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# **PART 5**

## **Codes and Protocols**

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## SECTION 1 –Code of Conduct for Members

*Issued July 2012; Updated XX 2019*

1. Purpose of the Code
2. Rules of Conduct
3. Interests
4. Gifts & Hospitality
5. Dispensations
6. Complaints Process

### Appendix

1. Glossary
2. Pecuniary Interests

## **1 Purpose of the Code**

- 1.1 The Localism Act 2011 requires this Council to promote and maintain high standards of conduct by its Members and Co-opted Members. In discharging its duty, the Council is required to adopt a Code of Conduct, which sets out the conduct expected of its Councillors.
- 1.2 The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the Council, to their constituents and to the public at large by:
  - a. establishing the standards and principles of conduct expected of all Members in undertaking their duties;
  - b. ensuring public confidence in the standards expected of all Members and in the commitment of the Council to upholding the Code through an open and transparent process.

### **Who does the Code apply to:**

- 1.3 Any reference to “member” in this Code is taken to apply to Members & Co-opted Members of Epsom & Ewell Borough Council. All elected and co-opted members of the Council must give a written undertaking to abide by the “Code of Conduct for Members” when taking office or on appointment.

### **What does the Code apply to:**

- 1.4 The Code applies to a Member's conduct, which relates in any way to their membership of the Council. The Code does not seek to regulate the conduct of Members in their purely private and personal lives or in the conduct of their

wider public lives unless such conduct significantly damages the reputation and integrity of the Council as a whole or of its Members generally.

### What are the Principles?

- 1.5 The 7 principles of public life, sometimes referred to as the 'Nolan Principles' apply to anyone who works as a public office-holder. This includes people who are elected or appointed to public office, nationally and locally, and all people appointed to work in in the public sector. The principles also apply to all those in other sectors that deliver public services. The application of the Nolan Principles to the Code are further enhanced by the addition of two new principles.
- 1.6 The Localism Act 2011 requires the Council to establish and maintain a register of interests of the members (and co-opted members) of the Council. The Register of Members' Interests is published on the Council's website and will be maintained by the Monitoring Officer.
- 1.7 In addition to disclosable pecuniary interests, in the interests of transparency, personal interests as specified in the Code, must be notified to the Monitoring Officer and declared at meetings. Any decision making Member with a prejudicial interest must ensure they comply with the requirements of the Code.

## 2 Rules of Conduct

- 2.1 Local government impacts the lives of citizens every day. The proximity of local government to local people means the decisions of local authorities can directly affect a citizens' quality of life. As such it is accepted and expected that high standards of conduct are needed to protect the integrity of decision making to maintain public confidence and to safeguard local democracy.
- 2.2 When acting as a Member of the Council, Members must observe this Code and the Rules of Conduct in such a manner that complies with the Seven Principles of Public Life. These general principles of conduct were identified by the Committee on Standards in Public Life in its First Report.
- 2.3 In addition to the Seven Principles, the Council has held itself to higher standards. Such higher standards are now incorporated into the Code as a further two Principles which will be referred to as the "Extra Principles".
- 2.4 These Nine Principles will be taken into account when considering the investigation and determination of any allegations of breaches of the Rules of Conduct. A breach of any of the Nine Principles will be seen as breach of the Rules of Conduct.

2.5 The Seven Principles of public life are 1-7 below and the Epsom & Ewell Extra Principles are 8-9:

Principle	Behaviours
1: Selflessness	Members should take decisions 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.
2: Integrity	Members should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
3: Objectivity	In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members should make choices on merit.
4: Accountability	Members are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5: Openness	Members should be as open as possible about their actions and those of the Council, and should be prepared to give reasons for those actions.
6: Honesty	Members 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.
7: Leadership	Members should promote and support these principles by Leadership, and by example, and should act in a way that secures or preserves public confidence
8: Duty to uphold the law	Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.
9: Stewardship	In discharging their duties and responsibilities Members must ensure that the Council's resources are used both lawfully and prudently.

2.6 As a Member your conduct shall in particular address the Nine Principles by:

- a. championing the public interest, taking into account the needs of your constituents, including those that did not vote for you, and the community as a whole;



- b. not allowing other pressures, to deter you from pursuing constituents' casework, the interests of the Council or the good governance of the Council in a proper manner;
- c. exercising independent judgement and not compromising your position by allowing individuals or organisations to improperly influence you in the performance of your official duties by means of any financial or other obligations;
- d. 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;
- e. being accountable for your decisions and co-operating when scrutinised internally and externally;
- f. restricting access to information when the wider public interest or the law requires it, and not disclosing confidential information, unless you are entitled to by law. Please refer to the Monitoring Officer if you are unsure;
- g. behaving in accordance with all of the Council's legal obligations, alongside any requirements contained within the Council's policies, protocols or procedures, including on the use of the Council's resources;
- h. ensuring that, when using or authorising the use by others of the resources of the Council, such resources are not used improperly for political purposes (including party political purposes) and having regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986;
- i. valuing your colleagues and officers of the Council and engaging with them in an appropriate manner and one that underpins the mutual respect that is essential to good local governance;
- j. always treating people with respect, including the organisations and constituents that you engage with and those that you work alongside, and not bullying, harassing (including sexually harassing), intimidating or attempting to intimidate any person;
- k. not doing anything which could reasonably be regarded as bringing your office or authority into disrepute;
- l. upholding the Council's obligations under the Equality Act 2010 by promoting equality, and not discriminating unlawfully against any person on the grounds of race, gender, disability, religion or belief, sexual orientation or age;
- m. registering and declaring any private interests, both pecuniary and non-pecuniary, that relate to your public duties in a manner conforming with the Council's procedures, set out below;
- n. providing leadership through behaving in accordance with these principles when championing the interests of constituents with other organisations as well as within the Council.

