

## **Appendix 6**

# **Members' Code of Conduct and Dealing with Complaints about Member Conduct**

Contents	Page
The Code of Conduct	2 - 4
Disclosable Pecuniary Interests	5 - 8
Arrangements for Dealing with Complaints about the Conduct of Members	9 - 14
Hearing Procedure	15 – 16
Local Code of Conduct in Planning Matters	17 - 24

## CODE OF CONDUCT FOR ELECTED MEMBERS

As a member or co-opted member of Chorley Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

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

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

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

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

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

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

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

As a Member of Chorley Council, my conduct will in particular address the statutory principles of the code of conduct by:

**Championing** the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.

**Dealing with** representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.

**Not allowing** other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the Borough or the good governance of the authority in a proper manner.

**Exercising independent** judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.

**Listening to** the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

**Being accountable** for my decisions and co-operating when scrutinised internally and externally, including by local residents.

**Contributing to** making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.

**Behaving in** accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.

**Valuing my colleagues** and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.

**Always treating people with respect**, including the organisations and public I engage with and those I work alongside.

**Providing leadership** through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

I will also comply with my obligations under the Act in relation to the registration and disclosure of interests and in Chorley Council this will be done as follows:

I will, within 28 days of taking office as a member or co-opted member, notify Chorley Council's Monitoring Officer of any disclosable pecuniary interest as defined by Regulations made by the Secretary of State, where the pecuniary interest is mine, my spouse's or civil partner's or is a pecuniary interest of someone with whom I am living as husband and wife or as if we were civil partners.

In addition, I will, within 28 days of taking office as a member or co-opted member, notify Chorley Council's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which Chorley Council has decided should be included in the register.

If an interest has not been entered onto Chorley Council's register, then I will disclose the interest to any meeting of the authority at which I am present, where I have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.<sup>1</sup>

Following any disclosure of an interest not on the authority's register or the subject of pending notification, I will notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, I will not participate in any discussion of, vote on, or discharge any function related to any matter in which I have a pecuniary interest as defined by Regulations made by the Secretary of State. Additionally, I will observe the restrictions Chorley Council place on my involvement in matters where I have a pecuniary or non pecuniary interest as defined by your authority.

---

<sup>1</sup> A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

## DISCLOSABLE PECUNIARY INTERESTS

This note explains the requirements of the Localism Act 2011 (Ss 29-34) and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, in relation to disclosable pecuniary interests.

These provisions are enforced by criminal sanction. They come into force on 1 July 2012.

### 1 Notification of disclosable pecuniary interests

Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any ‘disclosable pecuniary interests’.

A ‘disclosable pecuniary interest’ is an interest of yourself or your partner (which means 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 you are civil partners) within the following descriptions:

(In the extracts from the Regulations below, ‘M’ means you and ‘relevant person’ means you and your partner, as above)

<i>Subject</i>	<i>Prescribed description</i>
<i>Employment, office, trade, profession or vocation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<i>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.</i>
<i>Contracts</i>	<i>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.</i>
<i>Land</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Licences</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>
<i>Corporate tenancies</i>	<i>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</i>

*person has a beneficial interest.*

**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.*

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”** excludes 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.

## 2 Register of interests

Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

## 3 Sensitive interests

Where you consider that disclosure of the details of a disclosable pecuniary interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2).

## 4 Non participation in case of disclosable pecuniary interest

- A) If you are present at a meeting of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting,
1. You may not participate in any discussion of the matter at the meeting.
  2. You may not participate in any vote taken on the matter at the meeting.
  3. If the interest is not registered, you must disclose the interest to the meeting.
  4. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition, Procedure Rule 5, in Appendix 3 to this Constitution requires you to leave the room where the meeting is held while any discussion or voting takes place.

- B) Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

## 5 Dispensations

The authority may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

## 6 Offences

It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register

- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

## **ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CONDUCT OF ELECTED MEMBERS**

### **Introduction**

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the relevant Code of Conduct for Members.
2. The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Subject Member.”
3. No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

### **4. Making a complaint**

A complaint must be made in writing by post or email to: –

The Monitoring Officer  
Chorley Council  
Town Hall  
Market Street  
Chorley  
PR7 1DP

OR

[contact@chorley.gov.uk](mailto:contact@chorley.gov.uk)

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 5 working days of receipt, make written representations to the Monitoring Officer which he must take into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Initial Complaint Assessment.

