



GUILDFORD
B O R O U G H

PART 5

CODES AND PROTOCOLS

GUILDFORD BOROUGH COUNCIL

CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

PART 1

GENERAL PROVISIONS

Introduction and Interpretation

1. (1) This version of the Code came into effect on 6 October 2020¹ and applies to you only when acting in your capacity either as a councillor or co-opted (voting) member of the Council or its committees and sub-committees.
- (2) It is your responsibility to comply with the provisions of this Code which will assist the Council in meeting its statutory obligation to promote and maintain high standards of conduct by its councillors and co-opted members in accordance with the following principles:
 - **Selflessness.** Holders of public office should act solely in terms of the public interest.
 - **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.
 - **Objectivity.** Holders of public office must act and take decisions impartially fairly and on merit using the best evidence and without discrimination or bias.
 - **Accountability;** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - **Honesty.** Holders of public office should be truthful.
 - **Leadership** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Definition of terms

- (3) In this Code:

¹ Paragraphs 24 and 25 of the Code were amended by the Council on 19 May 2021
Paragraph 9 (i) of the Code was amended by the Council on 5 October 2021

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“bully” means to persistently display offensive, intimidating, malicious or insulting behaviour, which may involve an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

“harass” means the undertaking of an act or series of acts which are intended to cause alarm or distress (for example the making of malicious or false assertions, whether publicly or privately) and in the context of a relevant protected characteristic defined in the Equality Act 2010 to display unwanted conduct which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

A “disclosable pecuniary interest” is an interest within the prescribed descriptions set out below that you have personally, or is an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners, and you are aware that that other person has the interest:

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

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Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.
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These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” includes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31 (7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

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

“meeting” means any meeting of:

- (a) the Council;
- (b) the Executive of the Council;

- (c) any of the Council's or its Executive's committees, sub-committees, joint committees, joint sub-committees or area committees, including any site visit authorised by the Council, the Executive or any of the aforementioned committees.

A "non-pecuniary interest" is an interest which is not a disclosable pecuniary interest (as defined above) but is nonetheless an interest that may in the mind of a reasonable observer affect your objectivity or judgement of the public interest. Examples of non-pecuniary interests include but are not limited to:

- (a) membership of organisations to which you have been appointed or nominated by the Council and in which you hold a position of general control or management, or
- (b) membership or holding a position of general control or management of any body that:
- exercises functions of a public nature
 - is directed to charitable purposes
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
- (4) This Code does not cover matters in respect of which the Localism Act 2011 specifically provides that criminal sanctions will apply.
- (5) A failure of a councillor or co-opted member to comply with this Code is not to be dealt with otherwise than in accordance with arrangements approved by the Council under which allegations of such failure can be investigated and decisions on such allegations can be made. In particular, a decision is not invalidated just because something that occurred in the process of making the decision involved a failure by a councillor or co-opted member to comply with the Code.
- (6) Councillors may in their individual and personal capacity be subject to legal proceedings from third parties aggrieved by an action which also amounts to a breach of this Code. Councillors should be aware that the legal indemnity provided by the Council to Councillors engaged in the discharge of Council functions is unlikely to cover actions which constitute breaches of this Code.

General Obligations

2. (1) You must treat others with respect.
- (2) You must not:
- (a) do anything which may cause the Council to breach any of the equality enactments;
- (b) bully or harass any person. Examples of bullying/harassing behaviour include but are not limited to:
- (i) malicious falsehood, actions (whether by speech, written communication (including by email, text message, etc), or via social media which are intended to cause alarm or distress, spreading malicious rumours, or insulting someone by word or behaviour

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- (ii) the broadcast of confidential or private correspondence (whether by forwarding, copying, or reproducing that correspondence in a wider or public forum) where you know or ought to know that it would have the effect of inciting harassment or ridicule or having a detrimental impact on a person's reputation or business
 - (iii) exclusion or victimisation
 - (iv) unfair treatment
 - (v) overbearing supervision or other misuse of power or position
 - (vi) unwelcome sexual advances – touching, standing too close, the display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected
 - (vii) making threats or comments about job security without foundation
 - (viii) deliberately undermining by constant negative criticism rather than to complain to the appropriate manager or supervisor
 - (ix) preventing individuals progressing by intentionally blocking promotion or training opportunities.
- (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 councillor or co-opted member (including yourself) has failed to comply with this 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, the Council.
3. You must not:
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and

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- (bb) made in good faith and in compliance with the reasonable requirements of the Council²; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute, or in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct by councillors and co-opted members.
5. You:
- (a) must not use or attempt to use your position as a councillor or co-opted 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 Council's resources:
- (i) act in accordance with the Council'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.
6. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by the Council's Chief Finance Officer or Monitoring Officer where that officer is acting pursuant to their statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.
7. If you are the subject of a complaint, you have a duty to cooperate with any investigation and to respond promptly and comply with any reasonable requests from the Investigating Officer for such things as interviews, comments on draft meeting/ interview notes or the provision of information necessary for the conduct of an investigation.
8. You must not make trivial, politically motivated, or malicious allegations of misconduct against other councillors.
9. In addition to compliance with this Code of Conduct, you are also expected to comply with:
- (i) the relevant requirements of the Protocol on Councillor/Officer Relations, the Social Media Guidance for Councillors, the Councillor Email Signature Guidance, and the Probity In Planning – Councillors' Handbook, and
- (ii) any reasonable request by the Council that you complete a related party transaction disclosure

² Means the councillor should always consult the Monitoring Officer before taking a decision on whether or not to disclose confidential information

PART 2

INTERESTS

Predetermination

10. (1) Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as a councillor.
- (2) However, you should not place yourself under any financial or other obligation to outside organisations that might seek to influence you in the performance of your official duties.
- (3) When making decisions you must consider the matter with an open mind and on the facts before the meeting at which the decision is to be made.
- (4) If a councillor considers that they could be biased or they have predetermined their position to a decision, he or she should disclose this and should not take part in the decision-making process whenever it becomes apparent that the matter is being considered.

Registration of Disclosable Pecuniary Interests

11. As a councillor or co-opted member of the Council you must avoid participating in any decision where you could reasonably be seen as having an interest which compromised your honesty or objectivity. Equally you should avoid any action which might reasonably lead others to conclude that you were not acting selflessly or with integrity. In order to assist with this and to promote openness and accountability, the Monitoring Officer must, by law, establish and maintain a register of interests, open for inspection by the public at the Council's offices and publicly accessible on our website:

<http://www.guildford.gov.uk/councillorsearch>

12. You must, before the end of 28 days beginning with the day on which you became a councillor or co-opted member of the Council, notify the Monitoring Officer of any disclosable pecuniary interests which you have at the time when the notification is given. You should be aware that these interests include those of your spouse or civil partner, a person with whom you are living as husband or wife or a person with whom you are living as if they were a civil partner so far as you are aware of the interests of that person. These interests will then be entered on the register of interests.
13. Where you become a councillor or co-opted member of the Council as a result of re-election or re-appointment, paragraph 12 applies only as regards disclosable pecuniary interests not entered in the register when the notification is given.

Disclosure of Disclosable Pecuniary Interests and participation in decision making

14. Subject to paragraphs 29 to 32 (*dispensations*), if you are present at any meeting and you are aware that you have, or any other person referred to in paragraph 12 above has, a disclosable pecuniary interest in any matter that will be, or is being, considered at that meeting, you must, irrespective of whether that interest has been registered:
 - (a) disclose the nature of the interest to the meeting (or, if it is a sensitive interest as described in paragraph 33 below, disclose merely the fact that it is a disclosable pecuniary interest);

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- (b) not participate in any discussion or vote regarding that matter; and
- (c) withdraw immediately from the room or chamber (including the public gallery) where the meeting considering that matter is being held.

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date of the meeting at which it became apparent.

15. Subject to paragraphs 29 to 32 (*dispensations*), if you are aware that you have, or any other person referred to in paragraph 12 above has, a disclosable pecuniary interest in any matter on which either:

- (a) you are authorised to make decisions, or
- (b) you are consulted by an officer discharging powers delegated to them,

you must not, in relation to (a) above, take any decision on that matter or, in relation to (b) above, participate in any consultation with such officer in respect of that matter

Where you have not previously notified the Monitoring Officer of that disclosable pecuniary interest you must do so within 28 days of the date on which it became apparent.

16. You may participate in any business of the Council where that business relates to the Council's functions 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 councillors or co-opted members;
- (v) any ceremonial honour given to councillors; and
- (vi) setting Council Tax or a precept under the Local Government Finance Act 1992.

17. You should be aware that it is a criminal offence if, without reasonable excuse, you

- (a) fail to disclose a disclosable pecuniary interest as set out above;
- (b) participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- (c) take any steps as a single member discharging a function of the Council, when you have a disclosable pecuniary interest in a matter you are dealing with
- (d) provide information in relation to your disclosable pecuniary interests that is false or misleading and you know that the information is false or misleading, or are reckless as to whether the information is true and not misleading.

Non-Pecuniary Interests

18. In addition to the disclosable pecuniary interests referred to above, you will have a non-pecuniary interest in any organisation, operating in the borough of which you are in a position of general control or management, even if you were appointed or nominated to that organisation by the Council. This includes public and voluntary sector organisations, such as other councils, schools, charities and some companies. It also includes political parties and campaigning groups.
19. You must, within 28 days of taking office as a councillor or co-opted member notify the Council's Monitoring Officer of your non-pecuniary interests. Any interests you declare will be included in the Council's Register of Interests. You must also notify the Monitoring Officer of any changes in your interests arising after you have completed your initial notification.
20. In accordance with this Council's requirement that you are as open as possible about your decisions and actions, where you have a non-pecuniary interest in any matter to be considered or being considered at a meeting of the Council, the Executive (or any of its committees or sub-committees), a committee, board, sub-committee or joint committee of the Council and you speak at that meeting, you must disclose to that meeting the existence and nature of that interest.
21. You can participate in any discussion and (where applicable) vote on any matter in which you have a non-pecuniary interest unless you consider, having taken advice from the Monitoring Officer, that the interest is one that would affect your objectivity in relation to that matter, in which case you should withdraw from the room or chamber when it becomes apparent that the matter is being considered at that meeting.
22. If you are discharging a function of the Council as a member acting alone (e.g. as a Lead Councillor) or if you are being consulted by an officer discharging powers delegated to them, you will need to consider whether you have a non-pecuniary interest in any matter you are dealing with in the course of discharging that function, or in any matter on which you are being consulted. If you do have such an interest, you must ensure that a record of the existence and nature of the interest is recorded in the decision notice.
23. If, having taken advice from the Monitoring Officer, you consider that the interest is one that would affect your objectivity in relation to the matter, and therefore inappropriate for you to continue to take any steps in relation to the matter, you should not do so (except for the purpose of enabling the matter to be dealt with by someone else).

Acceptance of Gifts and Hospitality

24. As a councillor or co-opted member of the Council you must avoid accepting any gift, hospitality or other favour which compromises, or could give the impression of compromising, your integrity, honesty or objectivity. You should never accept any gift or hospitality as an inducement or reward for anything, or if acceptance might be open to misinterpretation or which puts you under an improper obligation. In particular, whenever acting in your capacity as a councillor or co-opted member, you
 - (1) should avoid any behaviour which might reasonably be seen as motivated by personal gain;
 - (2) should never solicit a gift or hospitality;

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- (3) may accept, but must register with the Monitoring Officer within 28 days of acceptance, any gift or hospitality of an estimated value between £25 and £50, subject always to the proviso that you exercise caution in accepting any gifts or hospitality regardless of value which are (or which you might reasonably believe to be) offered to you because you are a councillor or co-opted member; and
- (4) should never accept significant gifts or hospitality with an estimated value of more than £50 from any third party.
25. For the avoidance of doubt, the following gifts and types of hospitality do not need to be disclosed/registered:
- (a) civic hospitality provided by the Council or another public authority;
 - (b) modest refreshment in connection with any meeting or on the occasion of any social meeting;
 - (c) tickets for sporting, cultural and entertainment events which are sponsored by, or organised by or behalf of the Council;
 - (d) individual gifts or hospitality with an estimated value of up to £25, or more than one gift from one donor with a combined value of no more than £25;
 - (e) gifts or hospitality offered to the Mayor (Deputy Mayor when deputising for the Mayor) at an official mayoral engagement, subject to the proviso that any gifts with an estimated value exceeding £25, accepted belong to the office of the Mayor and not to the recipient personally; or
 - (f) any declined offer of a gift or hospitality unless it falls within paragraph 27.
26. Where it is impracticable to return any unsolicited gift of a value of £50 or more, or the return would cause offence, you must as soon as practicable within 28 days after the receipt of the gift, notify the Monitoring Officer in writing, and pass the gift to the Mayor's Office for donation to a charity or raffle as appropriate.
27. You must immediately report to the Monitoring Officer any circumstances where a gift or hospitality has been offered to you or to another councillor in order to gain inappropriate favour.
28. Your participation in any item of business that affects a donor from whom you have received any gift or hospitality that is registered, or ought to be registered as set out above, will need to be considered by you on a case by case basis. You will only be expected to exclude yourself from speaking or voting in exceptional circumstances, for example where there is a real danger of bias, or where you consider, having taken advice from the Monitoring Officer, that acceptance of a gift or hospitality would affect your objectivity in relation to the consideration of that business.

Dispensations

29. A councillor or co-opted member with a disclosable pecuniary interest in a matter may submit a written request to the Monitoring Officer for the grant of a dispensation allowing that councillor or co-opted member to participate in any discussion and/or vote on that matter at a meeting.

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30. The Monitoring officer may, after having had regard to all relevant circumstances, grant a dispensation to the councillor or co-opted member only if, he considers that without the dispensation:
- (a) the number of persons prohibited from participating in any particular business in relation to the matter would be so great a proportion of the body transacting the business as to impede the transaction of that business, or
 - (b) considers that without the dispensation each member of the Executive would be prohibited from participating in any particular business to be transacted by the Executive in relation to the matter.
31. The Corporate Governance and Standards Committee may, after having had regard to all relevant circumstances, grant a dispensation to the councillor or co-opted member only if, the Committee considers that:
- (a) without the dispensation the representation of different political groups on the body transacting the particular business would be so upset as to alter the likely outcome of any vote relating to that business, or
 - (b) granting the dispensation is in the interests of persons living in the borough, or
 - (c) it is otherwise appropriate to grant the dispensation.
32. Any dispensation granted must specify the period for which it has effect, and the period specified may not exceed four years.

Sensitive Information

33. (1) Sub-paragraphs (2) and (3) apply where:
- (a) a councillor or co-opted member of the Council has an interest (whether or not a disclosable pecuniary interest), and
 - (b) the nature of the interest is such that the councillor or co-opted member, and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the councillor or co-opted member, or a person connected with that councillor or co-opted member, being subject to violence or intimidation.
- (2) If the interest is entered in the register of interests, copies of the register that are made available for inspection, and any version of the register published on the Council's website, must not include details of the interest (but may state that the councillor or co-opted member has an interest the details of which are withheld under this provision of the Code).
- (3) Where a disclosable pecuniary interest is not entered on the register of interests and would otherwise require disclosure at a meeting, the councillor or co-opted member shall be entitled to merely disclose at the meeting the fact that they have such an interest in the matter concerned.

Removal of entries in the register

34. An entry in the register of interests will be removed once the person concerned:

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- (a) no longer has the interest, or
- (b) is (otherwise than transitorily on re-election or re-appointment) neither a councillor nor a co-opted member of the Council.

Review of the Councillors' Code of Conduct

35. This code of conduct shall normally be reviewed every four years during the year following the Borough Council Elections, and any such review shall involve formal consultation with parish councils within the borough.

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CODE OF CONDUCT FOR STAFF

1. Introduction

- 1.1 The public must have full confidence in the professionalism and integrity of all members of staff.
- 1.2 This Code applies to all members of staff when working for or acting on behalf of the Council, including temporary and casual workers, agency workers, interims and contractors. Where there is no direct employment-contract relationship, regard shall be had to this code when assessing acceptable behavioural standards.
- 1.3 The Code does not affect your rights and responsibilities under the law; its purpose is to provide clear and helpful guidance.
- 1.4 It is important for you to know that disciplinary action is possible if the Code is not followed and you should familiarise yourself with this document.
- 1.5 You should always seek advice from your line manager if in doubt about any aspect of this Code, especially the relevance of any personal relationships or interests¹.

2. Version

- 2.1 This document is version 2.0. It will be reviewed and updated as and when necessary to ensure that it is up to date and relevant.

3. General standards

3.1 You shall:

- Provide the highest possible standard of service to the public
- Provide impartial advice to councillors and the public
- Report to the appropriate management any breaches of this Code.
- Declare any gift, loan, reward, favour or advantage given to you because of the job you do.
- Present a smart professional appearance.
- If you are issued with a uniform, only wear it when undertaking your professional duties.
- Comply with the Council's **Behavioural Standards**.

3.2 You shall not:

- Conduct yourself in a way that would bring the Council into disrepute.

Organisational Culture Framework

¹ What is an 'interest'?

An interest can be something like the house or the area where you/your family live. Alternatively, it can be something you, your family or someone close to you do aside from working for the council like another job, membership of a political party or a club or society.

4. Political neutrality

4.1 You should remember that the Council is a political organisation and be mindful of this in all areas of your work and personal life. Some jobs in the Council are 'politically restricted' and those jobs are subject to rules about personal life as well as in work. The Council has written some [Guidance on Politically Restricted Posts](#).

4.2 You **shall**:

- Address all councillors respectfully and impartially.
- Be politically neutral when offering advice to councillors.
- Act according to any political restrictions set out in your job description.

4.3 You **shall not**:

- Allow your own personal or political opinions to interfere with your work.
- Attend political group² meetings without your strategic director's knowledge and approval.

5. Use of media and social media

5.1 The 'media' or the 'press' means news websites, radio or television stations and newspapers. When we talk about 'social media', we mean online social networking websites like Facebook, Instagram, Twitter etc.

5.2 If you post malicious, untrue or otherwise inappropriate statements about the Council, councillor(s) or members of staff on social media sites, this will be a misuse of social networking and any such posting(s) may result in the Council taking disciplinary action against you.

5.3 You **shall**:

- Direct anyone from the media with a query to contact the Council's trained officers in the Communications and PR Team.
- Be aware that any comments you make on social media websites will be public and expressing in a public forum (whether via news or other media or other online or social media) personal views which conflict with the policies of the Council may result in disciplinary action being taken against you for bringing the Council into disrepute.
- Always comply with the Council's [Communications Protocol](#) and [social media standards](#).

5.4 You **shall not**:

- Post comments or disclose information about Council business, other officer colleagues, councillors or the Council that could be described as offensive,

² **What is a Group?**

Councillors can form political groups and the largest group or a combination of groups usually form an administration to provide the political leadership for the authority. There is statutory recognition for political groups and it is common practice for such groups to consider matters of Council business in advance of consideration by the relevant Council committee.

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abusive or damaging even if those comments are made outside of working hours.

- Make available any of the Council's confidential information without the proper permission.

6. Disclosure of information

6.1 Sharing confidential information without permission is a serious matter and may result in dismissal under the Council's **Disciplinary Policy and Procedure**. It could also be a criminal offence and lead to criminal proceedings.

6.2 You **shall**:

- Know and apply the Council's policies on the management of sensitive information and be aware of the types of information that can be shared depending upon the person who asking for it.
- Check with your manager or the Monitoring Officer if you are unsure what information can be shared.
- Maintain the confidentiality of all sensitive information (whether personal or otherwise) that you have access to in the course of doing your job.

6.3 You **shall not**:

- Use Council-held information in a way that would promote your own personal interests or the interests of others or share it with others to use in such a way.
- Share personal information about another officer or councillor without proper authority to do so.

7. Relationships

You **shall**:

- Treat other members of staff with fairness, dignity and respect. The Council will not tolerate bullying, harassment or victimisation in any form. See the **Bullying and harassment policy**
- Be courteous, efficient, and impartial to councillors, members of the public and service users. See the **Protocol on Councillor/Officer relations**
- for guidance on role and relationships.
- Tell your strategic director if you have any business or personal relationships with an external service provider or potential contractor working for the council.
- Inform your manager if you are related to someone at work or if you are having a close personal relationship with someone at work.

8. Use of the Council's equipment and resources

You **shall**:

- Use Council-owned equipment and resources given to you to do your job in a lawful and responsible manner.
- Strive to ensure value for money when undertaking your professional duties.

- Use Council facilities and equipment only in connection with the duties required by your job.
- Follow the rules regarding:
 - [ICT users' policy](#)
 - [Information systems security policy](#)
 - [Data protection policy](#)

9. Contracts and tendering

9.1 You **shall**:

- Display accountability and openness and follow [Council's Procurement Procedures rules](#) during the tendering process.
- Respect the confidentiality of tenders. [Awarding contracts](#)
- Disclose in writing to your line manager and the Monitoring Officer, any interest you may have in a contract which is, or is proposed to be, appointed by the Council, in accordance with s117 of the Local Government Act 1972.

9.2 You **shall not**:

- Offer, promise or give someone a reward to make them perform their activities improperly.
- Accept, agree to accept or request a reward in return for performing an activity. [Anti-fraud and corruption policy](#)
- Bribe anyone in order to win business, keep business or gain a business advantage for the council. [Anti-bribery policy](#)

10. Appointments and employment matters

10.1 It you are involved in staff recruitment you **shall**:

- Appoint based on merit and purely on the ability of the applicant to undertake the duties of the post.

10.2 It you are involved in staff recruitment you **shall not**:

- Be involved in the appointment of a relative or friend
- Be involved in any decisions relating to discipline, remuneration or promotion of any member of staff who is a relative, partner, or close friend outside work.
- Show any favouritism for any member of staff who is a relative, partner, or close friend outside work.

11. Outside commitments

11.1 You **shall**:

- Usually be able to take up additional employment outside of your job for the Council provided it does not conflict with your Council role; however, you must first notify your line manager.
- Declare any additional hours working for an external employer to your line manager.

11.2 You **shall not**:

- If you are a senior officer, take up other employment in addition to your Council role without the express consent of your strategic director.
- Undertake activities outside of your Council work that may be regarded as bringing the Council into disrepute.

12. Personal Interests

12.1 If your job is Band 6 and above, it is expected that you **shall inform your strategic director**:

- If you, a close family member or someone with whom you have a close relationship has a financial interest in any matter being dealt with by the council.
- If you, a close family member or someone with whom you have a close relationship has submitted a planning application.
- If you have any interest in any council decision that you are able to influence for example, if you are a member of local club, society, or organisation in receipt of council grants, or which is a tenant or licensee of the Council.
- If you are a member of a political party.

12.2 Your strategic director will ask you to fill out a **Staff Declaration of Interest** form. What you declare will be included on a register of senior staff interests with access limited to your strategic director, the Joint Chief Executive, political group leaders and committee chairmen.

13. Safeguarding

13.1 The Council has a statutory duty to ensure the safety and welfare of children, young people and adults at risk and the Council has a **Safeguarding Policy**.

13.2 When you are doing your job, if you have direct or indirect contact with children or adults at risk, or if you have access to information about them, you have a duty to safeguard and promote their welfare.

13.3 If you have concerns relating to the welfare of a child or adult at risk, you must report these to your line manager or your strategic director.