- 2.7 Where Member is elected, appointed or nominated by the Council to serve:
- on another relevant authority, or any other body, when acting for that other authority or body, the Member must comply with the code of conduct of that other authority or body; or
  - on any other body which does not have a code relating to the conduct of its members, the Member must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- 2.8 Members must ensure that all contact with Council Officers will comply with the protocol for Managing Member/Officer Relations. A distinction is made between contacts with less senior staff as part of day to day enquires and council business and contact by members where contentious or political issues may arise. The table below sets some examples:

Examples of day to day contact with less senior Officers.	Examples of matters which should be addressed at Head of Service or above
Requests for routine information on a case or issue on behalf of a resident eg who is dealing with a case or the issues when it may be resolved.	Concerns around the application of a threshold or the entitlement to a service.
Requests for information on timescales of applications e.g. planning applications, licensing, housing allocation	Specific complaints about not granting consent or complaints about the application of eligibility criteria must be discussed with the relevant head of Service or above.
Requests for information on how processes work	Suggestions for improving or changing services

### 3 Interests

- 3.1 As a public figure, a Member's public role may, at times, overlap with their personal and/or professional life and interests, however when performing a public role as a Member, you must:
- act solely in terms of the public interest, and
  - not act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

- 3.2 Members shall fulfil conscientiously the requirements in respect of the registration and declaration of interests.
- 3.3 Members shall always be open and frank in drawing attention to any relevant interest in any proceeding of the Council or its Committees, and in any communications with Members, public officials or public office holders. Members are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office as Members. Interests must be recorded and be capable of audit.

#### **Notification & Registration of Member's Interests**

- 3.4 A Member must, within 28 days of this Code being adopted or applied by the Council or becoming a Member (or co-opted member), notify the Monitoring Officer of any disclosable pecuniary interest (DPI) as defined by regulations made by the Secretary of State, through the completion of the Declaration of Interests Form.
- 3.5 A Member, must within 28 days of becoming aware of any new disclosable pecuniary interest or change to any disclosable pecuniary interest already registered, provide written notification to the Monitoring Officer via an amendment form obtainable from the Monitoring Officer. The Monitoring Officer shall, subject to the provisions on Sensitive Interests, enter any amendments.
- 3.6 A Member must observe the notification provisions relating to interests which arise at meetings.

#### **Disclosable Pecuniary Interests**

- 3.7 A Member will have a disclosable pecuniary interest in any matter to be considered or being considered by the Council if it is of a description set out at Appendix 2 and either:
- a. it is the Member's interest, or
  - b. it is an interest of
    - (i) the Member's spouse or civil partner;
    - (ii) a person with whom the Member is living as husband and wife, or
    - (iii) a person with whom the Member is living as if they were civil partners and the Member is aware that that other person has the interest.
- 3.8 A Member must comply with the statutory requirements to register, disclose and withdraw from participating and voting in respect of any matter in which a Member has a disclosable pecuniary interest

## Personal Interests

3.9 A Member will have a personal interest in any matter to be considered or being considered by the Council where that interest is not a DPI in that matter and, either:

- a. the matter relates to or is likely to affect:
  - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;
  - (ii) any body
    - (aa) exercising functions of a public nature;
    - (bb) directed to charitable purposes; or
    - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
- b. a decision in relation to that matter might reasonably be regarded as affecting a Member's well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

3.10 For the purpose of paragraph 3.9(b), a "relevant person" is

- a. a member of the Member's family or any person with whom the Member has a close association; or
- b. any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- c. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- d. any body of a type described in Paragraph 4.8 a. (i) and (ii) above of which such persons are members or in a position of general control or management.

3.11 For the purpose of paragraph 3.10 a., "Family member" is for the time being defined as a spouse, partner, parent, parent in law, son, daughter, step son, stepdaughter, child of a partner, brother, sister, grandparent, grandchild,

uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and partner means a member of a couple who live together.

