

ASHFIELD DISTRICT COUNCIL



Ashfield

Council Offices,
Urban Road,
Kirkby in Ashfield
Nottingham
NG17 8DA

Agenda

Standards and Personnel Appeals Committee

Date: **Monday, 10th October, 2016**

Time: **6.30 pm**

Venue: **Committee Room, Council Offices, Urban Road,
Kirkby-in-Ashfield**

For any further information please contact:

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STANDARDS AND PERSONNEL APPEALS COMMITTEE

Membership

Chairman:

Councillor Lauren Mitchell

Councillors:

Amanda Brown
Jackie James
Lachlan Morrison
Helen Smith

Steve Carroll
Cathy Mason
Phil Rostance
Jason Zadrozny

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SUMMONS

You are hereby requested to attend a meeting of the Standards and Personnel Appeals Committee to be held at the time/place and on the date mentioned above for the purpose of transacting the business set out below.



R. Mitchell
Chief Executive

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Agenda Item 3

STANDARDS AND PERSONNEL APPEALS COMMITTEE

Meeting held in the Committee Room, Council Offices, Urban Road, Kirkby-in-Ashfield,

on Monday, 25th July, 2016 at 6.30 pm

Present: Councillor Lauren Mitchell in the Chair;

Councillors Amanda Brown, Cathy Mason,
Lachlan Morrison, Phil Rostance and Mike Smith
(substitute for Jackie James)

Apologies for Absence: Councillors Steve Carroll, Jackie James

Officers Present: Ruth Dennis and Alan Maher.

SP.01 Declarations of Disclosable Pecuniary and Non-Disclosable Pecuniary / Other interests

There were no declarations of interest made.

SP.02 Minutes

The minutes of the meeting held on Monday 14 March 2016 were approved as a true record.

SP.03 Standards and Personnel Appeals Committee - Work Plan 2016/17

The report to Committee set out the proposed Work Plan for the 2016/17 municipal year. The Council's Monitoring Officer, Ruth Dennis, explained, that this would focus on the Committee's core areas of responsibility - standards of behaviour, monitoring complaints and 'whistleblowing'.

Members considered each of the suggested work items. They heard that as part of the proposed update report on the implementation of the LGA recommendations and the assessment of their impact, the Committee would be asked to consider whether we should appoint Co-opted Members and also the retention of Independent Persons. The Committee was reminded that two recruitment exercises to appoint Co-opted Members had been carried out. Unfortunately, these had not been successful and the posts currently remained vacant.

The Committee noted that it would receive an update on the Member Development Strategy and Programme. In particular, it would be asked to consider proposals to personalise the programme, between now and the next District local elections, in 2019. The aim behind this change would be to provide bespoke support to Members to help them with those areas of development which they require or would benefit most from. The Committee was informed that some specific proposals were being developed in

consultation with Human Resources and these would be submitted to the Committee at its October meeting.

As part of the Work Plan, the Committee would be asked to consider whether a policy was required on Disclosure and Barring Service (DBS) checks for all elected Members. What other local authorities have done will be researched and some specific proposals brought to the Committee, in October 2016.

The Committee then noted that it would be asked to consider the Members Allowances Scheme – and in particular how the Performance Related Element should operate. The Committee was reminded that this would require Members to attend most of the Council meetings and the meetings of those Committees to which they had been appointed in order to receive their full allowance.

Members discussed briefly this issue. They emphasised just how important it would be to apply a consistent approach, especially in determining when there were legitimate grounds for missing meetings. At the same time they also emphasised that those with chronic medical conditions should not be disadvantaged if they were unable to attend as many meetings because of their conditions.

Finally, the Committee noted that it would be asked to consider the issue of Secret Societies as part of the Work Plan. In particular, it would be asked to consider whether the Code of Conduct ought to be amended to require all Members to declare their membership of Secret Societies. The Committee agreed that some suggested wording now be prepared and submitted to its December 2016 meeting.

RESOLVED

That the Committee approves the Standards and Personnel Appeals Committee Work Plan for 2016-17.

Reasons

To reflect good practice.

SP.04 Quarterly Complaints Monitoring Report

The report to Committee provided information on complaints of alleged Member misconduct and the progress which had been made in assessing them. In particular, the Monitoring Officer explained that two outstanding complaints had been assessed. The first had been seen as having sufficient grounds for it to be considered by a Hearing Sub-Committee. The Committee would be informed of the arrangements for this shortly. The second had been assessed as not requiring any further action. The Committee noted this.

Members also heard that since the Committee had received its last update, in March 2016, two new complaints had been received which required assessment. These complaints involved Member complaints (rather than complaints from the public) and were interrelated. Carrying out investigations into them would not necessarily produce a satisfactory outcome and other options were being explored. However the Committee was told that it may still

be necessary to carry out investigations if the other options were not successful.

Finally, Ruth Dennis told the Committee that she had been contacted by three members of the public about potential complaints, but these had not been submitted at this stage.

The Committee discussed the report. As part of this, Members considered the types of complaints which are received from the public, especially around planning issues. They also discussed briefly the arrangements for the hearing that was required. All in all, the Committee thought that good progress had been made in assessing the outstanding complaints and welcomed the prospect that there may even be no outstanding complaints by the next Committee meeting.

RESOLVED

The Committee notes the updated position in respect of Members Code of Conduct complaints as set out in report.

Reasons

To reflect good practice.

SP.05 Members with other roles which might conflict with their role as a Councillor

The Committee was asked to consider this discussion paper. The paper made it clear just how important it was to make Members aware of any potential conflicts of interest which they may have - and especially any conflicts of interest they might have when carrying out their roles as District Councillors and their other roles. In particular, it was pointed out that there were potential conflicts of interest for those Members who were elected to serve on both Ashfield District Council and Nottinghamshire County Council. These conflicts could also arise when Members have employment or business interests which might cause some sensitivities when they were taking part in the business of the Council.

In this context, the Committee heard and discussed some examples of when this had occurred, including those which involved Members becoming 'predetermined' (or unable to speak or take part in the discussion or decision) on planning applications because of their conflicting roles.

The report made clear that the Committee would not have to develop any new policies. Rules had been established for how Councillors should behave when faced with conflicts of interest. These were based on the Seven Principles of Public Life determined by the Nolan Committee. The Seven Principles had been incorporated into the Council's own Members' Code of Conduct. The Committee was reminded that under these principles Councillors should not disclose information which had been given in confidence to them, or to disclose any confidential information which they had acquired.

Members were asked how to take this forward and in particular, whether they wanted to produce some further clarification or guidance on dealing with conflicts of interest.

Members discussed the paper. During this discussion specific concern was raised about the need for clarity about when they could and could not share information. It was made clear that under the Data Protection Act Members should only use information for the purpose which it was intended – or in other words to enable them to carry out their roles as District Councillors. Consequently, they should not share this information with the public or other third parties, such as parliamentarians.

Members were reminded that the Council has an established process for dealing with MPs enquiries, which should be followed. The Committee felt it important that Members be clear when they are not acting in their capacity as a Councillor – such as when they are representing Members of Parliament or others. The Committee also felt it important that Officers be supported, so that they can challenge and seek clarity when this role was unclear.

At the conclusion of the discussion the Committee agreed that it would be a good idea to produce a briefing / guidance note. In addition, the Committee thought that it would be helpful to arrange a training session for those Members serving on more than one authority after the County Council elections had taken place, in May 2017.

RESOLVED

That a guidance note be produced on how to deal with other roles which might conflict with their roles as Councillors and this note be brought back for the Committee to consider at its October meeting.

Reasons

Members have highlighted the issue of conflicts of interest as part of the Committee's Work Planning discussions.

The meeting closed at 7.37 pm

Chairman.

Agenda Item 4

REPORT TO: STANDARDS AND PERSONNEL APPEALS COMMITTEE **DATE:** 10 OCTOBER 2016
HEADING: DRAFT MEMBER DEVELOPMENT STRATEGY
PORTFOLIO HOLDER:
KEY DECISION: NO **SUBJECT TO CALL-IN:** NO

1 PURPOSE OF REPORT

The Member Development Strategy sets out a commitment from Ashfield District Council regarding training and development for Elected Members. It aims to provide guidance on how members will be supported and provided with learning and development opportunities to develop their skills and knowledge necessary to undertake their roles as community leaders and representatives of the Council.

Furthermore, following the approval of the Independent Remuneration Panel's recommendations to Council on the 21 July 2016, the compulsory / mandatory element of Member training will form part of the performance SRA considerations effective from May 2017.

The draft attached as Appendix A is for discussion only. Further development of a Strategy is required to set the principles, objectives and actions for any Strategy going forward. Appendix B is a draft pre-course evaluation form.