14. Gifts, hospitality and sponsorship

14.1 You **shall**:

- Tell your strategic director about any gift received or hospitality accepted over a value of £25, which will be placed on a 'register of gifts and hospitality' with access limited to the Joint Chief Executive and the Monitoring Officer
- Be aware that limited hospitality (a meal/refreshments) is acceptable as long as it does not reach a level that it might seem like it has influenced a business decision.
- Decline a gift or an offer of hospitality if you believe that the offer was made in order to exert influence over you or the Council or if you are uncertain about the reason for the invitation.
- Be aware that a modest lunch is normally acceptable, but entertainment is unacceptable unless it is for charity fundraising.

PART 5 – CODE OF CONDUCT FOR STAFF

- Be aware that the rules concerning the acceptance of gifts or hospitality will apply if an outside organisation should sponsor a Council activity by invitation, tender, negotiation or voluntarily.

14.2 You **shall not**:

- Appear to influence the Council's relationship with anyone by accepting any gifts and hospitality from them.
- Accept any gifts, other than items of small value [£25 or less].
- Seek or accept special treatment from anyone because you work for the Council.
- Seek or accept special treatment regarding the use of any Council owned facility, unless you have been given permission to do so by the Council.
- Directly benefit yourself, or anyone with whom you have a close relationship, from any Council sponsored event or activity.

15. **Equalities and health and safety issues**

You should read and follow the Council's policies relating to [equal opportunities](#), [alcohol and substance misuse](#) and [health and safety](#).

16. **Notification of Criminal Investigations and other required disclosures**

You should inform your manager in writing straight away if during your employment with the Council you are arrested, charged with, or convicted of a criminal offence.

17. **Breach of code of conduct**

Any breach of the code of conduct may be regarded as a disciplinary offence.

[Disciplinary Policy and Procedure](#)

[Grievance policy and procedure](#)

[Whistleblowing procedure](#)

I have read and understood the content of this document

Staff Signature

.....

Date.....

Manager Signature

.....

Date

GUILDFORD BOROUGH COUNCIL

PROTOCOL ON COUNCILLOR/OFFICER RELATIONS

1. INTRODUCTION

- 1.1 Mutual understanding and basic respect between councillors and officers are the greatest safeguard of the integrity of the Council.
- 1.2 Copies of this protocol will be issued to all councillors upon their election to the council and to all staff upon their recruitment to the council and included in all induction training and refresher sessions.
- 1.3 Questions on interpretation of this protocol will be determined by the Monitoring Officer in consultation with the Chairman of the Corporate Governance and Standards Committee, unless the provision in question relates to a matter to be determined by the Joint Chief Executive, in which case it will be determined in consultation with the Leader of the Council.
- 1.4 The Corporate Governance and Standards Committee will be responsible for reviewing the practical application of this protocol and will make appropriate suggestions for its improvement and development.
- 1.5 The protocol is supplementary to the Councillors' Code of Conduct and Staff Code of Conduct contained in Part 5 of this Constitution.

2. VERSION

- 2.1 This will be an evolving document and in recognition of changes in working practices and the Protocol will be reviewed at least every four years at the same time that the Council reviews its Councillor Code of Conduct and the Staff Code of Conduct and the Probity in Planning document

3. ROLES

- 3.1 Both councillors and officers serve the public, but their responsibilities are distinct. This protocol seeks to guide councillors and officers in their relations with one another.
- 3.2 Councillors are responsible to the electorate. Their job is to represent their constituents, to agree policy and to take all non-delegated decisions. They serve as long as their term of office lasts.
- 3.3 Officers are responsible for day-to-day managerial and operational decisions within the authority. Their job is to give advice to councillors and the public, to take all delegated decisions and to carry out the council's work in a professional manner.
- 3.4 The role of officers is to seek to assist councillors within the restrictions of their levels of authority and in regard to the rules governing access to information. They also have a role to ensure that councillors are properly informed about information to which they have a right of access. Officers should not use professional expertise to discourage or intimidate councillors from pursuing lines of inquiry. There may be service level agreements set out regarding the timescales for responding to particular queries or

PART 5 – PROTOCOL ON COUNCILLOR /OFFICER RELATIONS

referrals from individual councillors. These may vary dependent on the 'level' of a councillor or the topic in question. For example, responses to the leader of the council or the leader of any political group may need to be given more speedily than a referral from a backbench councillor. Responses to matters of urgency, for example regarding the safeguarding of vulnerable adults or children can require a prompter response due to the immediacy of the issue and the need to take action within a short timeframe. Both officers and councillors have to prioritise their work. When their priorities do not coincide, they should discuss and agree a mutually acceptable timescale for response.

3.5 Officers must not allow their own personal or political opinions to interfere with their work.

4. MUTUAL RESPONSIBILITIES OF COUNCILLORS AND OFFICERS

4.1 To work in partnership.

4.2 To have respect for each other's roles, workloads and pressures.

4.3 To display respect, dignity, courtesy, integrity, mutual support and appropriate confidentiality.

4.4 To undertake training and development in order to carry out their role effectively.

4.5 To not subject the other to bullying or harassment.

4.6 To have a common purpose; providing the best possible service to the residents and other stakeholders of Guildford Borough

4.7 To have a commitment to collaborative, non-adversarial resolution of disputes.

5. RELATIONS WITH STATUTORY OFFICERS

5.1 In reaching their decisions, councillors must have regard to the advice given by officers and in particular, that offered by the:

- a) Chief Finance Officer, whose duties are prescribed under section 114 of the Local Government Finance Act 1988
- b) The Monitoring Officer's duties are set out under section 5 of the Local Government and Housing Act 1989. The Monitoring Officer should be consulted when there is any doubt as to the Council's power to act; or in determining whether any action proposed lies within the policy framework agreed by the Council; or where the legal consequences of action or failure to act by the Council might have important repercussions.
- c) The statutory officers of the Council are the Head of Paid Service (usually the Joint Chief Executive), the Monitoring Officer and the Chief Finance Officer (or Section 151 Officer). All have a duty to advise the council as a corporate body. The ability of these officers to discharge their duties depends not only on effective working relations with their councillor colleagues, but also on the flow of information and access to the debating processes of politicians. As such, it is crucial that you have a good working relationship with your statutory officers that are based on a clear understanding of their roles and responsibilities.

6. EFFECTIVE COLLABORATIVE WORKING IS ESSENTIAL

In establishing an effective working relationship, there should be clarity about the respective roles of councillors and officers. This is often made easier if:

- (a) Both parties discuss and agree the values and behaviours they expect from each other in a relationship of mutual trust.
- (b) Councillors identify their priorities, assisted by officers.
- (c) Officers provide clear advice and offer alternative courses of action where they exist.
- (d) Councillors and officers communicate clearly and openly, avoiding ambiguity and the risk of misunderstanding
- (e) Everyone works in a spirit of partnership, to turn the council's core values and priorities into practical policies for implementation.
- (f) While councillors and officers may have their own specific roles and responsibilities, there are clearly some grey areas in which both groups have a shared responsibility, e.g. agreeing workable policies and monitoring performance. In addition to this, councillors and officers both face the same public service agenda, i.e. delivering quality services to local people in a climate of tough challenges and constraints (budgets and timescales).

7. GENERAL RULES

- 7.1 All dealings between councillors and officers will be courteous and neither party will seek to take unfair advantage of their position.
- 7.2 A councillor will not raise matters relating to the conduct or capability of an officer at any public session of a meeting.
- 7.3 If a councillor has a concern regarding an officer's conduct or behaviour that is not resolved through respectful mutual discussion then they may raise the matter with the officer's Executive Head of Service or Strategic Director.
- 7.4 If after receiving a written report from the Executive Head of Service or Strategic Director, a councillor remains concerned, the Joint Chief Executive will be advised.
- 7.5 Should any further action with regard to an officer's conduct or behaviour be undertaken, it will be in accordance with the appropriate employment rules and procedures.
- 7.6 An officer will not raise matters relating to the conduct or capability of a councillor at any public session of a meeting.
- 7.7 If an officer has a concern regarding a councillor's conduct or behaviour that is not resolved through respectful mutual discussion then they may raise the matter with their Executive Head of Service, Strategic Director or the Joint Chief Executive.

PART 5 – PROTOCOL ON COUNCILLOR /OFFICER RELATIONS

7.8 The Executive Head of Service, Strategic Director or Joint Chief Executive will take the appropriate action by approaching the councillor concerned and/or his or her group leader.

7.9 Officers should endeavour to provide councillors with sufficient notice of meetings to allow them to prepare and balance their diaries and commitments

8. OFFICER ADVICE TO COUNCILLORS AND POLITICAL GROUPS¹

8.1 Officers serve the council as a whole and not any individual political group or any individual councillor.

8.2 An officer briefing meeting prior to a committee meeting or such support in whatever form it takes will be available to all councillors and all party groups.

8.3 The rules for providing advice to councillors include:

- (a) Officer advice and support must relate only to matters of council business and never include advice on political issues.
- (b) Officers may refuse to provide advice to a councillor/group until guidance has been sought from their Strategic Director or the Joint Chief Executive if that advice might be considered inappropriate.
- (c) Decisions made at party group meetings are not decisions of the Council and must not be treated or acted upon as such by either councillors or officers.
- (d) Officers should not normally attend formal meetings of political groups.
- (e) If a councillor requests information from an officer, the officer will inform the councillor at the time if that information is to be made available to any other councillors.
- (f) Councillors should not consider an officer supportive of a policy because they have helped to construct it
- (g) Councillors should contact report authors for any further information in advance of a committee meeting

8.4 Officer correspondence to parish councils and amenity groups will be copied to local ward councillors, unless the correspondence contains confidential information to which the provisions of Data Protection Act 2018 apply.

9. SUPPORT SERVICES TO COUNCILLORS AND POLITICAL GROUPS

9.1 Support services will be provided to assist councillors only in discharging their role as councillors.

9.2 Councillors will ensure they are up to date with and in compliance with all council policies

¹ **What is a Political Group?**

Councillors can form political groups and the largest group, or a combination of groups, usually forms an administration to provide the political leadership for the authority. There is statutory recognition for political groups, and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of consideration by the relevant Council body.

in respect of IT, information security and data protection.

10. COUNCILLORS' ACCESS TO INFORMATION AND COUNCIL DOCUMENTS

Cooperation between Councillors and Officers is vital to ensure a good service to the public. A free flow of information between Officers and Councillors is an essential part of this cooperation.

- 10.1 All confidential information held by the Council, in whatever form, remains confidential to the council and subject to the requirements of the Data Protection regulations, unless and until such confidentiality is waived by the Monitoring Officer. Any dispute will be determined by the Monitoring Officer in consultation with the Corporate Governance and Standards Committee.
- 10.2 Officers and elected Members are responsible for ensuring that personal information and data is only handled and processed in accordance with the provisions of the Data Protection Act 2018 and to familiarise themselves with their obligations under the 2018 Act accordingly.
- 10.3 Officers and councillors who require advice or assistance in relation to their duties under the Data Protection Act 2018 should take advice from the Monitoring Officer or the Information Rights Officer as appropriate.
- 10.4 Councillors can approach any Executive Head of Service to ask for information or seek advice. In the event of any difficulty, councillors should approach the relevant Strategic Director or the Joint Chief Executive.
- 10.5 All councillors have a statutory right to inspect any council documents² which contain material relating to any business which is to be transacted at a Council, Executive, committee or sub-committee meeting.
- 10.6 The over-riding principle is that Councillors should be given access to all documents², unless there is a justifiable reason for refusal. This reason must be clearly explained. Councillors wishing to view confidential information will be required to justify the request in specific terms.
- 10.7 Councillor access to council documents² is a common law right in so far as access to the document in question is reasonably necessary to enable the councillor to perform their duties. This is commonly known as “the need to know” principle. Where information is being withheld the Executive Head of Service will advise the councillor why it is being withheld.
- 10.8 In case of difficulty, the Executive Head of Service or councillor may seek the advice of the Monitoring Officer.
- 10.9 Members should be kept fully informed and consulted by Officers on all significant matters affecting their Ward or other area of responsibility. If a matter is urgent or sensitive, Officers must ensure Members are made aware as soon as reasonably possible and before the matter is made public.
- 10.10 All information permitted to a councillor will be provided under the terms of the

² Council documents in whatever format

PART 5 – PROTOCOL ON COUNCILLOR /OFFICER RELATIONS

Councillors' Code of Conduct and must be provided only for the reason requested and will not be shared except under terms set out in the Code.

- 10.11 Any councillor found to be or suspected of being in breach of the requirement to keep the confidentiality of items taken 'in committee' may be the subject of a Code of Conduct complaint.

11. COUNCILLOR/OFFICER RELATIONSHIPS

- 11.1 Working relationships between councillors and officers must always remain and appear professional and impartial.
- 11.2 A Strategic Director will be responsible for the contents of a report. Councillor queries about report contents will be addressed to the report author. Issues arising between a councillor and a report author will be referred to the appropriate Strategic Director. If unresolved the matter will pass to the Joint Chief Executive for resolution, in consultation with the Council Leader.
- 11.3 Officers work closely with councillors, but they are accountable to their Executive Head of Service or Strategic Director and cannot go beyond the bounds of whatever authority they may have been given by their Executive Head of Service, Strategic Director or by the Council.
- 11.4 It is appropriate for members of the Overview and Scrutiny Committee to ask officers to explain and justify advice given to councillors, whether on the Executive or otherwise, and to justify decisions officers have taken under delegated powers.
- 11.5 Where requested to provide information to the Overview and Scrutiny Committee, officers will provide that information in as a comprehensive and timely fashion as if the request had come from the Executive.

12. CORRESPONDENCE

- 12.1 Correspondence between a councillor and an officer, will not be copied by the officer to any other councillor, unless the councillor who initiated the correspondence copied it to other councillors in which case the officer shall copy his correspondence to those other councillors.
- 12.2 If it is necessary to copy correspondence to another councillor, this should be made clear to the original councillor through notation on the correspondence.
- 12.3 A system of 'silent copies' (Bcc) should never be employed. Correspondence sent to all councillors or groups of councillors will make the circulation list clear.
- 12.4 Official letters on behalf of the Council will be sent in the name of the appropriate officer rather than in the name of a councillor. Letters which create obligations or give instructions on behalf of the Council will never be sent out in the name of a councillor.
- 12.5 Councillors and officers will undertake training in the principles of the General Data Protection Regulation and will apply those principles when producing and storing personal information.

13. WARD COUNCILLORS

- 13.1 Whenever a significant meeting is organised by the Council to consider a local issue, all councillors representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, ward councillors will be notified at the outset of the exercise.
- 13.2 Officers will not normally attend meetings arranged by councillors unless this has been discussed and agreed with the appropriate Executive Head of Service or Strategic Director in advance in order that proper representation and briefing can be arranged.

14. CEREMONIAL EVENTS

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

15. ROLES OF COUNCILLORS AND TRAINING REQUIREMENTS

- 15.1 Councillors are asked to commit to the Training and Development opportunities that are afforded to elected Councillors, including a full Induction Programme at the commencement of each term of office. There are also mandatory training requirements for the Regulatory Committees (Planning and Licensing) to which Councillors, appointed to serve on these Committees, are required to commit.

16. INDEPENDENT / CO-OPTED PERSONS

- 16.1 This protocol applies equally to those persons who are co-opted on to any of the Council's committees or any other bodies.

17. ACCESS TO OFFICERS

- 17.1 Officers will always be available to ward councillors to discuss any issues of concern in their ward or area of responsibility.
- 17.2 With the Council-wide use of e-mail, Councillors 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 Councillor should seek to telephone the Officer and if required, arrange a convenient meeting.

- 17.3 Ward councillors are encouraged to contact relevant officers in advance of committee meetings to discuss any concerns.

18. UNDUE PRESSURE

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

Councillors should:

- Be aware of how they speak with and relate to officers, avoiding undue pressure;
- Avoid personal attacks on officers, particularly in publications, press statements or meetings attended by the public;
- Avoid words or actions which could undermine respect for officers by the public;
- 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

Officers should:

- Be aware of how they speak with and relate to Councillors;
- Remember at all times that they work in a political environment;
- Any Officer who is personally connected to a Councillor must notify his/her Strategic Director. Officers must not use undue influence over a Councillor, nor develop close personal friendships that could compromise or be perceived to compromise the integrity of their actions.

SUMMARY

The working relationship between councillors and officers is integral to the successful operation of an effective local authority. Politicians and managers have vital roles to play in providing a form of joint leadership which is based on shared knowledge, skills and experience. And at the heart of this relationship should be a common vision, shared values and mutual respect.

PART 5 – PROBITY IN PLANNING
PROBITY IN PLANNING LOCAL CODE OF PRACTICE –HANDBOOK FOR
COUNCILLORS AND OFFICERS

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1. Foreword

- 1.1 This Probity in Planning guide is for councillors and planning officers and reflects the requirements of the Localism Act 2011, the recommendations of the Third Report of the Committee on Standards in Public Life ('Nolan Report'), Local Government Association guidance and the Council's own experience.
- 1.2 The guidance clarifies how all councillors should understand their roles and responsibilities when involved in planning discussions, plan making and determining planning applications.
- 1.3 It is important that councillors and officers familiarise themselves with this guidance and with the other Codes and Protocols which sit alongside it in Part 5 of the Council's Constitution. Councillors must ensure that their conduct accords with the requirements of the Councillors' Code of Conduct and Protocol on Councillor/Officer Relations. Equally, officers must ensure that their conduct accords with the Code of Conduct for Staff and the Protocol on Councillor/Officer Relations.
- 1.4 Councillors should note that this guidance does not constitute legal advice.
- 1.5 Any councillor or officer with any doubts about the matters presented in this guidance should contact the Monitoring Officer for clarification.

2. Introduction

- 2.1 The planning system involves taking decisions about the use and development of land. It is not an exact science and relies on informed judgement within a firm policy context. It is important that all concerned (applicants, objectors, practitioners, officers, councillors, and the general public) have complete confidence in the integrity and transparency of the system.
- 2.2 Councillors are required to adhere to the following general principles prescribed by the Localism Act 2011, as attached to the Councillors' Code of Conduct:
 - **Selflessness.** Holders of public office should act solely in terms of the public interest.
 - **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves their family or their friends. They must declare and resolve any interests and relationships.
 - **Objectivity.** Holders of public office must act and take decisions impartially, fairly and on merit using the best evidence and without discrimination or bias.
 - **Accountability.** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
 - **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
 - **Honesty.** Holders of public office should be truthful.

- **Leadership.** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Officers are also obliged to adhere to the above-mentioned principles.

- 2.3 The Councillors' Code of Conduct makes clear that, in taking public office, councillors must accept constraints on their behaviour. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.
- 2.4 This local code of practice has been prepared to reflect government guidance within the local context of Guildford. It is intended as a guide to councillors and officers to ensure that decisions are taken impartially, without bias and are well founded.

3. Planning policies and the Local Plan

- 3.1 This local code of practice also applies to decisions on development plans, supplementary planning guidance or other policy documents.
- 3.2 Local plans must be positively prepared, justified, effective and consistent with national policy in accordance with section 20 of the Planning and Compulsory Purchase Act 2004 (as amended). Decisions must be taken in accordance with the provisions of the Development Plan and councillors must vote in accordance with it unless there are mitigating material considerations.

4. Applicability of the Code

- 4.1 This code of practice is intended to be a guide for councillors and officers as to the conduct expected of them on matters relating to planning in the Borough.
- 4.2 Councillors and others to whom this code applies must make their own judgments as to its application to specific planning matters, including individual planning applications. In most cases, its applicability will be clear. If any councillor is in doubt, they should seek advice from the Monitoring Officer. However, the final decision must be for the councillor to determine.

5. Breaches of the Code

- 5.1 A breach of the code is a serious matter and, although usually not amounting to a breach of the criminal law, may incur an adverse report from the Local Government Ombudsman and/or action under the Councillors' Code of Conduct.

6. Training

- 6.1 The Council requires that all councillors receive an introduction to planning training session when they are elected. It is important for all councillors, not only those sitting on the Planning Committee, to receive this training as some complex applications can be referred to full Council for determination. No member or substitute member of the Planning Committee shall be permitted to sit on the Committee as a decision-maker unless they have completed the introduction to planning training session.

- 6.2 For those members sitting on the Planning Committee further training sessions are delivered regularly. It is important that members and substitute members attend all training sessions so that any risk for the Council is kept low and the local community can be reassured that those determining Planning matters have the knowledge to be able to do so.
- 6.3 Members of the Planning Committee or substitute members who are absent when training is delivered must ensure they view the training recorded on the webcast to familiarise themselves with the training provided.
- 6.4 All councillors will receive training on the Councillors' Code of Conduct to remind them of the responsibilities of public office and remind them to review their register of interests regularly.

7. Role of the Councillor

- 7.1 Councillors and officers have different but complementary roles. Both serve the public, but councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole.
- 7.2 The Court of Appeal has held that Planning Committees are not acting in a judicial or quasi-judicial role when deciding planning applications but "in a situation of democratic accountability". Planning Committee Members **must** therefore:
1. act fairly, openly and apolitically;
 2. approach each planning application with an open mind, avoiding pre-conceived opinions;
 3. carefully weigh up all relevant issues;
 4. determine each application on its individual planning merits;
 5. avoid undue contact with interested parties;
 6. ensure that the reasons for their decisions are clearly stated and
 7. consider the interests and well-being of the whole borough and not only their own ward.
- 7.3 The above role applies also to councillors who are nominated as substitutes to the Planning Committee. Equally, the conduct of members of any working party or committee considering planning policy must be similar to that outlined above relating to the Planning Committee.

8. Role of the Planning Officer

- 8.1 Officers advise councillors and the Council and carry out the Council's work. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.
- 8.2 Planning officers advise councillors impartially on planning policy and planning applications. They will:
1. provide professional, objective and comprehensive advice;
 2. provide a clear and accurate analysis of the issues;
 3. advise on the development plan and other material considerations;

4. give a clear recommendation; and
5. implement the Committee's/Council's decisions (including those made by officers under powers delegated to them).

9. Role of the Monitoring Officer (or representative)

9.1 The Monitoring Officer will give clear, impartial, and objective advice to councillors:

- on legal issues arising out of the conduct of the Committee's functions; and
- regarding the implementation of the Committee's decisions and proposed courses of action

9.2 The Monitoring officer will implement the Committee's/Council's decisions so far as they require the completion of any legal agreements, institution/defence of any proceedings, issuing of notices etc.

9.3 The Democratic Services and Elections Manager (or representative) will also give clear, impartial, and objective advice to councillors as necessary on administrative issues arising out of the conduct of the Committee's functions.

10. Disclosure and Registration of Interests (see also Annex 1)

Disclosable pecuniary interests (DPIs).

10.1 A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). Councillors, or their spouse/partner, with a DPI in relation to any item on the Planning Committee agenda, may not speak on that item and should absent themselves from the debate and the vote. There is clear guidance in the Councillors' Code of Conduct on what constitutes a 'disclosable pecuniary interest'. The Council has a publicly available register of councillors' interests, a copy of which is also available for inspection on the Council's website: [Your Councillors - Guildford Borough Council](#).

