving on one of the Planning Committees may wish to attend on occasions as non-members to speak on a particular case.

4.4 All relevant planning officers should be trained in the provisions of this protocol as part of their professional training.

5. "Dual Hatted" Councillors

5.1 The Code of Conduct does not automatically prevent a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 8 of the Code to members of "any body exercising functions of a public nature" includes other local authorities. The Code says that such dual memberships create a personal interest for any Councillor, which is to be declared only if the member decides to speak.

5.2 If an issue is for discussion at both the parish and district level, and Councillors sit on both authorities, they should:

(a) at the parish level make it clear that they will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and

(b) at the district level, declare personal (but not prejudicial) interests arising from your membership of the Parish Council, which has already expressed a view on the matter and make it clear that the Parish Council's view does not bind them and that they are considering the matter afresh.

5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to a Councillor speaking and voting on issues in the District Council's development plan that particularly affects your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position.

5.4 In some situations, it is unrealistic to expect a member of the public to believe that a Councillor would disregard the interests of another public body on which you serve. For example, a Councillor should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. This is reinforced by the Code of Conduct, which requires declarations of prejudicial interests to be made on financial issues and on matters relating to the granting of consents by the Council (including planning matters).

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

6. Fettering a Councillor's Discretion

- 6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).
- 6.2 However, if councillors in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, Councillors comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.
- 6.3 Any Councillor who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.
- 6.4 Any Councillor who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.
- 6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

7. Cabinet Members – Conflicts of Interest on Planning Matters

- 7.1 Under the Council's executive constitution there is a clear distinction in law between the role of the Cabinet, which deals with planning policy and the determination of planning applications, etc which are not the responsibility of the Cabinet. The principle is that the Cabinet is responsible for formulating and recommending planning policy to the Council, whilst decision-making on individual planning matters must be separate and dealt with by separate bodies.
- 7.2 Any member of the Cabinet who is responsible for bringing forward planning applications as part of their portfolio responsibilities or other proposals on behalf of the Council which are subsequently considered by an Area Plans Sub-Committee, or the District Development Control Committee needs to be aware of the conflict of interest which exists. They should declare a prejudicial interest and not speak or vote on the planning matters.

7.3 The role of Councillors who are Portfolio Holders in this regard is quite distinct from how they should deal with their own planning applications. With the latter, they should follow the advice set out in Section 22 below.

7.4 The Housing and Finance, Performance Management and Corporate Support Services Portfolio Holders will often be closely involved in planning proposals. The Planning and Economic Development Portfolio Holder has a less close involvement in planning applications and the conflict of interest is thus less onerous. Furthermore, constituency work could easily blur the policy and decision-making roles. A Cabinet member would therefore need to be careful about approaches from constituents. They should for instance, consider arranging for these:

(a) to be dealt with by other elected ward councillors; or

(b) to be dealt with by another member of this political group if they serve in a single member Ward; or

(c) to be referred to planning officers.

8. Property Interests

8.1 Councillors who have substantial property interests or involvement with the property market or similar interests need to be very careful about their involvement in planning matters and should make their interests known at every meeting which they attend when planning issues are discussed. In cases of doubt, they should seek the advice of the Council's Monitoring Officer before the meeting.

8.2 Similarly the property interests of other public authorities can impinge on the planning process and conflicts of interests for "dual-hatted" Councillors may arise requiring prejudicial interests to be declared.

9. Gifts and Hospitality

9.1 Councillors should also be very cautious about accepting gifts and hospitality and bear in mind the requirement to include acceptance of gifts in their registration of interests under the Code of Conduct. Such acceptances create an automatic personal interest for 3 years thereafter and may lead them to conclude that any planning matter affecting the person giving the gift involves a prejudicial interest.

9.2 Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, the recipient should ensure it is of the minimum level and declare this as soon as possible in the register kept by the relevant Head of Service.

9.3 When Councillors and officers involved in planning matters receive approaches from any quarter, it is useful to clarify at the outset whether the person concerned has had, or will have, any dealings with the Council.

9.4 On occasions, third parties may offer gifts or hospitality to the Council or to the Chairman of the Council, sometimes in the context of a charitable appeal. The potential donor should always be asked whether they know of any current or intended dealings with the Council on a planning or property issue. If such matters are under consideration, such offers should be declined.