### Prejudicial Interests

- 3.12 Where a Member has a **personal interest** in any matter to be considered or being considered by the Council, that Member will also have a prejudicial interest in that matter where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice a Member's judgment of the public interest and where that matter:
- a. affects a Member's financial position or the financial position of a person or body described in the paragraphs relating to Personal Interests above, or
  - b. relates to the determining of any approval, consent, licence, permission, or registration in relation to you or any person or body described in paragraphs relating to Personal Interests above.
- 3.13 A personal interest in any matter to be considered or being considered by the Council is not a prejudicial interest where that matter relates to the functions of the Council in respect of:
- a. housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
  - b. 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;
  - c. an allowance, payment or indemnity given to Members;
  - d. any ceremonial honour given to Members;
  - e. setting council tax or a precept under the Local Government Finance Act 1992

### Sensitive Interests

- 3.14 Where a Member has an interest (whether or not a disclosable pecuniary interest) and the nature of it is such that the Member and the Monitoring Officer consider that disclosure of the details of the interest could lead to the Member or a person connected with that Member being subject to violence and intimidation if the interest is entered on the Declaration of Members Interests Form, then such interest will not be published. Instead it may be recorded the details of the interest are withheld under section 32(2) of the Localism Act 2011.

- 3.15 Where a Member has an interest in any business of the Council which would be disclosable but the details of the interest are not registered in the Council's published Register of Members Interests because they are classed as Sensitive Interests, a Member need not disclose the nature of the interest to the meeting.
- 3.16 A Member with a Sensitive Interest must, within 28 days of becoming aware of any change of circumstances, which means that information is no longer sensitive information, must notify the Monitoring Officer, asking that the information be included in the register of Interests.

### **Disclosure and participation at Meetings**

#### **General Principles**

- 3.17 At a meeting where a Member is being asked to make a relevant decision, or is speaking, a Member must not compromise any of the 9 Principles when arriving at or making such a decision.
- 3.18 Members should declare any personal and/or professional interests relating to their public duties and must take steps to resolve any conflicts arising in a way that protects the public interest. This includes the declaration of acceptance of any discloseable gift or hospitality at any discussion of, vote on, or discharge of any function relating to the donor.
- 3.19 Members should seek advice in advance of a meeting when a matter is known or should reasonably have been known to involve an interest affecting a Committee Member and complete the Declaration of Interests at Meetings Form.
- 3.20 A declaration of an interest made at any meeting relating specifically to a particular issue under consideration shall be recorded. The declaration shall appear in the minutes of the meeting and will be published on the Council's website.

#### **Declaration of Members Interests**

- 3.21 All Members are required to disclose as appropriate any personal and personal prejudicial interests in matters that arise at meetings which might influence their judgement or which could be perceived (by a reasonable member of the public) to do so. Members should declare:
- a. relevant personal direct and indirect pecuniary interests;
  - b. relevant direct and indirect pecuniary interests of close family members of which Members could reasonably be expected to be aware; and
  - c. relevant personal non-pecuniary interests, including those which arise from membership of clubs and other organisations;

- d. any body of which the Member is a member or in a position of general control or management and to which you are appointed or nominated by your authority;
- e. any body for which the Member works (paid or unpaid) exercising a function of a public nature, directed to charitable purposes or whose principal purpose includes the influence of public opinion or policy.

3.22 The personal interest becomes **prejudicial**, if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice your judgement of the public interest. A Member's DPIs are always prejudicial.

3.23 A Member must observe the restrictions the Council places on their involvement in matters where they have a pecuniary or non-pecuniary interest as defined by the Council.

#### **Predetermination or Bias**

3.24 Where a Member has been involved in campaigning in their political role on an issue which does not impact on their personal and/or professional life, they are not be prohibited from participating in a decision in their political role as Member of the Council. However, Members should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence the Member in the performance of their official duties.

3.25 When making a decision, Members must consider the matter before them, with an open mind and on the facts before the meeting at which the decision is to be taken.

3.26 Members who sit as Committee Members need to be aware that when they have an interest in the matter being discussed or being decided, the role as a decision maker is subject to extra scrutiny.

3.27 Members who are not Committee Members, but are attending a Committee to speak, also need to be aware that if they have an interest in the matter they are speaking on, their role as an interested member is also subject to extra scrutiny.

#### **Interests arising in relation to Scrutiny Committee**

3.28 Members have a prejudicial interest in any business before a Scrutiny Committee where:

- a. that business relates to a decision made (whether implemented or not) or action taken by any of the Council's Policy Committees or another committee, sub-committee, joint committee; and
  - b. at the time the decision was made or action was taken, the Member was a member of a Policy Committee, or other committee, sub-committee, joint committee mentioned in paragraph (a) and they were present when that decision was made or action was agreed or taken.
- 3.29 A Member with a prejudicial interest may only address a Scrutiny to answer any questions once they have declared the nature of the interest they have, which they must do at the earliest opportunity. They must withdraw from the room where the meeting is being held once they have answered any questions.