Non-pecuniary interests

10.2 If a councillor has a non-pecuniary interest they must declare it at the meeting, but they may speak on the item and need not absent themselves from the debate or the vote. Councillors should check with the Monitoring Officer if they are in any doubt. A non-pecuniary interest is an interest that may, in the mind of a reasonable observer, affect a councillor's objectivity or judgement of the public interest. Examples of non-pecuniary interests include, but are not limited to:

- (a) membership of organisations to which the councillor has been appointed or nominated by the Council and in which the councillor holds a position of general control or management, or
- (b) membership of, or holding a position of general control or management in, any body
 - that exercises functions of a public nature;
 - that is directed to charitable purposes; or
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

10.3 It is very important that councillors disclose any interests they may have in particular schemes at the earliest opportunity. This requirement relates to individual planning applications and planning policies and proposals, which are being developed in development plans, supplementary planning guidance or development briefs.

10.4 Interests must be disclosed by councillors before the Committee discusses the item concerned. Such disclosures are usually taken at the start of the meeting and are recorded in the minutes.

Officers' interests

10.5 It is also important for officers to disclose interests in writing to their Joint Executive Head of Service /Joint Strategic Director, if they consider that those interests might affect their objectivity. In such circumstances, officers shall take no part in any decision-making process which relates to or affects those interests.

10.6 The Council also holds a register of officers' interests, which is not available to the public.

Gifts and Hospitality

10.7 The Councillors' Code of Conduct sets out rules on acceptance of gifts and hospitality by councillors. There is also guidance for officers and a hospitality register is held within directorates.

11. Predisposition, Predetermination or Bias

11.1 It is entirely permissible for Committee Members, who are democratically accountable decision makers, to be predisposed towards a particular outcome. Nonetheless, they must address the planning issues before them fairly and on their individual merits. That means they can have a view on the application but must not make up their minds on how to vote before formally considering the application, listening to the officer presentation, any representations and the full debate. Committee Members must have an open mind to the merits of a proposal before it is formally considered at the Committee meeting and they must be prepared to be persuaded by a different view in the light of any detailed arguments or representations concerning the particular matter under consideration.

12. Limiting discretion

12.1 Councillors being involved with a matter that they will later be called upon to take a decision on as a member of the Council can limit their discretion.

12.2 Pressure is sometimes put on councillors to comment on a matter before the meeting, either in the press or on social media. Councillors should not put themselves in a position where it appears they have already taken a view. Councillors should always say that they will consider all the facts and take a decision based on the merits of the case presented.

13. Members of more than one tier of local government

13.1 Provided a member of the Planning Committee has not acted at parish or county level, in so far as they will have predetermined the matter, then they may remain in

the Committee meeting to speak and vote.

13.2 Councillors serving on other councils may reserve their right to change their position when more information is provided at the Planning Committee meeting. More information may become available in the Planning Officer's report, which will include all representations.

14. Development proposals submitted by the Council, councillors and officers

14.1 Planning applications submitted by individual councillors or officers will be determined by the Planning Committee and not under delegated powers in order to maintain propriety and transparency.

14.2 Any councillor submitting a planning application is likely to have a disclosable pecuniary interest and must follow the guidance set out in the Councillors' Code of Conduct.

14.3 Aside from minor Council applications, which can be approved under delegated authority proposals for the Council's own development will be treated with the same transparency and impartiality as those of private developers.

14.4 The Council has a corporate duty to ensure that:

- (i) Its development management functions are undertaken by identified persons provided with the necessary resources and acting impartially and objectively;
- (ii) any person acting or assisting in the handling of a planning application is prevented from being involved in promoting or assisting in the promotion of the application and/or the development; and
- (iii) any person involved in promoting or assisting in the promotion of the development is prohibited from giving any instructions to, or putting any pressure upon, any person acting or assisting in the handling of the planning application, or from attempting to do so.

14.5 It is recognised good practice to ensure that portfolio holders do not sit as members of the Planning Committee given the potential conflict of interest that is likely to exist in respect of applications in respect of the Council's own developments or developments which directly affect the Council's land or property.

15. Lobbying and Negotiations

15.1 Lobbying is usual during the planning process and those affected by an application will seek to influence individual councillors and the Planning Committee. Councillors should expect to be contacted in this regard and should listen to all views.

15.2 Councillors may offer advice, for example suggesting to those lobbying that they write to the planning officer or register to speak at the Committee but should take care when being lobbied that any comments they make do not give the impression that they have predetermined the matter. Instead, they should make it clear that they will not make a final decision until they have heard all of the arguments at the Committee meeting.

- 15.3 Political group decisions must not be taken on planning applications and related matters and councillors should not lobby one another or agree with one another on how to vote.
- 15.4 Councillors should adhere to the Protocol on Councillor/Officer Relations at all times and should not attempt to influence or to apply pressure to officers in any way. (If a councillor is concerned about the recommendation or the advice a case officer is giving, the Joint Executive Head of Planning Development or the Joint Strategic Director (Place) must be informed immediately.)
- 15.5 Councillors on the Planning Committee may receive correspondence from the public asking them to reject or grant an application. If the correspondence is received before the officer has completed their report, the councillor should direct the author to submit their representations via the website: [Search for information about a planning application - Guildford Borough Council](#).
- 15.6 If the correspondence is received after the officer has completed their report and before the Planning Committee meeting sits, the councillor should forward the correspondence to the Planning Committee's Democratic Services Officer, who will forward to the whole Planning Committee and the relevant planning officer(s).
- 16. Pre-Application Discussions including Planning Performance Agreements (PPAs)**
- 16.1 Pre-application discussions with potential applicants are an essential part of the planning process and help identify problems and address issues before the submission of an application. They can also be used to identify the right means of engagement before and during the application process. Such discussions are led by officers and the Council has a paid pre-application advice service and PPA service in place to ensure all discussions take place correctly. Councillors should be cautious of being approached in an attempt to circumvent this normal process. If any enquiries are received about obtaining pre-application advice, the Councillor should direct the enquirer to the Council's website: [Apply for our pre-application advice - Guildford Borough Council](#). Pre-application advice is confidential until the submission of an application and the applicant's consent must be gained before disclosing the advice. If a Councillor takes part in the pre-application process, they must be mindful of this confidentiality.
- 16.2 If a potential applicant requests a meeting with a Councillor, either before or after a pre-application enquiry has been made, the Councillor should contact officers before agreeing. The officer will advise whether a meeting at this stage is appropriate. If a meeting does take place as a matter of course an officer should be present. These should generally be in exceptional circumstances so as not to undermine normal pre-application discussions and to ensure good use of officer and Councillor time.
- 16.3 For large scale development proposals, it is appropriate to include relevant Councillors; however, this will normally be a briefing from officers rather than as direct engagement with the developer. Initially it will be for the officer to determine whether this briefing should take place.

- 16.4 As part of the pre-application advice process on larger developments a [Design Review Panel](#) process is also offered. This comprises design experts who are independent from the Council, more information on this process is available online. Relevant ward councillors would be invited to attend that review.
- 16.5 There should be a record of any meetings which take place. It should be agreed ahead of the meeting who will be responsible for taking notes/records (applicant/officer/ councillor etc). Before being finalised, those notes should be circulated to attendees to ensure transparency. A copy will then be placed on the pre-app file for record.
- 16.6 Occasionally, a third party may make a request to make an informal presentation to councillors on development proposals that do not form part of any formal planning application, and which do not fall within the formal Application or Pre-Application process. The Council has adopted a protocol to establish clear guidance to third parties and the Council in respect of such requests, and to promote an environment of openness and transparency. The protocol is attached as **Annex 2**.

17. Publicity

- 17.1 There are statutory requirements in place around advertising planning applications dependent upon the type of application received these are primarily set out in the Development Management Procedure Order:
- [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/595/contents/made).
<https://www.legislation.gov.uk/uksi/2015/595/contents/made>
- 17.2 The Council will publish how it will carry out its duties to publicise applications in the Statement of Community Involvement which can be accessed on the Council's website:
- [Find out how we involve the community in our policies - Guildford Borough Council](https://www.guildford.gov.uk/sci). <https://www.guildford.gov.uk/sci>
- 17.3 Interested parties will have up to 21 days to respond with the exception of 'permission in principle' applications, where interested parties only have 14 days in which to respond. The Council cannot determine an application until this period has expired.
- 17.4 If an application is amended, the case officer will consider whether the extent of the changes requires a 're-consultation' and will determine the length of time, this will not normally be less than 7 days.
- 17.5 Anyone can respond to a planning application regardless of whether they have been formally notified. All comments received are made public as part of the planning application process (although sensitive information is redacted online)
- 17.6 Comments on an application should be made via the Council's website: [Search or comment on a planning application - Guildford Borough Council](https://www.guildford.gov.uk/commentonaplanningapplication)
<https://www.guildford.gov.uk/commentonaplanningapplication> where progress of the application can also be tracked.

If that is not possible, comments may be submitted by email to: planningenquiries@guildford.gov.uk or by letter to the Joint Executive Head of Planning Development.

17.7 The purpose of this process is to seek people's views on the application. It is not possible to respond to individual written representations or enter into correspondence.

17.8 The number of representations received can affect whether an application is referred to Planning Committee (see paras 18.2 and 18.3 below).

18. Planning Applications

18.1 All planning applications are determined either under delegated powers by officers or by the Planning Committee.

18.2 Planning applications are designated by statutory classes set out by regulation and these fall into three main categories:

- Major applications
- minor applications
- householders and others (these include listed building consent and advertisement consent applications)

Major development

- 10+ dwellings/over half a hectare/buildings exceeding 1000 sq. metres
- Office/light industrial – 1000+ sq. metres/1+ hectare
- Retail – 1000+ sq. metres/ 1+ hectare
- Gypsy/traveller site – 10+ pitches
- Site area exceeding 1 hectare

Minor development

- 1-9 dwellings (unless floor space exceeds 1000 sq. metres or the site area exceeds half a hectare)
- Office /light industrial - up to 999 sq. metres/under 1 hectare
- General industrial – up to 999 sq. metres/under 1 hectare
- Retail – up to 999 sq. metres/ under 1 hectare
- Gypsy/traveller site – 0-9 pitches

18.3 Planning applications are referred to the Planning Committee in the following cases:

- where the number of representations contrary to the officers' recommendation received triggers the public speaking requirements at Planning Committee (as set out in Public Speaking Procedure Rules in the Council's Constitution):
 - for all householder and other applications: 10 representations
 - for all Major and Minor applications: 20 representations;
- all major applications submitted by Guildford Borough Council;
- when a councillor or a Council employee has submitted an application, or when the applicant is related to a councillor or council employee;
- when a Joint Strategic Director asks the Committee to decide; or
- when a councillor refers an item to planning committee for planning reasons.

- 18.4 Councillors are notified of all planning applications within their wards via the weekly lists. Councillors' comments received will be taken into account in determining the application; however, councillors who are members (or substitute members) of the Planning Committee should not provide a clear opinion either way at this stage as it could prejudice their ability to vote on the matter should it come before the Committee. At any point prior to the Committee meeting, should councillors wish to give an opinion, they are advised to state that this is their opinion based upon the information currently available, which may change in the light of additional information. Councillor comments are kept on file.
- 18.5 Under the Council's Constitution, there is the ability to refer planning applications to full Council for consideration. In those circumstances, this code of practice would equally apply to consideration of such applications by all councillors (see Council Procedure Rule 26 (c)).
- 18.6 In addition to planning applications, the Council also deals with other types of applications which are not subject to referral to Planning Committee as they deal with matters of fact rather than planning policies and/or are subject to determination deadlines which can result in 'deemed' consent being granted. These include:
- certificates of lawful development/use (existing and proposed)
 - applications for prior approval or prior notification

19. Councillor 'call-up' to Planning Committee (see Annex 3)

- 19.1 Councillors should use call up powers responsibly. There are likely to be many applications where Councillors may disagree with part of the recommendation. However, applications should only be referred to Planning Committee where there are strong planning grounds to do so. Referrals should not take place because an alternative development would be preferred or because of prior conduct of the applicant (including because the application is retrospective). By getting involved at an early stage, councillors can have their opinions and suggestions considered by officers and there is the opportunity for discussion.
- 19.2 The process for councillors to refer applications to the Planning Committee is set out in **Annex 3**.
- 19.3 Exclusions to this process are all Lawful Development Certificate applications; Prior Approval applications; Section 211 notifications (Trees in Conservation Areas), and Statutory Consultations from other authorities including Surrey County Council.
- 19.4 The officer report is confidential until it is published on the Planning Committee agenda, if it is referred to Committee, or until the application is determined under delegated powers, and must not be shared or forwarded to the applicant, agent, Parish Council, or third parties before this.
- 19.5 If, in the opinion of the Joint Executive Head of Planning Development and/or the relevant Joint Strategic Director, a call up request is not based on planning grounds then the request can be refused; however, officers will always explain their reason to the relevant Councillor.

19.6 Councillors who have exercised call-up will normally be expected to speak to the item when it is considered by the Planning Committee provided that, in the case of Planning Committee members, they have not demonstrated a predetermination.

20. Site Visits by Planning Committee members

20.1 Committee site visits may be conducted either before the meeting of the Planning Committee at which the application is to be determined following a request by a councillor, or the Committee may decide at the meeting to conduct a site visit. However, there may be circumstances where the Joint Executive Head of Planning Development considers the application to be of sufficient scale/importance that a site visit should be arranged irrespective of any request by Councillors. All formal site visits should follow the provisions of the Site Visit Protocol set out below.

Pre-Committee meeting Site Visits requested by a councillor

20.2. Pre-Committee meeting Site Visits assist with the debate at the meeting and avoid further delay to the determination of the application. Such site visits may be initiated on request by a councillor:

- when making a call up request, or
- following the publication of the Committee agenda by detailing their request to the Democratic Services Officer by no later than midday on the Thursday of the week prior to the Planning Committee meeting.

20.3 The request for a site visit is discussed in liaison with the Chairman of the Planning Committee and Joint Executive Head of Planning Development at the Chairman's Briefing (which is generally held in the afternoon on the Thursday prior to the Planning Committee meeting). If the Chairman and Joint Executive Head of Planning Development agree the request for a site visit, the Democratic Services Officer will confirm the site visit details with the Planning Committee members and the applicant.

20.4 Pre-Committee meeting site visits are scheduled to be held on the Tuesday, the day before the Planning Committee meeting commencing at approximately 9:30am.

Site Visits agreed by the Committee

20.5 Site visits can also be requested at a Planning Committee meeting. Reasons should be given as to why a Pre-Committee meeting site visit was not requested. Councillors must be mindful of the delay such a deferral will cause to the application and the implications, including possible appeal against non-determination. If the request is supported by the Committee, the application will stand deferred to enable a site visit to be scheduled at an agreed date and time. The Democratic Services Officer will confirm the site visit details with the Planning Committee members and the applicant.

20.6 The Committee minutes will show the planning reasons for the decision to hold a site visit.

Site visit protocol

- 20.7 In all cases site visits should only be held in circumstances in which it is not possible for councillors to make an informed decision on the application without seeing the site for themselves. Examples of such circumstances include:
- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
 - the comments of the applicant and objectors cannot be expressed adequately in writing
- 20.8 Site visits are generally not appropriate in cases where purely policy matters are at issue.
- 20.9 A planning officer and the Democratic Services Officer will attend all formal site visits.
- 20.10 Site visits are:
- fact finding exercises.
 - not part of the formal consideration of the application and, therefore, public rights of attendance and speaking by applicants and objectors do not apply.
 - to enable officers to point out relevant features.
 - to enable councillors to ask questions on site for clarification. However, discussion on the merits of the application will only take place at the Planning Committee meeting when all parties will be present.
- 20.11 Councillors should not allow themselves to be addressed by individual parties, members of the public or applicants at formal site visits.
- 20.12 The Chairman of the Committee or, in their absence, the Vice-Chairman must maintain control over the conduct of the site visit which, whilst not part of a formal meeting of the Planning Committee, must be conducted as a single meeting and in an orderly fashion.
- 20.13 Planning Committee members who are unable to attend a formal site visit may, if they wish, visit the site informally but should be mindful of the provisions of the Site Visit protocol. Any councillor who may visit the site alone is only entitled to view the site from public vantage points and has no individual rights to enter private property. If alone, it is not good practice to enter the site if invited by the owner, as this can lead to the perception that the councillor may no longer be impartial.

21. Planning Committee

- 21.1 The Planning Committee is made up of 15 borough councillors. A number of other councillors are named as substitute members of the Committee.
- 21.2 Planning Committee meetings are held in the Council Chamber, and usually take place every four weeks on a Wednesday evening beginning at 7pm. Sometimes there are special meetings to discuss major or strategic applications.

- 21.3 Agendas are published on the Council's website five clear working days before each meeting.
- 21.4 Any member of the public can attend Planning Committee meetings and listen to the discussions about applications and other matters on the public part of the meeting agenda.
- 21.5 The Planning Committee makes decisions on about 5% of the planning applications the Council receives. The Joint Executive Head of Planning Development decides all other applications under delegated powers.
- 21.6 All meetings are open to the public (s100 Local Government Act 1972). Where there are aspects of a matter which are required to be dealt with in private, the Committee may pass a resolution to exclude the public from the meeting (s100A(4) LGA 1972). That resolution must identify the matters to which it refers and state the description of the "Exempt Information" under the relevant paragraph(s) of Part 1 of Schedule 12A to the LGA 1972.
- 21.7 Unless otherwise decided by a majority of councillors present and voting at the meeting, all meetings shall finish by no later than 10.30pm. Any outstanding items not completed by the end of the meeting shall be adjourned to a reconvened meeting or the next ordinary meeting of the Committee.

Procedures for dealing with planning applications at Planning Committee

- 21.8 Councillors (who are not Planning Committee members) who wish to speak on a planning application on the agenda, whether the site is inside or outside of their ward, may do so with the consent of the Chairman of the Committee. They must register their wish to speak with the Democratic Services Officer by midday on the day prior to the Planning meeting and, if speaking in that capacity, cannot attend the meeting as a substitute.
- 21.9 Committee members wishing to speak for or against an application may for that item step away from the committee and speak from the seat allocated to ward councillors when they address the Committee but shall not be entitled to speak for more than three minutes. They shall then leave the chamber until the conclusion of that item. No substitute shall be allowed for that item.
- 21.10 Each speaker, including councillors or members of the public, may address the Planning Committee for a maximum of three minutes. In exceptional circumstances, the chairman can agree to speakers having longer than three minutes to address an item. An example of this would be a strategic site with multiple and complex issues.
- 21.11 Under Council Procedure Rules, the Chairman has the right to decline to hear anyone behaving improperly at the meeting.
- 21.12 No additional written evidence or information such as photographs, plans or models may be circulated at the meeting.
- 21.13 The procedure to be adopted in circumstances where the Committee wish to overturn the officer's recommendation is contained in **Annex 4**.

- 21.14 Officers might occasionally defer an application following publication of the agenda.
- 21.15 The Planning Committee might defer an application at the meeting. A motion may be proposed and seconded at any time during the debate to defer or adjourn consideration of an application. The Committee will do this if they run out of time to discuss it fully, if members feel additional information is required, or if they would like to make a formal committee site visit. In most situations, they will not defer an application until all speakers have spoken about it at a meeting.
- 21.16 If the Committee defers an application, and there has already been public speaking on this item at a meeting, there will be no further public speaking on it when it is discussed again by the Committee. However, the comments of speakers from the first meeting will be fully summarised in the updated report.
- 21.17 Councillors, objectors, the applicant and (where relevant) parish councils will be notified when an application is coming back to the Planning Committee following deferral.

22. Councillor behaviour in committee meetings

- 22.1 Councillors and officers will afford courtesy and respect to one another, and to all of those attending committee meetings and/or making representations.
- 22.2 Councillors will not pass notes in any format between themselves or others during the meeting.
- 22.3 Committee members and substitute members will not deliver pre-prepared speeches in support of, or in opposition to, any application giving the impression that they have pre-determined their decision.
- 22.4 It is considered acceptable for Committee members and substitute members to have prepared bullet points for any contributions they may make in advance of a meeting.

23. Webcasting

- 23.1 All Planning Committee meetings will be webcast. Webcasts of meetings will be suspended in circumstances where the Committee considers confidential or exempt information during the consideration of any matter.

24. Reports containing confidential or exempt information

- 24.1 Reports or sections of reports published on pink paper marked "Restricted" will be subject to confidentiality and may not be viewed or shared with any other person outside of the Council.
- 24.2 On occasion, owing to the sensitivity of a matter, the confidential item will only be handed out in hard copy at the meeting itself. Councillors will be given sufficient time to read through the report prior to debating the item and coming to a conclusion.

24.3 Councillors must ensure that their private papers are handed back to the Democratic Services Officer at the end of the consideration of that item. This is essential so that the papers can be confidentially shredded.

25. Public Speaking at Planning Committee (see Annex 5)

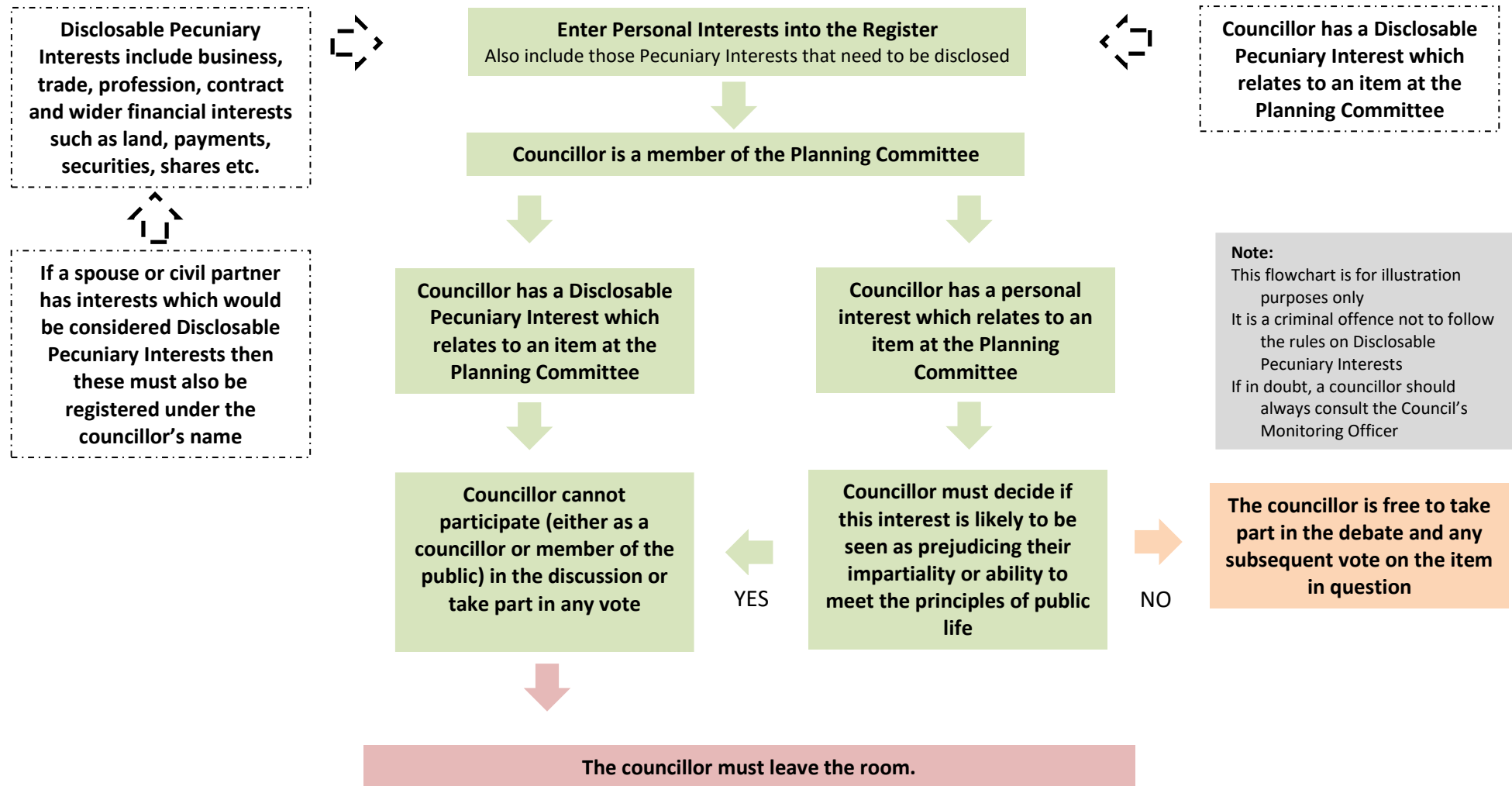
25.1 The Guide to Planning Committee Meetings, which deals with public speaking at Planning Committee Meetings, is attached as **Annex 5**.