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9.5 Separate advice on this area is available from the Standards Committee in the Council's Constitution.

10. Pre-Application and Post Submission Discussions - Role of Officers and Councillors

10.1 Ward Councillors (particularly if they are members of a planning body) should preserve their impartiality as decision-makers at pre-application or post-submission discussions with developers or other interested parties (including objectors) regarding development proposals.

10.2 Their involvement should be limited to listening to the discussion, asking questions and indicating points of concern. Ward Councillors should not debate the merits of the case or indicate views. Councillors should avoid the possibility that comments made at such meetings might prejudice their ability to bring an open mind to the formal decision on the proposal.

10.3 Post-submission meetings should be arranged so that, wherever possible, representatives of both the applicants and objectors can present their views. This could be either at a single meeting or at separate meetings. Councillors should be accompanied by an officer and a note taken of the meeting for the purpose of reporting to the full Committee. It is recognised that Councillors will be subject to lobbying on specific applications. In such cases, it is essential that care is taken to maintain the Council's and its members' integrity so as to protect the credibility of the planning process.

10.4 Members of the Council should always bear in mind the provisions of Section 5 of this protocol at such meetings.

10.5 Professional planning officers are approached from time to time by applicants, objectors and Ward Councillors to discuss a particular case. Often, those officers will be asked to indicate a view on the case. Where this occurs, planning officers must balance the following considerations:

(a) the duty to advise on legitimate concerns regarding proposals and to be helpful to those who come forward explaining the likely recommendations, which will go forward;

(b) the need to avoid anticipating the outcome of Planning Committee decisions.

10.6 All advice given and comments made must be designed to provide information to interested parties, which is helpful. This must, however, stop short of committing the Council to a decision.

11. Presentations Regarding Development Proposals

11.1 The District Council is approached from time to time about development proposals for sites within the District. Such requests involve:

(a) presentations on schemes, which may eventually result in planning applications;

(b) supply of development brief and other written material on the proposals;

- (c) indications of a wish to hear views and answer questions on the scheme.
- 11.2 Such requests need to be treated with caution. Invariably the sponsors of such schemes will be anxious to receive any indications, whether positive or negative, about their proposals and whether planning approval will be forthcoming. Councillors should carefully consider whether it is advisable to agree such requests or whether it is preferable to rely on normal planning processes.
- 11.3 If such a presentation is to be entertained, they should be regarded as the exception rather than the rule. The reasons for and against need to be carefully weighed, both from the point of view of members making themselves better informed and from the public perception particularly among those who may oppose the scheme. Councillors also need to avoid fettering their discretion in relation to any subsequent planning application. They should -
- (a) restrict themselves to listening to the presentation and reading the material provided;
 - (b) restrict themselves to clarifying facts and asking questions and not express opinions without reserving their opinion until all the facts are to hand;
 - (c) avoid 'one-to-one' discussions with the developers either at a presentation or separately.
- 11.4 It is important that a planning officer accompanies Councillors at such presentations.

12. Attendance of the Public at Planning Meetings

- 12.1 All planning decisions are taken in public session at meetings except if they are delegated to officers. Planning issues usually attract high levels of public interest and attendances reflect this.
- 12.2 With high levels of public interest and sometimes contentious decisions to be made, confidence in the planning system is under the spotlight. Issues such as conflicts of interest, lobbying, officer advice, the conduct of meetings and focus on planning considerations will colour the public perception positively or negatively. All participants need to keep this in mind.
- 12.3 The Council has a policy of allowing public speaking by applicants, objectors and Parish/Town Councils. The rules are set out in the Council's Constitution (Operational Standing Order 5(2)) and summarised in the public leaflet "Your Voice, Your Choice". This procedure must be respected at all times and the exercise of legitimate discretion by Chairmen accepted in the light of the circumstances which prevail.
- 12.4 Members of Planning Committees are strongly advised to attach equal weight to all representations made on planning grounds.