2 RECOMMENDATION(S)

Members of the Committee are asked to;

- Consider the information contained in this report
- Discuss objectives and priorities for a future Member Development Strategy
- Consider the introduction of an annual training needs survey for Members
- Endorse the development and enhancement of the Members e-learning facility
- Consider an appropriate financial threshold for individual Member training course
- Request that the Monitoring Officer explores further the possibility of dual hatted Members attending training at just one Authority where there is a requirement to attend the same training at both Authorities (for example, equalities and safeguarding).

3 REASONS FOR RECOMMENDATION(S)

Member development is important because it progresses the work of the Authority in a number of ways; it helps to increase and enrich members' skills and knowledge; it helps to build a cohesive group of people who understand what it means to be a member; it ensures we focus our resources and make the best use of members' time.

Member training was a key aspect of the LGA's recommendations as part of the Peer Review in 2014. This Committee is monitoring delivery of those recommendations and the impact of their implementation.

4 ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

The draft Member Development Strategy is for discussion only. Any alternative options or actions suggested will be considered as part of the wider development of a Strategy before approval.

5. BACKGROUND

Member training was a key aspect of the LGA's recommendations as part of the Peer Review in 2014. This Committee is monitoring delivery of those recommendations and the impact of their implementation. In the annual report in March, an update was given and Members asked to be provided with an annual update in relation to the LGA's recommendations (the next being due in March 2016). Members may recall that all recommendations had been actioned by March 2016 but Committee wanted to keep a close interest in the training and development of Members, in particular wanted to see the development of a Member Development Strategy.

Local Authorities have an obligation to ensure that they support elected Members to provide and improve corporate governance, local democracy and local services. The Council recognises that members have a pivotal role in taking forward the modernisation agenda and that its success will depend on elected members having the capacity to provide the best possible service to their residents.

All members whether newly elected or experienced will benefit from the opportunities available for specific learning and continuing development in order to fully appreciate and contribute to the dynamic service delivery agenda and to update and refresh the skills and knowledge required.

All members need to understand the scope and scale of the role in order to be able to identify the personal development needs that will enable them to fulfil the ever increasing individual and political demands.

The Different Roles of Members

There is considerable overlap in the skills, knowledge and behaviours required of all Elected Members in their different roles. It is therefore helpful to identify at this stage the different roles that elected members have and for which they need to be equipped.

- As members of Council**

Providing collective co-ordinated strategic direction to the policy framework of the Council including budgeting to meet strategic priorities.

- As Cabinet Members**

Having a comprehensive understanding and knowledge of particular portfolios they hold as Executive Members and providing strategic direction within that portfolio.

Providing collective leadership and direction as Cabinet members and ensuring a coordinated approach to policy and strategy development across the Council and with our partners.

- **As Overview and Scrutiny members**

Providing constructive challenge as members of Overview and Scrutiny Committees to the strategic and policy development of the Council and its service performance to support the Council in delivering its strategic objectives.

- **As members of Regulatory Committees**

Carrying out the regulatory functions of the Council in a fair and proper manner, consistent with legal obligations.

The Democracy Manager currently has responsibility for assisting Members with their training requirements. As part of the consideration of this issue it would be suitable to discuss how training needs are assessed and evaluated to ensure equal access to development.

Improving identification and assessment of training requirements will provide additional governance to the democratic process and ensure that Elected Members gain the necessary skills to carry out their role effectively.

6. IMPLICATIONS

Corporate Plan:

This Corporate Plan 2016 -2019 identify a clear commitment to Councillors, stating;

- We value the democratic role that Councillors have in representing the people of Ashfield;
- The Council recognises that the role of a Councillor is challenging and will support Councillors with training to help them deliver their roles;

Legal:

There are no legal implications contained within this report.

Financial:

Each year the Council identify the budget required for Training & Development for Elected councillors. This incorporates internal and external courses and conferences and seminars. The training budget for Member Development for 2016/17 is £10,000. Approximately a third of this has been spent up to September 2016.

Health and Well-Being / Environmental Management and Sustainability:

There are no Health and Well-Being / Environmental Management and Sustainability implications contained within this report.

Human Resources:

Ongoing work will be undertaken with Human Resources regarding the development of a Strategy to ensure that it meets the needs of all Members in carrying out their role.

Diversity/Equality:

Member learning and development activities are open for all Members to attend and it is intended that all such activities should be equally accessible and conform to the Council's equal opportunities policy and practice.

In recognition of the varying development needs and preferred learning styles, the member development programme will include a range of delivery methods including workshops, presentations, written resources, and e-learning. In considering the development and approval of a Member Development Strategy, an Equality Impact Assessment will need to be undertaken.

Community Safety:

There are no direct community safety implications associated with this report.

Other Implications:

there are no immediate implications arising from this report.

REASON(S) FOR URGENCY (if applicable)

N/A

BACKGROUND PAPERS

Corporate Plan
Ashfield and Mansfield Economic Masterplan

REPORT AUTHOR AND CONTACT OFFICER

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Acknowledgments

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Appendix A

Draft Member Development Strategy for Discussion

Introduction

Ashfield District Council recognise that to succeed in delivering high quality, cost effective services to the people of Ashfield, it needs well motivated, proactive Councillors with the skills and expertise to drive forward the Council's agenda.

Continuous member development is key to achieving this as all Councillors have a responsibility to learn new skills in line with the ongoing changes in local government. The overarching aim of the strategy is, therefore, to ensure that there is support for all members to enable them to acquire sufficient knowledge and a full range of skills to maximise their ability and capacity.

Arising from this overarching aim the Council has identified the following principles that will underpin how member development is delivered.

- Members will be offered opportunities to acquire the knowledge, skills and expertise they need to perform their roles effectively.
- Members will be encouraged to take responsibility for and actively seek opportunities for their own learning and development.
- Training and development applies to all members, even those that have been members for some time and feel that there is nothing new to learn.
- Members who take advantage of the opportunities available will be actively encouraged and supported.

This strategy sets out how the overarching aim will be achieved using these principles as the basis for doing so, for example in how access to learning will be ensured.

Strategic Context

This Corporate Plan 2016 -2019 sets out an ambitious programme for the Council over the next three years. It identifies our purpose as;

- The Council exists to serve the communities and residents of Ashfield;
- We will provide good quality, value for money services;
- We will act strategically and plan for the future.

The Values identify a clear commitment to Councillors, stating;

- We value the democratic role that Councillors have in representing the people of Ashfield;
- The Council recognises that the role of a Councillor is challenging and will support Councillors with training to help them deliver their roles;
- The Council will ensure that there is good governance in our democratic processes;
- The Council will keep Councillors of all political parties updated on key issues.

Aim of the Strategy

This Strategy is designed to provide an overall framework for member development that reflects best practice and achieves the following objectives:

- Provide a range of learning opportunities linked to skills required by Councillors for them to carry out their varied duties;
- Support and enhance the skills of all Elected Members through learning and development;
- Provide equality of opportunity and access to training and development for all Councillors;
- Encourage all members to take advantage of the learning and development opportunities available;
- Ensure that all newly elected members are properly inducted into the Council;
- Raise the profile of Ashfield by ensuring each member has access to training and development which will improve the quality of their role and the service they give to the public;
- Provide training and development at different times and in different ways to suit the diverse needs of Councillors;
- Contribute to the Council's corporate priorities through learning and development.

Roles of Elected Members

Councillors have personal, individual and collective responsibilities for their council's activities. In addition, as members of political groups or as independents, Councillors will express political values and support the policies of the group to which they belong.

Councillors who are Committee/Panel Chairs or Portfolio Holders have more specialised roles in promoting particular policies, representing the council while at the same time working with other agencies to tackle issues. Members roles include;

Representing the ward

The primary role of a member is to represent their ward and the people who live in it. They also have a responsibility to communicate Council policy and decisions to people in the ward.

Decision-making

Members have a central part to play in making decisions that impact on their ward and across the whole area covered by the Council. They will be involved in decision-making through:

- Council

- Cabinet (Cabinet Members only)
- Regulatory committees such as Planning or Licensing
- Sitting on boards and other groups as appointed to outside bodies

Policy and strategy development and review

Members influence and determine the development and review of the Council's policies and strategies. They also monitor the Council's performance. They contribute to this through their:

- Role in Overview and Scrutiny
- Involvement in advisory groups and partnerships
- Interaction with Cabinet Members
- Role as a representative on local community groups
- Case work
- Membership of a political group.