#### **Action following declaration**

- 3.30 If a Member is acting as a decision maker at a meeting where the Member has an Interest in the matter being discussed or that arises during the course of the meeting, the Member needs to consider if the interest is a Disclosable Pecuniary Interest and or a prejudicial interest.
- 3.31 If the interest is either a DPI or a prejudicial interest:
- a. the Member must withdraw from the room where the meeting considering the business, is being held, unless a written Dispensation has been granted;
  - a. the Member is not permitted to participate in any discussion of a matter that relates to the Member's DPI or prejudicial interest at the meeting;
  - c. the Member is not permitted to participate in any vote on the matter where they have a DPI or prejudicial interest.
- 3.32 In the case of any other Pecuniary or Non Pecuniary Interest, the Member will need to consider whether a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice your judgement of the public interest. A Member believes this to be the case or is advised that this is the case then that Member must as soon as possible:
- a. disclose the existence and nature of the interest at the meeting;
  - b. withdraw from the room where the meeting considering the business is being held.
- 3.33 However, provided the public have a right to speak at such a meeting the Member is able to make representations or answer any questions when the nature of the interest has been declared. The Member must after they have spoken immediately withdraw from the room where the meeting is being held.



## Other decision-making

- 3.34 Certain types of decisions, including those relating to a permission, licence, consent or registration for a Member, their friends, family members, employer or their business interests, are so closely tied to their personal and/or professional life that their ability to make a decision in an impartial manner in their role as a Member may be called into question. In turn this could raise issues about the validity or veracity of the decision of the Council. In such situations, Members have the same rights as an ordinary members of the public, which means they cannot take part or have any role in the decision making process.

## 4 Dispensations

### 4. Dispensations

- 4.1 There are some decisions that the Council will need to make that could affect every Member. A 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 Member to participate in any discussion and/or vote on that matter at a meeting, such request must be on the prescribed form. Members may not take part in these matters unless a general or specific dispensation has been granted.
- 4.2 The Council can grant a dispensation to enable Members to participate in certain circumstances and the Monitoring Officer is authorised to determine written requests for a dispensation.
- 4.3 The Monitoring Officer may, after having had regard to all relevant circumstances, grant a dispensation to a Member only if, he/she 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 a Committee would be prohibited from participating in any particular business to be transacted by that Committee in relation to the matter.
- 4.4 Any dispensation granted will specify the period for which it has effect, and the period specified may not exceed four years.

**5. Gifts and Hospitality**

- 5.1 Members should exercise the utmost care in relation to hospitality or gifts received in their role as a Member as there could be a real or perceived conflict with their membership of the Council. Members should declare any gift or hospitality with a value of £100 or above to the Monitoring Officer using the prescribed form and these declarations will be included in a register maintained by the Monitoring Officer. All entries on the Gifts & Hospitality Register will be retained for 4 years. Gifts from other Authorities over the value of £50 (para 5.2 (e) below, will need to be declared and an assessment will be made as to whether the gift should be retained by the Council.
- 5.2 The following gifts and types of hospitality do not need to be disclosed /registered:
- a. civic hospitality provided by another public authority;
  - b. modest refreshment in connection with any meeting;
  - c. tickets for sporting, cultural and entertainment events which are sponsored by the Council;
  - d. a modest alcoholic or soft drink on the occasion of an accidental social meeting;
  - e. small gifts of intrinsic value below £70, modest souvenir gifts with a value below £70, from another public authority given on the occasion of a visit by or to that Authority.
- 5.3 A Member should never accept any gift or hospitality as an inducement or reward for anything, if acceptance might be open to misinterpretation or which puts the Member under an improper obligation. A Member should never solicit a gift or hospitality.
- 5.4 Where it is impracticable to return any unsolicited gift, or the return would cause offence, the Member must, as soon as practicable after the receipt of the gift notify the Monitoring Officer in writing on the prescribed form, pass the gift to the Mayor's Office for donation to a charity raffle as appropriate.
- 5.5 Even if the value of an unsolicited gift or hospitality is less than £100, if the Member is concerned that its acceptance might be misinterpreted, the Member may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

5.7 A Member must immediately report to the Monitoring Officer any circumstances where an inappropriate gift or hospitality has been offered to you.

5.8 A Member's participation in any item of business:

- a. in which the Member has any other interest; or
- b. that affects a donor from whom the Member has received any gift or hospitality

that is registered, or ought to be registered as set out above, will need to be considered by the Member on a case by case basis. A Member will only be expected to exclude themselves from speaking or voting in exceptional circumstances, for example where there is a real danger of bias.

## **6 Complaints Process**

### **Overarching Principles**

- 6.1 This Part of the Code of Conduct sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct for Members.
- 6.2 The Monitoring Officer may investigate a specific matter relating to a Member's adherence to the Rules of Conduct under the Code or a complaint made against a member for breach of the Council's Code of Conduct.
- 6.3 Members shall cooperate, at all stages, with any such investigation by or under the authority of the Council. No Member shall lobby a member of the Standards Committee in a manner calculated or intended to influence its consideration of an alleged breach of this Code.