### **5. Complaint Initial Assessment**

The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (a Complaint Initial Assessment) as to whether it merits formal investigation, or another course of action. This decision will normally be taken within 21 days of receipt of a complaint.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint must be against one or more named Members or co-opted Members of the Council or a parish council within its district;

- The Subject Member must have been in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the subject Member was operating at the time of the alleged misconduct.

If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant, or the complaint has been the subject of an investigation by another regulatory authority;
- 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;
- Whether the allegation is anonymous;
- 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;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint although in itself minor in nature suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

## 6. Additional Information

The Monitoring Officer may obtain additional factual information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council or the complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of Local Resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

## 7. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complainant may be at risk of physical 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.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member

## 8. Investigation

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be a Council officer, an officer of another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

## 9. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, he may ask the Investigating Officer to reconsider their report and conclusion.

**10. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek Local Resolution.

**11. Local Resolution**

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

**12. Local Hearing**

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a Local Hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Council has agreed a procedure for local hearings, which is attached as Appendix A to these arrangements.

**13. Constitution of the Hearings Panel**

The Hearings Panel is a Sub-Committee of the Council's Governance Committee. The Council has decided that a Hearings Panel will be comprised of a maximum of three Members, and comprising Members should be drawn from at least 2 different political parties. There is no requirement for political proportionality and Members who sit on a Hearings Panel have a duty to the Council's Code of Conduct and will be expected to consider matters accordingly.

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

The Hearings Panel are not bound by the views of the Independent Member but where they depart from the view their decision should contain reasons why.

**14. Who is the Independent Person?**

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

A person cannot be “independent” if he/she –

- 14.1 Is, or has been within the past 5 years, a Member, co-opted Member or officer of the authority;
- 14.2 Is or has been within the past 5 years, a Member, co-opted Member or officer of a parish council within the authority’s area, or
- 14.3 Is a relative, or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, “relative” means –
  - 14.3.1 Spouse or civil partner;
  - 14.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 14.3.3 Grandparent of the other person;
  - 14.3.4 A lineal descendent of a grandparent of the other person;
  - 14.3.5 A parent, sibling or child of a person within paragraphs 14.3.1 or 14.3.2;
  - 14.3.6 A spouse or civil partner of a person within paragraphs 14.3.3, 14.3.4 or 14.3.5; or
  - 14.3.7 Living with a person within paragraphs 14.3.3, 14.3.4 or 14.3.5 as husband and wife or as if they were civil partners.

**15. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct**

Where a Hearings Panel find that a member has failed to comply with the Code of Conduct, the Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 15.1 Publish its findings in respect of the Member’s conduct;
- 15.2 Report its findings to Council (or to the Parish Council) for information;
- 15.3 Recommend to the Member’s Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 15.4 Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;
- 15.5 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;

- 15.6 Remove (or recommend to the Parish Council that the Member be removed) from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- 15.7 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- 15.8 Exclude (or recommend that the Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

**16. Revision of these arrangements**

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

**17. Appeals**

The subject of the complaint has the right to appeal both against findings of breach of the code and against sanction.

The appeal must be in writing and received by the Monitoring Officer within 7 days of the date of the Hearing Sub-Committee decision being made. The appeal must state whether the challenge is against the finding of breach or against the sanction imposed only.

The Monitoring Officer will arrange for an Appeal Sub-Committee to be convened within 7 days of the receipt of any appeal. The Appeal Sub-Committee comprising of 3 Members will be drawn from the Governance Committee and will not include Members who sat on the Hearing Sub-Committee. A different Independent Member will also be used. The Appeal will follow the procedure used for Hearing Panels.

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no further right of appeal against a decision of the Monitoring Officer or of the Appeals Panel.

## HEARING PROCEDURE

### Stage 1: Setting the scene

1. After all the everyone involved has been formally introduced, the Chair will explain how the Committee is going to run the hearing.
2. The Chair will introduce the Independent Member and advise the Member that whilst they do not have a decision making role they are present to provide an independent view which the Committee are obliged to consider.
3. The Chair will ensure that the Member is ready and happy to proceed. If the Member indicates that they are not ready, they must give reasons why. The Committee will decide whether the hearing should proceed and must act reasonably in coming to that decision. Where the Member has indicated they are not ready but the Committee decide to proceed they should given reasons why.