Overview and Scrutiny

The Overview and Scrutiny role of Members includes:

- Monitoring and reviewing policy formulation and implementation
- Policy development
- Quality review
- Scrutiny of external bodies and agencies
- Providing a check on the activities of the Cabinet through call-in powers

Regulatory Duties

Local authorities also act as regulators within certain functions and Members may be appointed to special committees that carry out these functions, such as standards, planning and licensing committees. In these roles, members are required to act independently and are not subject to the party group whip. Regulatory committees require Members to undertake mandatory training to carry out the regulatory function of those committees.

Currently Members are required to undertake the following mandatory training;

- Planning
- Licensing (and its sub-committees)
- Standards and Personnel Appeals Committee (and its hearing sub-committee)
- Chief Officers sub committee
- Safeguarding
- Code of Conduct
- Ethical Governance
- Equalities and Diversity
- **Any other training that the Council deems as required**

Community Leadership and Engagement

Community leadership is at the heart of modern local government and councils are taking on new responsibilities for working in partnership with other organisations, including the voluntary and community sector, to improve services and the quality of life of citizens.

Identifying Member Development Requirements

The process for identifying Members' development needs and priorities will be Member-led with officers bringing to Members' attention any training which is beneficial in carrying out their role. Learning and development priorities will also be assessed collectively in relation to the needs of specific committees and legislative and regulatory requirements.

Note for Members: *Members could be asked to complete a Training Needs Survey each year to identify what learning and development activities they have found to be effective and to assess what priorities they have for learning and development in the next year. This will then be used to develop and deliver the Member Development Training Plan.*

In identifying their priority learning and development needs, Members will be asked to consider outcomes they would like to achieve in relation to the requirements of the Council and achieving the Corporate Plan, personal aspirations and developing core skills.

Note for Members: *Members may wish to consider an appropriate financial threshold for individual Member training courses. For example £500 equates to 5% of the entire Members training budget.*

How will training be delivered?

Training will be delivered in a variety of forms, including in-house Member Seminars, briefings training at Committee / Panel meetings, E Learning, PowerPoint presentations and by sharing experiences with each other. Bespoke training will be provided by a mixture of internal Officers and external providers as and when necessary.

Additionally, Members can identify themselves external training that may enhance their knowledge and improve their skills in carrying out their role. In these instances Members should notify the Democracy Manager of the training, including details of nature of the course, location and cost.

Note for Members Consideration: *It may be useful to identify and agree requirements / evaluation method needed to assess relevance of the course and contribution it will make to enhancing Members skills to carry out their role. Please see Appendix B*

The suggested Training Needs Survey will also be used to develop and deliver a Member Development Training Plan.

Resources and Support

The Democracy Manager will monitor the budget for Member training and development and evaluate whether it meets the objectives identified within this strategy for Member Development. The 2016/17 budget for Member training and development is £10,000. This incorporates internal, external courses and conferences and seminars.

Courses requiring expenditure must be booked by the Democratic Services Team and reported to the Democracy Manager. Member Development has dedicated support from the Democratic Services Team. It is the role of the Democracy Manager to coordinate the Member Development Program, arrange facilitators, collate feedback and promote Member Development across the Council.

All councillors are aware of this support and are encouraged to contact the team should they wish to go on a course or look to develop an area of skills but are unsure as to how to go about it.

Delivering the Member Development Programme

Member learning and development activities are open for all Members to attend and it is intended that all such activities should be equally accessible and conform to the Council's equal opportunities policy and practice.

In recognition of the varying development needs and preferred learning styles, the member development programme will include a range of delivery methods including workshops, presentations, written resources, and e-learning.

Timing of in-house Training

Meeting arrangements are flexible in order to provide sessions to accommodate the needs of Members. When additional training or briefing sessions are organised, consideration will be given to the best time of day to schedule the meeting and Members will be consulted where appropriate.

Access to Information and Resources

All presentations and other materials from development activities and briefing sessions will be made available to all members, including those who could not attend.

Information about up-coming events is provided in writing and by email. Flyers may also be placed in the Members Rooms and Members' Digest.

Working in Partnership

The Council may work with Mansfield District Council to share best practice and deliver training locally to members in the two authorities. The Council will look to share training opportunities with its partners and other local councils such as parish and town councils, as appropriate.

Members' attendance on external training courses is supported where the course is relevant to the member's learning and development needs and is cost-effective. Details of courses and development opportunities will be circulated to all Members to ensure they are available on an equal basis.

Requests for external training will be determined by the Democracy Manager. Requests for training or development which have significant financial or policy implications will be submitted to the Assistant Chief Executive, Governance.

Evaluation of Member Development

All learning and development activities should be evaluated to provide information on effectiveness and value for money. Evaluation of learning and development activities will seek to assess the impact of the training in relation to achieving Members' priority training needs and the impact on the Council in achieving the aims of the Corporate Plan. Following the conclusion of events, Members will be asked to complete a feedback form, which will be issued by the Democracy Manager.

Where appropriate, follow-up feedback forms, giving Members an opportunity to reflect on how they have put the learning into practice, may be given to Members to complete a few months following a learning and development event, either on paper or electronically.

Other Member Development Support

The Council recognises that effective member development includes support and opportunities in addition to training. The Council will, therefore, provide the following to Members;

- Advice and support within the Democratic Services Team
- Access to IT equipment, information, stationery and office space in the Members' Room / Group Rooms
- Access to relevant Council and other information electronically through the Members Digest

Note: To be completed by Councillor and returned to the Democracy Manager prior to the booking of any training / seminars / courses. This form is designed to help assess the added value of courses in carrying out your role as a Councillor for both constituents and the Council.

Course	
Cost Of Course	
Position	Leader / Portfolio Holder / Chairman / Opposition / Scrutiny Member etc etc
How will this course assist you in carrying out your Member role	
How does this course contribute to the Councils priorities	

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Agenda Item 5

REPORT TO: STANDARDS AND PERSONNEL (APPEALS) COMMITTEE **DATE:** 10 OCTOBER 2016

HEADING: DISCLOSURE AND BARRING SERVICE CHECKS FOR COUNCILLORS

PORTFOLIO HOLDER:

KEY DECISION: NO **SUBJECT TO CALL-IN:** NO

1. PURPOSE OF REPORT

To consider the draft Policy on Disclosure and Barring Service (“DBS”) Checks for Elected Members.

2. RECOMMENDATION(S)

Committee is requested to consider whether all Elected Members should be DBS checked and if so recommend the draft Policy on Disclosure and Barring Service (“DBS”) Checks for Elected Members attached to the report for adoption by Council.

3. REASONS FOR RECOMMENDATION(S)

In order to protect those who are most vulnerable in society it is proposed that the Council adopts a policy of DBS checking all Members. The fact that all Councillors are checked may also strengthen public confidence.

4. ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

- a) **To continue to not carry out DBS checks.** Checking an individual’s background would assist in determining whether appointing a Member to a particular role may be less suitable for them in light of a relevant disclosure. In order to protect those who are most vulnerable in society it is proposed that this option be rejected; the Council may be open to criticism if it does not take reasonable steps to assess and mitigate the risk.
- b) **To carry out standard DBS checks for all Councillors.** Standard checks only reveal basic information concerning any unspent convictions and cautions, police remands and warnings; the enhanced level DBS certificate also contains any additional information held by the local police that they reasonably consider to be relevant to the individual’s role. This information is useful to determine whether there are concerns under investigation locally which have not resulted in any formal action and any information provided may also help put details of any offence in context.
- c) **To carry out enhanced DBS checks with a check of the barred lists.** This option is ruled out because it is not lawful to check the barred lists unless the individual who is being checked is going to undertake a “regulated activity” as amended by the Protection of Freedoms Act 2012. Councillors would not be eligible by virtue only of their position as a Councillor.

- d) **To carry out DBS checks in relation to specific roles which have some relationship with services that engage in “regulated activity”.** All Councillors have responsibility for decision taking at Committees therefore identifying specific individuals to DBS check would not be appropriate. Since Councillors engage in a variety of functions across the Council and in their constituency work it is more appropriate to check all Councillors.

5. DETAILED INFORMATION

Background

- a) The Council considered whether Members should be required to undertake, what was then, a Criminal Records Bureau (CRB) check in 2011. The Corporate Safeguarding Working Group led this review at the time. The Group concluded that a risk assessment of all the various member roles was required to determine on a role by role basis if CRB checks were required. The risk assessments were carried out based upon member role descriptions in place at the time. None of the roles were identified as having significant unsupervised contact with children or vulnerable adults. Councillors appointed to outside bodies may, depending on the type of organisation, come into contact with vulnerable groups, however, if such organisations require CRB checks to be undertaken the responsibility for carrying out those fell to that organisation.