13. Substitute Councillors and Attendance of Non-Members at Meetings

- 13.1 The Council's policy on these issues is set out in the Council's Constitution (Operational Standing Orders – Non-Executive Bodies).
- 13.2 The rules governing substitute Councillors apply to the District Development Control Committee providing that Committee members shall, if they wish another Councillor of

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the political group to which they belong to attend a meeting of that Committee in their place, liaise with the Leader or Deputy Leader of their political group who shall give notice not later than 10.00 a.m. on the day of the meeting that the Councillor is unable to attend and that the substitute Councillor named will attend in his/her place. Substitutes should only undertake this role if they have received the obligatory training.

- 13.3 The effect of a substitution is that the substitute Councillor shall be a full member of the Committee for the same period.
- 13.4 A substitution may be revoked at any time before the meeting starts. If both Members are at the meeting, the Councillor appointed to the Committee or Sub-Committee will take precedence.

14. Officer Reports to Committees

- 14.1 All applications considered by the Council's Planning Committees and Sub-Committees shall be the subject of full written reports from officers incorporating clear recommendations. These reports will consider national and development plan policies and guidance and representations made by statutory consultees, local residents and other interested parties. Reports will contain all the relevant material known at the time the report is despatched to Councillors and updating information will be provided to Councillors only if there have been any significant developments or changes to the report.
- 14.2 Once the Committee papers for a meeting have been published, any subsequent information received on material planning considerations will be reported orally at the meeting by the Director of Planning and Economic Development or his or her representative. With the consent of the Chairman of the District Development Control Committee or Area Plans Sub-Committee concerned this may on occasion involve tabled written material.
- 14.3 The Council's Code of Conduct requires Councillors not to prejudice the impartiality of officers. In their relations with officers therefore, Councillors should avoid placing inappropriate pressure on planning staff to achieve a desired outcome, including attempting to change decisions made under delegated authority by the Director of Planning and Economic Development.

15. Determination of Planning Applications

- 15.1 Whilst Councillors should bring to planning decisions a sense of the community's needs and interests, they must balance this with their obligation to remain within the constraints of planning law. They must only take account of relevant matters, (e.g. sound land use planning considerations) and must have regard to the Development and Local Plans and Government policy. Local feelings may run high but these must be weighed carefully against all material considerations. The officer's report must deal specifically with these matters so that Councillors can reach an informed decision.
- 15.2 Section 54A of the Town and Country Planning Act 1990 requires that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise. In cases where an Area Plans Sub-Committee wishes to depart from planning policy following consideration of an application, planning officers will advise that such a decision must be referred to the District Development Control

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Committee. In some cases the Leader of the Council may determine that a final decision by the full Council is desirable.

- 15.3 The Council recognises that planning decisions are often matters of fine judgement where the balancing of considerations is difficult. Reports of the Director of Planning and Economic Development will be based on planning policy but members may wish to exercise their discretion to permit an application as an exception to policy or may not agree with the recommendation. In such cases the procedural requirement is that they should formally move a motion to take the place of the officer's recommendation giving reasons.
- 15.4 Voting on decisions shall be by a show of hands.
- 15.5 When dealing with planning applications Councillors should be careful to avoid even the appearance that they may have been influenced improperly or by considerations which should not be taken into account under the planning legislation and regulations. Similar circumstances must give rise to similar decisions.
- 15.6 Improper decision taking can have financial penalties not only for the Council. The circumstances set out below can lead to expenditure:
- (a) an Ombudsman finding maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
 - (b) costs of litigation and award of costs following application for judicial review in the High Court;
 - (c) costs of local Public Inquiries, including possible award of an applicant's costs following use of Secretary of State's call-in powers;
 - (d) costs of local Public Inquiries, together with landowners' costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

16. Decisions Contrary to Officer Recommendations

- 16.1 Where a Planning Committee is minded to determine an application contrary to the officer's recommendation (whether for approval or refusal), the onus is upon the Committee to identify its reasons for the decision, which should be based on material planning considerations. The final decision on the application can therefore either:
- (a) be dealt with at the meeting with a formal proposal summarised by officers and voted on at that time;
 - (b) in the event of exceptional circumstances, be deferred until the next meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that officers can provide appropriate advice as to the clarity and reasonableness of the reasons put forward for approval or refusal of the application.
- 16.2 There will be a careful record kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chairman will summarise the main reasons for the proposed decision so that these are clearly understood before it is put to the vote.

