

# **PART 5**

# **Codes and Protocols**

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## **SECTION A - Code of Conduct for Members and Co-Opted Members**

*Issued July 2002; Revised September 2007*

### **Introduction and interpretation**

- 1
- (1) This Code applies to you as a member of an authority.
  - (2) You should read this Code together with the general principles prescribed by the Secretary of State.
  - (3) It is your responsibility to comply with the provisions of this Code.
  - (4) In this Code:-
    - "meeting" means any meeting of
      - (a) the Authority;
      - (b) any of the Authority's decision making committees, sub-committees, panels, joint committees, joint sub-committees, or area committees;
      - (c) meetings of all Scrutiny Committees and the Standards Committee;
      - (d) informal meetings with other Members and/or Officers relating to the discharge of the Authority's functions.

"member" includes a co-opted member and an appointed member.

### **Scope**

- 2
- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you:-
    - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
    - (b) act, claim to act or give the impression you are acting as a representative of your authorityand references to your official capacity are construed accordingly.
  - (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
  - (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3 (2) (c), 5 and 6 (a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph 3) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your Authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## General obligations

- 3**
- (1) You must treat others with respect.
  - (2) You must not:
    - (a) do anything which may cause your Authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
    - (b) bully any person;
    - (c) intimidate or attempt to intimidate any person who is or is likely to be:-
      - (i) a complainant,
      - (ii) a witness, or
      - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
    - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- 4**
- You must not:
    - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-
      - (i) you have the consent of a person authorised to give it;
      - (ii) you are required by law to do so;

- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is:-
  - (aa) reasonable and in the public interest; and
  - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

**5** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

**6** You:-

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority or of resources which are controlled or influenced by your authority:-
  - (i) act in accordance with your authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7** (1) When reaching decisions on any matter you must:-

- (a) do so on the basis of the merits of the circumstances and in the public interest;
- (b) have regard to any relevant advice provided to you by the authority's officers, in particular by:-
  - (i) the authority's Chief Finance Officer, particularly where that officer is acting pursuant to his or her statutory duties;
  - (ii) the authority's Monitoring Officer, particularly where that officer is acting pursuant to his or her statutory duties;

- (iii) the authority's Head of Legal and Democratic Services, who should be consulted whenever there is any doubt as to the authority's powers to act, or as to whether the action proposed lies within the policy framework agreed by the authority, or where the legal consequences of action or failure to act by the authority might have important repercussions.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Personal interests

- 8 (1) You have a personal interest in any business of your Authority where either:-
- (a) it relates to or is likely to affect
    - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
    - (ii) any body
      - (aa) exercising functions of a public nature;
      - (bb) directed to charitable purposes; or
      - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)of which you are a member or in a position of general control or management;
  - (iii) any employment or business carried on by you;
  - (iv) any person or body who employs or has appointed you;
  - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
  - (vi) any person or body who has a place of business or land in your Authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
  - (vii) any contract for goods, services or works made between your authority and you, or a firm, in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

- (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
  - (ix) any land in your authority's area in which you have a beneficial interest;
  - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
  - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.
- (2) In sub-paragraph (1) (b), a relevant person is:-
- (a) a member of your family or any person with whom you have a close association; or
  - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
  - (d) any body of a type described in sub-paragraph (1) (a) (i) or (ii).

## Disclosure of personal interests

- 9 (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8 (1) (a) (i) or 8 (1) (a) (ii) (aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- (6) Subject to paragraph 12 (1) (b), where you have a personal interest in any business of your authority and you have been present in committee when a decision has been taken in relation to that business, you must ensure that the minutes of that meeting records the existence and nature of that interest.

## **Prejudicial interest generally**

- 10**
- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
  - (2) You do not have a prejudicial interest in any business of the authority where that business:-
    - (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;
    - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or
    - (c) relates to the functions of your authority in respect of
      - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
      - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
      - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
      - (iv) an allowance, payment or indemnity given to members;
      - (v) any ceremonial honour given to members; and
      - (vi) setting council tax or a precept under the Local Government Finance Act 1992

- (3) The determination of any approval, consent, licence, permission or registration shall include the amendment or modification of any such approval, consent, licence or permission or registration of any condition, limitation or term to which it is subject or the revoking of any approval, consent, licence, permission or registration.

## **Prejudicial interests arising in relation to overview and scrutiny committees**

- 11** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where
- (a) that business relates to a decision made (whether implemented or not) or action taken by another of your authority's committees, sub-committees, panels, joint committees or joint sub-committees; **and**
  - (b) at the time the decision was made or action was taken, you were a member of the committee, sub-committee, panel, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken

## **Effect of prejudicial interests on participation**

- 12** (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your Authority
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from your Authority's Standards Committee;
  - (b) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## Registration of members' interests

- 13** (1) Subject to paragraph 14, you must, within 28 days of
- (a) this Code being adopted by or applied to your Authority;
- or
- (b) your election or appointment to office (where that is later), register in your Authority's register of members' interests (maintained under section 81 (1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8 (1) (a), by providing written notification to your authority's monitoring officer.
- (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

## Sensitive information

- 14** (1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.
- (3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## **SECTION B - Officers' Code of Conduct**

### **Officers' Code of Conduct**

**Issued: December 2003. Revised November 2010.**

#### **1 Introduction and Scope**

- 1.1 The public is entitled to expect the highest standards of conduct from all employees working for Epsom and Ewell Borough Council. Public confidence in employees' integrity would be shaken were the least suspicion to arise, however ill founded, that they could in any way be influenced by improper motives. The role of employees is to serve the Council in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity
- 1.2 The Council has approved this Code of Conduct after consultation with representatives of staff. The Code applies to all employees and draws together existing laws, regulations, standing orders, policies and conditions of service relating to conduct and provides further guidance to assist and protect staff in their day-to-day work. The Code is specifically linked to the following related Council policies:
- Gifts & Hospitality
  - Dress Code
  - Code of Conduct for Members and Co-opted Member
- It also relates to other Council policies including:
- Recruitment & selection
  - Confidentiality
  - ICT security
  - Data Protection
  - Whistleblowing
- 1.3 Unless otherwise stated, failure to follow the various guidelines and requirements set out in this Code could result in disciplinary action being taken, which could ultimately lead to dismissal. Equally, the Council's Grievance Procedure would apply if any member of staff were unhappy at the way the Code was applied in his/her case. It is therefore important that staff familiarise themselves with the contents of this Code.
- 1.4 Copies of the individual policies or terms and conditions of employment referred to in the Code are available for reference on IRIS, (the Council's Intranet), or from Human Resources and employees should feel free to refer to them to seek clarification on any point at any time or to speak to Human Resources in confidence on any specific matter arising from it. If in doubt on any matter arising from the Code, an employee should always seek advice as soon as possible.

1.5 The Code gives detailed advice and guidance in a number of specific areas as follows: -

<u>Section</u>	<u>Subject</u>
2	Standards in General
3.	Political Neutrality
4.	Disclosure of Information
5.	Relationships
6.	Financial Regulations and Standing Orders relating to Contracts
7.	Separation of Roles during Tendering
8.	Recruitment and other Employment Matters
9.	Outside Interests and Politically Restricted Posts
10.	Personal Interests
11.	Equality and Health and Safety Issues
12.	ICT Security
13.	Gifts and Hospitality
14.	Dress Code
15.	Whistleblowing

1.6 In particular, please note that employees are required to report full details of: -

- a) Personal friendships/relationships with Councillors, contractors or potential contractors (see section 5 of the Code)
- b) Personal interests in certain financial and non-financial matters, especially contracts (see section 10 of the Code)
- c) Hospitality received and offered (see section 13 of the Code)

1.7 The Monitoring Officer (within the Legal & Democratic Services division) holds two registers for these purposes. The forms are held as templates on IRIS or hard copies can be obtained by contacting the Monitoring Officer.

1.8 The Registers will not be open to public inspection but will be open to inspection by Members of the Council, the Monitoring Officer, the Chief Executive or members of staff authorised to do so by the Monitoring Officer in the course of their duties. Other than in these circumstances, the Registers can only be inspected with either your prior consent or under any statutory right of access.

## 1.9 **Scope**

The Code applies to all employees. You must:

- a. maintain conduct of the highest standard so that public confidence in your integrity is sustained
- b. treat others with respect
- c. comply with this Code whenever you conduct the business of the Council or act, claim to act or give the impression you are acting as a representative of the Council
- d. recognise your duty to discharge public functions reasonably and according to the law

## **2 Standards in General**

- 2.1 You are expected to give the highest possible standard of service to the public and, where it is part of your duties, to provide appropriate advice to councillors and fellow employees with impartiality.
- 2.2 You will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. You must report any impropriety or breach of procedure. Normally this would be to your Line Manager but in exceptional cases, may be direct to a Director or the Chief Executive. Further information is contained in the Council's Whistle-blowing Policy.
- 2.3 Conversely, you should be aware that it is a serious criminal offence for you corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, something or for showing favour, or disfavour, to any person in your official capacity.

## **3 Political Neutrality**

- 3.1 You serve the Council as a whole. It follows you must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected. The Member/Officer Protocol provides further guidance on the respective role of members and officers and principles governing general conduct.
- 3.2 If you are called upon to advise a specific political group within the Council, either as to the work of the group or as to the work of the Council, you may only do so with the prior consent of your Director. You must not attend any meeting of any such political group without the prior agreement of the Chief Executive.

## **4 Disclosure of Information**

- 4.1 It is generally accepted that open government is best in the dissemination of information and in decision-making. The law requires that certain types of information must be available to Councillors, auditors, government departments, service users and the public. Equally the Council has statutory and common law obligations to keep certain information confidential, or to divulge only certain restricted information.

You must not disclose information given in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where you have the consent of a person authorised to

give it or they are required by law to do so. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions.

Equally, you must not prevent another person from gaining access to information to which that person is entitled by law.

- 4.2 The Council's practice has always been to make as much information available to the public as possible and, since 1 January 2005, there is a positive obligation to do so in accordance with the Freedom of Information Act 2000.
- 4.3 In preparing committee reports, items should not be made "exempt" even though this might be technically possible, unless disclosure would prejudice the position of the Council or the individual or organisation concerned. Whenever possible, such information should be restricted to an exempt appendix. Generally therefore you may release factual information unless it:
- (i) is (or is likely to be) the subject of an exempt report;
  - (ii) relates to the personal circumstances of an employee (or ex-employee, apart from references) or Councillor, a member of the public or organisation. Such information can only be released by first obtaining the person's or organisation's permission for the disclosure; or
  - (iii) is covered by restrictions under the Data Protection Act 1998 or an exemption under the Freedom of Information Act 2000.

Further guidance on the disclosure of information can be obtained from the Monitoring Officer.

- 4.4 You should pay particular attention to requests for information from the Press or Police. Enquiries from the police should be referred to your Director and enquiries from the press should be referred to the Head of Consultation & Communication. Further guidance on publicity and the media is contained in the Member/Officer Protocol.
- 4.5 You should not use any information obtained in the course of your employment for personal gain nor should you pass it on to others who might use it in such a way.

## **5 Relationships**

You must:

- (a) treat others with respect;
- (b) not discriminate unlawfully against any person; and
- (c) treat members of the Council professionally

You should deal with other employees, the public and Councillors sympathetically, professionally, efficiently and without bias. Mutual respect between employees and Councillors is essential to good local government and working relationships should be kept on a professional basis.

## Councillors

- 5.1 Councillors are responsible to the Council through its Senior Managers. For some officers, their role is to give advice to Councillors and the Council. Mutual respect between them and Councillors is essential to good Local Government. Close personal familiarity with individual Councillors can damage that relationship and prove embarrassing to other employees and should be avoided. Any close personal friendships with Councillors should be declared to **the relevant** Director and recorded in the Register of Interests. Please also refer to the Member/Officer Protocol for further guidance regarding working relationships with Councillors.

## The Local Community and Service Users

- 5.2 You should always remember your responsibilities to the community and ensure courteous, professional, efficient and impartial service delivery to all groups and individuals within that community.
- 5.3 You are reminded of the requirement to comply with the Council's policies.
- 5.4 You are strictly prohibited from soliciting tips.