Reforms to CRB and Independent Safeguarding Authority

- b) The Protection of Freedoms Act 2012 (“**PFA**”) introduced changes to the arrangements for carrying out criminal records checks. One of the key changes involved the merger of the Criminal Records Bureau (“**CRB**”) and the Independent Safeguarding Authority (“**ISA**”) in December 2012 to form a new body called the Disclosure and Barring Service (“**DBS**”).
- c) The DBS is a non-departmental public body, sponsored by the Home Office. The DBS provides access to criminal records and other relevant information for organisations in England and Wales and is also responsible for investigating safeguarding concerns and maintaining the barred lists for Children and Adults and the combined list (these are statutory lists containing details of people considered unsuitable to work with children and/or adults).

Changes to the definition of Regulated Activity

- d) The changes introduced under the PFA not only affected the administrative arrangements but also scaled back the number of activities, involving work with children and adults, that are regulated; these are known as “regulated activities”. Individuals on a barred list for children and/or adults cannot undertake a “regulated activity” and it is a criminal offence for the Council to allow an individual to do so without first checking whether they are on a barred list.
- e) A “regulated activity” is one involving close work with vulnerable groups, including children, which a barred person must not do. The legislation redefines and reduces the scope of regulated activities. Examples of “regulated activity” include being employed in a position that involves regularly undertaking unsupervised activities such as caring for or supervising children, regularly working for certain establishments such as children’s centres, and providing personal care to an adult in a care home or day care centre.
- f) Councillors generally do not have unsupervised contact with children or adults as part of their role and therefore will not be involved in “regulated activity”. Therefore, unless activities fall within the redefined scope of “regulated activity”, Councillors are not required to be checked by virtue only of their position as a Councillor.

- g) It should be noted that Section 80 of the Local Government Act 1972 already provides some safeguard by disqualifying individuals from standing for election or holding office if they have been convicted of a criminal offence within the last 5 years and received in excess of 3 months' imprisonment (including a suspended sentence).
- h) Following the changes in legislation, the Council continued to not undertake DBS checks for Members on the basis that their role does not automatically fall within the scope of "regulated activity" and the risk assessments highlighted no significant risk arising from any specific Member role.

DBS Checks for Councillors and Council policy

- i) In light of recent safeguarding issues in other Councils, the Standards Committee requested that the Council's position be reviewed and the development of a policy for consideration was placed on the Committee's work programme. Section 11 of the Children Act 2004 places a statutory duty on key people and bodies, including district councils, to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children.
- j) In seeking to identify the appropriate options in relation to the undertaking of DBS checks for Councillors, other local authorities have been consulted to provide information on their respective positions and the recommendations and alternative options take into account this research. The established practice within local authorities with regard to undertaking DBS checks on Elected Members varies but it appears that local authorities are increasingly undertaking DBS checks for Members. County or Metropolitan Council's having a responsibility for education and social services functions and generally carry out such checks.
- k) Although the duties and responsibilities of Councillors do not fall under the scope of "regulated activity" and Councillors are no longer required to be checked if not undertaking such activity, the Council can still request that DBS checks (excluding a check of the barred lists) be carried out.
- l) Safeguarding children, young people and adults is a key priority for the Council and the important role Councillors play in scrutinising services that are delivered and the arrangements that are put in place for these groups is recognised.
- m) Councillors have a wide range of responsibilities which may require Councillors to access sensitive information about, or have contact with, vulnerable children and adults. A Councillor's constituency work may bring them in to unsupervised contact with vulnerable people. The fact that all Councillors are checked may strengthen public confidence.
- n) There are two levels of DBS checks that can be carried out. **Standard DBS** checks which disclose previous cautions, convictions, police reprimands and warnings relating to an individual. **Enhanced Checks** (without a check of the barred lists) provide the information resulting from a standard DBS check with the addition of relevant police information provided by the local police force. Chief police officers are asked to provide any information which they "reasonably believe to be...relevant and ought to be included in the [enhanced DBS] certificate", having regard to the purpose for which the certificate is sought.

- o) To address concerns about proportionality, the Government has introduced legislation to prevent certain minor and old convictions and cautions from being revealed by a DBS check.
- p) If Committee is minded to recommend to Council that enhanced DBS checks are undertaken for all Councillors a draft policy is attached for consideration. The proposed policy was discussed at the recent Cross Party Update meeting and all those present commented that on balance it was preferable to carry out DBS for all Elected Members. They felt that a Councillor is a figure of authority whom people trust and as such the position could be exploited; they felt that the adoption of such an approach would strengthen public confidence.

Accepting a previously issued DBS check and Update Service

- q) Ultimately it is for the Council to determine whether to accept previously-issued DBS checks. The following should be considered before making a decision:
 - the decision made by a Chief Police Officer to disclose information on a DBS certificate was made based on the position for which the criminal record check was originally applied for; it cannot be assumed that no other intelligence would be disclosed for a different position;
 - the information revealed was based on the identity of the applicant, which was validated by another registered body, at the time that the original check was requested; the Council would have to ensure that the identity details on the certificate match those of the applicant
- r) The online update service has made portability easier. In order for a check to be portable the Member would have to firstly have a new DBS Certificate. The Member would then have 14 days to register with the DBS for the Update Service after the certificate issue date. Registration must be renewed annually and costs £13 per year. It is only when you have successfully registered with the update service that your DBS check is portable.
- s) The DBS Update Service keeps DBS certificates up to date online and allows a certificate status to be checked at any time.
- t) For the Council to be able to use the Online Update Service the Elected Member would be required to give consent for access.

6. IMPLICATIONS

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

Legal issues are outlined in the report.

Financial:

The cost of each enhanced DBS check is £44 (so a total of £1,540) for which there is no existing budget.

Health and Well-Being / Environmental Management and Sustainability:

There are no Health and Well-Being / Environmental Management and Sustainability implications contained in this report.

Human Resources:

There are no human resource implications arising from this report.

Diversity/Equality:

There are no equality/diversity issues relating to this report.

Community Safety:

The Council has a duty to protect the most vulnerable in society. The fact that all Councillors are checked may strengthen public confidence.

Other Implications:

None

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Policy on Disclosure and Barring Service (“DBS”) Checks for Councillors and Co-opted Members

Background

1. The effective date of commencement for this policy is xx.
2. This policy complies with the exception to the Rehabilitation of Offenders Act 1974 and with the Disclosure and Barring Service Code of Practice.
3. This policy replaces all previous policies, decisions and/or precedents relating to criminal records checks for Ashfield District Councillors.

General Principles

4. In light of the fact that Council has a duty to protect the most vulnerable in society this Policy requires all Councillors to undergo enhanced level DBS checks.

The Process

5. Within two months of the commencement date of this Policy and thereafter for newly elected Councillors within two months of taking office following election, Councillors will be required to undergo an enhanced DBS check.
6. Checks will be processed by the [TBC] following a request by the Council’s Monitoring Officer.
7. The relevant Councillor will be provided with a DBS certificate issued by the DBS. The Council will be notified of the disclosure and whether the DBS check is clear. This information will be returned to the Monitoring Officer. Where a check is not clear, for instance, it contains details of an offence, the Councillor will be required to provide a copy of the DBS certificate to the Monitoring Officer within 28 days of the date of issue of the DBS certificate, unless the content of the DBS certificate is disputed and the dispute is raised with the DBS within 3 months of the date of issue, in which case the certificate must be provided to the Monitoring Officer within 28 days following the outcome of the dispute.
8. In accordance with Section 124 of the Police Act 1997 disclosure information will only be passed to those people who are authorised to receive it in the course of their duties. The Monitoring Officer will maintain a record of the date a check was requested, the date a response was received and a ‘list’ of all those to whom the disclosure or disclosure information has been revealed together with other relevant information. It is a criminal offence to pass this information to anyone who is not entitled to receive it.
9. Disclosure information will only be used for the specific purpose for which it is requested and for which the applicant’s full consent has been given.

10. Records of the Disclosure Number will be kept electronically, along with the date of issue. Where Disclosure Information is made available this will be kept securely in lockable, non-portable containers and destroyed within six months in line with the DBS Code of Practice and the Data Protection Act.
11. Once the retention period has elapsed, any disclosure information will be destroyed by secure means. While awaiting destruction, disclosure information will remain in a lockable container. No photocopy or other image of the disclosure or any copy or representation of the contents of a disclosure will be kept. However, as stated above, the Monitoring Officer will maintain a register of the date of the request for, and issue of, a disclosure, the name of the subject, the type of disclosure requested, the position for which the disclosure was requested, the unique reference number of the disclosure and the detail of any decision taken as a result of the disclosure.