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16.3 Under no circumstances is it acceptable for grounds for refusal or granting of consent to be left to planning officers to draft after the meeting. All such grounds shall be discussed at the meeting at which the application is dealt with and adopted following professional advice from planning staff. Chairmen of Planning Committees can assist this process by seeking from movers of proposals the reasons for their proposal based on District Plan requirements.

17. Voting at Planning Committees

17.1 In dealing with planning applications, a Committee or Sub-Committee is acting quasi-judicially (i.e. similar to a Court). In doing so, the Committee is balancing the requirements of planning law and planning policy against the needs of the community or individuals.

17.2 Votes must be cast according to an honest appraisal of the merits of an application, the planning grounds, which apply, and the need to act promptly on planning applications. Although there are circumstances where further debate in another forum might be helpful, such deferrals should be avoided except in the most exceptional cases.

18. Voting by Chairmen

18.1 Chairmen must state whether they intend to vote on any item for consideration before votes are cast.

19. Second or Casting Vote of Chairman

19.1 The Council's Constitution provides for the Chairman of the District Development Control Committee and the three Area Plans Sub-Committees to exercise a second or casting vote in the event of an equality of votes. The use of the second or casting vote should only be based on an honest appraisal of the planning matter concerned.

20. Site Visits

20.1 Formal site visits may be requested by any Planning Committee. However, these consume resources and could delay determination of an application. It is good practice to:

(a) consider site visits only where there is a substantial benefit to the decision-making process, e.g. when the impact of the proposed development is difficult to visualise from prior inspection from a public place, or from the plans and the supporting material; or it is particularly contentious;

(b) encourage members of the Committee, plus the Chairman or Vice-Chairman, to attend the site visit, together with a senior planning officer, if they have not already done so;

(c) ensure that the visit is managed by the Chairman, Vice-Chairman or senior officer and that it is made clear to other parties at the outset that the purpose is to gather factual information first hand – **not** to hear arguments for and against, or to enter into a debate about the merits of the case;

(d) ensure that the application will not be determined at that site visit;

- (e) in the interests of fairness to all parties, consider the desirability of viewing an application site from more than one property when the site visit is arranged.
- 20.2 Any response to questions or statements by interested parties at site visits should follow the good practice summarised above. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party.
- 20.3 All formal site visits should be conducted in a single group.

21. Lobbying

- 21.1 It is vital to distinguish the "quasi-judicial" role as a Councillor on a decision-taking Committee from that of a Ward Councillor approached by a constituent with a particular viewpoint about a planning matter.
- 21.2 The Council's duty when determining planning applications or planning enforcement matters is to attach weight to development plans, proper planning considerations and the advice of professional officers presented at Committee. Reasonable and fair decisions are expected.

Lobbying of Councillors

- 21.3 Lobbying of Councillors is a normal and proper part of the political process. However, unless care and common sense are exercised, the impartiality and integrity of members can be called into question. So far as lobbying is concerned, it is good practice to:
 - (a) explain to the lobbyist the quasi-judicial nature of the planning process;
 - (b) listen and ask relevant questions but avoid expressing any opinion which may indicate that the issue is prejudged before debate in Committee; in particular Councillors should never indicate in advance how they intend to vote;
 - (c) give procedural information or advice as appropriate, including how to speak or write to the relevant officer;
 - (d) stress that any comments made are personal and provisional, pending the rehearsal of all the relevant evidence and arguments at Committee;
 - (e) avoid acceptance of any hospitality at a site visit, (apart from routine courtesies), which could be misinterpreted by third parties;
 - (f) when a relevant item is considered declare cases where contacts with third parties through correspondence, telephone calls or meetings with applicants or objectors are significantly greater than normal Ward Councillor contacts; and
 - (g) consider whether the nature of the contacts referred to in (f) are so significant as to render them in the Councillor's view a personal or prejudicial interest and declare accordingly.
- 21.4 Councillors should carefully consider whether it is wise to accept an invitation from an applicant or objector to make an informal site visit prior to the relevant Committee

meeting. In controversial cases only one side of an argument will be heard. It is, of course, perfectly proper for a Councillor to view a site from a public place.