### Stage 2: Making findings of fact

4. The Committee will ask the Member whether there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
5. If there is a disagreement, the Investigating Officer, will be invited to make representations on the challenged facts, but these are to be confined to matters contained within the report.
6. The Member will then have the opportunity to make representations to support their stated position.
7. At any time, the Committee may question the Investigating Officer or the Member.
8. If the Member disagrees with most of the facts, the Committee may invite the Investigating Officer to make representations on all the relevant facts, instead of discussing each fact individually.
9. If the Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing.
10. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
  - continue with the hearing, relying on the information in the Investigating Officer's report
  - allow the Member to make representations about the issue, and invite the Investigating Officer to respond
  - postpone the hearing to allow the Investigating Officer to consider and investigate the new issue.
11. The Committee will usually move to another room to consider the representations and evidence in private also present will be the clerk to the Committee and the Independent Member. On their return, the Chair will announce the Committee's findings of fact.

**Stage 3: Did the Member fail to follow the Code of Conduct?**

12. Having made the finding on the facts the Committee will then consider whether the Member has failed to follow the Code.
13. The Member should be invited to give relevant reasons why the Committee should decide that they have not failed to follow the Code.
14. The Committee should then consider any verbal or written representations from the Investigating Officer.
15. The Committee may, at any time, question anyone involved on any point they raise on their representations.
16. The Member should be invited to make any final relevant points.
17. The Committee will then move to another room to consider the representations. The Independent Member will accompany them and their views should be sought and considered by the Committee. Where the Committee depart from the view of the Independent Member they should record the reasons why.
18. On their return, the Chair will announce the Committee's decision as to whether the Member has failed to follow the Code.

**If the Member has not failed to follow the Code of Conduct**

19. If the Committee decides that the Member has not failed to follow the Code, the Committee will notify the Member accordingly and record the decision.

**If the Member has failed to follow the Code of Conduct**

20. If the Committee decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the Investigating Officer and the Member as to:
  - whether the committee should apply a sanction
  - what form any sanction should take
21. The Committee may question the Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
22. The Committee will then deliberate with the Independent Member in private to consider whether to impose a sanction on the Member and, if so, what sanction it should be. As previously the Independent Member will not be able to participate in making the decision (ie vote) but their views must be considered by the Committee. Where the Committee depart from the Independent Members views they must record reasons why.
23. The Committee will be limited to the sanctions listed in the procedure for the administration of complaints. The Committee must ensure that any sanction is reasonable and proportionate to the breach.
24. On their return, the Chair will announce the Committee's decision.

## **LOCAL CODE OF CONDUCT IN PLANNING MATTERS**

### **Preface**

The Local Code of Conduct on Planning Matters Code does not form part of the local Code of Conduct for Members but will be used as Guidance in connection with the interpretation of the Code of Conduct for Members in connection with planning matters.

This local code has been compiled on the advice of the Local Government Association's document entitled "Probity in Planning – the role of councillors and officers".

It seeks to publicise the standard which the Council will operate. It proposes practices and procedures designed to avoid grounds for allegations of malpractice in the future. The guide is aimed at all those who are involved in the planning decision making process.

The successful operation of the planning system relies on Councillors and officers ensuring they act in a way which is not only fair and impartial but is also clearly seen to be so.

The planning code is in addition to and runs alongside the Local Code of conduct which governs the way in which Councillors behave in their public duties.

The Borough Council has adopted this document and ensure that future Councillors and Officers are aware of its guidance.

### **1. Introduction**

This Code applies to all Councillors and Officers who become involved in operating the planning system and is not, therefore, restricted to Members on the Development Control Committee or Chartered Town Planners. It applies equally to the operation of any Sub-Committee and full Council if it were to take a planning decision.

### **2. The Need for the Code**

2.1 Planning affects property interests, particularly the financial value of land and the quality of its setting. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well-founded in any way.

2.2 Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also potentially contentious because decisions both on policy and applications affect the daily lives of everyone and the private interests of individuals, landowners and developers. This is heightened by the openness of the system (public opinion is actively invited before taking decisions) and the legal nature of development plans and decision notices. It is this quasi-judicial role which particularly distinguishes planning from most other local government business. It is important, therefore, that the process is characterised by open and transparent decision making.

### **3. Status of the Code**

This Guidance is not legally binding, only advisory. However, it has been incorporated as an Appendix to the Council's Code of Conduct for Members and failure to follow the recommendations without good reason could be taken into account in investigations into possible references to the Standards Board for England, maladministration, actions for judicial review, or have implications for the standing of Councillors and Officers. At

its worst failure to follow the Code may result in indefensible planning decisions which are then reversed on appeal with a finding of costs against the Council.