## Contractors

- 5.5 Orders and contracts must be awarded on merit, by fair competition against other tenders, and no favouritism should be shown to businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.
- 5.6 All personal relationships with contractors, or contractors who could bid for Council work, i.e. any previous or current working relationship or friendship in a private capacity, should be declared to the relevant Director and recorded in the Register of Interests. In certain cases, not to divulge such information could contravene the law. This is particularly important if employees engage or supervise contractors or if they have an official relationship with contractors.
- 5.7 If you stand to gain financially from any contract or potential contract of the Council, you must declare it in writing to the appropriate Director, and you will be excluded from the process, particularly any decisions relating to the award of that contract. This applies whether the contract is let formally through the tendering process or in some less formal way.
- 5.8 The Director may require you to review your position and update information recorded at regular intervals depending on the circumstances.
- 5.9 No gifts or hospitality may be accepted from any person or organisation that is seeking to compete for Council work. This principle also applies in a Planning context where developers are in competition for a particular site in the Borough. For circumstances in which it is permissible to accept gifts and hospitality, see paragraph 13.

## **Work Colleagues**

- 5.10 You should always treat colleagues with fairness, dignity and respect. Mutual respect between colleagues is essential to good working relationships. The Council will not tolerate bullying, harassment or victimisation of anyone in any form. Please also see the Council's Bullying & Harassment policy and 'Dignity at Work' policy.
- 5.11 If you have a grievance or complaint about your employment eg working conditions or relationships with colleagues you should refer to the Council's grievance policy. If you have a grievance or complaint regarding a Councillor you should follow the procedure outlined in the Code of Conduct part 5, section C, 7.1, 7.4 and 7.5.

## **6 Financial Regulations and Standing Orders Relating to Contracts**

- 6.1 You must ensure that public funds are used in a responsible and lawful manner. You should strive to ensure value for money to the local community and to avoid legal challenge to the Council.
- 6.2 Standard procedures (Financial Regulations) have been agreed which govern the Council's financial matters and detail arrangements for handling money.
- 6.3 Likewise Contract Standing Orders detail the procedures to be followed in awarding contracts for work or services.
- 6.4 If your work involves the handling of money or awarding of contracts you must familiarise yourself with the requirements of the Council's Financial Regulations and appropriate Standing Orders. Failure to follow the correct procedures will be treated as a serious matter.
- 6.5 You must not utilise property, vehicles or other facilities of the authority for personal use unless specifically authorised to do so

## **7 Separation of Roles during Tendering**

- 7.1 If you are involved in the tendering process and dealing with contractors, you should be clear on the separation of client and contractor roles within the Authority. If you are a senior member of staff who has both client and contractor responsibility, you must be aware of the need for accountability and openness.
- 7.2 If you work in contractor or client units you must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 7.3 You should ensure that no special favour is shown to current or (recent) former members of staff, councillors or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **8 Recruitment and other Employment Matters**

- 8.1 If you are involved in recruitment decisions you should ensure that these are made on the basis of merit. It is unlawful to make an appointment that is based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a personal relationship (friendship or otherwise) outside work with him or her. You should declare any such relationship to your Director in advance.
- 8.2 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close personal friend. Such relationships with any other employee should be declared to your Director and registered in the Register of Interests. Please also see the Council's Recruitment policy and Casual policy.

## **9 Outside Interests and Politically Restricted Posts**

- 9.1 Your off-duty hours are your personal concern but you should never put yourself in a position where your duty as a Local Government Officer and your private interests conflict. The Council will not attempt to preclude you from undertaking additional employment provided that such employment does not, in the view of the Council, conflict with your job or have a detrimental impact on the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.
- 9.2 You are required to obtain written consent from your Director to take any other employment or occupation either paid or unpaid in addition to your post held with the Council. This includes directorships, consultancies and sponsorships by any company, organisation or individual. You should be clear about your contractual obligations to the Council and should not take outside employment, which conflicts, or might conflict in the future, with the Council's interests. Any employee undertaking additional work outside of the Council is required to complete a 'Declaration of Other Work' and submit to HR.
- 9.3 You may not carry out work arising from additional employment in Council time nor use Council resources or facilities (including typing) for those purposes.
- 9.4 Private use of Council facilities, other than prohibited by section 9.3 above, e.g. making telephone calls, using fax or photocopiers, should be declared.
- 9.5 You should follow the Council's policies on the ownership of intellectual property or copyright created during your employment i.e. all:
- (i) Creative designs, writings and drawings produced by you in the course of your duties, belong to the Council;
  - (ii) Inventions made by you are the property of the Council if made during the course of your normal duties (which includes those described in your notice of terms of employment, and any other duties arising from your Manager or other authorised officer of the Council).

- 9.6 Some posts are 'politically restricted,' by law, which means that the postholder is unable to take part in political activity or become an elected member of any public authority whilst in the employment of the Council. Your role is politically restricted if:
- (i) it is covered on the list of roles specifically restricted eg monitoring officer
  - (ii) your post meets the duties-related criteria for determining a "sensitive" post, irrespective of remuneration level, unless you appeal successfully against the determination. These posts are defined as those that give advice (excluding purely factual information) on a regular basis to the council, any committee or sub-committee of the authority or any joint committee on which the council is represented, or speak on behalf of the council on a regular basis to journalists and broadcasters

If this is applicable to you, your contract of employment will include an appropriate clause. In all other circumstances, you must record in the Register of Interests and declare to your Director any membership of a Local Authority. You should check your contract of employment if you are unsure if your post is politically restricted and the implications of this.

## 10 Personal Interests

You must not:

- allow your private interests or beliefs to conflict with your professional duty
- misuse your official position or information acquired in the course of your employment to further your private interest or the interests of others

- 10.1 You must declare to your Director, and record in the Register of Interests, non-financial interests that you consider could bring about conflict with the Council's interests or activities. Examples might be membership of the committee of an organisation seeking or receiving grant aid from the Council or involvement with an organisation or pressure group that may seek to influence the Council's policies. Ordinary membership of organisations, whether local or national, will not usually be relevant.
- 10.2 You must also declare and register any financial interests which could conflict with the Council's interests e.g. any pecuniary interest in a business or company within Epsom and Ewell or with which the Council might do business.
- 10.3 You must declare and register any interest you have as a freeholder, lessee, licensee or tenant in any land or property in the Borough of Epsom and Ewell, apart from your main residence, which will already be recorded in your personnel records.
- 10.4 You must never become involved in dealing with or determining any application or request that you or a member of your family or personal friend make to the Council, for example, an application for planning permission, council tax or housing benefit.

## 11 Equality and Health and Safety Issues

- 11.1 You must comply with policies relating to equality issues as agreed by the Council, in addition to the requirements of the law. All members of the local community, customers and other staff have a right to be treated with fairness and equity.

- 11.2 You should also ensure that policies relating to health and safety issues as agreed by the Council are complied with, in addition to the requirements of the law, in particular the Council's policy relating to smoking, drugs, alcohol and substance misuse.

## **12 ICT Security**

- 12.1 You must comply with policies relating to the security of the Council's computer systems as agreed by the Council. All new employees, agency workers and work experience students are required to sign their agreement and compliance.

## **13 Gifts and Hospitality**

- 13.1 Hospitality may sometimes be appropriate as part of a normal business arrangement. The Council requires you to declare all gifts and hospitality given or offered as part of your employment with the Council (however this does not apply to tea/coffee or small work related gifts, such as pens or diaries). Gifts of any description having a value in excess of £25 must be refused, unless your Director agrees that you can register and keep it.
- 13.2 You may accept being taken to lunch by contractors and suppliers where this lunch is part of legitimate dealings with the Council, and provided the Council is already doing business with that contractor or supplier. However, all such paid lunches must be recorded in the Register of Interests/Gifts and Hospitality if the value is £25 or more or if you consider that it should be recorded. This includes any corporate hospitality days.
- 13.3 In considering whether or not the gift or hospitality is appropriate, the question 'how will this look?' must be asked: if the hospitality could look like corruption to another party (e.g. to a councillor, council tax payer, another rival contractor), it should not be offered or accepted. For example, taking a contractor or supplier to lunch after a contract has been let could be a useful opportunity to talk through the details of the work and build a better working relationship. However, taking to lunch or accepting lunch from a supplier before a contract is let would be unacceptable as it could look as if that supplier was being unfairly favoured.

## **14 Dress Code**

Employees of the Council are expected to comply with the Council's Dress Code. Please see the Council's Dress Code policy for further details.

## **15 Whistleblowing**

Where an employee becomes aware of activities that he/she believes to be illegal, improper or unethical the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the Council's confidential reporting procedure. Please see the Council's Whistleblowing policy for further details.

## **SECTION C - Protocol for Managing Member/Officer Relations**

*Issued July 2002; Revised December 2007*

### **1 Introduction**

- 1.1 The purpose of this document is to provide a guide to good working relations between Members and Officers, to define their respective roles and provide some principles governing conduct.
- 1.2 The Local Government Act 2000 (Constitutions) (England) Direction 2000 given under section 37 (1) (a) of the Local Government Act 2000 sets out the broad themes to be included in a local authority's constitution. One of those broad themes is the requirement for local authorities to include a protocol for managing Member/Officer relations.
- 1.3 Given the variety and complexity of Member/Officer relations, any protocol cannot seek to be entirely prescriptive or comprehensive. Although some of the references relate to regulatory matters, the document largely seeks to offer guidance on some of the issues that most commonly arise. All successful organisations need to be flexible to suit circumstances but, at the same time, it should be recognised that the guidance should, as far as is possible, be uniformly followed throughout the Council.
- 1.4 This Protocol sits together with a number of other existing and evolving Council procedures and there may be some overlap between this document and those other procedures and rules both within and outside the Constitution.
- 1.5 In appreciation that this will be an evolving document and recognising the rapid changes in working practices both statutory and social (e.g. new technology), the Protocol will need to be reviewed regularly, probably every 12 months.
- 1.6 This Protocol, where applicable, will also apply to lay or co-opted Members of Committees.

### **2 The Respective Roles of Elected Members and Officers**

- 2.1 Elected Members represent their constituents. They formulate policy, make decisions and seek to ensure that their constituents' issues are addressed.
- 2.2 Officers are employed by and serve the whole Council. They advise Members, implement decisions of the Council, make decisions under powers delegated to them by the Council and address constituents' issues.

### **3 Access to Officers**

- 3.1 With the Council-wide use of e-mail, Members should seek to avoid, as far as possible, entering an Officer's work area and requiring immediate attention. Where an urgent response is required, the Member should seek to telephone the Officer and, if necessary, arrange a convenient meeting.

- 3.2 Officers should, whenever possible, meet the following performance targets for response to Member enquiries:
- (i) Straightforward enquiries - within 1 working day of receipt;
  - (ii) More complicated enquiries - within 5 working days;
  - (iii) Difficult enquiries involving research - within 10 working days.
  - (iv) Where a response is not going to be possible within 1 day, the Officer should acknowledge the enquiry and indicate to the Member when a response is likely to be forthcoming. As the Council employs a large number of part time Officers, these timescales may be difficult to meet on occasions.
- 3.3 A list of Officers with their day-to-day responsibilities and contact details (including Manager) will be supplied to Members.
- 3.4 A copy of all correspondence from a Member that raises an issue of policy should be sent to the relevant Division Head.
- 3.5 A copy of all correspondence from a Member, following up an unanswered enquiry, should be sent to the Officer's Service Manager.
- 3.6 Whenever possible, Members will seek to respond to Officers' enquiries and requests within one week from receipt of the enquiry/request.
- 3.7 Where a decision has been delegated to an Officer, whether or not in consultation with nominated Members, then it is for that Officer to make the decision. However, to assist Members' understanding, Officers should, when requested, explain to a Member the guidelines they use when making a delegated authority decision.

## **4 Access to information and to Council Documents**

- 4.1 Members are entitled to such information as they may reasonably need to assist them in discharging their role as Members of the Council. The legal right of Members to inspect Council documents is covered by:
- (i) Statutory right (Access to Information Act 1985, Freedom of Information Act 2000);
  - (ii) Common law (on a need to know basis).