Lobbying by Councillors

- 21.5 Councillors should avoid organising support for, or opposition to, planning applications and should not lobby other Councillors as such actions can easily be misunderstood. Members may have concerns about a planning matter before it comes to Committee. They are entitled to raise these concerns and to ask that they be addressed in any report that may go to Committee but Councillors should not put pressure on officers for a particular recommendation. The Code of Conduct requires Councillors to respect this impartiality.
- 21.6 Councillors should not lobby their colleagues on the Council if they have a prejudicial interest as this is precluded by the Council's Code of Conduct. Political Groups should also not seek to instruct their Councillors to vote in a particular way on a planning application.
- 21.7 For the purposes of this protocol, approaches from a Member of Parliament should be treated as lobbying if this is the nature of the approach.

Lobbying and Campaign Groups

- 21.8 The Code of Conduct requires Councillors to declare a personal interest in any matter that relates to an interest they must include in their register of interests – so they are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at their authority.
- 21.9 Members may not have a personal interest in the related discussion or decision of their authority if they merely campaigned on an issue as an individual, perhaps during their election campaign, and they are not a member of a relevant lobby group. As a result, they could not have a prejudicial interest in the matter. Members should still consider the general test for personal and prejudicial interests and whether there is any other reason outside of the Code why they should not participate in the decision, including bias.
- 21.10 Of particular relevance to members of lobby or campaign groups, is the revised Code which provides an exception to having a prejudicial interest in the following circumstances:
- (a) where the decision does not affect the financial position of a member or their interests; or
 - (b) does not relate to a licensing or regulatory matter brought by them or a person or body in which they have a personal interest.
- 21.11 For example, a member will not have a prejudicial interest in a developer's planning proposal against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter.

22. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors

(a) Introduction

- 22.1 Applications to their own Authority by serving Councillors and officers can easily give rise to suspicions of impropriety.

(b) Registration of Applications/Interests

- 22.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way, which gives no grounds for accusations of favouritism. Serving Councillors, and staff of Planning Services should play no part in the decision-making process in respect of those proposals. This should include applications by their partners or spouses. The Council's Monitoring Officer and the Director of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Director of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of Service respectively. Both postholders shall also advise the Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. Any such applications, whether by Members or officers, cannot be dealt with by the Director of Planning and Economic Development under delegated powers.

(c) Applications by Councillors

- 22.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered unless they decide to exercise their right to make representations (see Section 23 below).
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should also not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 22.5 Applications submitted by Councillors will always be determined by the District Development Control Committee and not by the Director of Planning and Economic Development under delegated powers.

(d) Applications by Officers

- 22.6 An officer (i.e. staff of Planning Services) submitting an application has a clear interest in that application. Applications submitted by officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Planning and Economic Development Service Director under delegated powers.
- 22.7 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.

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(e) Objectors

- 22.8 Councillors and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.

(f) Membership of Political Groups and Political Parties

- 22.9 On occasions, planning applications etc from fellow Councillors and political parties can give rise to concerns about conflicts of interest for those within the political grouping. This often creates a situation where all members of a Committee who have that relationship feel that they must declare a prejudicial interest. The consequence of this can be that applications have to be referred on to another body or delayed. Clearly where members of the public attend to make their views known, they will form a negative impression of the planning process unless the position is clearly thought through beforehand.

- 22.10 Such applications will be referred direct to the District Development Control Committee.

23. Prejudicial Interests and a Councillor's Representative Role

- 23.1 The preceding section deals with the prejudicial interests, which exist where Councillors etc are applicants or objectors on planning matters.

- 23.2 The revised Code of Conduct provides that a personal interest will also be a prejudicial interest if the matters affects Councillors' financial interests or relates to a licensing or regulatory matter and a member of the public, who knows the relevant facts, would reasonably think that the personal interest is so significant that it is likely to prejudice their judgement of the public interest. Regulatory matters include planning decisions. Equally prejudicial interest can arise as a result of "fettered discretions" as a consequence of advice in this protocol.

- 23.3 All such interests must be declared and the nature of that interest described. Councillors must then leave the room. Area Plans Sub Committees, the District Development Control Committee and (where necessary) the Council make provision for applicants and objectors to make representations for a maximum of three minutes.

- 23.4 The Code of Conduct allows Councillors who have a prejudicial interest in a planning matter to exercise the same rights as a member of the public. Thus they can attend a planning meeting for the purpose of:

- (a) making representations on their own behalf, for constituents, as a Parish Councillor either as objector or applicant, or
- (b) giving evidence; or
- (c) answering questions while they are present.