26. Councillor representations on appeals against planning decisions

26.1 Where a councillor wishes to support an appellant on any appeal against a Council decision on a planning matter, that councillor shall give written notice of his or her intention to the Monitoring Officer and Executive Head of Service, as well as the appellant. Where the appeal is to be dealt with at an inquiry, the written notice shall be delivered not less than five working days before the start of the inquiry.

26.2 Councillors proposing to support an appellant at an appeal must in addition make it clear to the planning inspector that they are appearing in their personal capacity and not as a spokesperson for the Council.

Annex 1: Councillor interests



Annex 2: Protocol for informal presentations to councillors relating to development

A protocol to clarify the role of third-party informal presentations to the Council and to provide guidance to third parties and councillors on attending such informal presentations that **do not form part of any formal planning application, and which do not fall within the formal Application process and Pre-Application process.**

In the event of conflict between this protocol and the Councillor Code of Conduct or the Councillors' Handbook, (**the Codes**) the Code/Handbook shall take precedence.

PROTOCOL

Scope

1. This protocol covers any request made by a third party to make an **informal presentation** to councillors. A third party may also include the Council when acting as a developer, and/or landowner.
2. This Protocol seeks to establish clear guidance to third parties and the Council in respect of requests for and the presentation of third-party informal presentations to councillors, and to promote an environment of openness and transparency.

Informal Presentation Request

3. A request by a third party to make an informal presentation of information shall be made in writing to the relevant director setting out the reason(s) for the proposed presentation, the subject matter, and any other relevant information.
4. The director may agree or refuse the request or may agree to elements of the proposed presentation. Alternatively, the director may refer the request to the Executive or lead councillor (as appropriate to the proposal) together with any advice from the Monitoring Officer, to agree or to refuse the request or to agree to elements of it.

Refusal of Request

5. When a request is refused, the relevant director taking that decision will set out the reasons for the refusal, and provide the decision and reasons to the third party. A copy of the refusal decision and reasons will also be sent to the portfolio holder(s)/Lead Councillor(s) for Planning Development and Regeneration.

Acceptance of Request

6. The relevant director shall provide a copy of this protocol to the third party with the decision that the informal presentation may proceed.

The Presentation

7. When a request is agreed the informal presentation shall proceed in accordance with the following rules:

The third party

- 7.1 The third party will:
 - a. arrange the platform/venue and time of the meeting, at no cost to the Council. The date and time to be agreed by the relevant director. Presentations will, generally, be convened in the evening and recorded wherever possible for those councillors that are unable to attend.

- b. provide any presentation materials to the relevant director at least **5 working days** in advance
- c. invite all councillors via email: councillors@guildford.gov.uk
- d. keep a record of attendance at the presentation.
- e. ensure notes of what is said at the presentation are taken and circulated to the relevant director for comment within 5 days of the presentation and once agreed will share them with all councillors.
- f. ensure that the presentation is for information purposes only and will not lobby any councillor(s) for support.

The Council

7.2 The Council will:

- a. distribute any presentation materials to Councillors at least **2 working days** in advance of the informal presentation.
- b. ensure that at least one planning officer and one senior officer, from the Joint Management Team, shall be present during the informal presentation.
- c. ensure that no councillor will be involved in making a presentation as a representative of the third party or otherwise.
- d. require all councillors to disclose any interests in the matter, in accordance with the Councillors' Code of Conduct, before the presentation starts, and all disclosures made will be recorded as part of the notes referred to in (7.1 (e)) above.

All parties

7.3 All Parties will:

- a. ensure that all those present understand that the presentation does not form part of the Council's decision-making process and that the process of debate and determination of any matter arising will be undertaken in accordance with the Council's normal procedures.
- b. ensure that those present understand that Councillors may ask questions for clarification purposes. Should any view(s) be expressed by any councillor(s) at the informal presentation, it will not bind them, nor the Council, to any decision in respect of any subsequent planning application that may be submitted in respect of the development proposal.

This Protocol is to be reviewed on or before two years of the date of its adoption.

Annex 3: Process for Councillor ‘call-up’ to Planning Committee

Applications to be included in this process:

- All planning applications, including S.73 applications
- Listed building consent applications
- Advertisement consent applications
- Tree Work Applications for trees subject to a TPO

Applications excluded from this process:

- Lawful Development Certificate applications
- Prior approval applications
- Section 211 notifications (Trees in Conservation Areas)
- Consultations from other authorities

Process

Upon validation of relevant applications, they will be included on the weekly list of planning applications. Councillors will have 21 days from the date of publication of the weekly list to submit a committee referral.

Councillors will be requested to make one of the following responses:

- No comments
- I have concerns/see potential benefits (these must be planning considerations, directly related to the applications) and would like the application referred to committee. Please indicate planning concerns/benefits:.....
.....
- I consider that due to the specific circumstances/scale of the development it will have wide ranging planning implications and I would like the application referred to committee. Please specify the nature of the wide-ranging implications:.....
.....
- I do not wish to refer the application to Committee, but I would like the following comments/suggestions for conditions taken into consideration:
.....
.....

Where there is more than one Councillor representing a ward, all the ward councillors are able to comment.

Response to be sent via email directly to the case officer and copied to PlanningEnquiries@guildford.gov.uk to ensure that it is recorded on the file and not missed due to officer absence. The request will be detailed in the officer's report.

Where comments are raised that are NOT material planning considerations the case officer will advise the Councillor of this before drafting the report.

Determination/referral to Committee

The referral of the application MUST have regard to the Councillor(s) response and the following scenarios may occur:

- Where "No comments" are specified; or where no councillor response is received, the application will proceed under delegated powers. No further councillor contact required.
- Where a Councillor has made a comment the case officer will include it in the delegated report and notify the Councillor.
- Where the Councillor response is a request to refer to Committee. Their request will be referred to in the committee report. Should the application be amended, the officer will notify the Councillor to see whether their request stands.

All requests for referral to Planning Committee will be subject to ratification by the Chairman of the Planning Committee and Executive Head of Service (or Strategic Director). The draft agenda will be shared with the Chairman who can comment at that point on any of the Member referrals.

Before the case officer writes the committee report, they shall contact the councillor to indicate what their recommendation on the application is likely to be and the reasons for it. This would enable the councillor to consider whether they still wish to call-up the application to Committee.

Notes:

- (1) A councillor who has requested an application to be called-up to Committee may, following further consideration, withdraw that request.
- (2) These referral measures do NOT affect the automatic thresholds for Committee referrals i.e. number of representation letters received.

Reporting

Management information should be produced to facilitate reviews of the process. Subject to system constraints, the following information should be produced every 12 months and should include a comparison with the previous 12 months:

- Number of applications decided in the period
- Number and percentage of applications referred to the committee
- Number and percentage of referrals overturned by the committee
- Number and percentage of overturns upheld at appeal

Implementation

The new process will require changes to functionality of the current planning IT system. However, the new process will be implemented as soon as possible

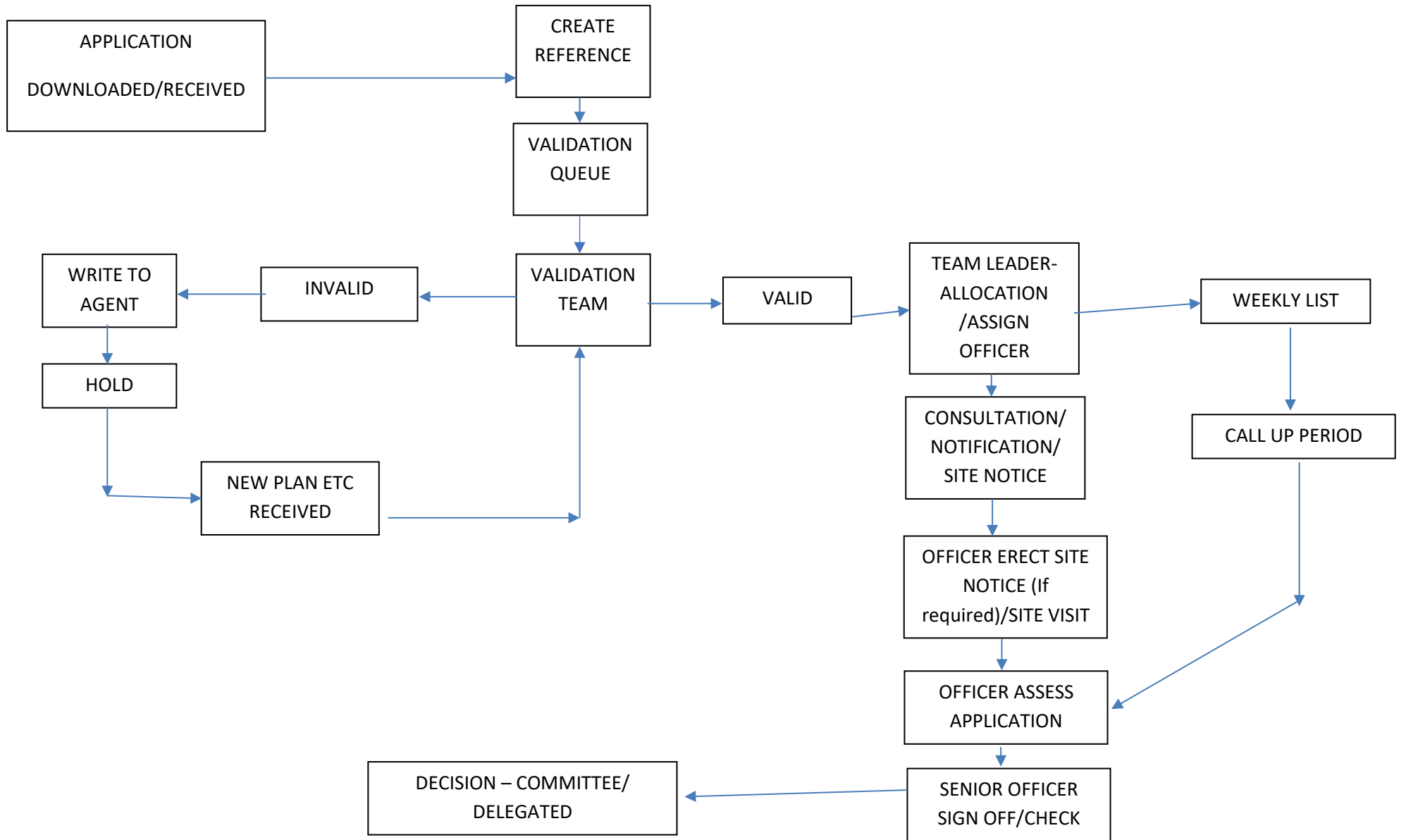
Reviewing

A review of this process shall be carried out after the first 12 months of operation following its adoption, or sooner if sufficient cause is identified by the Executive Head of Service following consultation with the Chairman and Vice Chairman of the Planning Committee. Any such review should seek views from officers and Councillors over the operation of this process. It should also look at the management information and compare with the previous system.

It is intended that this should offer a flexible framework and be adaptable. If issues arise which do not fundamentally alter the concept, then these operational changes should be put in place to allow for efficient working.

Longer term reviews of delegated processes should be undertaken at least every 24 months, led by the Executive Head of Service, in consultation with the Chairman of the Planning Committee. Officers should also seek the views of members during such a review.

Application Journey



Annex 4: Procedure for councillors overturning officer recommendations at the Planning Committee

If, during the debate on an application, it is apparent that Committee members do not support the officer's recommendation, the Chairman shall ask if any Committee member wishes to propose a motion contrary to the officer's recommendation, subject to the proviso that the rationale behind any such motion is based on material planning considerations. Any such motion must be seconded by another Committee member.

- Where such a motion proposes a refusal, the proposer of the motion shall be expected to state the harm the proposed development would cause in planning terms, together with the relevant planning policy(ies), where possible, as the basis for the reasons for refusal. In advance of the vote, the Chairman shall discuss with the relevant officers, the proposed reason(s) put forward to ensure that they are sufficiently precise, state the harm that would be caused, and refer to the relevant policy(ies) to justify the motion. The Committee shall take a separate vote on each proposed reason for refusal, following which the Committee shall take a vote on the motion to refuse the application based on all of the agreed reasons.
- Where such a motion proposes approval, the proposer of the motion shall be expected to state why the proposed development would be acceptable in planning terms, together with the relevant planning policy(ies), where possible. In advance of the vote, the Chairman shall discuss with the relevant officers the proposed reason(s) put forward to ensure that the planning reason for approval is sufficiently precise to justify the motion. In addition, the Committee shall discuss and agree the substance of the planning conditions necessary to grant a permission before taking a vote on the motion to approve.
- Where such a motion proposes deferral, (for example for further information/ advice) the Committee shall discuss and agree the reason(s) for deferring the application, before taking a vote on the motion to defer.

If the motion is not seconded, or if it is not carried, the Chairman will determine whether there is an alternative motion and, if there is not, the Chairman will move the officer's recommendation and ask another Committee member to second the motion. That motion will then be put to the vote.

Annex 5: Speaking at Planning Committee



GUILDFORD
BOROUGH

Guide to Planning Committee meetings



A guide for anyone who would like to:

- **know** how the committee process works;
- **attend** a Planning Committee meeting; or
- **speak** about an application at a Planning Committee meeting.

www.guildford.gov.uk

Introducing this guide

This guide explains what you need to know if you want to speak at or attend a Planning Committee meeting. You will find this guide useful if you:

- ✦ have applied for planning permission and your application is being considered by the committee;
- ✦ are the neighbour of someone whose planning application is being considered by the committee; or
- ✦ are interested in planning and how the Planning Committee makes decisions.

Attending a Planning Committee meeting

Where do Planning Committee meetings take place?

Our Planning Committee meetings are held in the Council Chamber, which is in the civic suite of Millmead House. The public entrance to the Council Chamber is signposted in the front car park at Millmead House.

Accessibility at Planning Committee Meetings

Planning Committee meetings are held in the Council Chamber which is accessed from the main reception up one flight of stairs. The main reception can be accessed via a disability ramp. The Council Chamber is accessible via a wheelchair accessible lift.

A hearing loop is also installed in the Council Chamber for those who are hard of hearing and use hearing aids. Please note that your hearing aid should be set to 'T'.

How often does the Planning Committee meet?

Planning Committee meetings normally take place every four weeks. Meetings normally are on Wednesday evenings and start at 7pm. Occasionally, there are special meetings to discuss major or strategic planning applications.

For a list of meeting dates please view our website at the following address:

<https://www.guildford.gov.uk/council>

Who can attend a Planning Committee meeting?

Any member of the public can attend our Planning Committee meetings and listen to the discussions about items on the public part of the meeting agenda.

In certain situations, you can speak at a committee meeting about a planning application you're interested in. If you would like to speak, you will need to arrange this with us before the meeting.

More information about speaking at Planning Committee meetings is given below.

There may be times when the Planning Committee needs to discuss confidential matters that are not on the public part of the agenda. Where this is necessary, the Chairman

will explain this at the meeting, and you will be asked to leave at the point at which the Committee decides to formally exclude the public from the meeting.

The public seating area is at the back of the Council Chamber, next to the public entrance. A layout plan of the Council Chamber is given on the back page of this guide showing the public seating area and where councillors and officers sit.

What does the Planning Committee do?

Our Planning Committee makes decisions on about 5% of the planning applications we receive. All other applications are decided by the Joint Executive Head of Planning Development under delegated powers.

The Planning Committee will make a decision on applications:

- for all householder and other applications, the trigger for Committee will be receipt of 10 written representations* or more contrary to the officer's recommendation;
- for all Major and Minor applications, the trigger for Committee will be receipt of 20 written representations or more contrary to the officer's recommendation;
- that are major applications submitted by Guildford Borough Council;
- that a councillor or a council employee has made, or when the applicant is related to a councillor or council employee;
- that the Joint Executive Head of Planning Development asks the Committee to decide; or
- that a councillor asks the Committee to decide for planning reasons.

* NB a "written representation" is defined as one written representation from an individual or organisation but does not include any subsequent representation(s) from the same individual or organisation in respect of the same planning application.

The agenda contains reports compiled by officers, which will include the recommendation along with any conditions or reasons for refusal. The reports are available for Members of the Committee to review prior to the meeting, along with the relevant plans and other information within the file.

Agendas are published five working days before each meeting. The agenda can be viewed on our website: [Browse meetings - Planning Committee - Guildford Borough Council](https://democracy.guildford.gov.uk/ieListMeetings.aspx?Committeeld=130)
<https://democracy.guildford.gov.uk/ieListMeetings.aspx?Committeeld=130>

Officers will carry out a brief presentation for each item, which may include relevant plans of the development and photographs of the site.

Who is on the committee?

The Planning Committee is made up of 15 borough councillors. A number of other councillors are named as substitute members of the Committee.

Contact details of the members of the Planning Committee can be viewed on our website: [Contact details - Planning Committee - Guildford Borough Council](https://democracy.guildford.gov.uk/mgCommitteeMailingList.aspx?ID=130)
<https://democracy.guildford.gov.uk/mgCommitteeMailingList.aspx?ID=130>

Webcasting Arrangements

Planning Committee meetings are recorded for live and/or subsequent broadcast on the Council's website. The whole of the meeting will be recorded, except where there are confidential or exempt items, and the footage will be on the website for six months.

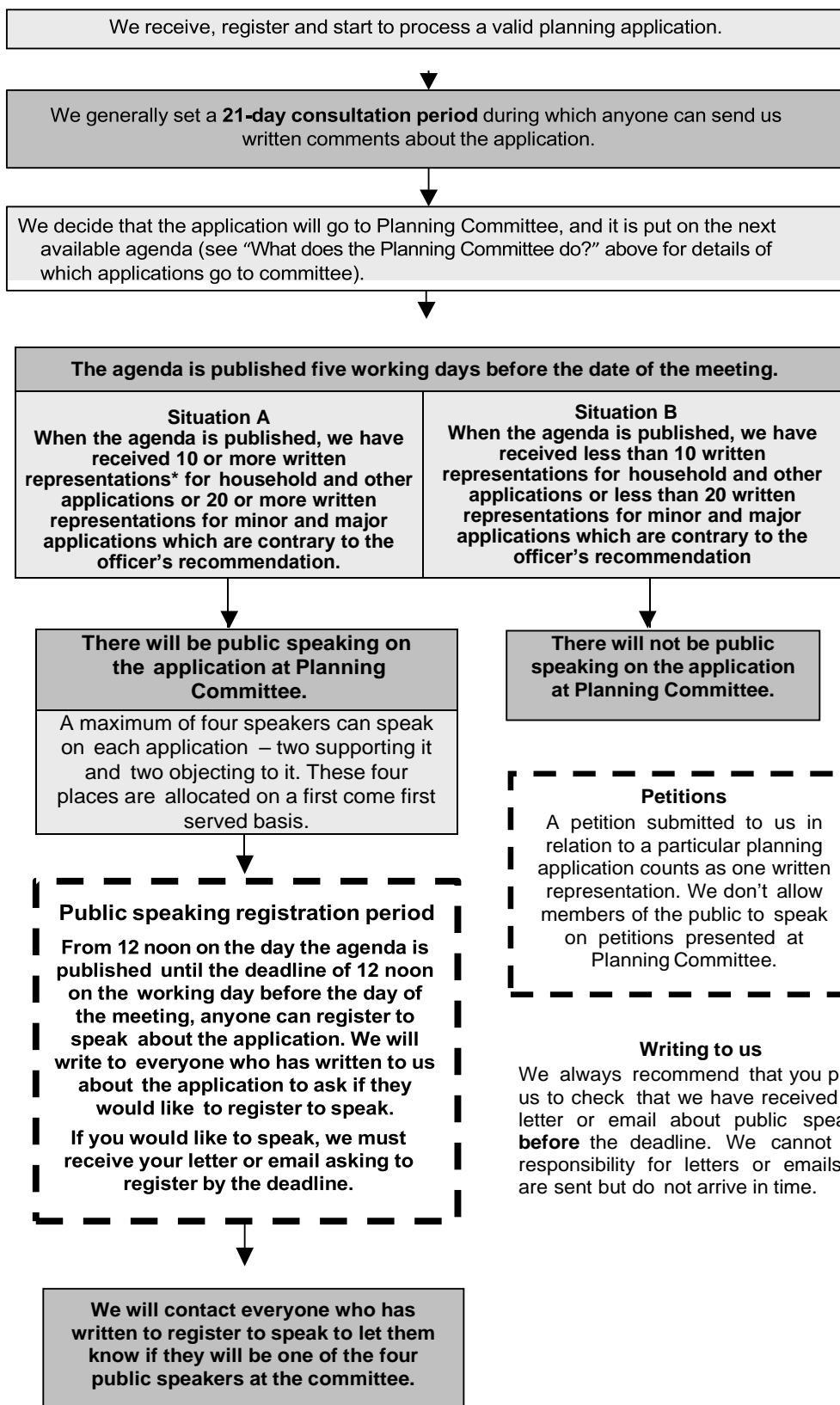
If you have any queries regarding the webcasting of meetings, please contact Committee Services by email on: committeeservices@guildford.gov.uk

The Public's Responsibilities

Members of the public must not be violent, abusive or threatening to councillors or officers and must not wilfully harm things owned by the Council, councillors or officers. Subject to available space, the public are entitled to attend public meetings of the Planning Committee but must comply with the ruling of the Chairman. They may not disrupt the meeting or cause undue disturbance, or they may be removed from the meeting. The display of banners or placards is not permitted in the Council Chamber or anywhere on the Council premises.

Speaking at Planning Committee meetings

The diagram on the following page explains the process for deciding whether public speaking will take place on a planning application being presented to the Planning Committee.



* NB a "written representation" is defined as one written representation from an individual or organisation but does not include any subsequent representation(s) from the same individual or organisation in respect of the same planning application.