#### **4. The General Role and Conduct of Councillors and Officers**

4.1 Councillors and Officers have different, but complementary, roles. Both serve the public, but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole. Officers provide advice and Councillors are the ultimate decision takers. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised.

4.2 Both Councillors and Officers are already guided by codes of conduct. The Council's Local Code of Conduct for Members provides guidance and standards for Councillors. Breaches of the Code of Conduct are to be referred to the Standards Board for England and may also be regarded as maladministration by the Local Government Ombudsman. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may lead to disciplinary action by the Institute. In addition to these codes, the Council's Constitution and relevant Conditions of Service set down rules which govern the conduct of Council business.

4.3 Government has published Regulations [The Relevant Authorities (General Principles) Order 2001 which sets out 10 general principles which are to govern the conduct of Members and Co-opted Members. The first of these is as follows:

“Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.”

Councillors should, therefore, represent their constituents as a body and vote in the interests of the whole of the Borough Council's area.

4.4 This is particularly pertinent to Councillors serving on the Development Control Committee or who become involved in making a planning decision e.g. where full Council might deal with a planning application. The basis of the planning system is the consideration of private proposals in the context of wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst Councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Committee. Councillors should also be very cautious about accepting gifts and hospitality and should follow the relevant advice in the Local Code.

4.5 Officers must always act impartially. In order to ensure that Senior Officers demonstrably do so, restrictions have been set on their outside activities, such as membership of political parties and serving on another council. During the course of carrying out their duties, Officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable, Officers should ensure it is of the minimum level and declare its receipt as soon as possible. All offers should be declared in the Council's hospitality book, whether or not accepted.

#### **5. Declaration and Registration of Interests**

- 5.1 The Local Code sets out requirements and guidance for Councillors on declaring personal and prejudicial interests and the consequences of having such interests. These must be followed scrupulously and Councillors should review their situation regularly. When doing so, it must be borne in mind that General Principles Regulations referred to at Paragraph 4.3 above contain the following principle (Principle 2):

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

The responsibility for this rests individually with each Councillor.

- 5.2 A register of members’ interests is maintained by the Council. It is updated regularly and any changes should be notified by Councillors as soon as possible. One purpose of this is to expressly bring under the Council’s scrutiny the suitability of individual Councillors to sit on the Development Control Committee. Councillors who have substantial property interests or other interests which would prevent them from voting on a regular basis should avoid serving on this Committee.
- 5.3 Advice on what constitutes a personal interest and what constitutes a prejudicial interest is given in the Local Code. It is for Councillors to interpret this always bearing in mind the general principles referred to above. Personal interests could arise through family, friends, clubs, or organisations that they or the Member works for. The Local Code states that a personal interest is an interest that affects the Member more than most other people in the area. People in the area include those who live, work or have property within the area of the Council. The Local Code states that the test for deciding whether a personal interest is also a prejudicial interest is whether the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest. If a Member has a personal interest, they must declare it and say what that interest is before any meeting where the issue is to be discussed or as soon as it comes to light. However, they can still take part in the meeting and vote unless the personal interest is also a prejudicial interest. If a Member has a prejudicial interest then they must declare what that interest is (if they have not already done so) and withdraw from the meeting (by leaving the room). The test for an interest to be declared is whether a member of the public, knowing all the facts, would reasonably think that the Councillor might be influenced by it. If so, and if the interest is clear and substantial, then not only must the interest be disclosed, but the Councillor should not take any further part in the relevant proceedings and should withdraw. The responsibility for declaring an interest lies with the individual Councillor.

## **6. Development Proposals Submitted by Councillors and Officers, and Council Development**

- 6.1 Proposals submitted to the Council by Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for the Council’s own development. Proposals can take the form of either planning applications or development plan proposals.
- 6.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. It is also prudent for Councillors and Officers to enquire clearly about the need for planning permission or building approval before commencing work.

- 6.3 Serving Councillors and Officers should never act as agents on behalf of people pursuing a planning matter with the Council. When making an application for their own property Planning Unit staff should take no part in its processing. Such proposals should be identified and reported to Committee rather than be dealt with under delegated powers.
- 6.4 Proposals for the Council's own development should be treated in the same way as those by private developers and in accordance with statutory procedures.