*N.B: This is covered in more detail in Article 2 and Standing Orders of the Council's Constitution*

- 4.2 Officers must treat all Members on an equal basis where there is an equal need to know.
- 4.3 The courts have ruled that the test of a Member's need to know derives from the Member's committee responsibilities, but this will not be exclusively the case. A Member dealing with a Ward issue may have a legitimate need to know which will enable him/her to have access to the relevant Council documents. The final decision on a Members 'need to know' will rest with the Chief Executive in consultation with the Monitoring Officer.

- 4.4 Ward Councillors should be kept fully informed and consulted by Officers on all relevant matters affecting their ward. Where applicable, relevant correspondence should be copied to them.
- 4.5 Information disclosed to a Member on a need to know basis should not be disclosed to another Member, unless there is an equal need to know, or the first Member is notified that the information is being so disclosed.
- 4.6 Correspondence to a constituent, from a Member or Officer, which raises an issue of policy or finance should normally be discussed with the relevant Director/Division Head.
- 4.7 When speaking to, or corresponding with, the public or media an Officer should not express personal opinions on policy or political decisions. Officers should restrict their observations to matters of fact and if appropriate, refer the person to the relevant ward councillor.

## **5 Undue Pressure**

- 5.1 To ensure that the business of the Council is carried out effectively, Members and Officers should endeavour to create a cordial working relationship with each other.

Members should:

- (i) Be aware of how they speak with and relate to junior Officers, avoiding undue pressure;
- (ii) Avoid personal attacks on Officers, particularly in publications, press statements or meetings attended by the public;
- (iii) Avoid words or actions which could undermine respect for Officers by the public;
- (iv) Never require an Officer to carry out work on a matter which is not justified in terms of budgetary controls, Council policy or the Officer's duties and responsibilities
- (v) Never require an Officer to carry out work within unreasonable deadlines or work that imposes an excessive workload;

Officers should:

- (vi) Be aware of how they speak with and relate to Members;
- (vii) Remember at all times that they work in a political environment;

- 5.2 Where a Member feels that an Officer's action/inaction is unacceptable he/she should follow the procedure outlined in Paragraph 7 of this Protocol.
- 5.3 Any Officer who is personally connected to a Member must notify his/her Director. Officers must not use undue influence over a Member, nor develop close personal friendships that could compromise or be perceived to compromise the integrity of their actions.

- 5.4 A claim for unfair dismissal can be made against the Council by an employee who resigns following their alleged harassment whether by another Officer or a Member. The claim can be based on a breach of the implied terms of the Officer's contract, due to the failure to maintain mutual trust and confidence and the provision of a reasonable working environment.

## **6 Use of Council property, resources and services**

- 6.1 Particular care needs to be taken in connection with the use of the Council's property, resources and services.

- 6.2 The Code of Conduct for Members and Co-opted Members provides:

*"When using the resources of the Council, or authorising their use by others, a Member must:*

- (i) act in accordance with the authority's requirements and,*
- (ii) ensure that such resources are not used for political purposes unless that could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the Member has been elected or appointed."*

*e.g. All Members and Officers using Council PCs have signed up to the IT Security Policy guidelines, which requires everyone who uses a Council PC to use it in accordance with these guidelines.*

## **7 When Things Go Wrong**

- 7.1 From time to time the relationship between Members and Officers may break down or become strained. When this happens, matters should wherever possible be resolved informally, or through conciliation by an appropriate senior Manager or Group Chairman/Leader.

### **Procedure for Members**

- 7.2 Where a Member is dissatisfied with the conduct or performance of an Officer, the Member should first discuss the matter with the relevant group Chairman or Leader. If the Member remains dissatisfied, then the matter should be discussed informally, either with an appropriate senior officer (Chief Executive, Director or Monitoring Officer) or with the Chairman of the relevant committee depending upon the circumstances.
- 7.3 If the matter is not resolved by this process, it should be raised formally with the appropriate Head of Service. Where the Officer concerned is a Head of Service, the matter should be raised with the appropriate Director. Where the Officer concerned is a Director, the matter should be raised with the Chief Executive. Where the employee concerned is the Chief Executive, the matter should be raised with the Director of Human Resources and Communication or the Head of Legal and Democratic Services. If the matter cannot be resolved informally, it may be necessary to invoke the Council's Disciplinary Procedure. This may involve the Member who raised the complaint attending or submitting evidence to a hearing constituted under that procedure.

## **Procedure for Officers**

- 7.4 An Officer who has a complaint about a Member should raise the matter with their Head of Service who in turn should raise it with a Director. The Head of Service or Director should then discuss the issue informally with the Member and the relevant Group Chairman or Leader. If the matter is not resolved by this process, the Officer may have recourse to the Whistleblowing Procedure, or to the Council's Monitoring Officer, as appropriate to the circumstances.
- 7.5 The Monitoring Officer will investigate the matter and, having consulted with the Chief Executive, the appropriate Group Chairman/Leader, and the Chairman of the Standards Committee, will decide on the course of action to be taken. This may include a reference to the Standards Committee.

## **8 Officer/Chairman Relationships**

- 8.1 It is clearly important that there should be a close working relationship between the Chairman of a Committee and the Director and other senior Officers who report to that body. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members, individuals or organisations.
- 8.2 Officers are accountable to their Director, and whilst Officers should always seek to assist a Chairman (or indeed any Members), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director/Division Head. The Chief Executive has statutory responsibility, as Head of Paid Service, for ensuring the proper organisation and management of the Council's staff, and has therefore an overall responsibility for the direction and management of all Officers.

## **9 Political Activity**

- 9.1 Officers must not do any work that is designed to promote one political grouping within the Council rather than the whole Council.
- 9.2 Officers invited to attend meetings organised by any political group should carefully consider whether it is appropriate to attend and should not do so if the meeting is called in the circumstances referred to in 9.1. Any other meetings organised by a political group should only be attended in consultation with the Chief Executive or a Director and only where the Officer's role is limited to providing factual information.

## **10 Members and the Media**

- 10.1 Contact with the media on issues related to Council business is handled through the Public Relations Officer who provides support, advice and training to Members and Officers.
- 10.2 Any Member who wishes to approach the media to speak on behalf of the Council on any item involving or affecting the Council, should first consult the relevant Committee Chairman, Director, or Public Relations Officer.

- 10.3 If a member wishes to approach or is approached by the media for a comment or action involving Council business, the Member should make it clear to the media person that any comments that are made are those of the Member personally and do not reflect the views or policies of the Council as a whole.
- 10.4 The Council allows media access to a wide range of Officers to provide the media with the factual information they need. Requests for comments or opinion on Council policy or political matters should be referred to the appropriate Committee Chairman.
- 10.5 Councils are prohibited from publishing any material that appears to be designed to affect support for any political group.

## **11 Breaches of the Protocol**

- 11.1 Serious breaches of this Protocol by Officers will be dealt with under the Council's Disciplinary Procedures. Serious breaches by Members could involve action taken under the Staff Grievance procedure or a report to the Standards Committee.

## **12 Conclusion**

- 12.1 This Protocol is intended to build on the sound arrangements that have existed within the Council for years.
- 12.2 Mutual understanding, respect and openness on these sensitive issues are the greatest safeguard of the integrity of the Council, its Members and Officers.

## **SECTION D - Monitoring Officer Protocol**

*Issued: December 2007; Revised December 2008*

*This protocol is in addition to any other provisions in the Council's Constitution.*

### **1 Purpose of Document**

- 1.1 The purpose of this protocol is to explain the role of the Monitoring Officer and provide a guide for staff and members as to how it will be exercised in Epsom and Ewell.

### **2 The Monitoring Officer and Deputy Monitoring Officer**

- 2.1 The Council has designated the Head of Legal and Democratic Services as the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989.
- 2.2 The Monitoring Officer has designated the Democratic Services Manager as the Deputy Monitoring Officer under Section 5 (7) of the 1989 Act. The Deputy Monitoring Officer will perform the Monitoring Officer's duties where he is unable to act owing to absence or illness.
- 2.3 Both the Monitoring Officer's and Deputy Monitoring Officer's duties are required to be performed by them personally.

### **3 Statutory Duties and Functions of the Monitoring Officer**

- 3.1 These arise under the Local Government and Housing Act 1989, the Local Government Act 2000 (as amended by the Local Government Act 2003 and the Local Government and Public Involvement in Health Act 2007) and relevant regulations. In summary, they are as follows:

#### **Local Government and Housing Act 1989, Section 5**

- 3.2 It is the duty of the Monitoring Officer to make a report to the Council about any proposal, decision or omission by the Council, any of its Committees, Sub-Committees or Advisory Panels or any of its office holders or employees which would result in:
- (a) contravention of a statute or rule of law; or
  - (b) maladministration or injustice (but only if a Local Government Ombudsman has investigated the matter).
- 3.3 In preparing such a report, the Monitoring Officer must consult the Head of Paid Service (in Epsom and Ewell, the Chief Executive) and the Chief Finance Officer (in Epsom and Ewell, the Director of Finance).
- 3.4 As soon as he has prepared the report, the Monitoring Officer must send it to every Member of the Council.

- 3.5 The full Council must consider the report within 21 days of the Monitoring Officer having sent it to the Members.
- 3.6 Once the Monitoring Officer has sent out the report, the Council cannot implement any proposal or decision to which it relates until the end of the first business day after they have considered it.

### **Local Government Act 2000**

- 3.7 The Monitoring Officer is given a number of functions relating to the ethical framework of the Authority, including:
- (a) a duty to establish and maintain a register of Members' Interests (Section 81);
  - (b) the function of receiving matters referred from an Ethical Standards Officer (ESO) appointed by the Standards Board for England relating to complaints against Members and co-opted Members of the Council and dealing with those matters in accordance with the relevant regulation;
  - (c) where an ESO completes an investigation against a Member or co-opted Member of the Authority, the function of receiving a copy of the report or notification of the outcome and dealing with it in accordance with the relevant regulations.

### **Local Government Act 2003 (amending the Local Government Act 2000)**

- 3.8 The Monitoring Officer can nominate another person to perform any of his functions which arise under the LGA 2000 (including relevant regulations).
- 3.9 The Deputy Monitoring Officer has the same power in respect of any such functions falling to him/her in the event of the illness or absence of the Monitoring Officer.
- 3.10 The purpose of this provision is to allow the Monitoring Officer to arrange things in such a way as to avoid conflicts of interest for the better handling of work.
- 3.11 If the Monitoring Officer/Deputy Monitoring Officer nominates someone else to perform any of his/her functions under this provision, that person must perform them personally and is entitled to appropriate resources. If the person concerned is not an officer of the Council he/she may also be paid a reasonable fee and proper expenses.

## **Local Government and Public Involvement in Health Act 2007 (amending the Local Government Act 2000)**

- 3.12 This legislation gives effect to the Government's proposals for the reform of the regime relating to standards of conduct for local government, aimed at devolving most decision-making on the conduct regime for local authority members to local authorities, with a revised, regulatory role provided for the Standards Board.
- 3.13 The measures provide for local standards committees to make initial assessments of misconduct allegations and for review arrangements for those assessments which lead to no action being taken.
- 3.14 The Monitoring Officer's functions relating to the ethical framework are amended accordingly:
- (a) to receive matters referred from the Standards (Assessment) or Standards (Review) Sub-Committees for steps other than investigation relating to complaints against members and co-opted members of the Council, and dealing with those matters in accordance with the relevant regulations;
  - (b) to receive matters referred from the Standards (Assessment) or Standards (Review) Sub-Committees or an ESO appointed by the Standards Board for England for investigation relating to complaints against members and co-opted members of the Council, and dealing with those matters in accordance with the relevant regulations; or
  - (c) where an ESO completes an investigation against a member or co-opted member of the authority, to receive a copy of the report or notification of the outcome and to deal with the matter in accordance with the relevant regulations.