Registering to speak

If you would like to register to speak on a public speaking item, registration starts at 12 noon on the day the agenda is published, which is five clear working days prior to the meeting. For example, planning committee meetings are normally held on a Wednesday, therefore the agenda is published on the Tuesday the week before. You must write to us or email us by **12 noon on the working day before the day of the meeting**. You must send your email or letter to:

Democratic Services Officer for the Planning Committee
Guildford Borough Council
Millmead House
Millmead
GUILDFORD
Surrey GU2 4BB

Email: committeeservices@guildford.gov.uk

Tel: 01483 444056

Your letter or email must contain:

- ✎ Your name
- ✎ Your address
- ✎ Your daytime phone number
- ✎ The planning application number
- ✎ The name of the development
- ✎ Whether you want to speak to support or object to the application

If I write to you about an application, do I have to speak at a meeting?

No, you don't. If we receive a letter or email from you within the 21-day consultation period for the application, we will include a summary of your comments in the Planning Officer's report.

If we receive your letter or email **after the agenda is published but before noon on the working day before the day of the meeting**, the Democratic Services Officer will include a summary of your comments in a document known as the 'Late Sheet'. This is given to councillors and the public at the meeting.

How many people can speak about each application?

Up to **four** people can speak about an application.

- ✎ Two speakers who **object** to the application.
- ✎ Two speakers who **support** the application.

As there can be no more than four speakers, we will only invite the first two people who write to us objecting to an application, and the first two people who write to us supporting an application to speak at the meeting.

A person can speak to the committee on behalf of others who support or object to an application. If we have written to tell you that you can speak at a meeting, we may pass your details to others who object to or support the application so that they can contact you. If you would prefer us not to pass your details on to others, please let us know.

How long can I speak for?

Each speaker has three minutes to speak. The Chairman will let you know when your three minutes are almost finished. You must make sure you cover all your points in those three minutes. You cannot ask councillors, officers, or other speakers any questions.

You are not allowed to use any presentation equipment when you speak at the meeting. For example, you cannot give a computer presentation or use an overhead projector or a slide projector.

Can I hand out information at the meeting?

No, you cannot hand out any documents (such as plans and photographs) at the meeting and you cannot display any models. If you wish to send in additional documentation, or information, you must do this in advance of the meeting and by no later than 12 noon on the working day before the meeting. This must be sent, preferably by email, to the Democratic Services Officer: committeeservices@guildford.gov.uk

If I am speaking at a meeting, when should I arrive?

You should arrive in the Council Chamber by 6.45pm. The Democratic Services Officer will introduce themselves and note your attendance.

What will happen at the meeting?

- Everyone who attends the meeting will be given a list of people who have registered to speak at the meeting.
- The committee will first consider the applications for which there is public speaking, in the order on the list of speakers.
- When the Chairman announces the name and number of the application you are interested in a planning officer will give a presentation on it.
- The Chairman will call each of the speakers in turn to go to the public speaking desk at the front of the Council Chamber to have their say.
- When you have finished your speech, you will be asked to return to your seat in the public seating area.
- When all the speakers have been heard, the committee will discuss the application. The public cannot take part in the discussion.
- The committee will make a decision on the application.

If you have registered to speak and you arrive late or don't turn up to the meeting, the committee will still make a decision on the application.

What happens if the Committee put off making a decision on an application until a future committee meeting?

The Planning Committee might sometimes decide to put off making a decision on an

application. This is known as 'deferring an application'. They will do this if they run out of time to discuss it fully, if members feel additional information is required, or if they would like to make a formal committee site visit. In most situations, they will not defer an application until all speakers have spoken about it at a meeting.

If the committee defers an application, and there has already been public speaking on this item at a meeting, there will be **no further public speaking** on it when it is discussed again at committee.

What issues should I speak about?

The Planning Committee can only take into consideration 'planning' issues relevant to the proposed development and cannot consider any other matters in its decision making. Therefore, when you are speaking to the Planning Committee you should focus only on Development Plan (local plan and neighbourhood plan) policies and other material planning considerations relevant to the Planning application that is being decided.

What are 'material planning considerations' and how are they determined?

Material considerations are decided by statements of national Government policy or by decisions of the courts. The following are examples of material planning considerations:

- Development Plan (local plan and neighbourhood plan) policies
- National Planning Policy Framework and other Government planning policy
- Overlooking / loss privacy
- Loss of light / overshadowing
- Effect on listed building
- Layout, density
- Design, materials
- Previous decisions/appeals
- Natural environment
- Flood risk
- Parking
- Highway safety
- Traffic
- Noise
- Disabled access

The following are examples of what are **not** material planning considerations:

- House prices and house insurance
- Personal circumstances
- The applicant - characteristics and conduct
- The strength or volume of opposition / objection
- Loss of a *private* view
- Damage to property or Party Wall Act matters
- Loss of trade
- Boundary disputes or covenants

In making its decision the Committee must take into account the officer's report.

The Committee cannot give weight to non-planning consideration in making a planning decision. The weight that should be attached to each material planning consideration in any particular case is for the Committee to determine as decision maker.

At the meeting

1. Please keep your speech to the subject of the application and material planning considerations. The Chairman will stop you speaking if you deviate from planning issues
2. Please do not make statements of a personal or slanderous nature or be abusive
3. During your speech, you are not permitted to refer to the conduct of officers or councillors or to the manner in which an application has been dealt with. The Council has a separate Complaints Procedure in place to deal with these issues
4. You are also not permitted to make personal comments about individual applicants, objectors, supporters or others involved in an application.
5. Do not interrupt other speakers, or the Committee during the debate
6. The Chairman of the Planning Committee has sole discretion on whether a person can speak or not and retains overall responsibility for the smooth running of the meeting. The Chairman's decision on procedural matters is final and must be adhered to.

If you would like more advice on what is a planning issue, please email planningenquiries@guildford.gov.uk or phone planning enquiries on 01483 444609.

For more information about committee meetings and speaking at a Planning Committee meeting, please contact the Democratic Services Officer for the Planning Committee, by emailing committeeservices@guildford.gov.uk, or by phone on 01483 444056.

The Council Chamber layout for a Planning Committee meeting

		Senior Solicitor	Democratic Services Officer	Chairman	Planning Development Manager	Planning Officer		
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Public Speaker												NPCMS
Cllr												Cllr
Cllr												Cllr
	Cllr	Cllr	Cllr	Cllr	Cllr	Cllr	Cllr	Cllr	Cllr	Cllr		

Cllr: Planning Committee Member
 NPCMS: Non-Planning Committee member speaker

Committee Room 1 public seating
Any other councillors who attend the meeting will sit here

Please contact us to request this document in an alternative format



GUILDFORD BOROUGH COUNCIL

PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

Introduction

1. The Council has extensive involvement with a wide range of external partnerships and organisations. Councillors may be informally involved on an individual basis with many organisations including community organisations, sports and recreation clubs, housing associations charitable trusts and companies. This Protocol relates to the formal appointment of councillors to external organisations by the Council. The main objective of these appointments is for the Council to develop positive relationships with local organisations in the interests of the local community.
2. Formal appointments include various roles ranging from advisory to membership of management committees as trustees or as company directors. Some roles will have legal duties and responsibilities which must be properly discharged and which can have implications for the Council as well as for the individuals themselves. Consequently, with any relationship involving external organisations there must be a clear definition of roles, responsibilities and accountabilities. This Protocol aims to assist councillors serving on external organisations to be clear on these matters and includes guidance for dealing with any conflicts of interest between the Council and the external organisations.
3. The main purposes of this Protocol are:
 - (i) to ensure that the Council's and individual councillors' interests are properly safeguarded and represented;
 - (ii) to ensure, whenever a councillor is appointed to an external organisation, that all such appointments are properly authorised, recorded and managed; and
 - (iii) to provide a formal procedure with relevant guidance to appointees.

Existing Guidance for Councillor Appointees

4. The matter of councillors' conduct is addressed by the Council's own local code of conduct ("the Councillors' Code"), which was adopted by the Council pursuant to Section 27 of the Localism Act 2011. The Councillors' Code appears in Part 5 of the Council's Constitution and covers matters of propriety in office, the acceptance of gifts and hospitality and rules relating to disclosable pecuniary interests. The Councillors' Code does not directly address the matter of any conflict between the interests of the Council and those of the external organisation to which a councillor has been appointed. An appointment to an external organisation does not necessarily mean that the councillor will be representing the Council's interests on that external organisation. Indeed, a councillor appointed by the Council to a decision making role in an external organisation (for example, as a director of a company or as a trustee) has a duty to act in the best interests of the organisation notwithstanding a conflict between these interests and those of the Council. This may mean, in some instances, that a councillor cannot participate in a decision of the Council which affects or relates to that external organisation. Importantly, when acting for the other organisation, the appointee has no power to commit the Council to any particular course of action: their role is to exercise independent judgement when deciding issues and to contribute to the decision-making of the other organisation, not to represent the Council in discussions or negotiations within that organisation.

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

Types of External Organisation

5. There are a number of types of organisation to which the Council may appoint councillors. Some common examples are:
 - National or regional body
 - Charitable Trust
 - Company limited by shares
 - Company limited by guarantee
 - Unincorporated association
 - Industrial and provident society (mainly housing associations)

Legal Structures

6. In all cases it is essential that those accepting an appointment to an external organisation should have absolute clarity of the legal status of the organisation concerned and the nature and responsibilities of the appointment itself of the appointment itself. Those proposing to take up appointments must ensure that they possess and have read an up-to-date copy of the organisation's governance documentation, the skills and experience required by the organisation and fully understand all obligations and including any implications relating to personal liability.

Charitable Status

7. Many organisations with which the Council becomes involved are registered charities. Charities are not themselves a separate category of organisation. Charitable status is a characteristic, which can be attached to a number of different types of organisation provided they are set up for specified, and purely charitable purposes and fulfil the various requirements of the Charity Commission.

There are four main structures available for charities and community groups. These are:

- Unincorporated Association
 - Charitable Trust
 - Charitable Incorporated Organisation (CIO)
 - Charitable Company
8. Organisations that are '*unincorporated*' are associations having no separate legal existence and remain for most purposes a collection of individuals and committee members hold personal liability. Any property or contracts would be held by individuals on behalf of the group. Any legal proceedings taken against the group would be taken against the individuals themselves, making them personally liable. An '*incorporated*' organisation has limited personal liability, a clear statutory framework and clear accountability both to members/shareholders and to a regulatory body. Incorporated charities are registered as companies with Companies House as well as the Charity Commission. If a charity is incorporated, the organisation, rather than individual trustees, is liable for debts and other costs.
 9. Those managing a charitable organisation have the duties and responsibilities of company directors, management committee members or trustees, and are subject to the

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

legal requirements placed upon those organisations by charity law and/or company law as appropriate.

10. The duties of a charity trustee do not differ in principle from those of a non-charitable trustee - to execute the duties of the trust in accordance with its terms of reference and within the law in the interests of the intended beneficiaries. In doing so, they are subject to the jurisdiction of the Charity Commission. In particular, charity trustees may be held personally liable when charity assets are misapplied. This may be so even in some cases where the misapplication has been inadvertent (e.g., where the trustees honestly but mistakenly apply the assets other than for a charitable purpose). It is important to note that charity trustees who suffer financial loss as a result of such a breach are not entitled to be indemnified out of the charity's property.

Company Status

11. Charitable companies (those incorporated as a company limited by guarantee) must comply with provisions in the Companies Acts 1985, 1989, 2006. Alongside compliance with charity law, they are required to register details of trustees as directors at Companies House. Councillors appointed to such organisations should ensure they are registered as directors and, in due course, ensure their names have been removed should they step down from the role.
12. Individuals appointed to positions within companies or industrial and provident societies (collectively referred to here as companies) should be mindful of Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 and Part 1 of the Localism Act 2011. This legislation provides a framework for regulating local authorities' interests in companies, access to its information, the treatment of its accounts, and the stated association with the local authority. The law in this area will determine if a company has become a "regulated company". This means the degree to which local authorities or persons "associated" with local authorities are involved with the company. For these purposes, "associated" persons are current councillors, officers, and anyone who has been a councillor in the past four years, together with certain employees of local authority-controlled companies. A company would be deemed regulated if "associated" persons make up 20% or more of the directors/management committee members or shareholders or hold 20% or more of the voting rights. Appointees should inform the Monitoring Officer should any resignation or appointment lead to the 20% threshold being reached. This information should also be readily available at board/management committee meetings and be properly minuted.

Duties and Responsibilities of Directors and Trustees

13. A councillor appointed as a director of a company must act in the best interests of the company. The main duties of a director are:
 - to act honestly and in good faith and in the best interests of the organisation as a whole;
 - a duty not to make a personal profit and to take proper care of the organisation's assets;
 - to attend board meetings and follow the rules on the declaration of interests;
 - to exercise reasonable skill and care (this is a subjective test based upon the individual's own knowledge and experience and involves due diligence in the performance of his/her duties as a director); and
 - to comply with statutory obligations imposed by the Companies Acts, other legislation and any procedural rules set out in the governing document.

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

14. A councillor appointed as a trustee of a charity has duties that are generally the same as for a director. In addition, he/she must ensure the trust acts in accordance with the aims and objectives of the trust and should ensure that he/she has a clear understanding of what these are (there is normally a trust deed which sets these out).

General Duties of an Appointee to an External Organisation

15. In carrying out the duties of a Trustee or Director of an external organisation, decisions must be taken without being influenced by the fact that you are a councillor. The primary duty as an appointee making management decisions for the external organisation is to make these decisions in the interests of the organisation. Councillors should always ensure that their fellow directors/trustees are aware of the fact that they are councillors. In these cases, the councillor must act in the interests of that organisation and exercise independent judgement in making decisions, in accordance with a duty of care to the organisation. The councillor appointee is not there just to vote in accordance with the Council's wishes. You may have regard to the interests of the Council, but only insofar as those interests directly coincide with those of the organisation. In some cases, voting in the Council's interests could be a breach of a director's duty to a company.
16. In other cases, the Council may have expressed a view or formulated a policy and would expect the councillor appointee to convey that view or policy to the external organisation. This is acceptable if it does not conflict with the particular duties as director or trustee, or where it is not contrary to the interests of the organisation. The overriding responsibility is to seek to avoid a situation where duty and interest conflict and therefore if the appointee is unsure about declaring an interest, it would be wise to declare it and leave the meeting during consideration of the business. Correspondingly, where a given decision of the Council may directly affect the company, this may place the councillor acting as a director or trustee in a situation of conflict when making decisions. Advice should be taken from the Monitoring Officer on how to manage this situation.
17. Councillors (and officers) are under a specific obligation as a result of the Local Authorities (Companies) Order 1995 to provide such information about the company as is needed in relation to their role. That obligation is best met by an annual report to the relevant Portfolio Holder and subsequently to Council. While the law now makes this a requirement for involvement in outside companies, it is self-evident that the requirement to report back should apply to involvement in all outside bodies.

Appointment Procedure

18. Councillors will normally be appointed to such external organisations that:
 - (i) Support the Council's Corporate priorities, and/or
 - (ii) Assist in delivery of Council services, and/or
 - (iii) Are using Council facilities
19. All appointees to external organisations shall be sitting borough councillors.
20. When an appointment is made, there shall normally be one councillor appointee and a deputy appointed to each external organisation.
21. The Council shall appoint to external organisations for a four-year term of office following Borough Council elections at the first ordinary Council meeting after the Selection

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

Council meeting. Should a vacancy arise during a term of office, then where applicable the deputy appointee will normally assume the role of the appointee for the term of office remaining and group leaders will be asked to submit nominations for the appointment of a new deputy appointee.

22. The Council or Executive shall approve all contested appointments as appropriate. In relation to contested nominations, each nominee shall have the opportunity to make either a written or an oral personal statement to the appropriate meeting in support of their nomination before the vote is taken, with any oral statement taking no longer than three minutes.
23. The Democratic Services and Elections Manager, under delegated authority, will determine uncontested appointments to external organisations.
24. A 'person profile' (as shown in Appendix 1 to this Protocol) shall be completed by each external organisation to ensure that the appointment is a suitable match to the requirements of the organisation and the capacity of the individual councillor in terms of skills, experience and time commitment.
25. It is the expectation of the Council that an induction and suitable training shall be provided for the councillor appointee by the external organisation, which shall include any legal responsibilities, budget and financial issues, information sharing with the council or other bodies and accountability.
26. It is the expectation of the Council that the external organisation will undertake any required and appropriate safeguarding arrangements with regard to the appointment and the appointee.
27. 'Appointments to External Organisations' will be covered in the Council's new councillor induction programme following local Borough elections.
28. Councillors shall not accept an appointment to an external organisation unless there is a full understanding of the commitments and requirements for the role between all parties.
29. Political group leaders shall liaise between themselves to ensure that individual councillor's interest in a specific nomination is shared between them before the meeting at which any contested appointments are to be determined.
30. Councillors appointed to an external organisation shall each year provide written feedback on the work of those organisations over the previous twelve months.
31. Councillor appointees are responsible for ensuring that their appointment has been approved and properly effected in accordance with the external organisation's own rules and procedures.
32. When an appointment ceases for whatever reason (including when that person ceases to be a councillor), the councillor concerned will be responsible for ensuring that it is properly terminated both with the Council and with the external organisation. It is not sufficient simply to cease to attend meetings of the organisation, as this is unlikely to extinguish the individual's legal responsibilities, where these apply.

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

Following Appointment

33. All appointments approved by the Council, Executive or under authority by officer delegation will be recorded in writing, published in the public domain and the Monitoring Officer informed. Appointments made in accordance with this Protocol will be held on a register of appointments. This register will be publicly available on the Council website and kept up to date by the Democratic Services and Elections Manager.
34. Appointees should play an active role in the external organisation particularly by way of regular attendance at meetings and reporting back to the Council. In particular, the appointee should report immediately if there are any material changes in the organisation or its relationship with the Council that would affect the reason they are appointed.

Conflicts of Interest

35. Disclosure of interests rules and the consequences of such disclosure in terms of speaking and voting on specific matters must be followed when working with the external organisation in the same way as council requirements as set out in the Councillors' Code.
36. Often, the purposes of the external organisation will coincide with the interests of the Council and conflicts should be rare. However, there may be difficulty in some circumstances if, for example
 - The organisation is not complying with the terms and conditions of a funding agreement with the Council, or;
 - If the organisation is to appeal against a planning decision made by the Council, or;
 - If the organisation has wider objectives than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

Such circumstances should be managed appropriately and advice should always be sought from the Monitoring Officer. Resignation may be the outcome.

37. If the Council or Executive does not feel that a representative on an external organisation is properly fulfilling their role and responsibilities, e.g. the person is not attending meetings or is voting in ways which may be inappropriate, then the Council or Executive could choose to change its appointee to the external organisation.
38. If the Council considers an issue relating to or affecting the external organisation you must declare an interest if the matter relates to an approval, consent, licence, permission or registration. Unless the interest is a disclosable pecuniary interest as defined in the Councillors' Code of Conduct, you would still be able to participate and, where applicable, vote on the matter at the meeting, if in doubt you should seek the Monitoring Officer's advice.
39. The Local Authorities (Companies) Order 1995 provides that an appointment to regulated company must end if the appointment as councillor ends. It may be that, on appointment, the Council wishes to make appointment to a company coterminous with a councillor holding a particular role or portfolio as elected member – and to extend these rules to appointment to other external bodies/organisations.

PART 5 – PROTOCOL ON COUNCILLOR APPOINTMENTS TO EXTERNAL ORGANISATIONS

Duties of Confidentiality and Conduct

40. Confidential information must be treated with care and if there is any doubt over the status of any information passed to the councillor by the organisation then it should be kept confidential and a check made with the Data Protection Officer, whether or not it is something which is already in the public domain or which may be disclosed. The specific rules adopted by each organisation will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.
41. The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it. Deliberate leaking of confidential information will be a breach of the Councillors Code of Conduct and a breach of the Data Protection Act 2018 and may result in legal action.
42. An appointee by the Council to an external organisation must comply with the Code of Conduct of that organisation, if it has one. If it does not, he/she must comply with the Councillors' Code of Conduct unless observance of the Code would conflict with any other obligations (i.e. the duty to act in the best interests of the external organisation).
43. Under the Code appointees must not:
 - disclose information given in confidence by anyone, or information acquired which is believed to be of a confidential nature, without the consent of a person authorised to give it, or unless required by law to do so;
 - prevent another person from gaining access to information to which that person is entitled by law.

Any correspondence an appointee may have with the relevant external body, if using their council email address or council headed paper may be the subject of a Freedom of Information (FOI) or Environmental Information Regulations (EIR) request from a member of the public. Councillors should therefore note that any written communications made using the council email system may be made publicly available if the council deems it to be captured under FOI or EIR, regardless of whether that councillor believes themselves to be acting outside of their capacity as a councillor.

44. Disclosing confidential information may also contravene other parts of the Code e.g. it may be regarded as bringing the office of Councillor or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage the appointee or any other person.
45. The external organisation may make it a condition of appointment that any person appointed or nominated to it is subject to a criminal record check from the Disclosure and Barring Service (DBS).

Allowances, insurances and indemnities

46. The Council has authorised attendance at meetings of external organisations as an approved duty for councillors, allowing travelling and/or subsistence allowances in connection with meetings of the organisation. Alternatively, the body itself, in accordance with its own rules, may defray any expenses. If the organisation does pay expenses, a claim may not be made from the Council. For further information on allowances, consult

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the Democratic Services and Elections Manager. The Local Authorities (Companies) Order 1995 places strict limits on the allowances permitted to be paid to councillors when appointed to regulated companies, requiring them to be in line with the rules of the Council in relation to a comparable duty.

47. In no instances are councillors who are appointed to external organisations by the Council provided with personal liability indemnity for decisions they make and actions which they take in their representative capacity. The external organisation may have insurance to cover personal liability in these cases and councillors should always check with the organisation itself.

GUILDFORD BOROUGH COUNCIL

PROTOCOL ON OFFICER APPOINTMENTS TO EXTERNAL ORGANISATIONS

Introduction

1. The Council has extensive involvement with a wide range of external partnerships and organisations. Officers may be involved on an individual basis with many organisations including community organisations, sports and recreation clubs, housing associations and companies and the Code of Conduct for Staff requires officers to notify their line manager of any private or personal interests¹. This Protocol relates to the appointment of officers to external organisations by the Council. The main objective of these appointments is for the Council to develop positive relationships with local organisations in the interests of the local community.
2. Appointments include various roles ranging from advisory to membership of management committees as trustees or as company directors. Some roles will have legal duties and responsibilities which must be properly discharged and which can have implications for the Council as well as for the individuals themselves. Consequently, with any relationship involving external organisations there must be a clear definition of roles, responsibilities and accountabilities. This Protocol aims to assist officers serving on external organisations to be clear on these matters and includes guidance for dealing with any conflicts of interest between the Council and the external organisation.
3. The main purposes of this Protocol are:
 - (i) to ensure that the Council's and individual officers' interests are properly safeguarded and represented;
 - (ii) to ensure, whenever an officer is appointed to an external organisation, that all such appointments are properly authorised, recorded and managed; and
 - (iii) to provide a formal procedure with relevant guidance to appointees

Existing Guidance for Officer Appointees

4. Officer should read and familiarise themselves with the Council's Code of Conduct for Staff which sets out policies and practice relating to:
 - General standards
 - Political neutrality
 - Disclosure of information
 - Relationships
 - Use of the Council's materials, equipment or resources
 - Separation of roles during competitive tendering
 - Appointments and employment matters
 - Outside commitments
 - Personal interests
 - Gifts and hospitality
 - Sponsorship
 - Equality and health and safety issues
 - Information technology
 - Breach of code of conduct

¹ GBC Constitution Part 5, Code of Conduct for Staff, Section 10.