Portability

12. DBS certificates are not portable other than those between individuals registered with the online DBS update service.

The Use of Disclosure Information

13. The existence of a criminal record or other information revealed as a result of an enhanced DBS check will not debar a Councillor from holding office.
14. In the event that the disclosure information received raises issues of concern, the Chief Executive advised by the Monitoring Officer in consultation with the relevant Group Leader, will discuss with the individual Councillor the restrictions considered necessary, to safeguard children, young people and adults, on the positions held by that Councillor.
15. This policy will be reviewed every two years and updated as and when required as a result of changes in the law.

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Agenda Item 6

REPORT TO: STANDARDS AND PERSONNEL APPEALS COMMITTEE **DATE:** 10 OCTOBER 2016

HEADING: MEMBERS WITH OTHER ROLES WHICH MIGHT CONFLICT WITH THEIR ROLE AS A COUNCILLOR

PORTFOLIO HOLDER:

KEY DECISION: NO **SUBJECT TO CALL-IN:** NO

1. PURPOSE OF REPORT

The Committee at its last meeting requested that a guidance note to assist members to recognise and avoid potential conflicts be prepared for consideration.

2. RECOMMENDATION(S)

Committee is requested to:

- Consider the attached draft guidance note for approval.

3. REASONS FOR RECOMMENDATION(S)

Members have highlighted the issue of conflicts of interest, dual hatted Members and outside employment interests that may create some sensitivities as part of the Committee's work planning discussions. It is the role of the Standards and Personnel Appeals Committee to promote and maintain high standards of conduct by Members and Officers; one way the Committee does this is by monitoring, reviewing and developing protocols and guidance for Members on how they can best meet the expected standards of behaviour.

4. ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

Members may wish to suggest amendments or an alternative approach to the draft guidance note.

5. INTRODUCTION

A discussion paper was presented to this Committee in July to highlight the importance of ensuring that Members are aware of any potential conflicts caused by other external roles or interests when carrying out their role as a District Councillor. This includes dual-hatted Members and employment interests that may cause some sensitivities when considering business of the Council.

The Committee resolved:

"That a guidance note be produced on how to deal with other roles which might conflict with their roles as Councillors and this note be brought back for the Committee to consider at its October meeting." (Min. SP.05 refers).

It was acknowledged by the Committee that, as a public figure, an Elected Member's role, may, at times, overlap with their personal and/or professional life and interests. Members agreed that when performing a public role, Elected Members should act solely in terms of the public interest and **not** act in a manner to gain financial or other material benefits for themselves, family, friends, employer or in relation to their outside business interests.

The Committee specifically asked for the following to be covered in the note:

- Dual hatted members
- Predetermination Guidance, particularly in relation to Planning
- Those with employment or business interests which might require the Member to contact the Council in both their capacity as a Councillor and in their line of work. An example raised by Members at the Committee related to the process for MP's to submit enquiries to the Council, to ensure Members who work for MP's are clear how to go about making requests as part of their role for the MP and how that differs to when they make a request in their role as a Councillor.

A draft guidance note for consideration is attached as Appendix 1.

6. IMPLICATIONS

Corporate Plan:

Consideration of this topic contributes towards our commitment to:

- Place and Communities
- Organisational Improvement

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

Under the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by Members and Co-opted Members of the Authority. Failure to have and maintain high ethical standards can have significant reputational consequences.

Financial:

There are no financial implications arising from this report.

Health and Well-Being / Environmental Management and Sustainability:

There are no Health and Well-Being / Environmental Management and Sustainability implications contained in this report.

Human Resources:

There are no human resource implications arising from this report.

Diversity/Equality:

There are no equality/diversity issues relating to this report.

Community Safety:

There are no community Safety implications contained in this report.

Other Implications:

None

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Appendix 1

DRAFT GUIDANCE NOTE FOR ELECTED MEMBERS

HOW TO DEAL WITH OTHER ROLES WHICH MIGHT CONFLICT WITH THEIR ROLES AS COUNCILLORS

The Standards and Personnel Appeals Committee's role includes promoting and maintaining high standards of conduct by Members and Officers. One way the Committee does this is by monitoring, reviewing and developing protocols and guidance for Members on how they can best meet the expected standards of behaviour.

The Committee wishes to highlight the importance of ensuring that Members are aware of any potential conflicts caused by other external roles or interests when carrying out their role as a District Councillor. This includes dual-hatted Members and employment interests that may cause some sensitivities when considering business of the Council.

The Committee acknowledges that, as a public figure, an Elected Member's role, may, at times, overlap with their personal and/or professional life and interests. When performing a public role, Elected Members should act solely in terms of the public interest and **not** act in a manner to gain financial or other material benefits for themselves, family, friends, employer or in relation to their outside business interests. The Committee feels it is timely to produce guidance for Members on **how to deal with other roles which might conflict with their roles as councillors**.

Members' Code of Conduct

The Members' Code of Conduct applies when you act in your role as a Councillor. The Code sets out what conduct is expected from Councillors and includes the rules relating to declaring interests. The Council's Code of Conduct also incorporates The Seven Principles of Public Life – often called the "Nolan Principles". The Seven Principles of Public Life are set out below:

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

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

Objectivity

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

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

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

Honesty

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

Leadership

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

Dual-Hatted Members

It is recognised that some Councillors also represent other tiers of local government such as County or Parish Councils. Whilst the Code of Conduct does not automatically prevent Members from considering the same issue at more than one tier of local government and they may not have a disclosable pecuniary interest requiring them to not take part in any decision-making related to that issue, they may be conflicted because of actual or perceived predetermination or bias.

Dual Hatted Members must abide by the code of conduct that applies to the authority whose business they are carrying out at the time. So for example, if you are an Ashfield District Councillor and also a Nottinghamshire County Councillor, you will be bound by Ashfield District Council's Code of Conduct when carrying out District Council business.

If Members represent the District Council on any other body (an outside body appointed to by the Council), they must comply with Ashfield District Council's Code of Conduct – except where it conflicts with any other legal obligations by which the other body is bound. Members should seek legal advice if they consider that the provisions of the Council's Code of Conduct conflict with other legal obligations. These circumstances will not arise very often.

Predetermination and Bias

A brief summary of the principles of predisposition and predetermination are set out below:

Predisposition

- It is not a problem for Councillors to favour a particular view (be predisposed);
- Those views can be strong and publicly voiced;
- Councillors may have been elected because of their views on a particular issue;
- This is acceptable provided the Councillor is still prepared to consider all information and arguments put forward at a meeting and may change their mind;
- As long as the Councillor has an **OPEN MIND** on the issue they are entitled to take part in the debate and vote.

Predetermination

- A Councillor has predetermined an issue if they have a **CLOSED MIND** to all arguments – “I have made up my mind and nothing will change it”;
- Councillors must also avoid giving the appearance that nothing will change their mind – this may be as a result of comments made, or things written in leaflets, for instance;
- If Councillors have predetermined an issue they should **NOT** take part in making the

decision. If they do, the decision may be unlawful.

For further guidance specifically in relation to planning matters, the Local Government Association and the Planning Advice Service have produced joint guidance entitled, “*Probity in Planning*”.

Access to Information

The Code of Conduct specifies that Members should not disclose information given to them in confidence by anyone, or information acquired by them which they believe, or ought reasonably to be aware, is of a confidential nature, except where:

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

Detailed guidance regarding access to information by Members is set out at paragraph 12 of the Member/Officer Protocol.

Members have the ability to ask for information pursuant to their legal rights to information. This right extends to such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as a Member of the Council. This can range from a request for general information about some aspect of the Council’s activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the service or unit manager or Service Director.

In terms of the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.

Appendices C and D to the Member/Officer Protocol gives detailed guidance on the rights of Members to obtain information (attached to this guidance). The guidance note set out in Appendix C maps the hierarchy of rights of Members to information, but should be read in combination with the contents of the Constitution, most particularly the Access to Information Procedure Rules which cover the statutory obligations of the Authority in terms of information and its relationship with the decision-making process.

Council information provided to a Member is subject to the protections afforded by the Data Protection Act 1998 and must only be used by the Member for the purpose for which it was provided, ie in connection with the proper performance of the Member’s duties as a Member of the Council. Therefore, for example, early drafts of Committee reports / briefing papers are not suitable for public disclosure and should not be used other than for the purpose for which they were supplied.

Failure to observe this obligation or disclosure of confidential information may amount to a breach of the Code of Conduct. Failure to safeguard and protect the confidentiality of personal information within the meaning of the Data Protection Act 1998 may result in prosecution of the Council and/or any individual Officer or Member by the Information Commissioner and the imposition of significant monetary penalties.