## 7. **Lobbying of and by Councillors**

- 7.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the committee. As the Nolan Committee's Third Report states: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the Councillors themselves". Any code of conduct which fails to take account of the realities of the political/representative process will not carry credibility with experienced elected members.
- 7.2 It should be remembered that the reports on North Cornwall and Warwick were both greatly concerned with the issue of lobbying. In both cases, lobbying had caused considerable public mistrust of the councils.
- 7.3 Councillors, and members of the Development Control Committee in particular, need to take account of the general public's (and the Ombudsmen's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. It is probably misleading to describe the determination of a planning application strictly as a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), but it is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Standards Board or to the Ombudsmen on grounds of maladministration.
- 7.4 However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a councillor being called into question. When being lobbied, councillors, and members of the Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant officer, in order that their opinions can be included in the officer's report to the Committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant advice and arguments at committee.
- 7.5 The difficulty created by the nature of the Committee's proceedings as set out in paragraph 7.4 above is that members of the Committee (at least those who are not councillors for the affected ward – see below) should not openly declare which way

- they intend to vote in advance of the Committee meeting, and of hearing the evidence and arguments on both sides.
- 7.6 Political reality suggests that it is often important to distinguish between the role of the Development Control Committee member who is, and who is not, a ward member for the area affected by the planning application. A Committee member who does not represent the ward affected is in an easier position to adopt a (formally) impartial stance, however strong his or her feelings about the application may be, and to wait until the Committee meeting before declaring one way or the other.
- 7.7 A Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome – or even campaign actively for it – it will be very difficult for that member to argue convincingly when the Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented – perhaps in some respects for the first time – at Committee. Although not amounting to a personal or prejudicial interest according to the Local Code, the proper course of action for such a member should be to make an open declaration and not to vote. This restriction is a problem for Committee members whose ward is affected so the summary advice set out in Appendix 1 is important because it allows such a member to display a sympathetic ear without openly declaring his/her voting intention. It also builds in time during which the proposal may be amended such that it allows the member to then vote, once it comes to Committee with all the evidence, in a way which may not have been their initial reaction.
- 7.8 It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active ward representative and the principle in the General Principles Regulations that Members should serve only the public interest.
- 7.9 It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual member, and that in doing so regard needs to be paid to the following principles laid down in the General Principles Regulations:
4. “Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.”
  6. “Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.”
- 7.10 Given that the point at which a decision on a planning application is made cannot occur before the Committee meeting when all the update information is to hand, any political group meeting prior to the Committee meeting should not be used to decide how Councillors should vote. Councillors should avoid organising support for or opposition to a planning application, and avoid lobbying other Councillors and should not put pressure on officers for a particular recommendation. Such actions can easily be misunderstood by parties to the application and by the general public.
- 7.11 There may be some members of Development Control Committee who are also Parish Council members and who may get involved in commenting on planning applications at Parish level. The best way forward is for them not to vote at that stage – i.e. do not go

public one way or the other – and save their formal position until Development Control Committee receives its full report.

## **8. Pre-Application Discussions and Member Briefings**

- 8.1 Discussions between a potential applicant and Officers prior to the submission of an application can be of considerable benefit to both parties and encouraged by the Audit Commission. However, it would be easy for such discussions to become, or be seen (especially by objectors) as part of a lobbying process.
- 8.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any advice expressed is provisional. By the very nature of such meetings, not all relevant information will be to hand, neither will formal consultations with interested parties have taken place. Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies between Planning Officers.
- 8.3 A written note should be made of the meeting. Two or more Officers should attend potentially contentious meetings and a follow-up letter is advisable at least when documentary material has been left with the Council. A follow up letter should be sent if it is clear that the potential applicant or adviser is under a misapprehension as to the outcome of the meeting. It will not normally be necessary or appropriate for a Councillor to attend pre application meetings. Should there be occasions when Councillors are involved, they should always be advised by appropriate professional Officers from the Council (including an appropriate Planning Officer). These are normally pre-application briefings, open to all Members of the Council and run under strict guidance. These briefings are an opportunity for applicants for major developments to provide Members with information, consultation plans and to respond to questions. These briefings must not be used to make decisions or to prejudice an application, merely to gather information.

## **9. Ward Member Referrals to Development Control**

- 9.1 A ward councillor acting in that capacity, may request that a planning application which is recommended for approval under delegated powers, is determined instead by the Development Control Committee, providing that at least one written objection to the application has been received by the Director of Partnerships, Planning and Policy. The request from the ward councillor must be received in writing within 4 weeks of the application appearing on the published weekly list of planning applications.
- 9.2 This provision may also apply to ward councillors in an adjacent ward where a planning application is reasonably deemed to affect that ward if determined so by the Director of Partnerships, Planning and Policy in consultation with the Chair and Vice Chair of the Development Control Committee.