## **4 Duties of the Council towards the Monitoring Officer**

- 4.1 Under Section 5 of the Local Government and Housing Act 1989, the Council must provide the Monitoring Officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties to be performed.
- 4.2 Under the Local Authorities (Standing Orders) (England) Regulations 2001, the Council cannot take disciplinary action against its Head of Paid Service, Monitoring Officer or Chief Finance Officer except in accordance with a recommendation made by a designated independent person who has investigated the matter. An officer can be suspended on full pay for a maximum period of two months while the investigation is carried out.

## **5 Provisions in the Council's Constitution**

- 5.1 The Monitoring Officer's functions are summarised in Article 11 of the Council's Constitution. He is also given the additional tasks of maintaining and reviewing the Constitution, supporting the Standards Committee, acting as the Proper Officer under the access to information legislation and advising members on matters of legality, maladministration, financial impropriety and probity.

## **6 Recommended Best Practice in relation to the Monitoring Officer**

- 6.1 The Association of Council Secretaries and Solicitors, the professional body to which most Monitoring Officers belong, recommends that the Monitoring Officer should:
- (a) be a Chief Officer or at least have the right to receive agendas and minutes of all meetings and attend and speak at them;
  - (b) have a right of access to any meeting, including Members' Briefings;
  - (c) be recognised as the principal adviser to the Standards Committee and the point of reference for advice on the Council's Constitution and powers;
  - (d) have a protocol approved by the full Council setting out how they are expected to discharge their functions, the support and reporting arrangements required, and reporting duties of fellow officers; and
  - (e) have a team with sufficient expertise to keep the Council's constitutional documents under review.

## **7 Operative Provisions of the Protocol**

### **The Monitoring Officer will receive:**

- 7.1 Advance notice of Corporate Board Meetings, copies of all agendas and reports;
- 7.2 Advance notice of meetings whether formal or informal, between the Chief Executive/Chief Officers and Group Leaders/Committee Chairmen where any procedural, vires or other constitutional issues are likely to arise;
- 7.3 Advance notice of all emerging issues of concern, including legality, probity, vires and constitutional issues;
- 7.4 Copies of all reports to members.

### **The Monitoring Officer has the right:**

- 7.5 To attend and speak at any Corporate Board Meetings;
- 7.6 To call for any relevant information, whether confidential or otherwise, and to give that information as appropriate to any body, including the Standards Board, the Standards Committee, the District Auditor or Ombudsman;
- 7.7 To withhold the identity of a complainant who has made an allegation of misconduct from the Member, in consultation with the Chairman of the Standards Committee, (or in the Chairman's absence, another independent member): such anonymity to last until preparation for the hearing of the complaint;
- 7.8 To withhold from a member, in consultation with the Chairman of the Standards Committee, (or in the Chairman's absence, another independent member), the fact that a complaint has been received against them if it is decided that notification may prejudice any subsequent investigation.

**The Monitoring Officer will:**

- 7.9 Ensure the Head of Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues;
- 7.10 Set up arrangements within the authority to ensure that any allegation made in writing that a member of the authority has or may have failed to comply with the authority's Code of Conduct is referred to him immediately upon receipt by the authority;
- 7.11 Maintain a register of such allegations to ensure that the authority can comply with its obligations under the relevant legislation;
- 7.12 Refer all substantive allegations of member misconduct to the Standards (Assessment) Sub-Committee and refer all other matters for action as appropriate;
- 7.13 Act as Chairman of the Corporate Governance Group and through this Group will meet the Head of Paid Service and Chief Financial Officer regularly (and in any event not less than quarterly) to consider and recommend action in connection with current governance issues and other matter of concern regarding probity;
- 7.14 In carrying out any investigation (whether under regulations or otherwise), have unqualified access to any information held by the Council and any employee who can assist in the discharge of his functions;
- 7.15 Have control of a budget sufficient to enable him to seek Counsel's opinion on any matter concerning his functions;
- 7.16 Be responsible for preparing a training programme for members on the ethical framework subject to the approval of the Standards Committee;
- 7.17 Report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation in particular with the Head of Paid Service and Chief Finance Officer;
- 7.18 Appoint a deputy who will be kept briefed on emerging issues. His nominated deputy will have all the rights and powers of the Monitoring Officer when discharging the role of Monitoring Officer.

**The Monitoring Officer may:**

- 7.19 in consultation with the Mayor and the Chairman of the Standards, defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved;
- 7.20 Make a report to the Council from time to time as necessary on the staff, accommodation and resources he requires to discharge his functions.

## SECTION E – Protocol on Use of Call-in Procedure

*Issued April 2008*

***This protocol is to be read in conjunction with Paragraph 14, Overview and Scrutiny Procedure Rules, Part 4, Epsom and Ewell Borough Council Constitution, 'Call-in'.***

- 1.1 Requests for Scrutiny Committee to consider use of the call-in procedure should be forwarded to the Scrutiny Officer or the Chairman of the Scrutiny Committee either by e-mail or in person in the first instance. Each request should set out those principles of decision making of Article 12 of the Constitution which the person considers have not been met. All requests shall be logged by the Scrutiny Officer on Form SC/CI 1.
- 1.2 The Chairman of the Scrutiny Committee shall consider the request regarding use of call-in. He/she shall reject those requests considered frivolous, as well as those outside the remit of the call-in procedure, i.e. those concerning quasi-judicial decisions. Remaining requests shall then be forwarded to the other members of the Scrutiny Committee for consideration, together with the Chairman, as to whether they should wish to call-in a decision of a policy committee as per the requirements of the Constitution.
- 1.3 In the absence of the Chairman, requests for Scrutiny Committee to use call-in should be forwarded to the Scrutiny Officer as per paragraph 1. The Scrutiny Officer shall pass the request for the Committee to consider call-in to all other members of the Scrutiny Committee. The members shall decide whether they wish to instigate call-in as per the requirements of the Constitution.
- 1.4 To ensure openness, all requests for Scrutiny Committee to consider call-in shall be reported to the formal meetings of the Scrutiny Committee. Where the members of the Scrutiny Committee do not call-in a decision of a policy committee, the Chairman of the Scrutiny Committee shall inform the person requesting that Scrutiny Committee consider the matter, the decision of the committee, together with its reasons. The reasons shall be recorded on F. SC/CI 1.
- 1.5 When call-in is instigated by a majority of the members of the Scrutiny Committee, Form SC/CI 2, 'Record of Call-in', should be used (attached). This should be completed by the relevant members of Scrutiny Committee before the expiry of five working days after the publication of the policy committee decision. It should be forwarded to the Scrutiny Officer either by e-mail or by use of a hard copy. Scrutiny Committee members wishing to call-in a decision of a policy committee should set out the reasons for the call-in in detail on page 2 of Form SC/CI 2 with particular reference to Article 12 of the Constitution, 'Principles of Decision Making'.
- 1.6 To ensure openness and transparency, in addition to the members of the relevant policy committee (as required by the Constitution) the following shall, where possible, be informed of a decision of the Scrutiny Committee to instigate a call-in, and of the Committee's final decision:
  - (a) All Councillors

- (b) Chief Executive
- (c) Head of Legal and Democratic Services
- (d) Democratic Services
- (e) Relevant officers
- (f) Member(s) of the public who requested the call-in.

## **SECTION F - Code of Conduct and Practice in Licensing Procedures and Hearings**

*Effective from 21 March 2005*

### **1 Introduction and status of code**

- 1.1 In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing. The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Committee, and also to Council Officers, where appropriate.
- 1.2 This code is based on guidance contained in the National Code of Local Government Conduct, the Nolan Committee's recommendations and experience within the Council.

### **2 Definitions and interpretations effective from 7 February 2005**

- 2.1 "The (Licensing) Authority" means Epsom and Ewell Borough Council.
- 2.2 "Licensing Objectives" means the four objectives the Licensing Authority must have a view to promoting when carrying out its functions under the Licensing Act 2003. The Licensing Objectives are defined in Part 2, paragraph 4 (2) of the Licensing Act 2003.
- 2.3 "Premises" means any vehicle, vessel or moveable structure, or any place or a part of a premises.
- 2.4 "Applicant" means the applicant for the Conversion, Grant or Variation of a licence, or certificate.
- 2.5 "Application" means any application under the Licensing Act 2003, including:-
  - (i) Conversion of an existing licence or registration
  - (ii) Grant of a licence, certificate or TEN
  - (iii) Transfer of a licence or certificate
  - (iv) Variation of a licence or certificate (including waiver or modification of a licence condition or to extend the licensed area, amend the licensable activities or extend the licensed hours).

- 2.6 "Authorised Person" is defined in Part 3, paragraph 13 (2) of the Licensing Act 2003, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, Fire Authority Inspectors, Environmental Health Officers and inspectors locally responsible for the enforcement of Health and Safety at Work etc Act 1974.
- 2.7 "Interested Parties" is defined in Part 3, paragraph 13 (3) of the Licensing Act 2003, and includes the bodies or individuals who are entitled to make representations to the Authority on applications for the grant, variation or review of a premises licence, or apply for the review of a licence. These include; a person living in the vicinity of the premises in question; a body representing persons living in that vicinity; a person involved in a business in the vicinity of the premises; and, a body representing persons involved in such business.
- 2.8 "Responsible Authorities" is defined in Part 3, paragraph 13 (4) of the Licensing Act 2003, and includes public bodies that must be fully notified of applications, and are entitled to make representations to the Authority on applications for the grant, variation or review of a premises licence. These include, The Chief Officer of Police, Surrey Fire and Rescue Service, Environmental Health Officers and inspectors locally responsible for the enforcement of Health and Safety at Work etc. Act 1974, Chief Planning Officer, Surrey Area Child Protection Committee and any Licensing Authority (other than Epsom and Ewell Borough Council) in whose area part of the premises are situated.
- 2.9 Party to the hearing" means a person to whom notice of the hearing is to be given in accordance with Regulation 6 (1) of the Licensing Act 2003 (Hearings) Regulations 2005, and "party" and "parties" shall be construed accordingly,
- 2.10 "Representation" means any person who has lodged a written objection to an application in accordance with these rules, and as defined in Part 3, paragraph 18 (6) of the Licensing Act 2003.
- 2.11 "Regulations" means Regulations made under the Licensing Act 2003
- 2.12 In these rules, the masculine always includes the feminine.

### **3 Composition of licensing hearings sub-committee**

- 3.1 The Licensing Hearings Sub-Committee shall consist of three Members. No business shall be transacted unless at least three Members are present.
- 3.2 Councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises.

### **4 The need for guidance on licensing**

- 4.1 Licensing is unlike other local authority services (apart from Planning) in having a special responsibility to safeguard interests and balance conflicts. Licensing decisions have legal and judicial implications that are separate from the normal process that directs local authorities. Licensing involves the extensive exercise of the Council's discretionary powers.

- 4.2 Licensing applications are sometimes amongst the most contentious matters with which the Council deals. The successful operation of the licensing system relies amongst other things, upon ensuring that both Officers and Councillors act in a way that is not only fair and impartial but is also clearly seen to be so. Licensing decisions can affect land and property values, and it is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons.

## **5 General role and conduct of councillors in relation to the licensing system**

- 5.1 The determination of applications by the Licensing Hearings Sub-Committee is a quasi-judicial process. The role of Councillors taking licensing decisions has similarities to that of a court of law (and Licensing Justices). Decisions are made after a hearing at which the applicant and objectors are each given an opportunity to be heard and to put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and current government advice.
- 5.2 Whilst Councillors who are Members of the Licensing Hearings Sub-Committee can have regard to the views of their constituents, they should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, as their overriding duty in making decisions on licensing applications is to do so in a fair and impartial manner, in accordance with the Licensing Objectives, and taking into account any relevant Policy.

## **6 Training**

- 6.1 No members should be appointed to the Licensing Committee or Licensing Hearings Sub-Committee without having agreed to undertake a period of training in licensing procedures and legislation as specified by the Council, either before serving on the committee or as soon as possible after their appointment to the committee with additional training as necessary.