Any Member request for personal information or personal data about an individual employee (rather than a general group of employees as a whole) should only be supplied where there is a demonstrable need for that Member to have the information at that level of detail in order to carry out their duties as a Member of the Council. Any such requests should be referred to and considered by the HR manager who may, if necessary, refer the request to the Monitoring Officer.

Employment / Outside Interests

Members who are employed in a field that may give rise to the perception that a reasonable member of the public with knowledge of the relevant facts, would believe that their ability to judge the public interest would be impaired, should be cautious and ensure that they follow the Code of Conduct and the law relating to predetermination and bias carefully. Members are also encouraged to ensure they follow any guidance or policies issued to them by their employer.

The Code of Conduct and the law relating to predetermination is not intended to prevent Members from campaigning or lobbying on specific issues, however, if a Member's employment or outside interests could give the perception that their judgment may be prejudiced, or that sensitive or confidential information may be at risk, Members should take additional care to ensure they are following the Code of Conduct or legal position explicitly. Such positions may arise for those who work in fields whereby their employer is involved in regulatory applications (such as planning or licensing) or their employer has significant interest and contact with Council matters directly (such as those Members working for political offices).

A Member should make it clear in what capacity they are making a request for information or an enquiry. If an officer is not clear what capacity a request has been made in, they will seek clarification before providing the information.

[Insert revised MP's enquiries process once finalised]

In cases of doubt, Members should approach the Monitoring Officer for assistance.

APPENDIX C MEMBERS' ACCESS TO INFORMATION

Introduction

1. The rights of access to information by Members is a complex mix of legislation available to Members and the public alike, legislation specific to local government and “common law rights” given to Members by the Courts. This Guidance endeavours to provide some guidelines for Members through this “maze”. Members may also seek advice from the Principal Solicitor or Monitoring Officer.
2. For general rights of access available to the public, please see the Access to Information Procedure Rules as set out in the Council’s Constitution.

What is the Hierarchy of Rights?

3. The law relevant to access to information by Members includes the following:
 - 3.1 **The Freedom of Information Act 2000.** This makes non-personal information freely available to all, with only limited exceptions.
 - 3.2 **The Data Protection Act 1998.** This relates to personal information, and generally makes this non-disclosable except in certain circumstances.
 - 3.3 **Local Government Legislation**
 - Access to Information provisions of the **Local Government Act 1972.** This gives the public access to Committee Minutes and Agenda, and to background material relevant to those documents.
 - **Local Government (Executive Arrangements) (Meetings and Access to Information) Regulations 2012**) ensures that Members are entitled to material relevant to public/private meetings of the Leader and Cabinet (and decision making by individual portfolio holders). However, these rights do not apply to draft documents, to the advice of a political advisor or to most exempt / confidential information (unless such information is needed for the work of the Scrutiny Committee).
 - 3.4 **Common Law Rights** (derived from Court judgements) give Members the right to inspect Council documents insofar as this is reasonably necessary to enable a Member to perform his/her duties as a Member — this is known as the “need to know” basis.
 - 3.5 Members do not have any right to “a roving commission” through Council documents — mere curiosity is not sufficient.

4. Navigating the Hierarchy of Rights Freedom of Information Act 2000

- 4.1 In broad terms, if the information being sought by a Member is non-personal, then the Freedom of Information Act 2000 allows access to most Council documentation. The first port of call for information under the Freedom of Information Act is the Council’s Publication Scheme. This is located on the Council’s website and sets out most of the Council’s published material. This information can be accessed and used without any further reference to the Council. The remainder of this note assumes that the information being sought by a Member is not available under the Publication Scheme.

4.2 In certain circumstances, access to documentation via the Freedom of Information Act may be exempt, although most of the exemptions are subject to a “public interest test”. So, for example, releasing commercially sensitive information to a member of the public is not likely to be in the public interest. Whereas (subject to the usual rules of confidentiality), it is likely to be in the public interest to release such information to a Member.

4.3 Examples of exemptions under the Freedom of Information Act are:

- Work in progress (draft reports, for example) need not be disclosed.
- Information subject to a data-sharing Protocol should not be released until all organisations have each agreed to disclosure. This is to ensure that crime and disorder and fraud investigations, for example, are not prejudiced.
- Commercially sensitive information.
- Where, in the opinion of a designated officer (the Monitoring Officer) disclosure of information would or would be likely to inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation, or would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs. This exemption is also subject to the public interest test.

4.4 If the rights outlined above are not sufficient to provide a Member with the information he/she needs, then it is necessary to look to other provisions set out below.

Data Protection Act 1998

5.1 If the information sought by a Member relates to an identified living individual, then the Data Protection Act applies.

5.2 There are 2 classes of Data Protection — “normal” personal information and “sensitive personal information”. Sensitive personal information includes:

- Racial or Ethnic Origin
- Religious beliefs
- Trade Union membership
- Physical or Mental health
- Actual or alleged criminal offences and criminal records
- Sexual life
- Political opinions.

5.3 Where “normal” personal information is involved, unless additional consent has been granted by the individual concerned, information about an individual can only be used for the purposes for which that information was obtained.

5.4 Members have the same rights as Council employees to access personal information and the Member must have a need to know and not just be curious.

5.5 The Council has a duty to ensure that personal information disclosed to Members using the above procedures is used strictly for the purposes for which it is disclosed and that

Members will keep the information secure and confidential (and then disposed of in a similarly careful manner).

- 5.6 Members must observe the Code of Conduct and all the provisions of the Constitution. Officers will automatically assume that Members will treat personal information in accordance with the previous paragraph.
- 5.7 Where “sensitive” personal information is involved (see paragraph 5.2 above) then more rigorous procedures are necessary:
 - Either explicit consent of the person concerned must be obtained; or
 - If this is not practicable, Members must complete a form under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002.
- 5.8 If the rights outlined above are not sufficient to provide a Member with the information s/he needs, then it is necessary to look other provisions below:

Access to Information Provisions of the Local Government Act 1972/Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012

- 6.1 Where a Member cannot obtain the disclosure of information under the Freedom of Information Act then the information may still become available to Members at a later date via Committee agenda, and the right to see background material associated with such an agenda. Once a matter has reached the stage where it is before a Council/Committee/Cabinet, then members of that Council/Committee/Cabinet would have a “need to know” all relevant information; and other Members would be able to use the usual Access to Information provisions. However, the above rights do not apply to draft documents, to the advice of a political advisor or to most categories of exempt/confidential information (unless the Scrutiny Committees require such exempt / confidential information as part of actions/decisions it is scrutinising).