## **10. Officer Reports to Committee**

- 10.1 Criticism can arise in respect of the way in which planning applications are reported to Committee, e.g. inadequate consideration of the issues, inconsistency of decision making, that the reasoning behind a recommendation is unclear or non-existent, and that sometimes there is no recommendation. This can lead to public concern and a loss of confidence.

10.2 All these problems can be avoided by having regard to the following points. It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under the Town and Country Planning Act 1990.

10.3 It has been the practice at Chorley to prepare a full written report on all applications reported to Committee. This is seen as the fairest way of representing all the issues which relate to the planning decision. Given the importance of the written report, the following key areas should be covered:

- Reports should be accurate and cover all relevant points.
- Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations.
- Reports should have a written recommendation of action; oral reporting (except to update a report) should be extremely rare and carefully minuted when it does occur.
- Reports should contain a technical appraisal which clearly justifies the recommendation.
- If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

## 11. Decisions Contrary to Officer Recommendation and/or the Development Plan

11.1 The law requires that where in making any decision under the Planning Acts, regard is to be had to the Development Plan, that decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 54A of TCPA 1990).

11.2 This gives rise to several issues. Firstly, all applications which are not in accordance with the Development Plan must be identified as soon as possible and then advertised as departures. Secondly, if it is intended to approve such an application, the material considerations which lead to this conclusion must be clearly identified and how they justify overriding the Development Plan. The application may then have to be referred to the Secretary of State depending upon the type and scale of development proposed. If the Officers' Report recommends approval of a departure, the justification for this should be included in full in that report with regard to all planning applications.

11.3 If the Committee makes a decision contrary to the Officers' recommendation (whether for approval or refusal) a detailed minute of the Committee's reasons should be made and a copy placed on the application file. Such reasons should be clear and convincing planning reasons and Members should always bear in mind (a) that the ability of any Officer to defend the decision at any subsequent Planning Inquiry may therefore be seriously constrained; and (b) that there may be surcharging implications should costs be awarded following a successful appeal. As advised in Planning Policy Guidance (PPG1) the personal circumstances of an applicant will only provide such reasons in very exceptional circumstances for this. A Senior Legal Officer should always attend the meeting to ensure that procedures have been properly followed.

11.4 There is a further safeguard in the system at Chorley. If Development Control Committee intends to make a decision which would involve a substantial departure from policy, the Chair can refer that decision to the full Council for ratification.

## 12. Committee Site Visits

- 12.1 If there is no consistency in the operation of site visits, as regards why they are held and how they are conducted, it may leave the Council open to the accusation that they are, at best, arbitrary and unfair and, at worst, a covert lobbying device.
- 12.2 In general Committee should only seek a site visit when the impact of the proposal is difficult to visualise or the proposal is particularly contentious.

### 13. Regular Review of Decisions

- 13.1 Best Practice recommends Councillors should visit a sample of implemented planning permissions to assess the quality of their decisions. Such a review should improve the quality and consistency of decision making, thereby strengthening public confidence and helping with reviews of planning policy.
- 13.2 The review should be on an annual basis and experience to date of this practice has been very beneficial. It will be important to feedback experience to Committee to decide whether it gives rise to the need to review any policy or practices.

### 14. Complaints and Record Keeping

- 14.1 So that any complaints from the public regarding the Council's handling of planning matters may be properly processed in accordance with the Council's Complaints Procedure (and, in any case, as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's position. Every planning application file should contain an accurate account of events throughout its life including notes taken by officers on site visits, notes of telephone calls and notes taken at meetings. It should be possible for someone not involved with that application to understand what the decision was, and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers, where there is no Committee Report. Such reports should follow a similar format to Committee Reports. These principles apply equally to enforcement and development plan matters. Monitoring should be undertaken regularly.

## **SUMMARY OF GOOD PRACTICE IN RELATION TO LOBBYING**

- *Advise that any comments should be made in writing to the Head of Planning.*
- *Say that letters or petitions given to a member will be passed on to the relevant Planning Officer.*
- *Explain the procedures which will be followed e.g. all comments received will be referred to in the report presented to Committee before any decision made.*
- *State that you expect most points being raised in representations are likely to be addressed in the report to Committee.*
- *Acknowledge the points being made without necessarily agreeing with them.*
- *Be clear that members need to see all the evidence for or against a proposal before being able to declare which way they will vote.*
- *To jump in for or against at the outset would be seen as impartial and could bar a member from voting on the final decision.*
- *In general it is best to receive the officers report to Committee before declaring any voting intentions.*