

**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- Consider the attached draft guidance note for approval.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Members may wish to suggest amendments or an alternative approach to the draft guidance note.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.