PART 5 – PROTOCOL ON OFFICER APPOINTMENTS TO EXTERNAL ORGANISATIONS

5. The Council requires officers to disclose direct or indirect pecuniary interests in organisations having contracts with the Council. Officers are expected to consider carefully whether their membership of any organisation could allow the impression to be created that their official position could be used to promote a private or personal interest and, if appropriate, submit a declaration to the Monitoring Officer.

Types of External Organisation

6. There are a number of types of organisation to which the Council may appoint officers
Some common examples are:
 - National or regional body
 - Charitable Trust
 - Company limited by shares
 - Company limited by guarantee
 - Unincorporated association
 - Industrial and provident society (mainly housing associations)

Legal Structures

7. In all cases, it is essential that those accepting an appointment to an external organisation should have absolute clarity of the legal status of the organisation concerned and the nature of the appointment itself. Those proposing to take up appointments must ensure that they possess and have read an up-to-date copy of the organisation's governance documentation and fully understand all obligations and any implications relating to personal liability.
8. Officers should read and familiarise themselves with the Council's separate guidance for councillors appointed to external organisations in terms of:
 - Charitable status
 - Company status
 - Duties and responsibilities of directors and trustees
 - General duties of councillor appointees to an external organisation
 - Councillor appointment procedure
9. The Monitoring Officer is excluded from serving on the governing organisation of any external organisation because this officer acts solely and transparently in the Council's interest and is in a position of independence to comment on potential conflicts of interest.

Following Appointment

10. All officer appointments should be notified to the Monitoring Officer, to be recorded in the register of appointments.
11. Subject to any absolute duties (such as, for example, as a Director to an external company, in the instance of a conflict) appointees should play an active role in the external organisation particularly by way of regular attendance at meetings and reporting back to the Council. In particular, the appointee should report immediately if there are any material changes in the organisation or its relationship with the Council that would affect the reason they are appointed.

PART 5 – PROTOCOL ON OFFICER APPOINTMENTS TO EXTERNAL ORGANISATIONS

12. Councillors (and officers) are under a specific obligation as a result of the Local Authorities (Companies) Order 1995 to provide such information about the company as is needed in relation to their role. That obligation is best met by an annual report to the relevant Portfolio Holder and subsequently to Council. While the law now makes this a requirement for involvement in outside companies, it is self-evident that the requirement to report back should apply to involvement in all outside bodies.

Conflicts of Interest

13. Unless an officer has been appointed a director or a trustee officers will be representing the views of the Council and must make that clear at any meeting of the external organisation. If the officer has been appointed a director or trustee then they must act in the best interests of the external organisation and follow the guidance set out for such roles. In particular, care should be taken to act for the proper purposes of the company, charity, or partnership – to avoid the risk of a shadow directorship (a liability directly to the Council).
14. Often, the purposes of the external organisation will coincide with the interests of the Council and conflicts should be rare. However, there may be difficulty in some circumstances if, for example
 - The organisation is not complying with the terms and conditions of a funding agreement with the Council, or;
 - If the organisation is to appeal against a planning decision made by the Council, or;
 - If the organisation has wider objectives than the reason behind the Council's appointment and wishes to pursue activities which would conflict with Council policy.

Such circumstances should be managed appropriately and advice should always be sought from the Monitoring Officer. Resignation may be the outcome.

15. When external organisations consider issues relating to the business of the Council or where an appointee may have a personal interest in relation to the organisation's activities, these need to be declared in line with the rules of the external organisation. The specific rules adopted by each organisation will vary and therefore you should ask for advice and guidance from the secretary of the organisation and/or the Monitoring Officer, as appropriate.
16. If the Council considers an issue relating to or affecting the external organisation you must declare an interest if the matter relates to an approval, consent, licence, permission or registration. Unless the interest is a disclosable pecuniary interest as defined in the Officers' Code of Conduct, you would still be able to participate and, where applicable, vote on the matter at the meeting, if in doubt you should seek the Monitoring Officer's advice.

Duties of Confidentiality and Conduct

17. Confidential information must be treated with care and if there is any doubt over the status of any information then it should be kept confidential and a check made with the Data Protection Officer, whether or not it is something which is already in the public domain or which may be disclosed.

PART 5 – PROTOCOL ON OFFICER APPOINTMENTS TO EXTERNAL ORGANISATIONS

18. The legal position is that someone who has received information in confidence is not allowed to take improper advantage of it, or to disclose it without the party benefiting from the duty of confidentiality. Deliberate leaking of confidential information will be a breach of the Officers Code of Conduct and a breach of the Data Protection Act 2018 and may result in legal and/or disciplinary action.
19. An appointee by the Council to an external organisation must comply with the code of conduct of that organisation, if it has one. If it does not, he/she must comply with the Officers' Code of Conduct unless observance of the Code would conflict with any other obligations (i.e. the duty to act in the best interests of the external organisation).
20. Under the Code appointees must not:
 - disclose information given in confidence by anyone, or information acquired which is believed to be of a confidential nature, without the consent of a person authorised to give it, or unless required by law to do so;
 - prevent another person from gaining access to information to which that person is entitled by law.
21. Any correspondence an appointee may have with the relevant external body, if using their council email address or council headed paper may be the subject of a Freedom of Information (FOI) or Environmental Information Regulations (EIR) request from a member of the public. Officers should therefore note that any written communications made using the council email system may be made publicly available if the council deems it to be captured under FOI or EIR, regardless of whether that officer believes themselves to be acting outside of their capacity as an officer.
22. Disclosing confidential information may also contravene other parts of the Code e.g. it may be regarded as bringing the office of Officer or the Council into disrepute; may compromise the impartiality of people who work for the Council; may improperly confer or secure an advantage or disadvantage the appointee or any other person.
23. The external organisation may make it a condition of appointment that any person appointed or nominated to it is subject to a criminal record check from the Disclosure and Barring Service (DBS).

Allowances, insurances and indemnities

24. Where attendance at meetings of external organisations is an approved duty for officers and has been authorised, the council would allow travelling and/or subsistence allowances in connection with meetings of the organisation. Alternatively, the body itself, in accordance with its own rules, may defray any expenses. If the organisation does pay expenses, a claim may not be made from the Council. For further information on allowances, consult your line manager.
25. The Council will provide insurance cover that only indemnifies officers for work they are doing on Council business, or representing the interests of the Council. If officers are not doing any of this, then they would not be covered under the Council's policy. In that instance, they would need to be covered by the external organisation. The external organisation may have insurance to cover personal liability in these cases and officers should always check with the organisation itself. In each instance, the Council's insurance officer should be consulted so that coverage may be confirmed.

GUILDFORD BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS AND CO-OPTED MEMBERS

1 Context

- 1.1 Under Section 28(6) and (7) of the Localism Act 2011, the Council, and each Parish Council within the borough area, must have in place arrangements under which allegations that a councillor or co-opted member ('Member') of the Council or relevant Parish Council has failed to comply with the relevant code of conduct (whether of the Council or the relevant Parish Council) can be made, investigated, and decisions can be made on such allegations.
- 1.2 These arrangements for dealing with allegations of misconduct by councillors and co-opted members ('Arrangements') apply when a complaint is received that a Member of the Council or relevant Parish Council has or may have failed to comply with the Code of Conduct for Members ('the Code').
- 1.3 The terms capitalised in these Arrangements are as defined within the text or at paragraph 2, Interpretation, below.
- 1.4 The Council may by resolution agree to amend these Arrangements, and has delegated to the Corporate Governance and Standards Committee the right to depart from these Arrangements where on the advice of the Monitoring Officer the Sub-Committee considers it expedient to do so in order to secure the effective and fair consideration of any matter and is lawful, and is consistent with the principles of natural justice.
- 1.5 The Council shall appoint one or more Independent Persons from outside the Council to assist the Monitoring Officer and the Corporate Governance and Standards Committee in considering complaints, and whose views:
- (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated,
 - (b) may be sought by the authority at any other stage, and
 - (c) may be sought by a councillor or co-opted member against whom an allegation has been made.
- 1.6 No Member of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2 Interpretation

- 2.1 'Assessment Sub-Committee' means the Sub-Committee of the Corporate Governance and Standards Committee constituted in accordance with paragraph 7.6 of these Arrangements.

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- 2.2 'Code of Conduct for Members' means the code of conduct for councillors and co-opted members adopted by the Council, or in relation to a Parish Council the code of conduct adopted by that Parish Council.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'the Corporate Governance and Standards Committee' means the Corporate Governance and Standards Committee or to a sub-committee to which it has delegated the assessment of complaints or the conduct of a hearing unless the context indicates that it refers only to the Corporate Governance and Standards Committee.
- 2.5 'Formal Investigation' means the process described at paragraph 9 of these Arrangements.
- 2.6 'Hearings Sub-Committee' means the Sub-Committee of the Corporate Governance and Standards Committee constituted in accordance with Appendix 3 of these Arrangements.
- 2.7 'Independent Member' means a co-opted person who is not a Councillor or Officer of the Council who sits on the Corporate Governance and Standards Committee in an advisory capacity but who is not entitled to vote.
- 2.8 'Independent Person' means the person (of whom there may be more than one) appointed by the Council under section 28(7) of the Localism Act 2011 who has the functions set out in that Act, as referred to in paragraph 1.5 above.
- 2.9 'Informal Resolution' means the procedure described in these Arrangements at paragraph 8.
- 2.10 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another officer of the Council, an officer of another authority or an external investigator.
- 2.11 'Investigation Report' means the report prepared in accordance with paragraphs 21 to 24 of the Procedure for Local Investigation of Assessed Complaints at Appendix 2.
- 2.12 'Monitoring Officer' means the statutory officer appointed by the Council under the Local Government and Housing Act 1989 Sections 5 and 5A, being the officer of the Council who is responsible for administering the system of complaints about member misconduct and as part of that role may nominate another officer of suitable experience and seniority to carry out any of the functions listed in these Arrangements.
- 2.13 'Parish Member' means a co-opted member of any parish council within the borough who sits on the Corporate Governance and Standards Committee and in respect of parish matters the Assessment or Hearings Sub-Committees in an advisory capacity but who is not entitled to vote at meetings.

- 2.14 'Police Reporting Protocol' means the protocol as may be adopted from time to time describing how the Council and the Police will cooperate in the event of the discovery of information or evidence tending toward indicating that a crime has been, or may have been, committed and titled the *Protocol between Guildford Borough Council and Surrey Police regarding the investigation of alleged criminal conduct by Councillors*.
- 2.15 'Subject Member' means an elected or co-opted member of the Council or any elected or co-opted member of any parish council within the borough against whom a complaint has been made alleging a breach of the Code of Conduct.

3. Making a complaint

- 3.1 All complaints must be made in writing and shall be on the official complaint form. The complaint form can be posted or e-mailed to the Council's Monitoring Officer whose contact details are:

Monitoring Officer
Guildford Borough Council
Legal Services
Millmead House
Millmead
GUILDFORD
Surrey GU2 4BB
Email: monitoringofficer@guildford.gov.uk
Telephone: 01483 444135

- 3.2 Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance. A request for assistance should be made in the first instance by contacting the Monitoring Officer, whether in person, by phone, or email (whether by themselves or by somebody assisting them) using the contact details set out in paragraph 3.1 above.
- 3.3 A complaint should describe the resolution (whether formal or otherwise) sought, and must provide substantiated information: the Monitoring Officer shall rely wholly on information and evidence accompanying a complaint when conducting the Initial Jurisdiction Test. Further information regarding the range of formal sanctions available is set out in paragraph 27 of Appendix 3.

4. Complaints identifying possible criminality, complainant confidentiality, and anonymous complaints,

Anonymous Complaints

- 4.1 Anonymous complaints will not normally be investigated, and will only be accepted in exceptional circumstances where the Monitoring Officer (in consultation with the Independent Person) concludes that the balance of the public interest lies in doing so, and the fairness of the procedure is maintained.

Complaints Identifying Possible Criminality

- 4.2 If the complaint identifies criminal conduct by any person, the Monitoring Officer shall, having regard to the Police Reporting Protocol, make a report to the Police or

other appropriate investigatory authority, in addition to any action taken pursuant to the Code. In the case of alleged criminal conduct, the complaint may be held in abeyance pending the outcome of any criminal investigation.

Complainant and Witness Confidentiality

- 4.3 If a Complainant or any witness giving any information or involved in any discussions (whether with the Monitoring Officer, the Investigating Officer, the Independent Person, or the Parish Member) wishes their identity to be withheld, they should state this on the complaint form (or, in the case of a witness, in writing to the Monitoring Officer), providing full reasons. Any request for confidentiality will be considered by the Monitoring Officer at the Initial Assessment stage of these Arrangements. In reaching his/her decision, the Monitoring Officer shall have regard to the principles described at paragraph 4.4 below, and may also consult with the Council's Independent Person.
- 4.4 As a matter of fairness and natural justice and in order to preserve the probative value of any evidence given, the Subject Member will usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the identity of a Complainant or witness where the Monitoring Officer is satisfied that the Complainant has reasonable grounds for believing that they, or any witness relevant to the complaint, may be at risk of serious harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed. The Monitoring Officer (in consultation with the Independent Person) will consider whether the public interest in taking action on a complaint outweighs the wish of the Complainant or witness to have his or her identity withheld from the Subject Member, whether the fairness of proceedings is maintained.
- 4.5 Where the Monitoring Officer decides to refuse a request by a Complainant or a witness for confidentiality, they will offer the Complainant the option to withdraw the complaint or the witness to withdraw their witness evidence.

Sensitive and confidential information

- 4.6 Where any decision notice, record, or report (including the report of an Investigating Officer) contains information which is sensitive or confidential, the Monitoring Officer having regard to the Access to Information Procedure Rules at Part 4 of the Council's constitution may redact it in any published version.

5. The Handling of Complaints

Discontinuance of Complaints by Monitoring Officer

- 5.1 The Monitoring Officer may discontinue a complaint or terminate an investigation if they consider it appropriate to do so, having regard to whether the balance of the public interest lies in continuing to action the complaint, where the Subject Member:
- (a) ceases to be a Member of the Council,
 - (b) has a long term or serious illness and is unable to participate in the procedure, or

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(c) dies.

5.2 Where a complaint is discontinued, the Monitoring Officer will write to the Complainant and the Subject Member setting out the reasons for their decision.

Timeframes and Communications Policy

5.3 The Monitoring Officer will acknowledge receipt of the complaint within 10 working days of all required information being provided.

5.4 Key dates in relation to the administration of the Arrangements are set out in the body of the Arrangements, and shall act as targets to facilitate the swift administration of the Arrangements but which, if missed, will not invalidate the procedure comprised herein.

5.5 The Complainant and the Subject Member will be informed should there be a delay in completing any stage of the process.

5.6 The Communications Policy at Appendix 1 shall have effect in relation to any matters of publicity, or public engagement associated with a Complaint.

Participation of Complainant

5.7 Where the Monitoring Officer concludes in consultation with the Independent Person, that the participation of the Complainant (by way of interview, or appearance before Hearings Sub-Committee) would be in the public interest, the Monitoring Officer shall request the further participation of the Complainant, giving reasonable notice, and such support as the Complainant may reasonably require and where the Complainant declines to participate this shall be recorded in the report of any decision or investigation, or reported to the Hearings Sub-Committee (as the case may be).

6. Stage 1 – Initial Jurisdiction Test

6.1 The Monitoring Officer will, within 20 working days of the acknowledgement referred to in paragraph 5.3 above, apply the following questions to determine whether a Complaint falls within the jurisdiction of these Arrangements:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the Subject Member a member of the Borough or relevant Parish Council at the time of the alleged conduct?
- (c) Was the Subject Member acting in an official capacity as a councillor at the time of the alleged conduct? (The case law and legislative position is that Code of Conduct matters can only be dealt with when the allegation is about something that a Councillor did in his or her role as a councillor when acting in an official capacity.)
- (d) Did the alleged conduct occur when the Subject Member was acting as a member of another authority, subject to the code of conduct of that authority,

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and not subject to these *arrangements for dealing with allegations of misconduct by Councillors*?

- (e) If the facts were proved would the alleged conduct be capable of constituting a breach of the Code of Conduct?
- (f) Is the complaint limited to dissatisfaction with the Borough or relevant Parish Council's decisions, policies and priorities?

6.2 Where a complaint is rejected on any of the above grounds, the Monitoring Officer will write to the Complainant explaining why their complaint cannot be dealt with under this procedure.

6.3 If the Complaint passes the Initial Jurisdiction Test, it will proceed to stage 2.

7. Stage 2 – Procedure for Initial Assessment of Complaint

7.1 The Monitoring Officer will notify the Subject Member, and if applicable, the Parish Clerk of the existence of the complaint, providing a copy of the complaint and such information as accompanied it (subject to paragraphs 4.3 and 4.4 (confidential complaints)). The documents provided may include necessary redactions in order to maintain any confidentiality that has been agreed by the Monitoring Officer. The Monitoring Officer will invite the Subject Member to submit any comments or information in response within 20 working days of the notification, which the Monitoring Officer will take into account in conducting the Initial Assessment.

7.2 Upon the Subject Member either providing a response, or declining to do so within the 20 working days referred to in paragraph 7.1 (unless extended by agreement with the Monitoring Officer), the Monitoring Officer will provide the complaint, accompanying information or evidence, together with any response provided by the Subject Member, pursuant to paragraph 7.1 above, to the Independent Person and, where applicable, to the Parish Member, allowing a reasonable period for that response to be provided, and asking for their view generally, and on whether the complaint merits Informal Resolution or Formal Investigation.

7.3 Once the Independent Person, and the Parish Member (where applicable) have provided a response, the Monitoring Officer shall (subject to the exception described at paragraph 7.6 below) have regard to that response and to the following criteria in deciding whether a complaint should be subject to Informal Resolution or Formal Investigation:

- (a) The seriousness of the matters alleged;
- (b) Whether a substantially similar allegation has previously been made by the Complainant to the Monitoring Officer (unless sufficient new evidence is provided), or the complaint has been the subject of an investigation by another regulatory authority;
- (c) Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;

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- (d) Whether the evidence is sufficiently reliable, i.e. whether it is first-hand evidence or hearsay evidence, and whether it is relevant to the alleged breach?
- (e) Whether the Subject Member is willing to participate in an Informal Resolution;
- (f) Whether the allegation is anonymous (subject to paragraph 4.6 above);
- (g) Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action; and
 - i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - ii) Whether in all the circumstances there is no overriding public benefit in carrying out an investigation;
 - iii) Whether the complaint appears to be trivial, malicious, vexatious, politically motivated or 'tit-for-tat'; or,
 - iv) Whether the complaint relates to a matter which is the subject of a corporate complaint;

7.4 The Monitoring Officer shall in particular have regard to the following mitigating, and aggravating factors:

Mitigating factors (tending to make further action less likely)

- (1) The substance of the complaint has already been the subject of an investigation or other action relating to the Code of Conduct;
- (2) The allegation took place more than 28 days prior to receipt of the complaint and there would be little benefit in taking action now;
- (3) The Subject Member took appropriate advice on the matter and followed that advice;
- (4) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (5) It is likely that an investigation will prove only a technical or inadvertent breach;
- (6) The complaint appears to be trivial, malicious, vexatious, politically motivated or 'tit-for-tat';
- (7) The Complainant has involved the press in relation to the alleged complaint;
- (8) The member has already provided (or tried to provide) a suitable remedy (such as apologising);
- (9) The breach occurred in all innocence i.e. without knowledge;
- (10) There was unreasonable provocation;

Aggravating factors (tending to make further action more likely)

- (1) The complaint involves allegations of bullying or intimidation of a Complainant;
- (2) The allegation if proven could have a serious effect upon the reputation of the Council or relevant parish council, upon staff relations or upon public trust and confidence;

PART 5 - ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS

- (3) The Subject Member holds a position of seniority and/or a position of influence;
- (4) There is a pattern of individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disruptive to the business of the Council or relevant parish council;
- (5) The Subject Member took appropriate advice on the matter but did not follow that advice;
- (6) The complaint involves an allegation that the behaviour may cause the Council or relevant parish council to breach an equality enactment;

7.5 The criteria set out in paragraphs 7.3 and 7.4 above does not limit or fetter the discretion of the Monitoring Officer and is not an exhaustive or prescriptive list and the Monitoring Officer may take into account other criteria dependent on the circumstances. The existence of such criteria does not fetter the discretion of the Monitoring Officer.

Assessment Sub-Committee

7.6 The Monitoring Officer may refer a complaint to the Assessment Sub-Committee for assessment. The referral power is at the absolute discretion of the Monitoring Officer. Examples of when a referral may take place include, but are not limited to the following:

- (1) It is an allegation where there is a perceived or actual conflict of interest e.g. the Monitoring Officer has previously advised the Subject Member on the matter;
- (2) It involves the Mayor or Deputy Mayor of the Council;
- (3) It involves the Leader, a member of the Executive, or the leader of a political group;
- (4) It involves a Chairman or Vice Chairman of a Council Committee or Sub-Committee
- (5) The Complaint is from a Statutory Officer of the Council (the Head of Paid Service, Section 151 Officer, or the Monitoring Officer).

7.7 The Assessment Sub-Committee will be established in the same way as other Sub-Committees of the Corporate Governance and Standards Committee. The Assessment Sub-Committee shall have all the powers of the Monitoring Officer described in paragraph 7. Where the Assessment Sub-Committee finds that a complaint should be subject to Informal Resolution, paragraph 8 shall apply and the Monitoring Officer shall resume responsibility for the progression of the matter

7.8 Decisions of the Assessment Sub-Committee are usually made in private. Neither the Complainant nor the Subject Member will usually be permitted to attend where such meetings contain confidential personal information. In such cases, meetings will not be open to the press or public. The rules covering the exclusion of the press and public are set out in the Access to Information Procedure Rules at Part 4 of the Council's Constitution. If the press and public are to be excluded from a committee or sub-committee, a formal resolution of the meeting is required. This must specify the legal grounds for exclusion.

7.9 The members of any Assessment Sub-Committee will be selected by the Monitoring Officer, in consultation with the Chairman of the Corporate Governance and

Standards Committee in accordance with paragraph 10.3(b) of Part 2, Article 10 of the Constitution.

Decision in writing

- 7.10 The decision of the Monitoring Officer, or Assessment Sub-Committee (as the case may be) shall be recorded in writing, and a decision notice will be sent to the Complainant and the Subject Member within 10 working days of the decision. The Independent Person shall be given the option to review and comment on allegations which the Monitoring Officer (or Assessment Sub-Committee) is minded to dismiss as being without merit, vexatious, or trivial. The decision notice will summarise the allegation, give the decision of the Monitoring Officer or Assessment Sub-Committee, and the reasons for their decision. There is no right of appeal against the decision of the Monitoring Officer or Assessment Sub-Committee.