In these circumstances the Councillor will be subject to the Council's policy for public speaking at planning meetings. The Councillor should not sit with other members when he or she makes these representations. The Councillor should present them in the same way as would be expected of a member of the public in accordance with the

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Council's policy. Once the Councillor has spoken he or she must leave the meeting room and take no part in the decision.

- 23.5 Once the Councillor has spoken, the Code of Conduct requires that he or she leaves the meeting room and takes no part in the decision. Councillors might wish to exercise this right –
- (a) to submit representations on behalf of constituents;
 - (b) to make representations as applicant or objector or as Parish Council representative.
- 23.6 They should also make their representations at the meeting before any other person registered to do so. This is to ensure that a Councillor with a prejudicial interest remains in the meeting for a minimal period and to ensure that any influence in relation to discussion is restricted.
- 23.7 It is very important that the procedure for Councillors who have a prejudicial interest is perceived as quite distinct from their normal role particularly if they are a Councillor of that Committee. Councillors must be scrupulous in making this distinction clear.

24. Application for Planning Consent by the District Council

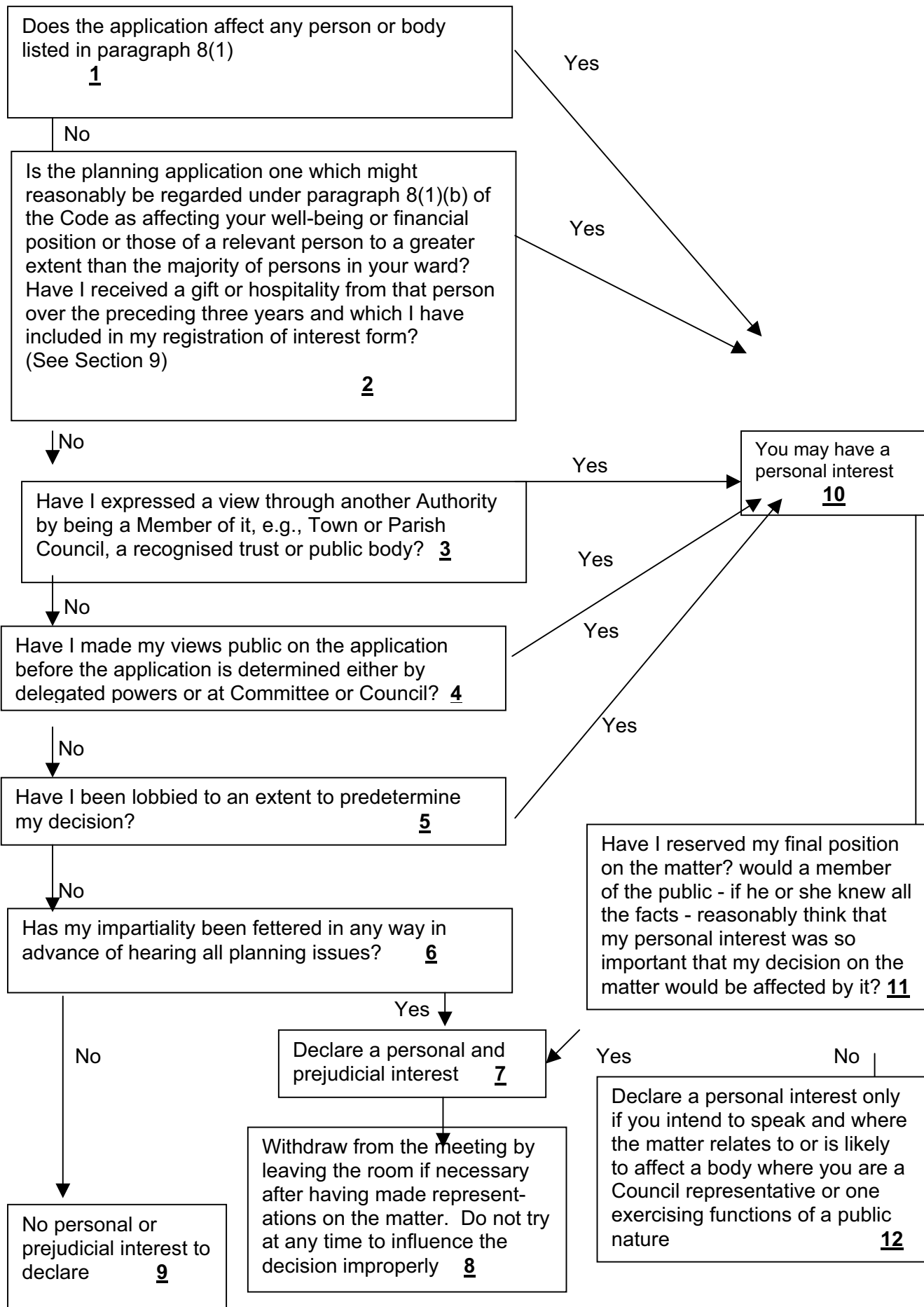
- 24.1 Planning applications for the Council's own development proposals will be treated in the same way as applications by any other person or body. Such applications will always be referred to an Area Plans Sub-Committee and will not be dealt with under delegated authority. This requirement extends to applications from other parties in respect of Council-owned land or property, where a land sale is being negotiated.
- 24.2 The Council's role as landowner is completely separate from its role as Planning Authority. The landowner role is a matter reserved to the Cabinet as an executive function. Considerations relating to the landowner role are not relevant planning considerations in respect of the determination of planning applications. Members of Area Plans Sub-Committees should at all times keep this in mind.
- 24.3 Section 7 above deals with conflicts of interest, which can arise if Cabinet members are involved in determining applications for which they are responsible.