## **7 Pre-application discussions**

- 7.1 Pre-application discussions or discussions whilst an application is being processed between Council Officers and applicants can be beneficial. It is often helpful for the Council's officers to be able to give advice at an early stage on relevant licensing policies and to provide details of other known factors, which are likely to be taken into account.
- 7.2 It is however, important that such discussions are not seen as part of a lobbying process, which could prejudice proper consideration of a licensing application. Hence, it should be made clear from the outset that the discussion will not bind the Council to making a particular decision on a licensing application and that any views expressed are personal, provisional and without prejudice. If a pre-application meeting is held this position should be confirmed in a standard letter.
- 7.3 Officer advice should be consistent and based on approved Council policies and known material considerations. It should, as with all officer advice, be politically impartial.

## **8 Lobbying**

- 8.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the application in accordance with the Rules of Procedure of the Committee (see paragraph 8.3 below). However, personal lobbying of the Members of a Committee, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Committee being challenged by way of Judicial Review.
- 8.2 A Member of the Licensing Committee who is lobbied by an applicant or objector in relation to an application which may come before a Licensing Hearings Sub-Committee on which he is sitting should accordingly refer the person lobbying to another Councillor.
- 8.3 In accordance with the procedural rules of the Committee, Members should ensure that written material or other evidence which they wish to be considered by the Licensing Hearings Sub-Committee is provided in advance to the relevant officers, and within the timescales prescribed in the Regulations.
- 8.4 Given that the point at which a decision on a licensing application is made cannot occur before the Licensing Hearings Sub-Committee meeting when all relevant information is available for consideration, any political meeting before the Licensing Hearings Sub-Committee meeting should not be used to decide how Councillors should determine an application. Such use of party “whips” is considered by the Ombudsman as contrary to the National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.
- 8.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Committee determining the application.

## **9 Gifts and hospitality**

- 9.1 Councillors and officers should observe extreme caution in respect of any personal offer of a gift, favour or hospitality from someone who has or is likely to submit a licensing application to the Council. Further guidance on this matter is given in the Council’s Code of Conduct for Members and co-opted Members.
- 9.2 All offers or receipt of gifts or hospitality must be reported to the Chief Executive and recorded in the register of gifts and hospitality.

## **10 Declaration of interests**

- 10.1 The responsibility for declaring an interest rests with Members. If in doubt, Members should seek advice well in advance of the meeting concerned. Guidance on the declaration of personal and prejudicial interests is contained in the National Code of Conduct and the Council's Code of Conduct for Members and co-opted Members. Advice is available from the Monitoring Officer.
- 10.2 Where the Member has a personal and prejudicial interest in an item on the agenda, it should, of course, be declared, and that Member will not be entitled to sit on the Licensing Hearings Sub-Committee deliberating the application in question. Where a prejudicial interest is declared, Standing Orders require the Member concerned to leave the meeting, unless the member has made representation in their own right, or, is elected to represent an objector who has made a valid representation. In these circumstances, of course, it will not be possible for the Member to take any part in the decision making process.

## **11 Licensing applications submitted by councillors and their close associates or licensing applications which may have an impact on councillors, their families or close associates**

- 11.1 Councillors will wish to have particular regard to the Code of Conduct for Members and co-opted Members and the National Code of Conduct e.g. where Members act as agents for people pursuing licensing issues.
- 11.2 Given the Code of Conduct for Members and co-opted Members, Councillors who have business or other interests that may bring them into contact with the Council's licensing system on a regular basis should not normally sit on the Licensing Committee or the Licensing Hearings Sub-Committee.

## **12 Member and officer relations**

- 12.1 Good administration is dependant upon a successful relationship between Councillors and officers which can only be based upon mutual trust and understanding of each others' roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised. Accordingly, Councillors should not attempt in any way to influence the terms of the officers' report or recommendation on any application. Equally, officers should give firm independent advice.

## **13 The role of the Licensing Officer**

- 13.1 Licensing Officers fulfil two roles for the Committee hearing. Firstly, a role limited to an administrative one, and secondly, a role limited to consideration of the relevant representations from their knowledge of local licensing policy, guidance, statute and good practice.
- 13.2 Licensing Officers will make NO recommendations to the Licensing Hearings Sub-Committee in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:
- (i) Summary of the application;

- (ii) Summary of the representations made;
- (iii) Summary of how s/he views the provisions of the Licensing Policy;
- (iv) Statement, Guidance of the Secretary of State, and the relevant legislation as relating to the application and any relevant representations;
- (iv) Summary of any pre-application and pre-decision discussions held with the applicant or bodies making representations;
- (v) Details of any site visits which took place prior to the application or Committee hearing;
- (vii) Details of any lobbying activities which have been brought to their notice.

## **14 Period of time in which hearing to be held**

- 14.1 The Authority shall arrange for a Hearing to be scheduled in accordance with Regulation 5, and shall give a notice of a Hearing in accordance with Regulations 6 and 7 of the Licensing Act 2003 (Hearings) Regulations 2005.

## **15 Notice of hearing**

- 15.1 In the case of a hearing for cancellation of an interim authority notice following Police objection, or counter notice following Police objection to a Temporary Event Notice (TEN), the Authority shall give notice of hearing no later than two working days before the day or the first day on which the hearing is to be held.
- 15.2 In the case of a hearing for review of a premises licence following closure order; or determination of an application for conversion of existing licence; or determination of application for conversion of existing club certificate; or determination of application by holder of justices; licence for grant of personal licence; the Authority shall give notice of hearing no later than five working days before the day or the first day on which the hearing is to be held.
- 15.3 Annex 1 contains the schedule detailing the provisions under which the hearing is held, and the period of time within which the hearing must be commenced.
- 15.4 The Authority will, when giving notice of the Hearing, follow Regulation 7 of the Licensing Act 2003 (Hearings) Regulations 2005.

## **16 Action following receipt of notice of hearing**

- 16.1 A party shall give to the Authority within the period of time prescribed below, a notice stating:
- (i) whether he intends to attend or be represented at the hearing;
  - (ii) whether he considers a hearing to be unnecessary.

- 16.2 In the case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Authority in relation to the application, representations or notice of the party making the request.
- 16.3 In the case of a hearing for cancellation of an interim authority notice following Police objection, or counter notice following Police objection to a TEN, the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.
- 16.4 In the case of a hearing for review of a premises licence following closure order, or; determination of an application for conversion of existing licence, or; determination of application for conversion of existing club certificate, or; determination of application by holder of justices; licence for grant of personal licence; the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.

## **17 Right to dispense with hearing if all parties agree**

- 17.1 The Authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary and have done so by giving notice to the Authority that they consider a hearing unnecessary. In such circumstances the Authority must give notice to the parties that the hearing has been dispensed with.

## **18 Withdrawal of representations**

- 18.1 A party who wishes to withdraw any representations they have made may do so by giving notice to the Authority no later than 24 hours before the day or the first day on which the hearing is to be held or orally at the hearing.

## **19 The committee procedure**

- 19.1 The Licensing Hearings Sub-Committee is serviced by a number of officers. These include the Democratic Services Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Grants and Licensing Team acts as a presenting officer: introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.
- 19.2 The Licensing Hearings Sub-Committee agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the Committee will be the subject of a written report from officers.

- 19.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall consider any request made by a party under regulation 8(2) of the Licensing Act 2003 (Hearings) Regulations 2005 for permission for another person to appear at the hearing.
- 19.4 The Licensing Hearings Sub-Committee shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 19.5 The Licensing Hearings Sub-Committee shall allow parties an equal maximum time period in which to support their representation or application.
- 19.6 The Chairman of the Licensing Hearings Sub-Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing, and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the Hearing, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

## **20 Power to extend time and adjourn hearings**

- 20.1 The Authority may extend a time limit provided for in the Licensing Act 2003 (Hearings) Regulations 2005 for a specified period where it considers this to be necessary in the public interest. In such circumstances, the Authority will issue a notice to the parties stating the period of the extension and the reasons for it.
- 20.2 The Authority may adjourn a hearing to a specified date, or arrange for a hearing to be held on specified additional dates where it considers this to be necessary for its consideration of any representations or notice made by a party. The Authority will issue a notice should it decide to use such power.
- 20.3 The Authority will not exercise this power in such a way that the effect will be that an application will be treated as granted or rejected under paragraph 4 (4), 7 (3), 16 (4), 19 (3) or 26 (4) of Schedule 8 (transitional provision etc), or; it would fail to reach a determination on the review under section 167 within the specified period.

## **21 Hearing to be public**

- 21.1 The Authority may exclude the public (which may include any person assisting or representing a party) from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing or that part of the hearing, taking place in public.

## **22 Right of attendance, assistance and representation**

- 22.1 Subject to 14 (2) and 25 of the Licensing Act 2003 (Hearings) Regulations 2005, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

## **23 Councillor representations**

- 23.1 Where a councillor wishes to express a view on an application either in their own right in the capacity as an interested party, or in a specific representative capacity, he/she must do so in accordance with the procedural rules of the Committee, and the Regulations made under the Licensing Act 2003.
- 23.2 To avoid conflicts of interest, councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises. A member of the relevant Licensing Hearings Sub-Committee who represents or lives in the ward, which may also be affected by a licensing application, may be in a difficult position if it is a controversial application that has generated opposition. Members in such a situation should therefore not publicly support or oppose a particular outcome unless they are prepared to make their own valid representation. The member would then become ineligible to take part in the deliberative and decision making process of the Licensing Hearings Sub-Committee concerned with determining that application.

## **24 Representations and supporting information**

- 24.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.
- 24.2 Anonymous representations will not be considered by the Authority.
- 24.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.
- 24.4 At the hearing a party shall be entitled to: -
- (i) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d) of the Licensing Act 2003 (Hearings) Regulations 2005, give further information in support of their application, representations or notice (as applicable),
  - (ii) if given permission by the Authority, question any other party; and
  - (iii) address the Authority.
- 24.5 Members of the Licensing Hearings Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 24.6 In considering any representations or notice made by a party the Authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.
- 24.7 The Authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to: -

- (i) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and
- (ii) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

## **25 Frivolous, vexatious or repetitious representations**

25.1 Where the authority considers that representations are frivolous, vexatious or repetitious, the person making the representation will be notified in writing either

- (i) Five working days before the Licensing Hearings Sub-Committee is to be held (due to relevant representations being made elsewhere), or;
- (ii) In any other case, before the determination of the application to which the representation relates.

## **26 Failure of parties to attend the hearing**

26.1 If a party has informed the Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

26.2 If a party who has not so indicated fails to attend or be represented at a hearing the Authority may: -

- (i) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- (ii) hold the hearing in the party's absence.

26.3 Where the Authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.

26.4 Where the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

## **27 The committee decision making process**

27.1 The Licensing Hearings Sub-Committee shall normally adjourn from the Hearing to deliberate their decision. The Committee may require that the Legal Adviser withdraws with the Committee. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Committee has reconvened.

27.2 The decision on an application should be taken on all of the relevant factors in the case, and in particular the evidence submitted to the Licensing Hearings Sub-Committee meeting. Each application will be treated on its individual merits. The Committee shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.

- 27.3 Members may add extra conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition of such conditions would be necessary and reasonable.
- 27.4 The Licensing Hearings Sub-Committee must make its decision at the conclusion of the Hearing for cases under:
- (i) Section 35 or 39 which is in respect of an application made at the same times as an application for a conversion of an existing licence under paragraph 2 of scheduled 8 (determination of application under section 34 or 37)
  - (ii) Section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
  - (iii) Section 105 (2) (a) - counter notice following police objection to TEN
  - (iv) Section 167 (5) (a) - review of premises licence following closure order
  - (v) Paragraph 4 (3) (a) of Schedule 8 - determination of application for conversion of existing licence
  - (vi) Paragraph 16 (3) (a) of Schedule 8 - determination of application for conversion of existing club certificate, or;
  - (vii) Paragraph 26 (3) (a) of Schedule 8 - determination of application by holder of a justices' licence for grant of personal licence

In any other cases, the Committee must make its determination within the period of five working days beginning with the day or the last day on which the Hearing was held.

- 27.5 Where a Hearing has been dispensed with in accordance with Regulation 9 of the Licensing Act 2003 (Hearings) Regulations 2005, the Authority must make its determination within the period of ten working days beginning with the day the Authority gives notice to the parties under Regulation 9 (2).