8. Stage 3 - Informal Resolution

- 8.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint without the need for a formal investigation by way of Informal Resolution, which may be appropriate for example:

- (a) Where it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error, was not actuated by any malicious intent, and the matter would not warrant a more serious sanction,
- (b) Where training or conciliation would be a more appropriate response.

- 8.2 Types of Informal Resolution might include:

- (a) An explanation by the Subject Member of the circumstances surrounding the complaint;
- (b) An apology from the Subject Member;
- (c) An agreement from the Subject Member to attend relevant training or to take part in a mentoring process;
- (d) Offering to engage in a process of mediation or conciliation between the subject Member and the Complainant; or
- (e) Any other action capable of resolving the complaint.

- 8.3 Where the Monitoring Officer seeks to resolve the complaint informally he or she will provide the Subject Member with recommendation together with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 20 working days following a decision to seek Informal Resolution) or to engage in a process of Informal Resolution organised by the Monitoring Officer.

- 8.4 Before deciding upon a course of action, the Subject Member may seek guidance from the Leader of their political group, the Independent Person, and/or the Monitoring Officer. The Monitoring officer may also seek the Complainant's views to ascertain what form of informal resolution they would find acceptable, particularly if the form of resolution they have specified in their complaint is not possible.

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- 8.5 At the end of the 20 working day period referred to at paragraph 8.3 above the Monitoring Officer will, in consultation with the Independent Person, seek to establish whether the Subject Member has resolved the complaint to the Complainant's satisfaction.
- 8.6 Where it has been possible to agree a form of resolution between the Subject Member and the Complainant, there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the Complainant and the Subject Member of this decision.
- 8.7 Where it has not been possible to agree a form of resolution between the Subject Member and the Complainant, the Monitoring Officer will decide if the complaint merits formal investigation.
- 8.8 Where the Subject Member makes a reasonable offer of informal resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in his or her decision but may impose the Informal Resolution.
- 8.9 Where Informal Resolution is proposed, the Monitoring Officer may direct that the Subject Member maintains confidentiality as to the matters discussed, and parties involved.

9. Stage 4 – Formal Investigation

- 9.1 Where the Monitoring Officer, or Assessment Sub-Committee decides that a complaint merits investigation, he/she will appoint an Investigating Officer.
- 9.2 The process of appointment and functions of the Investigating Officer are set out at Appendix 2.

10. Stage 5 – Review of Report

- 10.1 The Monitoring Officer will, within 10 working days of the receipt of the Investigating Officer's report prepared in accordance with Appendix 2, review the report.
- 10.2 The Monitoring Officer will, in consultation with the Independent Person, determine whether:
- (a) The report is complete, or (where incomplete) should be referred back to the Investigating Officer or a newly appointed Investigating Officer; or,
 - (b) No further action is required, because the report finds no breach of the code of conduct; or
 - (c) The matter may be reasonably resolved by way of Informal Resolution; or,
 - (d) The matter should proceed to the Hearings Sub-Committee.
- 10.3 Save in respect of the circumstances described in paragraph 10.2 (a) above, the Monitoring Officer will give both the Complainant and the Subject Member a copy of the Investigating Officer's final report, subject to any necessary redactions in respect

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of confidential or sensitive information, and shall notify the Chairman of the Corporate Governance and Standards Committee of his or her decision.

11. **Stage 6 – Hearings Sub-Committee**

- 11.1 Where the Monitoring Officer has determined that the matters should proceed to the Hearings Sub-Committee, Appendix 3 shall apply.

Adopted by the Council on: 24 July 2018 (amended on 6 October 2020)

Communications Policy in relation to Member Complaints

1. The Communications Policy sets out guidelines on what can be communicated during any ongoing complaint. This covers both public statements to the media and communications with the Subject Member and Complainant and, if appropriate, the relevant Parish Council. Any communications shall be under the supervision of the Monitoring Officer who may direct any exception to them, or specific action.

Statements to the Media

2. The Council should communicate in a professional and objective manner. In all cases, the Council's approach to the media should be:
 - (a) open and honest whilst respecting the human rights of those parties involved, and
 - (b) responsive, balanced, and timely
3. All media communications will be made by the Council's Communications and PR Manager, in consultation with the Monitoring Officer and the Chairman of the Corporate Governance and Standards Committee.
4. During the first two stages of the process when a complaint is either the subject of the Initial Jurisdiction Test (Stage 1), or the Initial Assessment Test (Stage 2), it is not usual to make any public statement about a case. However, some matters may be in the public domain at an early stage. Where a statement is sought on an allegation at this stage, the Council should simply confirm or where appropriate deny the fact that an allegation has been received and is being assessed save for circumstances in which a corrective or guiding statement is justified to maintain confidence in the process. Regard should be had as to whether a complainant has sought his or her identity to be maintained as confidential; for example, it may be appropriate not to disclose the existence of a complaint until the Initial Jurisdiction Test has been applied.
5. Where, following assessment, no action is to be taken on a case, public attention should not be drawn to an allegation which is not being pursued. However, where a public statement is necessary, and subject to paragraph 4.8 of the Arrangements, reasons should be given as to further action is being pursued.
6. Where, following assessment some further action is being taken, either the matter is being investigated or some other resolution is being pursued or has occurred, a more pro-active stance may be necessary such as a short statement being made available to confirm the fact, e.g. that an investigation is now underway, and that no further comments will be made until the conclusion of the case. Councillors and officers should not make any comments one way or the other while an investigation is ongoing. All information gathered in the course of an investigation will be regarded as confidential. All parties that are interviewed will be requested to maintain confidentiality and councillors may in particular be referred to their obligation under paragraph 3 of the Code of Conduct not to disclose information that they have received in confidence. Any report issued by an Investigating Officer will be marked "Confidential" to preserve the integrity of any further investigation the Investigating

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Officer may need to carry out. Release of confidential information to the media may lead to an investigation being terminated.

7. Where some other resolution has been reached, this may be made available with the consent of the Subject Member.
8. Where an investigation has been completed and this results in a local hearing, the Corporate Governance and Standards Committee will arrange for a summary of the decision and reasons for that decision to be published on the Council's website.
9. The Corporate Governance and Standards Committee may also make available the minutes and reports of the Hearings Sub-Committee, subject to the advice of the Monitoring Officer.

Procedure for Local Investigation of Assessed Complaint

Appointment of Investigating Officer

1. Following the decision of the Monitoring Officer to investigate the allegation or upon receipt of the referral to the Monitoring Officer from the Assessment Sub-Committee for an investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him or her to conduct an investigation of the allegation and to report thereon to the Monitoring Officer.
2. Where the Monitoring Officer acts as Investigating Officer, the role of legal adviser to the Hearings Sub-Committee shall be appointed by him to another individual, whether an internal or external appointee.
3. The Monitoring Officer may at his or her sole discretion make an external appointment to the role of Investigating Officer where for example:
 - (a) The complaint looks likely to raise particularly complex or sensitive issues;
 - (b) There is insufficient expertise within the Council to carry out the investigation;
 - (c) There is insufficient capacity within the Council to carry out the investigation;
 - (d) A conflict has, or may be perceived to have, arisen.

Notification of Investigation to the Subject Member

4. The Monitoring Officer will notify the Subject Member in writing:
 - (a) that the allegation has been referred for local investigation and possible hearing;
 - (b) the identity of the person making the allegation (unless identification of the Complainant might prejudice the investigation or put the Complainant at risk);
 - (c) the conduct which is the subject of the allegation;
 - (d) the paragraph(s) of the Code of Conduct which appear to be relevant to the allegation(s);
 - (e) the procedure which will be followed in respect of the investigation;
 - (f) the identity of the Investigating Officer;
 - (g) the identity of the Independent Person whose views may be sought by the Subject Member; and
 - (h) the identity of the Parish Member whose views may be sought by the Subject Member if the Subject Member is a parish councillor.

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5. The Monitoring Officer shall provide the Subject Member with a copy of the complaint.
6. In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Subject Member, and shall consider whether the matter should be referred to the Police, in accordance with paragraph 4.2 of the Arrangements.

Notification to the Complainant

7. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Complainant in writing of the matters set out above.

Notification to the Corporate Governance and Standards Committee

8. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Chairman of the Corporate Governance and Standards Committee in writing of the matters set out above.

Notification to the Parish Council Clerk

9. Where the allegation relates to the conduct of a Subject Member of a Parish Council in his or her capacity as such, at the same time as notifying the Subject Member, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out above.

Investigation Process

10. The agreed process may be the standard procedure used by the external investigator. As a minimum, the Investigating Officer will interview the Complainant, the Subject Member and, where possible, any witnesses to the event or events that are the substance of the complaint. The Investigating Officer will produce notes of these meetings that will be signed by the interviewees as fair records of what was said in the interviews. If the complaint is complex, the Investigating Officer may produce formal, signed statements and participants will be notified that the information they have provided could be released into the public domain if the matter proceeds to a hearing.
11. Interviews may be recorded where the Investigating Officer, in consultation with the Monitoring Officer, considers this appropriate.
12. The Monitoring Officer will agree with the Investigating Officer the scope and parameters of the investigation before an investigation starts. However, these may change during the course of an investigation depending on the findings of that investigation. Any changes will be agreed with the Monitoring Officer by the Investigating Officer and this agreement will be documented.

Initial Response of the Subject Member

13. The Monitoring Officer should request the Subject Member to respond to the Investigating Officer in writing within 14 days of notification as follows:

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- (a) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (b) listing any documents which the Subject Member would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents and informing the Investigating Officer of where the original documents may be inspected;
- (c) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Subject Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
- (d) providing the Investigating Officer with any information which the Subject Member would wish the Investigating Officer to seek from any person or organisation.

Supporting information from the Complainant

14. In notifying the Complainant as above, the Monitoring Officer will request the Complainant to respond to the Investigating Officer within 14 days of notification as follows:
- (a) listing any document which the Complainant would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
 - (b) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation; and
 - (c) providing the Investigating Officer with any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.
15. The Subject Member has a duty to cooperate with any investigation and to respond promptly and to comply with any reasonable requests from the Investigating Officer for such things as interviews, comments on draft meeting/interview notes or the provision of information necessary for the conduct of an investigation.

Confidentiality

16. It is important that confidentiality is maintained throughout the investigation and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members, or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.

Termination of an Investigation

17. In exceptional circumstances, and as is referred to in paragraph 5.1 of the Arrangements, the Monitoring Officer may stop an investigation before it is finished,

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for example where confidential information has been released to the media, if the Subject Member ceases to be a councillor, has a long term or serious illness, or dies and it is deemed no longer in the public interest to pursue the matter further. If the Monitoring Officer stops the Investigation early, he/she will give their reasons to the Subject Member and the Complainant.

18. The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Hearings Sub-Committee.

Reference to Police or other regulatory agencies

19. At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation by any person, he or she shall notify the Monitoring Officer, who may direct that the investigation is suspended. The Monitoring Officer shall report the matter, as appropriate, in accordance with the Police Reporting Protocol.
20. Where the police or other agency investigates the matter, the Monitoring Officer shall take the advice and direction of the Police in deciding whether and when to inform the Subject Member, the Complainant, the Chairman of the Corporate Governance and Standards Committee and if appropriate the clerk to the relevant Parish Council. Where the Police or other relevant investigating body declines to undertake the investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his or her investigation.

The Draft Report

21. When the Investigating Officer is satisfied that he or she has sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall prepare a draft Investigation Report setting out:
 - (a) the details of the allegation;
 - (b) the relevant provisions of the Code of Conduct;
 - (c) the Subject Member's initial response to the allegation(s) (if any);
 - (d) the relevant information, advice and explanations which he or she has obtained in the course of the investigation;
 - (e) a list and copy of any documents relevant to the matter;
 - (f) a list of those persons whom he or she has interviewed, a copy of the record and any meeting notes and those organisations from whom he or she has sought information;
 - (g) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
 - (h) a statement of his or her draft findings of fact;

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- (i) his or her conclusion as to whether the Subject Member has or has not failed to comply with the Code of Conduct;
 - (j) any recommendations which the Investigating Officer is minded to make to the Hearings Sub-Committee. Where the allegation relates to a parish councillor, such recommendations would be recommendations which the Investigating Officer would recommend the Hearings Sub-Committee make to the relevant Parish Council.
22. The draft Investigation Report should also state that the Investigation Report does not necessarily represent the Investigating Officer's final finding and that the Investigating Officer will be in a position to present a final report to the Hearings Sub-Committee once he or she has considered any comments received on the draft Investigation Report.
23. The Investigating Officer shall then send a copy of his or her draft Investigation Report to the Subject Member and the Complainant and request that they send any comments thereon to him or her within 14 days of the date of that request. The draft Investigation Report will be clearly labelled 'DRAFT' and 'CONFIDENTIAL'.

The Final Report

24. After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his or her draft report in the light of any comments received and produce and send to the Monitoring Officer his or her final Investigation Report. The report will be clearly labelled 'FINAL' and 'CONFIDENTIAL'.

Appendix 3

Procedure and powers of the Corporate Governance and Standards Committee, and Hearings Sub-Committee

Timing

1. The Corporate Governance and Standards Committee will seek to hold a hearing in relation to an allegation within three months of receiving the Investigation Report. The hearing will be conducted by a Sub-Committee of the Corporate Governance and Standards Committee known as the Hearings Sub-Committee.

Before the hearing

The pre-hearing process

2. The Corporate Governance and Standards Committee will use a written pre-hearing process in order to allow the hearing to proceed fairly and efficiently.
3. The Monitoring Officer will ask the Subject Member to provide the following information within 15 working days:
 - (a) to identify those paragraphs in the Investigating Officer's Report with which the Subject Member agrees, and those paragraphs in the Report with which the Subject Member disagrees and the reasons for such disagreement;
 - (b) to identify any further documentary evidence upon which the Subject Member would like to rely at the hearing;
 - (c) to ascertain if they are going to attend the hearing and if they are going to represent themselves or whether they are going to employ someone to represent them, in which case they should provide the details of their representative prior to the hearing;
 - (d) to give reasons whether the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Hearings Sub-Committee should be withheld from the public.
4. The Monitoring Officer will ask the Investigating Officer to comment on the Subject Member's response within 15 working days to say whether or not he or she:
 - (a) will be represented at the hearing;
 - (b) wants to call witnesses to give evidence to the sub-committee;
 - (c) wants any part of the hearing conducted in private and why;
 - (d) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.

5. The Monitoring Officer will endeavour to accommodate the availability of the parties (including the Complainant attending the hearing before notifying the parties of the date, time and place for the hearing.

The Hearing

Preliminary

6. The members of the sub-committee will be selected by the Monitoring Officer after having consulted the Chairman of the Corporate Governance and Standards Committee, noting the restrictions of paragraph 1.6 of the Arrangements above, and in accordance with paragraph 10.4 (b) of Part 2, Article 10 of the Constitution.

Notification of the Hearing

7. The Monitoring Officer shall ensure that, when the agenda for the Hearings Sub-Committee is sent out to members of the Hearings Sub-Committee, including the final report, the agenda and the report are also sent at the same time to:
 - (a) the Subject Member
 - (b) the Complainant;
 - (c) Witnesses; and
 - (d) the Clerk to the relevant Parish Council if the Subject Member is a parish councillor.
8. The Hearings Sub-Committee will be convened to determine the outcome of the Complaint and shall follow the Order of Business set out below.

The Order of Business

9. The order of business will be as follows, subject to the Chairman exercising discretion and amending the order of business where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter:
 - (a) Election of a Chairman.
 - (b) Apologies for absence and notification of substitutes.
 - (c) Declarations of interests.
 - (d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing.
 - (e) Introduction by the Chairman, of Members of the Hearings Sub-Committee, the Independent Person, the Parish Member (if the complaint involves a parish councillor), the Monitoring Officer or Legal Advisor to the Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).

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- (f) To receive representations from the Monitoring Officer, the Investigating Officer and Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press (subject to Part 1 of Schedule 12A Local Government Act 1972 (as amended)).
- (g) To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press (subject to Part 1 of Schedule 12A Local Government Act 1972 (as amended)).and the reasons for such an exclusion.
- (h) Conduct of the Hearing. The Hearings Sub-Committee may adjourn the hearing at any time.

Presentation of the Complaint

- 10. The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.
- 11. The Hearings Sub-Committee will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chairman. This is not cross examination but an opportunity to ask questions/points of clarification on the evidence presented at the hearing.
- 12. The Hearings Sub-Committee may question the Investigating Officer upon the content of his or her report and any complainant witnesses. This is not cross examination but an opportunity to ask questions/points of clarification on the evidence presented at the hearing.

Presentation of the Subject Member's case

- 13. The Subject Member or their representative presents their case and calls their witnesses.
- 14. The Hearings Sub-Committee will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chairman.
- 15. The Hearings Sub-Committee may question the Subject Member upon the contents of their case and any Subject Member witnesses.

Summing up

- 16. The Investigating Officer sums up the complaint.
- 17. The Subject Member or their representative sums up their case.

Deliberations of the Hearings Sub-Committee

- 18. The Hearings Sub-Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor, and taking the view of the Independent Person and the Parish Member (where applicable) who shall be entitled to retire to consider their view) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.

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19. The Hearings Sub-Committee may, at any time, come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Hearings Sub-Committee cannot be presented, then the Hearings Sub-Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
20. The Hearings Sub-Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
21. Where the complaint has a number of aspects, the Hearings Sub-Committee may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.
22. Having deliberated on its decision the Hearings Sub-Committee will reconvene the hearing in public and the Chairman will announce that, on the facts presented, the Hearings Sub- Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
23. If the Hearings Sub-Committee considers that there has been **no breach of the Code of Conduct**, the Sub-Committee will set out the principal reasons for the decision. The Chairman will also announce that the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
24. If the Hearings Sub-Committee decides that there has been **a breach of the Code of Conduct**, the Chairman will announce the principal reasons for the decision.
25. The Chairman will then invite the Investigating Officer and the Subject Member, to make their representations as to whether any sanction(s) or recommendations should be applied and what form any sanction(s) or recommendation(s) should take. In reaching its decision, the Hearings Sub-Committee may make any recommendations it considers may facilitate and enhance ethical standards within the relevant authority, noting the list at paragraph 28 below.
26. Having heard the representations/views, the Hearings Sub-Committee will adjourn with the legal adviser and deliberate in private. The Independent Person and the Parish Member (if appropriate) shall express their view in private session and shall be entitled to retire to consider their view beforehand.
27. Having deliberated on the suggested sanctions and/or recommendations(s) and the application of any sanctions(s), and having taken into account the Independent Person's views and those of the Parish Member if the complaint relates to a parish councillor, the Hearings Sub-Committee will reconvene the hearing and the Chairman will announce:
 - (a) whether any sanctions are to be applied (sanctions can only be recommended if the Subject Member is a parish councillor).
 - (b) Whether any recommendations will be made to the Borough or Parish Council or the Monitoring Officer.

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- (c) That the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
- (d) That the decision will be published on the Borough Council's website; and
- (e) That there is no internal right of appeal against the Hearings Sub-Committee's decision(s) and/or recommendations(s).

Range of Possible Sanctions

28. The Corporate Governance and Standards Committee has delegated to the Hearings Sub-Committee such of its powers to take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may:

- (a) Publish and report its findings in respect of the Subject Member's conduct (or recommend to the relevant Parish Council that it does so);

And it may

- (b) Report its findings to Council (or to the Parish Council) for information;
- (c) Censure the Member;
- (d) Recommend to the Subject Member's political group leader (or in the case of an un-grouped Subject Member, recommend to Council) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
- (e) Recommend to the Leader of the Council, in the case of an Executive Subject Member, that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities for a specified period;
- (f) Instruct the Monitoring Officer (or recommend to the relevant Parish Council) that the Subject Member be requested to participate in appropriate training or participate in conciliation and/or mediation; and where the Subject Member does not cooperate, the Monitoring Officer shall report the matter to the Chair of Corporate Governance and Standards who shall cause a meeting of the Hearings Sub-Committee to take place with the purpose of resolving to apply an alternative sanction;
- (g) Recommend to Council or the Leader of the Council (in the case of appointments by the Executive) or the relevant Parish Council that the Subject Member be removed from all or particular outside appointments to which they have been appointed or nominated by the Council or by the relevant Parish Council for a specified period (in which case the meeting of the Council or relevant Parish Council to consider the proposed removal shall do so on the basis of the report alone, and shall not re-hear the matter);
- (h) Withdraw, or recommend to the relevant Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access for a specified period;

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- (i) Exclude, or recommend that the relevant Parish Council excludes the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings and public areas;
- (j) Issue a formal letter of advisement as to future conduct to the Subject Member;
- (k) Request that Subject Member should tender an apology to such persons as were aggrieved by his or her actions;
- (l) Where the Monitoring Officer and Independent Person are not satisfied that the Subject Member has tendered the apology described at 27.11 the Monitoring Officer shall report the matter to the Chair of Corporate Governance and Standards who shall cause a meeting of the Hearings Sub-Committee to take place with the purpose of resolving to apply an alternative sanction.

The Hearings Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.

Matters to Consider when Applying a Sanction

29. When deciding whether to apply one or more sanctions referred to above, the Hearings Sub-Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Hearings Sub-Committee will consider the following questions along with any other relevant circumstances raised at the hearing:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
 - (b) Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
 - (c) Has there been a relevant breach of trust?
 - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
 - (e) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
 - (f) How serious was the incident?
 - (g) Does the Subject Member accept that they were at fault?
 - (h) Did the Subject Member apologise to the relevant persons?

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- (i) Has the Subject Member previously been warned or reprimanded for similar misconduct?
- (j) Has there been a relevant previous breach by the Subject Member of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?
- (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue, the Hearings Sub-Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

The written decision

30. The Chairman will announce its decision on the day. The Monitoring Officer will issue a full written decision approximately 10 working days after the end of the hearing to:
- (a) The Subject Member;
 - (b) The Complainant;
 - (c) Any witness; and
 - (d) The clerk to any Parish Council concerned.

Making the findings public

31. The Monitoring Officer will also arrange for a decision notice to be published as soon as possible on the Council's website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.
32. If the Hearings Sub-Committee finds that a Subject Member did not fail to follow the relevant authority's Code of Conduct, the public summary must say this, and give reasons for this finding.
33. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Hearings Sub-Committee's decision not to take any action.
34. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Hearings Sub-Committee.

Costs

35. Subject Members are responsible for meeting the cost of any representation at a Hearings Sub-Committee meeting from their own finances and not those of the Council. The Hearings Sub-Committee cannot make orders as to costs. Neither the

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Borough Council nor a Parish Council can contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member or Complainant against costs which he or she may incur.

Appeals

36. There is no right of appeal for a Member against a finding by the Hearings Sub-Committee following a hearing.

Variation

37. The Monitoring Officer or the Hearings Sub-Committee on the advice of the Monitoring Officer, in consultation with the Chairman of the Corporate Governance and Standards Committee, may vary this procedure in any particular instance where he or she or they is/are of the opinion that such a variation is expedient in order to secure the effective and fair consideration of any matter, is lawful, and is consistent with the principles of natural justice.

Pre-Election Period Publicity and Decision-Making Policy for all Elections conducted in the Boroughs of Guildford and Waverley

1. This Policy applies from the date of the publication of the Notice of Election until after polls close being the period when pre-election period publicity restrictions apply. This Policy restricts the Council and its officers during the pre-election period; it does not fetter candidates and councillors from their own political campaigning when doing so using their own resources.