General

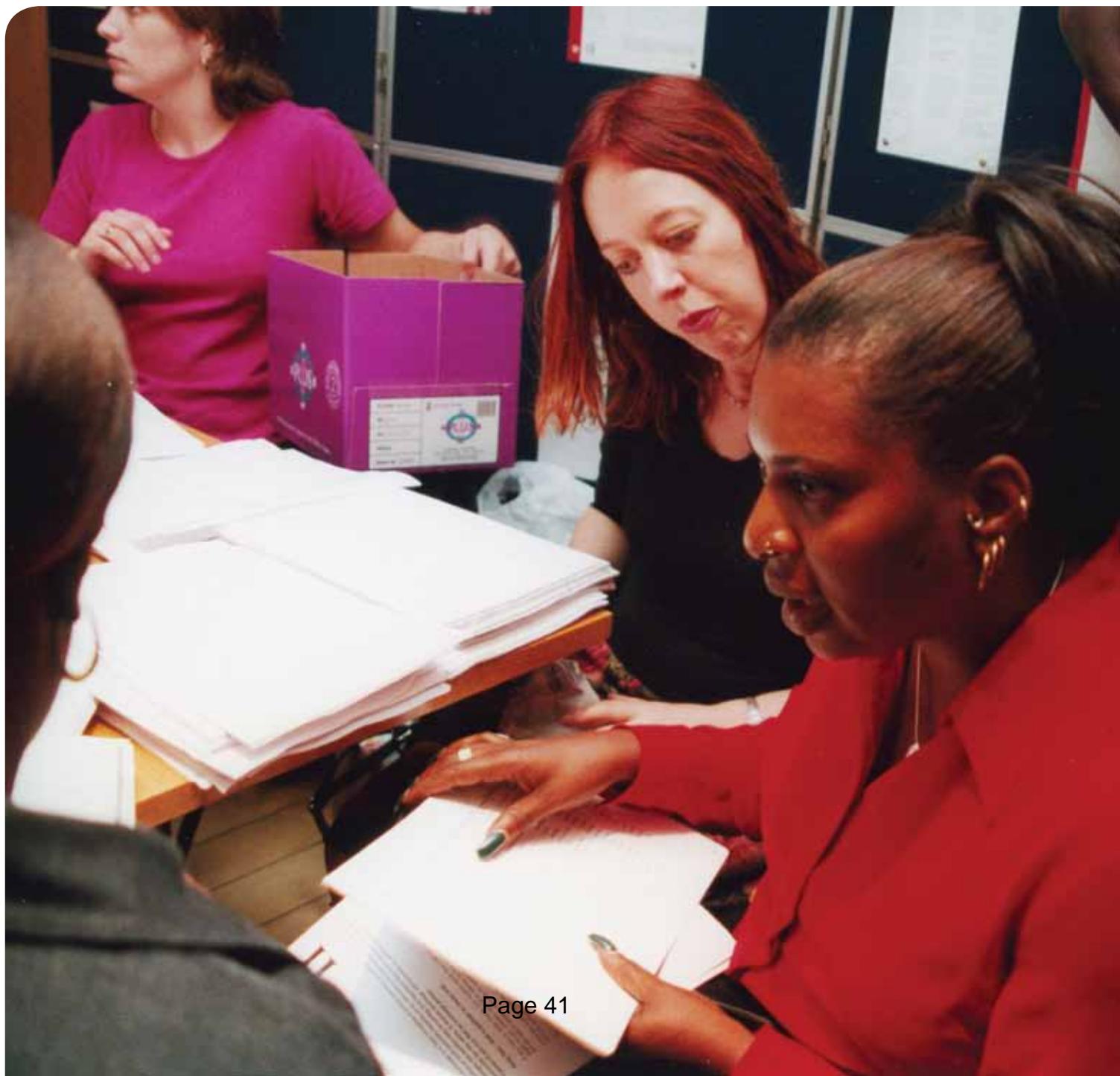
- 7.1 Material from the Legal Section (where the Legal Section is providing legal advice to one of its in-house clients at the Council) may be non-disclosable due to legal professional privilege.
- 7.2 Information supplied under the Data Protection Act 1998 must not be used or disclosed for political purposes.
- 7.3 Requests for information under the control of Officers should normally be made to the relevant Service Manager/Service Director.
- 7.4 Requests for information under the control of the Leader and Cabinet should normally be made to the Leader and/or the relevant Portfolio Holder.
- 7.5 Members must not put undue pressure on Officers to release information to which the Member is not entitled to have access.
- 7.6 Should a Section Manager or Service Director need advice as to whether information can be released to a Member s/he should contact the Principal Solicitor or Monitoring Officer.

- 7.7 The additional access to information rights given to Members are to allow them to do their jobs as Members. Confidential or exempt information should only be used in appropriate circumstances, in accordance with the proper performance of their duties as Members. Information should only be passed between Members if both Members can demonstrate a “need to know”.
- 7.8 Any complaints by a Member about the non-disclosure of information should be made in writing to the Monitoring Officer whose decision shall be final as far as the Council is concerned. However, if the Member remains dissatisfied, the Member may be able to refer the matter to the Information Commissioner.

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Probity in planning

for councillors and officers



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This publication was prepared by Trevor Roberts Associates for the Planning Advisory Service. It also includes contributions from officers from various councils.

April 2013

Foreword

This 2013 update to the 2009 version of the Local Government Association's Probity in Planning guide reflects changes introduced by the Localism Act 2011. It clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

This guide has been written for officers and councillors involved in planning. Councillors should also be familiar with their own codes of conduct and guidance.

This guide is not intended to nor does it constitute legal advice. Councillors and officers will need to obtain their own legal advice on any matters of a legal nature concerning matters of probity.

Introduction

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

The planning system works best when officers and councillors involved in planning understand their roles and responsibilities, and the context and constraints in which they operate.

Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

Background

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today's place-shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This guidance is intended to reinforce councillors' community engagement roles whilst maintaining good standards of probity that minimizes the risk of legal challenges.

Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.

The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This guidance is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business.

This guidance refers mainly to the actions of a local authority planning committee as the principal decision-making forum on planning matters. It is recognised, however, that authorities have a range of forms of decision-making: officer delegations; area committees; planning boards, and full council.

This guidance applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

The general role and conduct of councillors and officers

Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. All councils had to adopt a local code by August 2012.

The adopted code should be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

It should embrace the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public. Many local authorities have adopted their own, separate codes relating specifically to planning although these should be cross referenced with the substantive code of conduct for the council.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers over and above an agreed nominal value should let the council's monitoring officer know, in writing, and seek advice as to whether they should be accepted or declined. Guidance on these issues for both councillors and officers should be included in the local code of conduct

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Ombudsman on grounds of maladministration or a breach of the authority's code.

Finally, as planning can sometimes appear to be complex and as there are currently many changes in planning taking place, the LGA endorses the good practice of many councils which ensures that their councillors receive training on planning when first appointed to the planning committee or local plan steering group, and regularly thereafter. The Planning Advisory Service (PAS) can provide training to councillors (contact pas@local.gov.uk).

Registration and disclosure of interests

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of disclosable pecuniary interests are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

For full guidance on interests, see Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013. (This guidance note does not seek to replicate the detailed information contained within the DCLG note). Advice should always be sought from the council's monitoring officer. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

Each council's code of conduct should establish what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the council's monitoring officer and made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has a (non-pecuniary) personal interest, he or she should disclose that interest, but then may speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at planning committee he or she should raise this with their monitoring officer as soon as possible.

See Appendix for a flowchart of how councillors' interests should be handled.

Predisposition, predetermination, or bias

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a ‘closed mind’ approach and likely to leave the committee’s decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright, the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

This reflects the common law position that a councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased.

For example, a councillor who states “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee” will be perceived very differently from a councillor who states: “Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area.”

If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter.

This would apply to any member of the planning committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward). If the Council rules allow substitutes to the meeting, this could be an appropriate option.

Authorities will usually have a cabinet/executive member responsible for development and planning. This councillor is able to be a member of the planning committee. Leading members of a local authority, who have participated in the development of planning policies and proposals, need not and should not, on that ground and in the interests of the good conduct of business, normally exclude themselves from decision making committees.

Development proposals submitted by councillors and officers, and council development

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals.

Such proposals must be handled in a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:

- if they submit their own proposal to their authority they should play no part in its consideration
- a system should be devised to identify and manage such proposals
- the council's monitoring officer should be informed of such proposals
- such proposals should be reported to the planning committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant, should also not seek to improperly influence the decision.

Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers.

Lobbying of and by councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves".

Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the planning committee in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments.

In such situations, they could restrict themselves to giving advice about the process and what can and can't be taken into account.

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material and planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence. This should be set out in the authority's code of conduct for planning matters.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

A local code on planning should also address the following more specific issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Planning committee or local plan steering group members should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.
- Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.
- Call-in procedures, whereby councillors can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committee, should require the reasons for call-in to be recorded in writing and to refer solely to matters of material planning concern.

As previously outlined, councillors must always be mindful of their responsibilities and duties under their local codes of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

Pre-application discussions

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, through the Localism Act and previously the Audit Commission, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and helps to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act, particularly S25, by endorsing this approach, has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. In addition to any specific local circumstances, guidelines should include the following:

- Clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice should be given by officers based upon the development plan and material planning considerations.
- Officers should be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.

- Confirmation that a written note should be made of all meetings. An officer should make the arrangements for such meetings, attend and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes should record issues raised and advice given. The note(s) should be placed on the file as a public record. If there is a legitimate reason for confidentiality regarding a proposal, a note of the non-confidential issues raised or advice given can still normally be placed on the file to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines would apply. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Authorities should think about when, however, discussions should be registered and notes written.

Authorities have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken)
- ward councillor briefing by officers on pre-application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

Officer reports to committee

As a result of decisions made by the courts and ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), any local finance considerations, and any other material planning considerations.

- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors.

In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

New documents should not be circulated to the committee; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This should be made clear to those who intend to speak.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990).

This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non-material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- discussing the areas of difference and the reasons for that with planning officers beforehand (as part of a standard 'call-over' meeting where all items on the agenda are discussed)
- recording the detailed reasons as part of the mover's motion
- adjourning for a few minutes for those reasons to be discussed and then agreed by the committee
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

Committee site visits

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be ‘triggered’ by a request from the ward councillor, the ‘substantial benefit’ test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters.

This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Annual review of decisions

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy.

Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

Scrutiny or standards committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews.