## **28 Record of proceedings**

- 28.1 28.1 Hearings will be recorded in a permanent and intelligible form, and retained for six years from the date of the determination, or, where an appeal is brought against the determination of the Authority, the disposal of the appeal.

# **SECTION G - Code of Conduct and Practice in Licensing Procedures and Hearings – Gambling Act 2005**

*Effective from April 2007*

## **1 Introduction and Status of Code**

- 1.1 In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing. The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Committee, and also to Council Officers, where appropriate.
- 1.2 This code is based on guidance contained in the National Code of Local Government Conduct, the Nolan Committee's recommendations and experience within the Council.

## **2 Definitions and interpretations**

- 2.1 "The Act" means the Gambling Act 2005
- 2.2 "The (Licensing) Authority" means Epsom and Ewell Borough Council
- 2.3 "Licensing Objectives" means the three objectives the Licensing Authority must have a view to promoting when carrying out its functions under the Gambling Act 2005. The Licensing Objectives are defined in Part 1, paragraph 1 of the Gambling Act 2005.
- 2.4 "Gambling" means gaming (within the meaning of section 6); betting (within the meaning of section 9) and; participating in a lottery (within the meaning of section 14 and subject to section 15).
- 2.5 "Application" means an application to the Licensing Authority under the Gambling Act 2005, including:
- (i) Premises Licence namely; Casino Premises, Licence, Bingo Premises Licence, Adult Gaming Centre Premises Licence, Family Entertainment Centre Premises Licence and Betting Premises Licence, Conversion of an existing licence or registration.
  - (ii) Club Gaming Permit and Club Machine Permit
  - (iii) Small Lottery Registration Permit
  - (iv) Prize Gaming Permits
  - (v) Temporary Use Notice (TUN) and Occasional Use Notice (OUN)

- 2.6 "Authorised Person" is defined in Part 15, of the Gambling Act 2005, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, an Inspector appointed under section 18 of the Fire Precautions Act 1971, an Inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974, Environmental Health Officers, and a person who is within a class prescribed by the Secretary of State by Regulations.
- 2.7 "Interested Parties" is defined in Part 8, paragraph 158 of the Gambling Act 2005, and includes persons who (in the opinion of the Licensing Authority) live;
- (i) Sufficiently close to the premises to be likely to be affected by the authorised activities;
  - (ii) Has business interests that might be affected by the authorised activities, or;
  - (iii) Represents persons who satisfy paragraph (a) or (b).
- 2.8 "Responsible Authorities" is defined in Part 8, paragraph 157 of the Gambling Act 2005, and includes;
- (i) The Licensing Authority;
  - (ii) The Gambling Commission;
  - (iii) The Chief Officer of Police;
  - (iv) Surrey Fire and Rescue service;
  - (v) Chief Planning Officer;
  - (vi) Environmental Health;
  - (vii) Surrey Area Child Protection Committee (or other body designated in writing to advise the Authority about the protection of children from harm);
  - (viii) HM Commissioners of Customs and Excise;
  - (ix) Any other person prescribed under Regulations made by the Secretary of State.
- 2.9 "Representation" means any Interested Party or Responsible Authority person who has lodged a written objection to an application in accordance with these rules, and as defined in the Regulations.
- 2.10 "Regulations" means Regulations made under the Gambling Act 2005
- 2.11 In these rules, the masculine always includes the feminine.
- 3 Composition of Licensing Hearings Sub-Committee**
- 3.1 The Licensing Hearings Sub-Committee shall consist of three Members. No business shall be transacted unless at least three Members are present.

- 3.2 Councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises.

#### **4 The need for Guidance on Licensing**

- 4.1 Licensing is unlike other local authority services (apart from Planning) in having a special responsibility to safeguard interests and balance conflicts. Licensing decisions have legal and judicial implications that are separate from the normal process that directs local authorities. Licensing involves the extensive exercise of the Council's discretionary powers.
- 4.2 Licensing applications are sometimes amongst the most contentious matters with which the Council deals. The successful operation of the licensing system relies amongst other things, upon ensuring that both Officers and Councillors act in a way that is not only fair and impartial but is also clearly seen to be so. Licensing decisions can affect land and property values, and it is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons.

#### **5 General Role and Conduct of Councillors in Relation to the Licensing System**

- 5.1 The determination of applications by the Licensing Hearings Sub-Committee is a quasi-judicial process. The role of Councillors taking licensing decisions has similarities to that of a court of law (and Licensing Justices). Decisions are made after a hearing at which the applicant and objectors are each given an opportunity to be heard and to put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and current government advice.
- 5.2 Whilst Councillors who are Members of the Licensing Hearings Sub-Committee can have regard to the views of their constituents, they should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, as their over riding duty in making decisions on licensing applications is to do so in a fair and impartial manner, in accordance with the Licensing Objectives, and taking into account any relevant Policy.

#### **6 Training**

- 6.1 Members appointed to the Licensing Committee or Licensing Hearings Sub-Committee will undertake a period of training in Gambling Act procedures and legislation as specified by the Council, either before serving on the Committee or as soon as possible after their appointment to the Committee with additional training as necessary.

## **7 Lobbying**

- 7.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the application in accordance with the Rules of Procedure of the Committee. However, personal lobbying of the Members of a Committee, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Committee being challenged by way of Judicial Review.
- 7.2 A Member of the Licensing Committee who is lobbied by an applicant or objector in relation to an application which may come before a Licensing Hearings Sub-Committee on which s/he is sitting should accordingly refer the person lobbying to another Councillor.
- 7.3 In accordance with the procedural rules of the Committee, Members should ensure that written material or other evidence which they wish to be considered by the Licensing Hearings Sub-Committee is provided in advance to the relevant officers, and within the timescales prescribed in the Regulations.
- 7.4 Given that the point at which a decision on a licensing application is made cannot occur before the Licensing Hearings Sub-Committee meeting when all relevant information is available for consideration, any political meeting before the Licensing Hearings Sub-Committee meeting should not be used to decide how Councillors should determine an application. Such use of party “whips” is considered by the Ombudsman as contrary to the National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.
- 7.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Committee determining the application.

## **8 Gifts and Hospitality**

- 8.1 Councillors and officers should observe extreme caution in respect of any personal offer of a gift, favour or hospitality from someone who has or is likely to submit a licensing application to the Council. Further guidance on this matter is given in the Council’s Code of Conduct for Members and co-opted Members.
- 8.2 All offers or receipt of gifts or hospitality must be reported to the Chief Executive and recorded in the register of gifts and hospitality.

## **9 Declaration of Interests**

- 9.1 The responsibility for declaring an interest rests with Members. If in doubt, Members should seek advice well in advance of the meeting concerned. Guidance on the declaration of personal and prejudicial interests is contained in the National Code of Conduct and the Council’s Code of Conduct for Members and co-opted Members. Advice is available from the Monitoring Officer.

9.2 Where the Member has a personal and prejudicial interest in an item on the agenda, it should, of course, be declared, and that Member will not be entitled to sit on the Licensing Hearings Sub-Committee deliberating the application in question. Where a prejudicial interest is declared, Standing Orders require the Member concerned to leave the meeting, unless the member has made representation in their own right, or, is elected to represent an objector who has made a valid representation. In these circumstances, of course, it will not be possible for the Member to take any part in the decision making process.

## **10 Licensing Applications submitted by Councillors and their close associates or Licensing Applications which may have an impact on Councillors, Their families or close associates**

10.1 Councillors will wish to have particular regard to the Code of Conduct for Members and co-opted Members and the National Code of Conduct e.g. where Members act as agents for people pursuing licensing issues.

10.2 Given the Code of Conduct for Members and co-opted Members, Councillors who have business or other interests that may bring them into contact with the Council's licensing system on a regular basis should not normally sit on the Licensing Committee or the Licensing Hearings Sub-Committee.

## **11 Member and Officer Relations**

11.1 Good administration is dependant upon a successful relationship between Councillors and officers which can only be based upon mutual trust and understanding of each others' roles and responsibilities. This relationship, and the trust which underpins it, should not be abused or compromised. Accordingly, Councillors should not attempt in any way to influence the terms of the officers' report or recommendation on any application. Equally, officers should give firm independent advice.

## **12 The role of the Licensing Officer**

12.1 Licensing Officers fulfil two roles for the Committee hearing. Firstly, a role limited to an administrative one, and secondly, a role limited to consideration of the relevant representations from their knowledge of local licensing policy, guidance, statute and good practice.

12.2 Licensing Officers will make NO recommendations to the Licensing Hearings Sub-Committee in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:-

- (i) Summary of the application;
- (ii) Summary of the representations made;
- (iii) Summary of how s/he views the provisions of the Licensing Policy Statement;
- (iv) Guidance of the Secretary of State, and the relevant legislation as relating to the application and any relevant representations;

- (v) Summary of any pre-application and pre-decision discussions held with the applicant or bodies making representations;
- (vi) Details of any site visits which took place prior to the application or Committee hearing;
- (vii) Details of any lobbying activities which have been brought to their notice.

### **13 Period of time in which hearing to be held**

13.1 The Authority shall arrange for a Hearing to be scheduled as soon as reasonably practicable following the day after the end of the period for people to make representations. Typically, applications for Premises Licences and Permits will be scheduled for a Hearing no more than 20 working days after the end of the representation period. Typically, 10 days notice will be given to the applicant and objector(s).

### **14 Notice of Hearing**

14.1 In the case of a hearing for an Application for a Temporary Use Notice (TUN) which has been subject to representation, the Authority will arrange for a Hearing to take place no later than six weeks from the date the Authority received the TUN. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.

14.2 In the case of a hearing for all applications for Premises Licences, Application for variation, Application for Transfer, Application for reinstatement or Application for Review other cases, the Authority will arrange for a Hearing to take place as soon as reasonably practicable following the day after the end of the period during which representations may be made. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.

### **15 Action following Receipt of Notice of Hearing**

15.1 A party shall give (no later than five working days before the hearing) notice to the Authority stating:

- (a) whether he/she intends to attend or be represented at the hearing
- (b) whether he/she intends to call any witnesses at the hearing and their names and addresses, and;
- (c) whether he considers a hearing to be unnecessary.

15.2 In the case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the Authority in relation to the application, representations or notice of the party making the request.

## **16 Right to dispense with hearing if all parties agree**

- 16.1 The Authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary and have done so by giving notice to the Authority that they consider a hearing unnecessary. In such circumstances the Authority must give notice to the parties that the hearing has been dispensed with.

## **17 Withdrawal of Representations**

- 17.1 A party who wishes to withdraw any representations they have made may do so by giving notice to the Authority no later than 24 hours before the day or the first day on which the hearing is to be held, or; orally at the hearing.

## **18 The Committee Procedure**

- 18.1 The Licensing Hearings Sub-Committee is serviced by a number of officers. These include the Committee Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Grants and Licensing Team acts as a presenting officer, introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.
- 18.2 The Licensing Hearings Sub-Committee agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the Committee will be the subject of a written report from officers.
- 18.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall consider any request made by a party for permission for another person to appear at the hearing.
- 18.4 The Licensing Hearings Sub-Committee shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 18.5 The Licensing Hearings Sub-Committee shall allow parties an equal maximum time period in which to support their representation or application.
- 18.6 The Chairman of the Licensing Hearings Sub-Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the Hearing, and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the Hearing, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

## **19 Power to adjourn hearings**

- 19.1 The Authority may adjourn a hearing to a specified date, or arrange for a hearing to be held on specified additional dates where it considers this to be necessary for its consideration of any representations or notice made by a party. The Authority will issue a notice should it decide to use such power.

## 20 Hearing to be public

- 20.1 The Authority may exclude the public (which may include any person assisting or representing a party) from all or part of the hearing where it considers that the public interest in doing so outweighs the public interest in the hearing or that part of the hearing, taking place in public.