25. Review of Decisions

- 25.1 Planning and enforcement decisions and Local Plans are subject to review in a number of ways:
- (a) as a result of investigations by the Local Government Ombudsman;
 - (b) at Planning Inquiries;
 - (c) through the Courts;
 - (d) as part of Comprehensive Performance Assessments and Best Value service reviews;

- (e) through the Council's Compliments and Complaints Procedure; and
 - (f) by means of a six-monthly review of appeal decisions.
- 25.2 By these reviews, the quality of planning decisions will be constantly monitored to ensure that the public can continue to have faith in the appropriateness and probity of the system.
- 26. Complaints**
- 26.1 The Council's compliments and complaints procedure allows any member of the public to complain about any aspect of how the planning system operates.
- 26.2 Opportunities exist to take complaints forward to the Local Government Commissioner for Administration (the Ombudsman) usually if a complainant is not satisfied after the Council's complaints procedure has been completed.
- 26.3 The Standards Board for England will consider complaints by any member of the public (including officers and other Councillors) about the conduct of any Councillor if it is considered that he or she has breached the requirements of the Council's Code of Conduct.
- 26.4 The Standards Committee has a role in reviewing and monitoring this protocol and if necessary offering advice on its operation.
- 27. Human Rights Act 1998**
- 27.1 The provisions of this protocol acknowledge throughout the rights of citizens in the planning process and the duty of the Council to reflect those rights in its procedures.
- 28. Planning Inquiries, Court Proceedings and Public Hearings**
- 28.1 Often planning decisions of the Council lead to further proceedings by way of appeals heard at Public Inquiries or hearings or in Court. The question often arises about involvement by Councillors in such circumstances.
- 28.2 Councillors who wish to be involved in such hearings should, as a matter of courtesy, advise the Council in advance that they intend to participate. At the hearing, they should make it clear that the views they express are personal and should not seek to criticise Council officers or Councillors on a personal basis.

FLOW CHART PLANNING PROTOCOL – MEMBERS/OFFICERS' INTEREST GUIDANCE



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Epping Forest Assessments Subcommittee – Active Cases

As at: 02 September 2013

Year	No.	Case reference no.	Case status	Received - (dd/mm/yy)	Investigator
2013	3	EFDC 3/2013	<p>Complaint made by member of the public about a District Councillor. Complaint relates to handling of a planning matter and members role in that process.</p> <p>Complaint has been considered by Monitoring Officer and Independent Person who agree that an investigation will not serve a useful purpose.</p> <p>Member concerned has met officers to discuss the matter, in particular the comments of the IP.</p>	26 June 2013	N/A
2013	4	EFDC 4/2013	Complaint made by a member of the public about comments made by two District Councillors at and Area Plans Sub-Committee meeting.	14 August 2013	

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