Statutory requirements

2. There are statutory restrictions that apply to Council publicity before all elections. Although it should be *business as usual* in relation to decision-making, there are also some important sensitivities and conventions that councillors and officers should follow to reduce the risk of legal challenge being brought against the Council.
3. The Council must comply with restrictions outlined in Section 2 of the Local Government Act 1986 ('the Act'). In addition, a Code of Recommended Practice on Local Authority Publicity published in 2011 ("the Code of Practice") makes clear that particular care should be taken in periods of heightened sensitivity, such as in the run up to an election. The Act defines publicity as "**any communication, in whatever form, addressed to the public at large or to a section of the public.**"
4. Section 2 of the Act says that we should "**not publish any material which, in whole, or in part, appears to be designed to affect public support for a political party.**" The Code of Practice recommends that Councils should generally not issue any publicity which seeks to influence voters and that publicity relating to candidates and politicians involved directly in the election should not be published unless expressly authorised by statute.
5. The Code of Practice recommends that communications are issued with care during periods of heightened sensitivity.

Publicity

6. The Council must not issue:
 - proactive publicity of candidates and other politicians involved directly in the elections (this includes a candidate, agent, proposer, seconder, or assenter) who are named in the published Statement of Persons Nominated notice for the elections (but see also the section on the mayoralty below)
 - publicity that deals with controversial issues that could specifically be linked to a relevant issue in the elections. If this cannot be avoided, the publicity should present issues clearly and fairly with opposing points of views represented.
 - publicity that reports views in such a way that clearly identifies them with individual members or groups of members directly involved in the elections.

PART 5 – PRE-ELECTION PERIOD PUBLICITY AND DECISION-MAKING POLICY

7. Publicity includes:

- news releases and media enquiries
- emails, online and printed newsletters
- banners, posters, leaflets, booklets and publications
- social media information - such as postings on Facebook or Twitter – including video and audio clips and photographs
- consultation information
- information on our website

8. However, the Council can:

- respond to enquiries from the media provided that the answers given are factual and not party political
- if needed, publish factual information which identifies the names, wards and parties of candidates
- comment on a relevant issue where there is a genuine need for a councillor-level response to an important event outside of the Council's control or in relation to reactive media releases, with a response by a relevant lead officer
- continue with *business as usual* Council, Executive, and Committee meetings, subject to the proviso that the business to be transacted at those meetings, including motions brought and conduct displayed at those meetings does not, in the view of the Monitoring Officer, contravene the provisions of this policy.

9. During the pre-election period the Council will avoid:

- **including councillors or persons directly involved in the election in any publicity** other than the factual information referred to above - relevant lead officers may be quoted instead as necessary.
- organising photo opportunities or events which could be seen as giving candidates, councillors or other political office holders a platform for political comment.
- publications, events or promotions, and postpone them until after the elections if proceeding could give the appearance of seeking to affect support for a political party or candidate involved in the elections.
- commenting on matters of political controversy unless to refrain from comment would, in the opinion of the Chief Executive and Monitoring Officer, be harmful to the Council's reputation and best interests.
- references in publications to the period the current administration has been in office or to the Council's future commitments, if to do so could be seen to affect support for a political party or candidate involved in the elections.

Social media

10. The following guidance applies to all Council social media channels that are managed and monitored by Council officers. These rules apply generally at all times but some need more careful consideration during the pre-election period.
11. Officers must not:
 - Share content from political parties, councillors or politicians (but see also the section on the mayoralty below).
 - Add content on matters that are politically controversial.
 - Post, tweet, or share text, images, or video of political parties, councillors, politicians or subjects that are politically controversial.
 - Start a significant digital campaign, unless it can be demonstrated that this was included in the communications schedule before the election was called and is not politically controversial.

Decision making and Committee Meetings

12. The principle of the Council carrying on with *business as usual* during the pre-election period is subject to the wider context of pre-election sensitivity as to publicity. Therefore, depending on the type of election or referendum called, in relation to decision making within the council, the position remains that it is *business as usual unless there are very good reasons why this should not be the case*.

Specifically:

- Planning Committee, Licensing Sub-Committee and Licensing Regulatory Sub-Committee will be scheduled as usual during the Pre-election Period;

Meetings of the Full Council, Executive, and other Committees (including extraordinary and special meetings) may be scheduled with the approval of the Monitoring Officer.

- However, any meetings, formal decisions, Council motions or scrutiny projects on issues which are considered to have the potential to be politically contentious may be re-scheduled until after the pre-election period has ended, unless it is required by law to undertake them, or it's necessary to decide the matter to meet a statutory timetable.
- Where an unscheduled election is called, meetings scheduled to take place in the Pre-election Period (other than meetings of the Planning Committee, Licensing Sub-Committee and Licensing Regulatory Sub-Committee) may be cancelled if it is considered by the Monitoring Officer prudent to do so.

Public Consultation

13. Public consultation exercises should generally not take place during the Pre-election Period, unless not to do so would be harmful to the Council best interests or unlawful.

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14. The Joint Chief Executive, in consultation with the Monitoring Officer, will make the final decision in relation to whether a public consultation exercise should take place or not.

Third parties

15. The restrictions on publicity in an election period apply to publicity issued by third parties if they are assisted by Council funding. For example, where it could be shown that Council funding is being used to pay for a charity's publicity, the Council will take reasonable steps to ensure that that organisation complies with this pre-election period policy.

The Mayoralty and Council events

16. The Mayoralty is considered to be politically neutral and where, during the pre-election period, an elected Councillor response is required the Mayor should be the spokesperson.
17. Council communications including Social media posts by and about the Mayor can continue as long as they are not of a political nature.
18. The Council should avoid holding events which could give the appearance of seeking to affect support for a political party or candidate involved in the elections. The Chief Executive, in consultation with the Monitoring Officer, will make the final decision in relation to whether an event should be deferred or not.

Requests for Information

19. The Council is still legally required to respond to requests for information under Freedom of Information and related legislation. The Council should continue to ensure that all requests are treated even-handedly, with no preference shown to a particular group or party.

Elected councillors

20. Please note that the pre-election period restrictions generally relate to the Council and publicity in that period and not to individual councillors.
21. This means that individual councillors or political parties may contact the press directly, respond to their calls and set up their own photo shoots and publicity to promote a candidate or political party in the elections. However, they may not use the Council's resources (including ICT resources and email accounts), premises or facilities to do so. Councillors who breach or attempt to breach the restrictions or who put pressure on officers to break these rules may be in breach of the Councillors' Code of Conduct.

Council officers

22. Officers should take care in responding to requests for ad hoc meetings of a public nature to ensure that they are required only for the proper discharge of the Council's business.
23. Officers should not supply Council photographs or other materials to councillors or anyone directly involved in the election, unless they have verified that they will not be used for campaigning purposes.

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24. Officers should exercise caution if invited to any event in which election candidates participate. They should seek the Monitoring Officer's advice in such circumstances.
25. Those officers who are in politically restricted posts must refrain from taking part in canvassing or campaigning for a political candidate or party.
26. *Business as usual* officer decisions may continue be taken. However, politically controversial items may be deferred until after the election if to continue would, in the opinion of the Chief Executive, the Borough Returning Officer and the Monitoring Officer, be harmful to the conduct of the election.

Risks

27. If these rules about publicity are broken, the Council could be subject to legal challenge and, in a worst-case scenario, election results could be invalidated. Officers who fail to observe the rules may be liable to disciplinary action.

By-Elections

28. Although the full pre-election publicity procedures set out in the Policy will not be appropriate for ward by-elections, the Council and its officers will exercise extra caution and may apply some of the principles of this policy.

Useful Links

The Code of Recommended Practice on Local Authority Publicity

[Recommended code of practice for local authority publicity - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/222222/Recommended_code_of_practice_for_local_authority_publicity_-_GOV.UK.pdf)

Local Government Association (LGA) – pre-election period overall section

[Pre-election period | Local Government Association](https://www.local.gov.uk/pre-election-period)

LGA short guide to publicity during the pre-election period

[A short guide to publicity during the pre-period | Local Government Association](https://www.local.gov.uk/pre-election-period)

GUILDFORD BOROUGH COUNCIL MONITORING OFFICER PROTOCOL

1.0 THE MONITORING OFFICER

The Monitoring Officer is responsible for ensuring that the Council and its Members act lawfully, do not cause maladministration, and comply with the Code of Conduct for Members. The Monitoring Officer is the Council's primary source of advice on all legal issues, and to Members on their legal obligations, but also has specific statutory duties, such as investigating complaints of Member misconduct and making public report to the Council in cases of illegality.

The purpose of this protocol is to enable Members to make use of the Monitoring Officer's ability to provide them with practical advice on legality and conduct, by setting out how the Monitoring Officer will carry out their functions.

2.0 INTRODUCTION

The Council recognises that an effective Monitoring Officer, positively engaged in the discharge of the Council's business, is essential to the effective running and sound governance of the Council.

Section 5(1) Local Government and Housing Act 1989 requires the Council to appoint an Officer as the Council's Monitoring Officer and gives that Officer personal responsibility to:

- Report on actual, and anticipated, illegality within the Council; and
- Report cases where the Ombudsman has found maladministration on the part of the Council;

The Localism Act 2011 places a statutory responsibility on the Monitoring Officer to:

- Maintain the Register of Members' Interests; and
- Administer, assess and investigate complaints to Members' misconduct.

The law does not prescribe exactly how the Monitoring Officer is to carry out these functions. Therefore, this protocol describes the manner in which the Council expects the Monitoring Officer to discharge these functions and how it expects Officers and Members to co-operate with the Monitoring Officer in order to enable them to discharge these functions effectively.

3.0 DESIGNATION

The Monitoring Officer is designated by Council and may or may not be an employee of the Council. Where the Monitoring Officer is an employee of the Council and leaves that employment, they automatically cease to be the Monitoring Officer for the Council. The Council may appoint an Officer as Monitoring Officer on an interim basis pending a permanent appointment.

The Council's structure provides for the Executive Head of Legal & Democratic Services to be the Monitoring Officer. Any appointment to the role of Executive Head of Legal & Democratic Services and designation to the role of Monitoring Officer must be made in accordance with the Officer Employment Procedure Rules at Part 4 of the Constitution.

4.0 PERSONAL RESPONSIBILITY

The Monitoring Officer is required to carry out the statutory functions of their post personally, with the exception that:

- The Monitoring Officer, rather than the Council, will nominate at least one Officer as Deputy Monitoring Officer, with the power to act as Monitoring Officer where the Monitoring Officer is unable to act as a result of absence, illness, or conflict of interest; and
- In respect of the obligations relating to alleged breaches of the Members' Code of Conduct, the Monitoring Officer may arrange for any person to perform all or any of their functions, for example by delegating internally or by instructing an external and independent individual to conduct a particular investigation.
- Whilst the statutory functions are personal to the Monitoring Officer, they may arrange for any Officer to assist them in the discharge of any non-statutory functions.

5.0 FUNCTIONS

The functions of the Monitoring Officer are as follows:

5.1 Statutory Functions

- To report to the Council in any case where they are of the opinion that any proposal, decision or omission by the Council or any of its Committees, Sub-Committees, or any Member or Officer, has given rise to, or is likely to give rise to any illegality, in accordance with section 5(2)(a) Local Government and Housing Act 1989.
- To report to the Council in any case where the Ombudsman, after investigation, has reported that any proposal, decision or omission by the Council or any of its Committees, Sub-Committee, or any Member or Officer, has given rise to maladministration or injustice, in accordance with section 5(2)(b) Local Government and Housing Act 1989.
- To maintain the Register of Member's Interests in accordance with section 81(1) Local Government Act 2000 and section 29 Localism Act 2011, including dealing with sensitive interests under section 32 Localism Act 2011.
- To administer, assess and investigate complaints of allegations of breach of the Members' Code of Conduct, in accordance with the Localism Act 2011.

5.2 Non-Statutory Functions

- To ensure that the Council has effective governance arrangements in place.

- To provide an effective, robust and ongoing programme of elected member training and development.
- To contribute to the corporate management of strategic risks.
- To encourage effective scrutiny of the Council.
- To monitor and uphold the Constitution.
- To provide or obtain legal advice to the Council.
- To provide advice to Members on conduct and ethics matters generally.
- To consult regularly with the Chief Executive / Head of Paid Service, the Chief Financial Officer and Auditors to identify areas where the probity of the Council can be improved or better protected and to take appropriate action.
- To investigate any applications for dispensation from a Member and to report and recommend to the Council and/or Corporate Governance & Standards Committee as appropriate.
- To report to the Council on resources which they consider they require for the discharge of their functions.

6.0 ADVICE AND DECISIONS

The Monitoring Officer's responsibilities fall into 3 distinct categories:

6.1 Advice

A Member may seek advice from the Monitoring Officer, for example concerning their interests. The Monitoring Officer will provide their advice but ultimately it is for the individual Member to take their own decision as to their conduct in the light of that advice.

6.2 Decisions

Where the proposal, act or omission would cause the Council to act unlawfully, the Monitoring Officer may be required to decide whether there is any illegality that they are required to report to Council which would have the effect of suspending implementation of the action or decision until their report has been considered.

6.3 Advice and Decision

In some case, for example a Member conduct matter, the Monitoring Officer may be obliged to advise a Member whilst also being required to take action as Monitoring Officer.

7.0 SEEKING THE ADVICE OF THE MONITORING OFFICER

The Monitoring Officer will be most effective if they are able to advise on any issue at an early stage of policy formulation or implementation. Officers and Members should therefore routinely consult the Monitoring Officer in respect of new policy proposals and action programmes.

Members and Officers of the Council may consult the Monitoring Officer in confidence in respect of any proposal, decision or omission. Wherever possible, the

Monitoring Officer will seek to avoid any illegality or maladministration by identifying alternative means of achieving the objective or rectifying any deficiency. The Monitoring Officer may only make a report on illegality in respect of a proposal public where the relevant Officer or Member progresses the matter despite having been advised not to by the Monitoring Officer. Before reporting to Council on any illegality or maladministration, the Monitoring Officer will consult with the Chief Executive / Head of Paid Service and Chief Financial Officer.

The Monitoring Officer is responsible for advising Members on conduct and ethics matters and any Member can seek the confidential advice of the Monitoring Officer about their own position. Subject to any conflict of interest with the Council, the Monitoring Officer will advise whether in their view the conduct would amount to a breach of the Code and will not disclose that advice unless required to do so by law or as part of an investigation into an alleged breach of the code.

Members are encouraged to seek the advice of the Monitoring Officer concerning the conduct of another Member, prior to making a formal complaint, and they should do so in writing. The Monitoring Officer may make contact with the Member complained of, before responding.

8.0 INVESTIGATION

The Council expects the Monitoring Officer to investigate matters which give them concern as to possible illegality, maladministration or breach of code of conduct.

Where the Monitoring Officer is considering a complaint of a breach of the code of conduct, they will follow the Council's procedures and arrangements set out for the assessment, investigation and determination of such complaints.

Where the Monitoring Officer considers a complaint of illegality or maladministration and determines that the proposal, act or omission does, or would, give rise to maladministration or illegality, they shall seek to agree an alternative and lawful course of action and/or make a statutory report.

Upon receiving any complaint of illegality, maladministration or breach of the code of conduct, the Monitoring Officer will, where appropriate, seek to resolve the matter amicably and informally, but there may be circumstances where the matter is not appropriate for local resolution, is incapable of so being resolved, or if of such seriousness that a statutory report is an appropriate response.

9.0 REPORTING

Where the Monitoring Officer is of the opinion that illegality or maladministration has occurred or will occur, they will, after consulting with the Chief Executive / Head of Paid Service and Chief Financial Officer, report to Council. Alternatively, to negate the need for a separate statutory report, they are also able to add their written advice to the report on the matter by any other Council officer, and/or to provide oral advice at any meeting of the Council.

10.0 ADVICE TO INDIVIDUAL MEMBERS

Wherever possible the Monitoring Officer will provide advice to individual Members to support them in the discharge of their responsibilities as a Councillor. The Monitoring Officer will not however provide advice to a political group of the Council. The Monitoring Officer is designated as statutory officer to the Council, rather than to any individual Member or group of Members. Where the Monitoring Officer considers that providing advice to a Member is incompatible with their role as advisor to the Council, they may decline to provide such advice but can, at their discretion, secure such advice from an independent source at the Council's expense.

11.0 MONITORING AND INTERPRETING THE CONSTITUTION

The Monitoring Officer will monitor, and review on a regular basis, the effectiveness and operation of the Council's constitution so as to ensure that the aims and principles of the Constitution are given full effect and that the Constitution enables the Council to discharge its functions effectively.

In order to conduct such monitoring and review, the Monitoring Officer may:

- Consult any Member or Officer, other organisations and stakeholders.
- Observe meetings of Members and/or Officers at any level.
- Undertake an audit trail of a sample of decisions.
- Record and analyse issues raised with them by Members, Officers, the public or stakeholders.
- Compare practices in this Council with those in other comparable authorities, or national examples of best practice.
- Consider any relevant reports and recommendations of the Auditors and other regulatory agencies.

The Monitoring Officer will maintain an up-to-date copy of the Constitution and ensure that it is accessible to Members, Officers and the public and will make such amendments to the Constitution as are necessary to reflect changes of law, decisions made by Council and any other minor and consequential amendments.

The Monitoring Officer is responsible for advising on the interpretation of the Constitution.

12.0 RESOURCES

The Council is required by statute to provide the Monitoring Officer with the resources which they consider are necessary for the fulfilment of their statutory duties.

For the purpose of carrying out their functions, the Monitoring Officer shall be provided with the following resources:

- The right of access to all documents and information held by or on behalf of the Council.

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- The right of access to any meetings of Members or Officers of the Council, other than political group meetings.
- The right to require any Officer or Member of the Council to provide an explanation of any matter under investigation.
- A right to report to the Council and to the Executive, including the right to present a written report and to attend and advise verbally.
- The right of access to the Chief Executive / Head of Paid Service and the Chief Financial Officer.
- The right, following consultation with the Chief Executive / Head of Paid Service and the Chief Financial Officer, to notify the Police, the Council's Auditors and other regulatory agencies of their concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions.
- The right to obtain legal advice at the Council's expense from an independent external source.

GUILDFORD BOROUGH COUNCIL

PROTOCOL ON DECISION-MAKING BY LEAD COUNCILLORS

1. Protocol on Decision-Making by Lead Councillors

1.1 This protocol has been adopted by the Council to help achieve the following aims:

- (a) to protect the interests of the Council and individual councillors;
- (b) to ensure that decisions are based upon complete and sound information and advice from appropriate professional staff; and
- (c) to ensure that decisions are made in accordance with the Council's agreed processes and standards.

1.2 A clear audit trail of decision-making must be maintained for future reference. The Monitoring Officer will advise councillors and officers to ensure that the decision-making process meets the requirements of the law and good governance and on the proper implementation of these procedures.

1.3 This protocol does not cover all aspects of decision-making by individual councillors under executive arrangements. Councillors and officers will also need to be aware of and guided by other relevant sections of the Council's Constitution, particularly:

- Delegation to Lead Councillors (Part 3)
- Access to Information Procedure Rules (Part 4)
- Executive Procedure Rules (Part 4)
- Overview and Scrutiny Procedure Rules (Part 4)
- Councillors' Code of Conduct (Part 5)
- Code of Conduct for Staff (Part 5)
- Protocol on Councillor/Officer Relations (Part 5)

2. Forward Plan

2.1 Subject to the provisions of Access to Information Procedure Rules 15 (General Exception) and 16 (Special Urgency), a key decision shall not be taken by an individual lead councillor unless details have been included in the Council's Forward Plan.

2.2 In addition, as is the case for decisions taken by the Executive collectively, the Democratic Services and Elections Manager, in consultation with the Leader of the Council, will endeavour to ensure that information on all other decisions to be made by individual lead councillors is included in the Forward Plan.

3. Requirement for a Written Report

3.1 A written report on the proposed decision shall be prepared by the relevant officer on his or her own initiative or at the request of a lead councillor and shall be approved by the relevant strategic director.

3.2 The officer's report shall set out the following:

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- (a) The Executive portfolio within which the issues falls.
 - (b) The ward(s) and any parish(es) affected by the proposed decision.
 - (c) The name and title of the officer concerned.
 - (d) The date of the proposed decision.
 - (e) The subject/title of the report.
 - (f) Whether a key decision is to be taken.
 - (g) Whether the report contains confidential or exempt information.
 - (h) A description of the issue to be decided.
 - (i) The views of the relevant local ward councillor(s) (if appropriate).
 - (j) The views of the relevant parish council(s) (if appropriate).
 - (k) Any consultations undertaken, the method of consultation and a summary of any representations received.
 - (l) The officer's recommendations and the reasons for them.
 - (m) Details of any alternative options considered.
 - (n) A list of background papers.
- 3.3 Subject to the provisions on confidential and exempt information and special urgency set out in the Council's Access to Information Procedure Rules, the Democratic Services and Elections Manager shall at least five clear days prior to the date that the proposed decision is scheduled to be taken:
- (a) forward a copy of the report by e-mail to the relevant lead councillor and all other councillors; and
 - (b) make the report publicly available at the Council offices and on the Council's website.

4. Taking the Decision

- 4.1 The decision shall be taken by the lead councillor on the scheduled date in the presence of the relevant strategic director and Democratic Services and Elections Manager (or their representatives).
- 4.2 Prior to taking the decision, the lead councillor will be required to consider whether they, or their spouse or civil partner, have a disclosable pecuniary interest in relation to the matter under consideration. If they have such an interest and they have not received a dispensation in accordance with the Councillors' Code of Conduct, the lead councillor must not take any decision on that matter and must instead refer the matter to the Leader/Executive for determination.

5. Record of Decision

- 5.1 As soon as practicable after a decision has been taken by the lead councillor, the Democratic Services and Elections Manager will prepare a record of the decision in accordance with the provisions of Access to Information Procedure Rule 23.
- 5.2 By 5.00pm on the day following the date of the decision, the Democratic Services and Elections Manager shall forward the record of the decision by e-mail to all councillors indicating when it will become effective and, at the same time, will also make the record available for public inspection. This will enable councillors to consider whether they wish to call-in the decision in accordance with Overview and Scrutiny Procedure Rule 17.
- 5.3 The Democratic Services and Elections Manager will publish and maintain records of all decisions made, together with associated reports and background papers, in accordance with the Council's Access to Information Procedure Rules.

GUILDFORD BOROUGH COUNCIL

OTHER POLICIES AND PROTOCOLS

In addition to the policies and protocols included within Part 5 of the Constitution, the Council, the Leader of the Council, the Executive and other committees, councillors and officers will also act in accordance with the following documents:

- Anti-Fraud and Corruption Strategy
- Anti Bribery Policy
- Whistle-Blowing Policy
- Procurement Policy and Strategic Framework
- Risk Management Strategy and Framework
- Human Resources Strategy
- Equality Scheme
- Consultation Policy
- Communications Protocol
- Protocol on the appointment, role, status, rights and obligations of Honorary Freemen and Honorary Aldermen

Copies of these documents are published alongside the Constitution on the Council's website and internally on the Intranet.