Complaints and record keeping

All councils should have a complaints procedure which may apply to all council activities. A council should also consider how planning-related complaints will be handled, in relation to the code of conduct adopted by the authority.

So that complaints may be fully investigated and as general good practice, record keeping should be complete and accurate. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

List of references

Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters
Local Government Association, May 2009
http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3378249/PUBLICATION-TEMPLATE

The Localism Act 2011
<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

National Planning Policy Framework
Department for Communities and Local Government, March 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report Cm 3702-1:
<http://www.public-standards.gov.uk/our-work/inquiries/previous-reports/third-report-standards-of-conduct-of-local-government-in-england-scotland-and-wales/>

Royal Town Planning Institute Code of Professional Conduct:
<http://www.rtpi.org.uk/membership/professional-standards/>

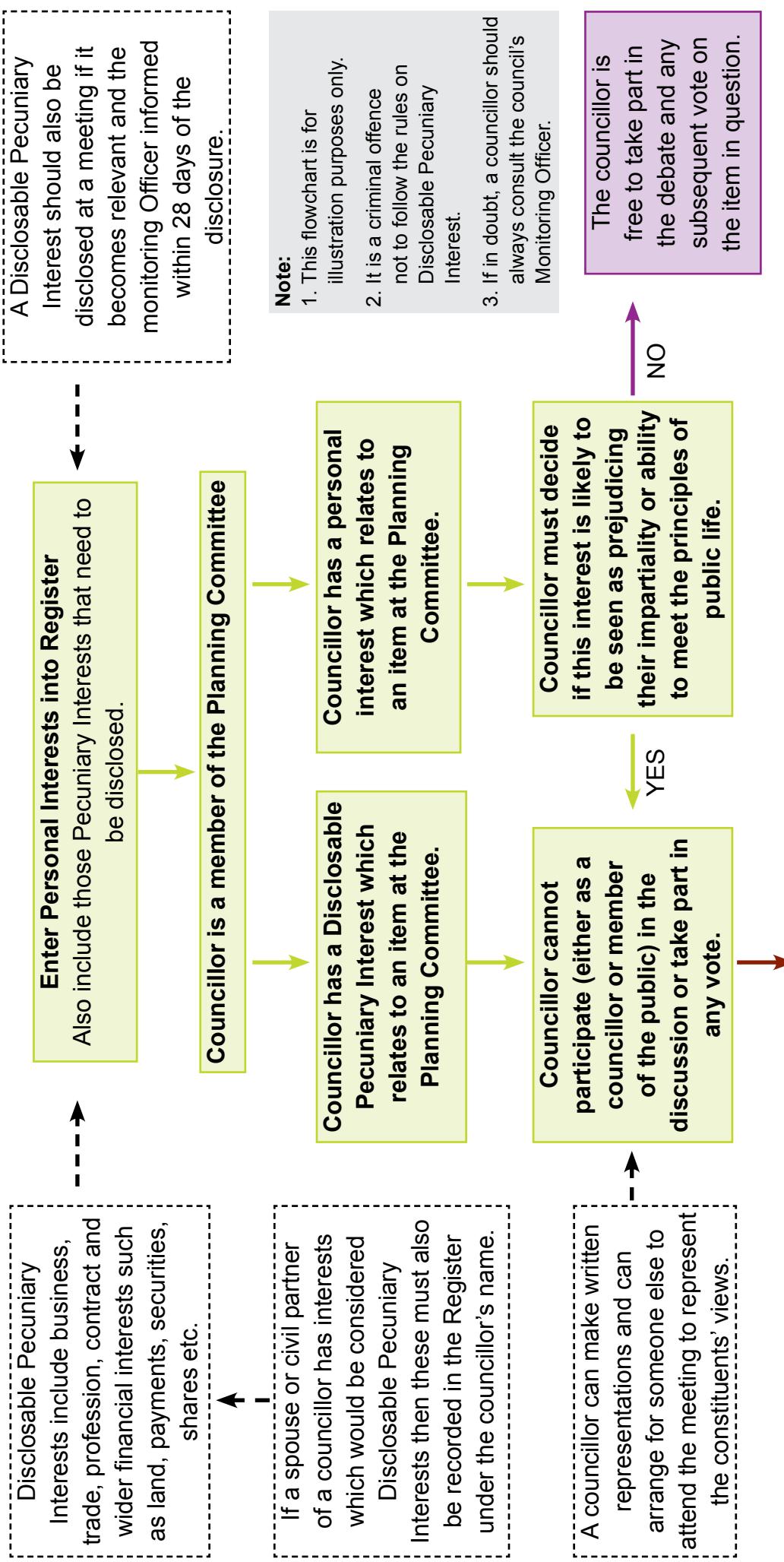
The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

Openness and transparency on personal interests: guidance for councillors, Department for Communities and Local Government, March 2013
<https://www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors>

The Planning System – matching expectations to capacity
Audit Commission, February 2006
http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/AuditCommissionReports/NationalStudies/Planning_FINAL.pdf

'Standards Matter' Kelly Committee Jan 2013
<http://www.official-documents.gov.uk/document/cm85/8519/8519.pdf>

Flowchart of councillors' interests



Councillor must leave the room if Council's Standing Orders require it or if continuing presence is incompatible with the Council's code of conduct or it would contravene the principles of public life. Special dispensation can be sought in exceptional circumstances.



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Agenda Item 7

REPORT TO:	STANDARDS AND PERSONNEL APPEALS COMMITTEE	DATE:	10 OCTOBER 2016
HEADING:	QUARTERLY COMPLAINTS MONITORING REPORT		
PORTFOLIO HOLDER:	N/A		
KEY DECISION:	NO	SUBJECT TO CALL-IN:	NO

1. PURPOSE OF REPORT

This report provides an update in respect of Members' Code of Conduct complaints.

2. RECOMMENDATION(S)

The Committee is requested to note the updated position in respect of Members' Code of Conduct complaints as set out in the Appendix for the period commencing on 16 July 2016 and ending on 30 September 2016.

3. REASONS FOR RECOMMENDATION(S)

To reflect good practice.

4. ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

No alternative options are considered appropriate.

5. BACKGROUND

This report outlines in the Appendix the number of complaints of alleged Member misconduct which are outstanding and a summary overview of the status of ongoing complaints.

An update will be provided to the Committee at the meeting in relation to the complaint due to be considered at a hearing.

Alternative approaches in relation to the two remaining complaints have been explored. One complaint now requires final assessment with the Independent Person which it is hoped will take place prior to the Committee meeting. If this is the case, a verbal update will be provided at the meeting. In relation to the other complaint, further information is required from the Complainant before an assessment can be made.

6. IMPLICATIONS

Corporate Plan:

The Council will strive to ensure effective community leadership, through good governance, transparency, accountability and appropriate behaviours.

Legal:

There are no legal implications associated with this monitoring report.

Financial:

There are no financial implications associated with this monitoring report.

Health and Well-Being / Environmental Management and Sustainability:

There are no Health and Well-Being or Environmental Management and Sustainability implications associated with this monitoring report.

Human Resources:

There are no HR implications associated with this monitoring report.

Diversity/Equality:

There are no Diversity/Equality implications associated with this monitoring report.

Community Safety:

There are no Community Safety implications associated with this monitoring report.

Other Implications:

None.

BACKGROUND PAPERS

None

REPORT AUTHOR AND CONTACT OFFICER

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Appendix 1

QUARTERLY UPDATE OF COMPLAINTS FROM 16 JULY MARCH 2016 TO 30 SEPTEMBER 2016

REFERENCE	DATE COMPLAINT RECEIVED BY MONITORING OFFICER	COMPLAINANT TYPE	COMPLAINT ABOUT A DISTRICT OR PARISH COUNCILLOR	ALLEGED BREACH	LOCAL ASSESSMENT DECISION (MONITORING OFFICER IN CONSULTATION WITH INDEPENDENT PERSON)	DATE OF ASSESSMENT DECISION
ADAC2014-03	20 March 2014	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct 2.7 Disrepute	Referred for investigation. The draft report was sent to relevant parties for their comments by 4 January 2016. No comments were received by the deadline. The final report was issued and has been considered by the Monitoring Officer and the Independent Person. The matter is to be referred for a hearing; arrangements for the hearing are being made. Update to be provided at Committee.	16 February 2015

ADC2016-01	6 April 2016	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct. 2.3 Bullying	Considered alternative options prior to assessment. Awaiting assessment with the Independent Person	
ADC2016-02	25 May 2016	District Councillor	District Councillor	2.1 Respect 2.2 Contrary to high standards of conduct. 2.3 Bullying	Considered alternative options prior to assessment. Further information required before assessment can be made.	