### **Complaints against Members**

- 6.4 All complaints against Members must be in writing and on the Council's prescribed form. The Council will not normally investigate anonymous complaints, unless there is a clear public interest in doing so.
- 6.5 The Monitoring Officer will use a number of criteria for assessing complaints, and may consult with the Independent Person and if necessary the appropriate Party group Leaders and or Party Whips. The decision whether to

investigate a complaint will be proportionate response to the issues raised and the likely outcomes.

- 6.6 The Monitoring Officer may determine that an allegation does not merit an investigation or further action, where:
- a. the allegation does not demonstrate a breach of the Code of Conduct; for example it related to a Member's private life to which the Code does not apply or its about dissatisfaction with a Council decision or service, or
  - b. it is about someone who is no longer a Member of the Council, or
  - c. there is insufficient evidence upon which to investigate and/or the person making the allegation has failed to co-operate with the Monitoring Officer to specify the allegations sufficiently, or
  - d. the same or similar allegation has been investigated and determined, or
  - e. it is an anonymous allegations which does not include sufficient documentary evidence to indicate a significant breach of the Code of Conduct, or
  - f. the Monitoring Officer facilitates an informal resolution without the need for a formal investigation, or
  - g. the complaint is considered to be vexatious.
- 6.7 The Monitoring Officer will acknowledge receipt of a complaint within 10 working days of receiving it. The Subject Member may be advised that a complaint has been made but will not be advised of the contents of the complaint nor of the Complainant's details
- 6.8 The Monitoring Officer will determine as to whether the complaint merits formal investigation in accordance with the requirements of this Part of the Code. This decision will normally be taken within 15 working days of receipt of a complaint. Where the Monitoring Officer has taken a decision, the Complainant and the Subject Member will be informed of the decision along with the reasons for such.
- 6.9 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 6.10 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

## INVESTIGATION & DETERMINATION OF COMPLAINTS

- 6.11 If the Monitoring Officer decides that a complaint merits formal investigation, an Investigating Officer will be appointed to investigate the complaint.
- 6.12 The Investigating Officer would normally write to the Subject Member, providing with a copy of the complaint. The Subject Member will be requested to provide any relevant information the Investigating Officer needs to investigate the Complaint.
- 6.13 In exceptional cases, where it is appropriate to keep the identity of the Complainant confidential, or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer may withhold the Complainant's details or delay notifying the Subject Member until the investigation has progressed sufficiently.
- 6.14 At the end of his/her investigation, the Investigating Officer will produce a draft report. This draft will be sent in confidence to the Complainant and the Subject Member, to give them an opportunity to identify any matter in that draft report which is either factually incorrect or which may require further consideration. Having received and taken account of any comments on the Draft Report, the Investigating Officer will send the Final Report to the Monitoring Officer.
- 6.15 The Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer, will write to the Subject Member and the Complainant notifying them of either :
  - a. that no further action is required, and provide them both a copy of the Investigating Officer's final report, or
  - b. following review of the Investigating Officer's report, that either the complaint will be:
    - (i) sent for determination before a Standards Hearing Sub Committee, or
    - (ii) after consulting the Independent Person, seek a local resolution.

### Local Resolution

- 6.16 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person and seek to agree fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Subject Member accepting that his/her conduct was short of the standard expected , offering an apology, and/or other remedial action by the Council. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee as part of an update report for information, but will take no further action.

### Process for the Determination of Complaints

- 6.17 If the Monitoring Officer considers that local resolution is not appropriate, then the Monitoring Officer will convene a Standards Hearings Sub Committee to determine the complaint. The Sub Committee will conduct a hearing to decide whether the Subject Member has failed to comply with the Code of Conduct and if so, whether to take any action in respect of the Subject Member.
- 6.18 The Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give his/her response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and may issue directions as to the manner in which the hearing will be conducted.

### Conduct of a Sub Committee Hearing

- 6.19 The Monitoring Officer will present the Investigating Officer’s report to the Sub Committee.
- 6.20 The Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Subject Member has failed to comply with the Code of Conduct. The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
- 6.21 If the Sub Committee, with the benefit of any advice from the Independent Person, concludes:
- a. that the Subject Member did not fail to comply with the Code of Conduct, then they can dismiss the complaint, or
  - b. that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Sub Committee will then consider what action, if any, the Sub Committee should take as a result of the Subject Member’s failure to comply with the Code of Conduct. In doing this, the Sub Committee will give the Subject Member an opportunity to make representations to the Sub Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.
- 6.22 The Council has delegated to the Sub Committee powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, depending on the seriousness or significance of the matters, the Sub Committee may authorise the Monitoring Officer to:
- a. publish any findings in respect of the Subject Member’s conduct;
  - b. report the findings to the Standards Committee for information;
  - c. recommend to the Subject 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;

- b. arrange training for the Subject Member;
- c. remove from all outside appointments to which the Subject Member has been appointed or nominated by the Council;
- d. withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- e. exclude 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.

6.23 The Sub Committee has no power to suspend or disqualify the Subject Member or to withdraw members' or any special responsibility allowances which may exist.

6.24 At the end of the hearing, the Chairman will state the decision of the Sub Committee as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Sub Committee resolves to take.