## 21 Councillor Representations

- 21.1 Where a Councillor wishes to express a view on an application either in their own right in the capacity as an interested party, or in a specific representative capacity, he/she must do so in accordance with the procedural rules of the Committee, and the Regulations.
- 21.2 To avoid conflicts of interest, councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises. A member of the relevant Licensing Hearings Sub-Committee who represents or lives in the ward, which may also be affected by a licensing application, may be in a difficult position if it is a controversial application that has generated opposition. Members in such a situation should therefore not publicly support or oppose a particular outcome unless they are prepared to make their own valid representation. The member would then become ineligible to take part in the deliberative and decision making process of the Licensing Hearings Sub-Committee concerned with determining that application.

## 22 Representations and supporting information

- 22.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.
- 22.2 Anonymous representations **will not** be considered by the Authority.
- 22.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.
- 22.4 At the hearing a party shall be entitled to call witnesses and address the Committee. The Committee will consider if it wishes to allow a party to question any party to the hearing or any witnesses.
- 22.5 The Committee will disregard any evidence produced by parties or witnesses which is not relevant.
- 22.6 The Committee will have discretion as to whether they wish to take into account any documentary or other evidence produced by a party in support of their application, representation or notice (as applicable), either before the hearing, or, with the consent of all the other parties, at the hearing.
- 22.7 Members of the Licensing Hearings Sub-Committee may ask any question of any party or other person appearing at the hearing.

## **23 vexatious and frivolous representations, and representations which will not influence the Authority's determination of the application**

23.1 Where the Authority considers that representations are vexatious, frivolous, would certainly not influence the Authority's determination of an application, or are repetitious, the person making the representation will be notified in writing typically, five working days before the Licensing Hearings Sub-Committee is to be held (due to relevant representations being made elsewhere), or, before the determination of the application to which the representation relates.

## **24 Failure of parties to attend the hearing**

24.1 If a party has informed the Authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

24.2 If a party who has not so indicated fails to attend or be represented at a hearing the Authority may:

- (i) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- (ii) hold the hearing in the party's absence.

24.3 Where the Authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.

24.4 Where the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

## **25 The Committee decision making process**

25.1 The Licensing Hearings Sub-Committee shall normally adjourn from the Hearing to deliberate their decision. The Committee may require that the Legal Adviser withdraws with the Committee. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Committee has reconvened.

25.2 The decision on an application should be taken on all of the relevant factors in the case and in particular the evidence submitted to the Licensing Hearings Sub-Committee meeting. Each application will be treated on its individual merits. The Committee shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.

25.3 Members may add or remove conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition or removal of such conditions would be necessary and reasonable.

25.4 The Licensing Hearings Sub-Committee will usually make its decision at the conclusion of the Hearing, or within 5 working days following the last day on which then hearing was held.

## **26 Record of proceedings**

- 26.1 Hearings will be recorded in a permanent and intelligible form, and retained for six years from the date of the determination, or, where an appeal is brought against the determination of the Authority, the disposal of the appeal.

# SECTION H - Association of Council Secretaries and Solicitors (ACSeS) Model Code of Good Practice for Members regarding Planning Matters

*Incorporated into the Constitution in December 2007*

## 1 Background

- 1.1 The Planning Code of Good Practice has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework and replaces the Council's former local code of conduct on planning matters.
- 1.2 This Code is as per the model adopted by the Association of Council Secretaries and Solicitors (ACSeS) and launched on 14 February 2003. The drafting of the model code was subject to consultation and comment from a number of other local authorities through the machinery of ACSeS, the Standards Board for England, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

## 2 Introduction

- 2.1 **The aim of this code of good practice:** to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 2.2 **The key purpose of Planning:** to control development in the public interest.
- 2.3 **Your role as a Member of the Planning Authority:** to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.4 **When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

*If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.*

## 3 Relationship to the Members' Code of Conduct

- 3.1 **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- 3.2 **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:

- (i) the Council at risk of proceedings on the legality or
- (ii) maladministration of the related decision; and
- (iii) yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee.

## 4 Development Proposals and Interests under the Members' Code

4.1 **Do** disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. (Use the disclosure form provided for disclosing interests.)

(a) **Do** then act accordingly. **Where your interest is personal and prejudicial:**

- (i) **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- (ii) **Don't** try to represent ward views, get another Ward Member to do so instead.
- (iii) **Don't** get involved in the processing of the application.
- (iv) **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- (v) **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code place limitations on you in representing that proposal. You may (where the 2007 Code of Conduct is adopted) address the Committee but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery).
- (vi) **Do** notify the Monitoring Officer in writing and note that:
  - you should send the notification no later than submission of that application where you can;
  - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers; and

- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at Committee.

## 5 Fettering Discretion in the Planning Process

- 5.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.
- 5.2 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 5.3 **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal (this is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits).
- 5.4 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example, or both a district/borough and county Councillor), provided:
- (a) the proposal does not substantially affect the well being or financial standing of the consultee body;
  - (b) you make it clear to the consultee body that:
    - (i) your views are expressed on the limited information before you only;
    - (ii) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
    - (iii) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
    - (iv) you disclose the personal interest regarding your membership or role when the Committee comes to consider the proposal.
- 5.5 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not have to withdraw, but you may prefer to do so for the sake of appearances.

- 5.6 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. (Use the disclosure form provided for disclosing interests.)
- 5.7 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member (this is granted by the authority's standing orders or by the consent of the Chairman and Committee) where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do:
- (a) advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
  - (b) remove yourself from the member seating area for the duration of that item; and
  - (c) ensure that your actions are recorded.

## **6 Contact with Applicants, Developers and Objectors**

- 6.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.
- 6.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Development Control Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- 6.3 **Do** otherwise:
- (a) follow the rules on lobbying;
  - (b) consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - (c) report to the Development Control Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- 6.4 **In addition in respect of presentations by applicants/developers:**
- (a) **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
  - (b) **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.

- (c) **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application: this will be carried out by the appropriate Committee of the planning authority.
- (d) **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

## **7 Lobbying of Councillors**

- 7.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the Committee's decision making to express an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.
- 7.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 7.3 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible, and remember to register interests where its value is over £25 (in accordance with the authority's rules on gifts and hospitality).
- 7.4 **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity.
- 7.5 **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development, through a proposed Section 106 Planning Obligation or otherwise.
- 7.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 7.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:
  - (a) listening or receiving viewpoints from residents or other interested parties;
  - (b) making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - (c) seeking information through appropriate channels; or
  - (d) being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

## 8 Lobbying by Councillors

- 8.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest.
- 8.2 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, Council for the Protection of Rural England (CPRE), Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 8.3 **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- 8.4 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

## 9 Site Visits

- 9.1 **Do** try to attend site visits organised by the Council where possible.
- 9.2 **Don't** request a site visit unless you feel it is strictly necessary because:-
- (a) particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - (b) there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 9.3 **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.
- 9.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- 9.5 **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 9.6 **Don't** hear representations from any other party, with the exception of the Ward Member (s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 9.7 **Don't** express opinions or views to anyone.

- 9.8 **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
- (a) you feel it is essential for you to visit the site other than through attending the official site visit,
  - (b) you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and
  - (c) you can ensure you will comply with these good practice rules on site visits.

## 10 Public Speaking at Meetings

- 10.1 **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 10.2 **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 11 Officers

- 11.1 **Don't** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions or submitting views to the Development Control Manager, which may be incorporated into any committee report).
- 11.2 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 11.3 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

## 12 Decision Making

- 12.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your reasons are recorded and repeated in the report to the Committee.
- 12.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 12.3 **Do comply** with section 38 (6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan/Local Development Framework unless material considerations indicate otherwise.

- 12.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 12.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 12.6 **Do** have recorded the reasons for the Committee's decision to defer any proposal [and that this is in accordance with the Council's protocol on deferrals].
- 12.7 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan/Local Development Framework that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

### **13 Training**

- 13.1 **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 13.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the planning process beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- 13.3 **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

## 14 Member's Disclosure of Interest

A Member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

<b>Member's Name:</b>	
<b>Meeting of:</b>	
<b>Date of Meeting:</b>	

I disclose for the information of the meeting that I have a personal interest in \_\_\_\_\_  
(1)

which will be the subject of consideration by the meeting.  
(2)

The nature of that interest is \_\_\_\_\_

and <sup>(3)</sup> [Delete if not applicable]

- **The personal interest is a prejudicial interest and I shall withdraw from the chamber during deliberation of the item.**

or <sup>(4)</sup> [Delete if not applicable]

- **The interest is disclosed on grounds of planning good practice, as I have or have appeared to judge [or reserve the right to judge] the planning matter elsewhere, including whilst serving on another body, and I will not take part in the debate or vote. I [will] [will not] [Delete as applicable] be also withdrawing from the chamber.**

**SIGNED:** .....

**Dated** .....

- To be read out by the Member when invited to by the agenda or at the commencement of consideration of that item. **Please complete this form and pass it to the committee administrator during the meeting.**

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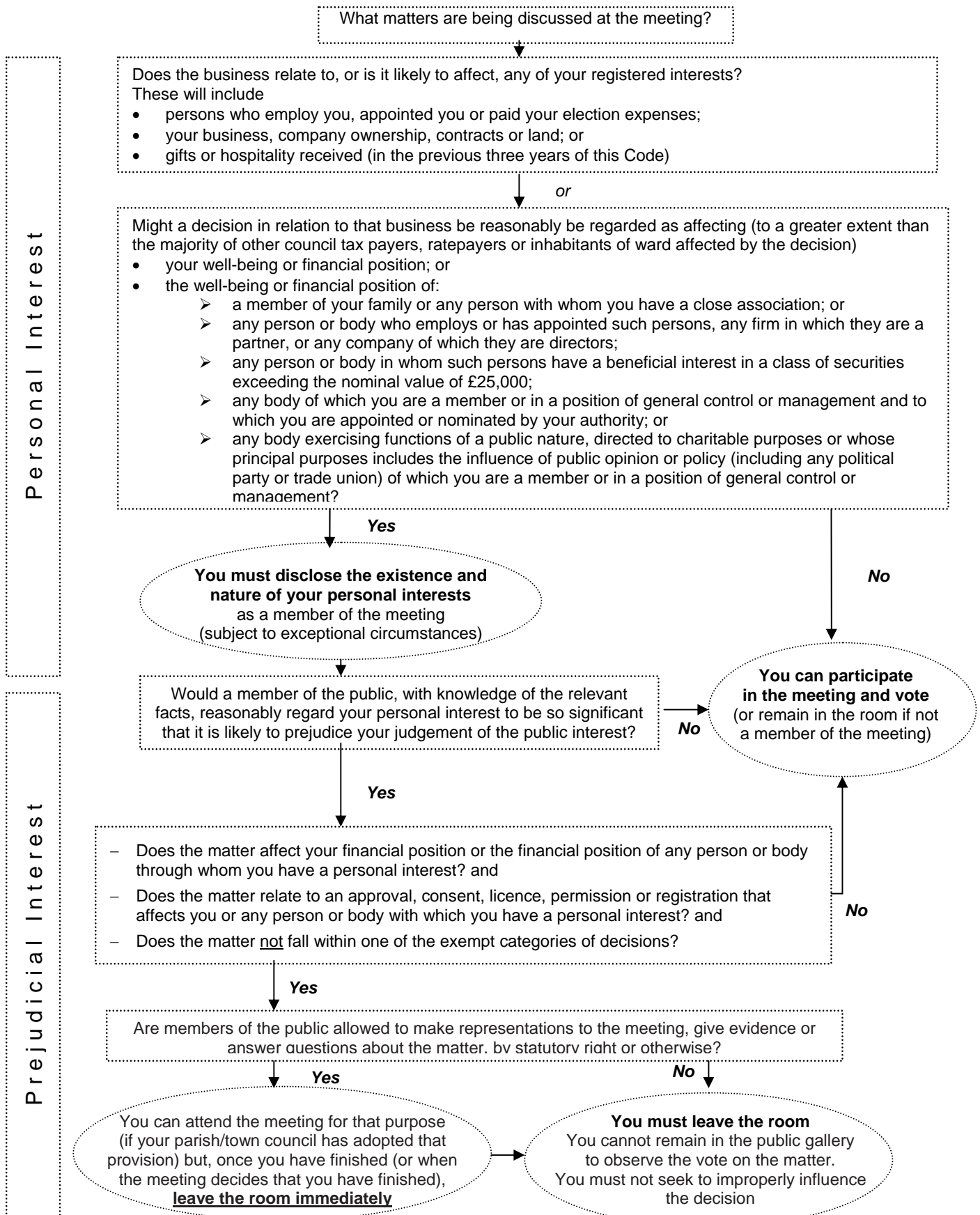
**NOTES:**

- (1) State details of the item (agenda item, planning application number, etc.)
- (2) State what the general nature of the personal interest in the matter is. (You do not need to supply specific details unless you wish to).
- (3) State only if this is a prejudicial as well as a personal interest

***A Member with a prejudicial interest in any matter must also***

- ***withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting (or immediately after giving statements or evidence to where the Code and the Council's public participation rules permit it) unless s/he has obtained a dispensation from the Standards Committee;***
  - ***not exercise executive functions in relation to that matter; and***
  - ***not seek improperly to influence a decision about that matter.***
- (4) State where you have an interest which flows from fettering one's discretion as described in the Members' Planning Code of Good Practice.

## DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF (Non-Overview and Scrutiny Meetings)



Personal Interest

Prejudicial Interest

## **SECTION I - Whistleblowing Policy**

*Issued August 2003; Revised April 2011*

### **1 Introduction**

- 1.1 The Council supports whistleblowing and this policy is drafted to take account of the requirements of the Public Interest Disclosure Act (1998). If you raise a genuine concern in good faith, this policy means you will not be at risk of losing your job or suffering from any retribution, even if your concerns are not substantiated by an investigation. If however you do not make an allegation in good faith or you make an allegation for personal gain, disciplinary action may be taken against you.
- 1.2 The Council wishes to ensure that its money is spent appropriately on services for the local community. Any loss of funds as a result of fraud or corruption can reduce the amount of money available for services or lead to higher Council Tax.
- 1.3 Furthermore, the Council is committed to the highest standards of openness, probity and accountability. In line with that commitment we expect you, as an employee, and others we deal with, who have concerns, to come forward and voice them.
- 1.4 This policy applies to all employees and those contractors working for the Council on Council premises for example agency staff, builders, suppliers of services etc. It also covers suppliers and those providing services under a contract.
- 1.5 This Policy is designed to tackle potentially serious allegations and enables you, as an employee or contractor to raise genuine concerns about serious malpractice.
- 1.6 The Council will investigate all complaints received through the Whistleblowing process to protect its interests and that of local residents but untrue malicious allegations may be dealt with severely.

### **2 Aims and Scope of Policy**

- 2.1 This policy aims to:-
  - Make you feel able to raise a concern in confidence and without risk to your own job;
  - Provide avenues to raise concerns and receive feedback;
  - Provide a guarantee that you will receive a response to your concerns and ensure that you are aware of the processes to follow if you are not satisfied;
  - Reassure you that you will be protected from possible reprisals for victimisation;
  - Provide other sources of reference for advice.
- 2.2 There are existing procedures in place if you have a grievance relating to your own employment or if you consider that you are harassed due to race, sex or age, or if you are concerned about health and safety issues. These are available on IRIS under HR.

- 2.3 This Policy is intended to cover concerns that fall outside the scope of other procedures. These include:-
- conduct which is an offence or a breach of law
  - disclosures related to miscarriages of justice
  - health and safety risks including risks to the public as well as other employees,
  - damage to the environment
  - the unauthorised use of public funds,
  - fraud and corruption;
  - sexual or physical abuse of clients
  - any attempt to prevent disclosure of any of the above, or
  - other conduct which gives you cause for concern.
- 2.4 This policy supplements and does not replace the Council's complaints procedure, or grievance procedures and other procedures in place to deal with harassment and with health and safety.

### **3 Safeguards**

- 3.1 The Council is committed to good practice and high standards and aims to be supportive of its employees. The Council recognises that the decision to report a concern can be a difficult one to make particularly when colleagues are involved or if there is a fear of reprisals. The Council will not tolerate any attempt on the part of an employee, councillor or contractor to apply any pressure, sanction, harassment or victimisation. The Council will take the necessary action required, including disciplinary action against an employee, action for breach of a contract against a contractor or report a Member to the Monitoring Officer for appropriate action.

### **4 Malicious Allegations**

- 4.1 The Council will take all allegations very seriously and, if you are employed by the Council, may take action against you if you deliberately make untrue malicious allegations.
- 4.2 If you make an allegation in good faith but it is not proven by investigation no action will be taken against you.

### **5 Guidance on Making a Complaint**

- 5.1 In order to deal with an allegation the earlier you raise your suspicions, the easier it is to take action.
- 5.2 As a first step, you should raise concerns with your immediate Manager or Director. Who you chose to raise your concerns with may depend on the seriousness and sensitivity of the issues involved and who is suspected of malpractice. For example if you believe that your manager is involved you should approach your Director or one of the Designated Whistleblowing Officers.

- 5.3 Your Manager or Director receiving notification of a concern under this policy must inform one of the Designated Whistleblowing Officers providing a copy of all relevant paperwork. The Council has two designated Whistleblowing Officers, who are the Director of Finance and the Director of Human Resource and Communication (the names of the individuals who currently hold the designated posts are set out at the end of this policy). If the matter relates to financial irregularities or failures of financial control, the Director of Finance must be informed. Further guidance on dealing with such matters can be found in the Fraud Response Plan available on the Council's intranet, IRIS.
- 5.4 When making a complaint you should provide accurate details such as background, names and, where possible, documentary evidence.
- 5.5 You may raise your concerns verbally or in writing. However, it is preferable for complaints to be raised in writing to provide more accurate details. You may find the proforma report form attached to this policy helpful, although it is not compulsory to use it.
- 5.6 Your complaint will be treated in confidence and you should also treat the matter as confidential whilst your complaint is on-going.
- 5.7 If you are a contractor working for the Council, the procedures for whistleblowing are similar but in the first instance, you should normally raise your concerns with your own manager who will then contact the Council's lead officer dealing with the particular contract. If you do not have a line manager, you should contact the Council's lead officer dealing with the particular contract or, alternatively, one of the Council's Designated Whistleblowing Officers.
- 5.8 If you are a Council employee you can obtain advice and guidance on how to raise matters of concern from the Director of Human Resource and Communication. If you are a contractor working for the Council, agency staff or a supplier, you can obtain confidential, independent advice from the charity Public Concern at Work (the contact details for this organisation are set out at the end of this policy document).
- 5.9 During initial investigations it may be necessary to conduct an interview to ascertain facts. You can invite your trade union or professional association representative or a work colleague to be present during any interviews in connection with the concerns you have raised.
- 5.10 If you are a council employee, you can leave a message on the 24 hour Whistleblowing/Fraud Hotline (0800 1974 520) operated by the Council's Internal Auditors RSM Tenon. This service is strictly confidential and you do not need to provide your name if you do not want to.

## **6 Guidance on the investigation process and feedback**

- 6.1 The action taken will be dependent on the nature of your allegation. In the first instance, the matter will be investigated internally, by or on behalf of the Designated Whistleblowing Officer, to establish the facts. Should it relate to a financial matter then the Fraud Response Plan may be implemented.

- 6.2 In order to protect you, and those about whom concerns are raised, initial enquiries will be made to decide whether an investigation is warranted and if so, what form it should take. If you have raised concerns or made an allegation which is the subject of its own policies and procedures, such as discrimination for example, such matters will normally be referred for consideration under the relevant policies and procedures rather than dealt with by the Designated Whistleblowing Officer. It may be possible at this stage to agree action without the need for further investigation. If urgent action is required this will be taken before any investigation is concluded.
- 6.3 The Designated Whistleblowing Officer dealing with the case will endeavour to acknowledge your complaint within 5 working days. Then, depending on the circumstances of your complaint, will formally respond in more detail within 21 working days or once the investigation is completed.
- 6.4 The initial written response will
- Acknowledge that your complaint has been received;
  - Indicate how the Council proposes to deal with the matter;
  - Give an indication or estimate of how long it will take to provide a final report;
  - Outline what initial enquires have been made;
  - Supply you with information of staff support mechanisms.
- 6.5 Further action will depend on the results but the case may be: -
- Passed to an appointed independent person or body such as internal audit for further investigation.
  - Referred to Director of Human Resources & Communications for disciplinary action
  - Referred to the District Auditor
  - Referred to the Police
- 6.6 The amount of contact the Designated Whistleblowing Officer dealing with the allegation will have with you will depend upon the nature of the matters you raised. It may or may not be necessary to seek further information from you during the course of an investigation.
- 6.7 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcomes of any investigation. However feedback may be limited during an investigation.

## **7 How the matter can be taken further**

- 7.1 This policy is intended to provide you with an avenue within the Council to raise concerns and has been written to take account of the Council hopes that you will be satisfied with any action taken. If you are not satisfied with the outcome of your confidential report you can write to the Chief Executive and ask for the outcome to be reviewed. If you remain dissatisfied, you feel it is right to take the matter outside of the Council. In this case, you may wish to rely on your rights under the Public Disclosure Act 1998.

7.2 This Act protects you if you make certain disclosures regarding information in the public interest and those disclosures are made in accordance with the provisions of the Act. The provisions are quite complex and include a list of prescribed persons outside of the Council who can be contacted in certain circumstances. If in doubt, you should seek advice on the provisions of the Act. If you do take the matter outside the Council, you should ensure that you do not disclose information where you owe a duty of confidentiality as by doing so you may commit an offence by making such a disclosure. Where you are in any doubt you should obtain your own legal advice.

## 8 The Law

8.1 The Employments Rights Act 1996 has been amended to incorporate the provisions of the Public Disclosure Act 1998. The Employment Rights Act 1996 already protected employees who took action over, or raised concerns about, health and safety at work. For the avoidance of doubt, financial issues are covered by Section 151 Local Government Act 1972, Section 114 of the Local Government Finance Act 1988, The Local Government and Housing Act 1989 and Accounts and Audit Regulations 2003.

## 9 Contact Details

9.1 The Council has two Designated Whistleblowing Officers, who are the:

- Director of Finance, (John Turnbull, Tel 01372 732201, or e-mail: [jturnbull@epsom-ewell.gov.uk](mailto:jturnbull@epsom-ewell.gov.uk))
- Director of HR and Communications, (Irene Clarke, Tel 01372 732115, or e-mail: [iclarke@epsom-ewell.gov.uk](mailto:iclarke@epsom-ewell.gov.uk))

9.2 Alternatively, you may wish to speak to one of the following individuals:

- Chief Executive, (Frances Rutter, Tel 01372 732104, or e mail: [frutter@epsom-ewell.gov.uk](mailto:frutter@epsom-ewell.gov.uk))
- Monitoring Officer, (Simon Young , Tel 01372 732140, or e-mail [syoung@epsom-ewell.gov.uk](mailto:syoung@epsom-ewell.gov.uk))
- Head of Audit, (Client Manager) (Anna Simmonds can be contacted by telephone on 07816 549832, by e-mail [Anna.Simmonds@remtenon.com](mailto:Anna.Simmonds@remtenon.com) or in writing at RSM Tenon, 30-34 Moorgate, London, EC2R 6PL)
- A local Councillor – Residents of the Borough of Epsom and Ewell can contact their local Councillor. A list of local Councillors is available by contacting the Council (01372 732000) or from the Council's web page

### External Contact Details

9.3 If you are relying on your rights under the Public Disclosure Act 1998, you may wish to contact:

- The Audit Commission – Paul Grady (District Auditor and Relationship Manager), 1st floor, MLS Business Centre, Crossweys, 28-30 High Street, Guildford, Surrey, GU1 3EL. Tel 01483 243344, or e-mail; [p-grady@audit-commission.gov.uk](mailto:p-grady@audit-commission.gov.uk)

- Your Trade Union or staff representative
- Public Concern at Work – [www.pcaw.co.uk](http://www.pcaw.co.uk). Tel 0207 404 6609
- The Police