6.25 The Monitoring Officer will issue a decision notice, in consultation with the Chairman of the Sub Committee. The decision notice will be sent to the Complainant and the Subject Member. Thereafter, the decision notice or a summary of the decision may be available for public inspection and/ or published. The decision will be reported to the next convenient meeting of the Standards Committee for information.

### **Appeals**

6.26 There is no right of appeal against a decision of the Monitoring Officer or of the Standards Hearing Sub Committee to the Council.

### **Independent Person**

6.27 The Independent Person will be invited to attend all meetings of the Sub Committee. The views of the Independent Person will be sought and taken into consideration before the Sub Committee takes any decision on whether the Subject 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.

### **Revision of these arrangements**

6.28 In the interests of fairness, the Monitoring Officer may vary any of these arrangements as appropriate. The Chairman of the Standards Sub Committee may depart from the arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## Appendix 1

### GLOSSARY

In this Code the following words will have the following meanings:—

Authority	means Epsom & Ewell Borough Council
Council	means Epsom & Ewell Borough Council
Code of Conduct	means the Epsom & Ewell Code of Conduct for Members
Independent Person.	means the a person who complies with the requirements section 28 Localism Act 2011 appointed by the Council to be the Independent Person
Meeting	means any meeting of— (a) the authority; (b) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees; whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members
Member	means a co-opted member or an appointed member of Epsom & Ewell Borough Council
Co-opted Member	means a co-opted member of Epsom & Ewell Borough Council
Subject Member	means a Member who is the subject of a complaint for a breach of the Code of Conduct
Sensitive Information	means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person connected to you may be subject to violence or intimidation
Nine Principles	means the general principles of conduct identified by the Committee on Standards in Public Life in its First Report, namely : Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Leadership and also the Extra Principles



Complainant	means the party who has made an allegation that a Member has failed to comply with the Member's Code of Conduct
Investigation Officer	means the person appointed by the Monitoring Officer to under an investigation into a complaint of a breach of the Members' Code of Conduct.
Standards Hearing Sub Committee	means a sub committee of the Standards Committee established to conduct hearings into allegations against a Subject Members/s and to determine such allegations following a hearing.
Extra Principles	means the Council's extra principles of conduct, namely of 'Duty to uphold the law' and 'Stewardship'
Relevant authority	means a county council or other such council formally constituted under local government legislation

## Appendix 2

### The Schedule to the Relevant Authorities (Disclosable Pecuniary Interest) Regulations 2012

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>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.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>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</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
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.
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.

\*Note "M" means a member or co-opted member of the Council.

## SECTION 2 - Officers' Code of Conduct

Issued: December 2003; Revised November 2010.

### 1 Introduction and Scope

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

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

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

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

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

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

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

**1.9 Scope**

The Code applies to all employees. You must:

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

**2 Standards in General**

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

**3 Political Neutrality**

- 3.1 You serve the Council as a whole. It follows you must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected. The Member/Officer Protocol provides further guidance on the respective role of members and officers and principles governing general conduct.

- 3.2 If you are called upon to advise a specific political group within the Council, either as to the work of the group or as to the work of the Council, you may only do so with the prior consent of your Director. You must not attend any meeting of any such political group without the prior agreement of the Chief Executive.

#### **4 Disclosure of Information**

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

You must not disclose information given in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where you have the consent of a person authorised to give it or they are required by law to do so. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions.

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

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

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

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

## **5 Relationships**

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

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

### **Councillors**

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

### **The Local Community and Service Users**

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

### **Contractors**

- 5.6 Orders and contracts must be awarded on merit, by fair competition against other tenders, and no favouritism should be shown to businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.



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

#### **Work Colleagues**

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

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

- 6.1 You must ensure that public funds are used in a responsible and lawful manner. You should strive to ensure value for money to the local community and to avoid legal challenge to the Council.
- 6.2 Standard procedures (Financial Regulations) have been agreed which govern the Council's financial matters and detail arrangements for handling money.
- 6.3 Likewise Contract Standing Orders detail the procedures to be followed in awarding contracts for work or services.

6.4 If your work involves the handling of money or awarding of contracts you must familiarise yourself with the requirements of the Council's Financial Regulations and appropriate Standing Orders. Failure to follow the correct procedures will be treated as a serious matter.

6.5 You must not utilise property, vehicles or other facilities of the authority for personal use unless specifically authorised to do so

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

7.1 If you are involved in the tendering process and dealing with contractors, you should be clear on the separation of client and contractor roles within the Authority. If you are a senior member of staff who has both client and contractor responsibility, you must be aware of the need for accountability and openness.

7.2 If you work in contractor or client units you must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

7.3 You should ensure that no special favour is shown to current or (recent) former members of staff, councillors or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

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

8.1 If you are involved in recruitment decisions you should ensure that these are made on the basis of merit. It is unlawful to make an appointment that is based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you should not be involved in an appointment where you are related to an applicant, or have a personal relationship (friendship or otherwise) outside work with him or her. You should declare any such relationship to your Director in advance.

8.2 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close personal friend. Such relationships with any other employee should be declared to your Director and registered in the Register of Interests. Please also see the Council's Recruitment policy and Casual policy.

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

9.1 Your off-duty hours are your personal concern but you should never put yourself in a position where your duty as a Local Government Officer and your private interests conflict. The Council will not attempt to preclude you from undertaking additional employment provided that such employment does not, in the view of the Council, conflict with your job or have a detrimental impact on the Council's interests, or in any way weaken public confidence in the conduct of the Council's business.

- 9.2 You are required to obtain written consent from your Director to take any other employment or occupation either paid or unpaid in addition to your post held with the Council. This includes directorships, consultancies and sponsorships by any company, organisation or individual. You should be clear about your contractual obligations to the Council and should not take outside employment, which conflicts, or might conflict in the future, with the Council's interests. Any employee undertaking additional work outside of the Council is required to complete a 'Declaration of Other Work' and submit to HR.
- 9.3 You may not carry out work arising from additional employment in Council time nor use Council resources or facilities (including typing) for those purposes.
- 9.4 Private use of Council facilities, other than prohibited by section 9.3 above, e.g. making telephone calls, using fax or photocopiers, should be declared.
- 9.5 You should follow the Council's policies on the ownership of intellectual property or copyright created during your employment i.e. all:
- (i) Creative designs, writings and drawings produced by you in the course of your duties, belong to the Council;
  - (ii) Inventions made by you are the property of the Council if made during the course of your normal duties (which includes those described in your notice of terms of employment, and any other duties arising from your Manager or other authorised officer of the Council).
- 9.6 Some posts are 'politically restricted,' by law, which means that the postholder is unable to take part in political activity or become an elected member of any public authority whilst in the employment of the Council. Your role is politically restricted if:
- (i) it is covered on the list of roles specifically restricted eg monitoring officer
  - (ii) your post meets the duties-related criteria for determining a "sensitive" post, irrespective of remuneration level, unless you appeal successfully against the determination. These posts are defined as those that give advice (excluding purely factual information) on a regular basis to the council, any committee or sub-committee of the authority or any joint committee on which the council is represented, or speak on behalf of the council on a regular basis to journalists and broadcasters
- 9.7 If this is applicable to you, your contract of employment will include an appropriate clause. In all other circumstances, you must record in the Register of Interests and declare to your Director any membership of a Local Authority. You should check your contract of employment if you are unsure if your post is politically restricted and the implications of this.

## **10 Personal Interests**

10.1 You must not:

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

10.2 You must declare to your Director, and record in the Register of Interests, non-financial interests that you consider could bring about conflict with the Council's interests or activities. Examples might be membership of the committee of an organisation seeking or receiving grant aid from the Council or involvement with an organisation or pressure group that may seek to influence the Council's policies. Ordinary membership of organisations, whether local or national, will not usually be relevant.

10.3 You must also declare and register any financial interests which could conflict with the Council's interests e.g. any pecuniary interest in a business or company within Epsom and Ewell or with which the Council might do business.

10.4 You must declare and register any interest you have as a freeholder, lessee, licensee or tenant in any land or property in the Borough of Epsom and Ewell, apart from your main residence, which will already be recorded in your personnel records.

10.5 You must never become involved in dealing with or determining any application or request that you or a member of your family or personal friend make to the Council, for example, an application for planning permission, council tax or housing benefit.

## **11 Equality and Health and Safety Issues**

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

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

## **12 ICT Security**

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

## **13 Gifts and Hospitality**

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

## **14 Dress Code**

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

## **15 Whistleblowing**

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

## SECTION 3 - Protocol for Managing Member/Officer Relations

*Issued July 2002; Revised: December 2007; July 2018*

### 1 Introduction

- 1.1 This Protocol is primarily based on the model prepared by Birmingham City Council, which was referred to in the Nolan Committee report<sup>1</sup> as an example of good practice.
- 1.2 The purpose of this Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure that a high standard of conduct is maintained and to ensure the business of the Council is transacted in a transparent, effective and efficient manner.
- 1.3 The Protocol is to a large extent a written statement of current practice and convention and given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It offers guidance on some of the issues that most commonly arise and serves as a guide to dealing with other circumstances as they arise.
- 1.4 This protocol seeks to reflect the principles underlying the Code of Conduct for Members and the Code of Conduct for Officers. The shared objective of these codes is to maintain and enhance the integrity (real and perceived) of Local Government and they therefore demand very high standards of personal conduct by all parties.
- 1.5 This Protocol sits together with a number of other existing and evolving Council procedures and there may be some overlap between this document and those other procedures and rules both within and outside the Constitution.
- 1.6 This Protocol seeks to promote greater clarity and certainty as to working relationships between Members and Officers. If the Protocol is followed, it should ensure that Members receive objective and impartial advice and that Officers are not subject to accusations of bias, and any undue influence from Members.

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<sup>1</sup> “Standards in Public Life”, the report of the Nolan Committee can be accessed at: <http://www.archive.official-documents.co.uk/document/parliament/nolan2/nolan.htm>

- 1.7 Given the variety and complexity of Member/Officer relations, any protocol cannot seek to be entirely prescriptive or comprehensive. Although some of the references relate to regulatory matters, the document largely seeks to offer guidance on some of the issues that most commonly arise. All successful organisations need to be flexible to suit circumstances but, at the same time, it should be recognised that the guidance should, as far as is possible, be uniformly followed throughout the Council.
- 1.8 In appreciation that this will be an evolving document and recognising the rapid changes in working practices both statutory and social (e.g. new technology), the Protocol will need to be reviewed regularly.
- 1.9 This Protocol, where applicable, will also apply to lay or co-opted Members of Committees.
- 1.10 If a councillor is unsure about any matter, s/he should contact the relevant Group Chairman/Leader or the Monitoring Officer for appropriate advice and assistance. If an Officer is unsure about any matter, s/he should contact the Monitoring Officer.

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

- 2.1 The Elected Members are responsible for:
- Initiation & direction of Policy;
  - Democratic accountability to the electorate for policies and for service delivery;
  - Scrutiny of Council services;
  - Community leadership; and
  - Promotion of partnership working
- 2.2 The Officers are responsible for:
- Providing the professional advice that Members must have before them when formulating policy and when taking decisions;
  - Implementing Members' decisions that have followed due process;
  - Running the Council's services and day-to-day administration;
  - Taking managerial and operational decisions in accordance with the Council's schemes of delegation; and
  - Providing information regarding Council services and approved Council policies

## **3 Access to Officers**

- 3.1 If Members wish to raise a request for service delivery (which is a matter covered by the CRM system), then they should raise this in line with the Council's standard processes, (e.g. through the Council's Contact Centre) rather than with individual officers.

- 3.2 If an issue or concern needs to be raised around the delivery of a service request or its failure, Members should, in the first instance, contact the relevant Head of Service or a nominated officer<sup>1</sup>. Members should seek to avoid, as far as possible, entering an Officer's work area and requiring immediate attention.
- 3.3 If any Member wishes to raise any matter which is either strategic in nature, or relates to a policy, they must do so in the first instance with the Chief Executive.
- 3.4 It is important to ensure timely response to correspondence and both Members and Officers should aim to respond to enquiries and requests they have raised, within one week from receipt of the enquiry/request.
- 3.5 If a Member wishes to follow up any unanswered correspondence, they should email the relevant service area's Head of Service to raise the matter.
- 3.6 Where a decision has been delegated to an Officer, whether or not in consultation with nominated Members, it will be notified to all Members through the Council's processes. To assist Members' understanding, Officers should, when requested, explain to a Member the guidelines they use when making a delegated authority decision.

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

- 4.1 Members are entitled to such information as they may reasonably need to assist them in discharging their role as Members of the Council.<sup>2</sup> The legal right of Members to inspect Council documents is covered by:
  - (i) Statutory right (Access to Information Act 1985, Freedom of Information Act 2000, Environmental Information Regulations 2004);
  - (ii) Common law (on a need to know basis).
- 4.2 Officers must treat all Members on an equal basis where there is an equal need to know. Officers must treat all such requests with care and respect and must not disclose any requests from one Political Group to another.
- 4.3 The courts have ruled that the test of a Member's need to know derives from the Member's committee responsibilities, but this will not be exclusively the case. A Member dealing with a Ward issue, casework or an issue raised by a ward resident, may have a legitimate need to know, which will enable him/her to have access to the relevant Council documents. The final decision on a Members 'need to know' will rest with the Chief Executive in consultation with the Monitoring Officer.

<sup>1</sup> [A list of contacts for Heads of Service and other nominated contact officers will be supplied to Members.](#)

<sup>2</sup> [This is covered in more detail in Article 2 and Standing Orders of the Council's Constitution](#)



- 4.4 Members should be kept fully informed and consulted by Officers on all relevant matters affecting their Ward. 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.
- 4.5 It is important for Members and Officers to recognise that information disclosed to a Member on a need to know basis should not be disclosed to another Member, unless there is an equal need to know, or the first Member is notified that the information is being so disclosed.
- 4.6 Any correspondence to a constituent, from a Member or Officer, which raises an issue of policy or finance, should be sent to the relevant Head of Service.

## **5 Working Relationships**

- 5.1 Both Members and Officers are servants of the public and they are indispensable to one another. However, their responsibilities are distinct. Members are responsible to the electorate and Officers are responsible to the Council as a whole. The conduct of Members and Officers should be such as to instil mutual confidence and trust. This should be reflected in the behaviour and attitudes of each other, both publically and privately.
- 5.2 To ensure that the business of the Council is carried out effectively, Members and Officers should endeavour to create a cordial and collaborative working relationship with each other.
- 5.3 Members should recognise that, as the Head of Paid Service, the Chief Executive has key statutory responsibilities. These include setting the manner in which the Council's different functions are discharged, the organisation of the Council's staffing structure, as well as the appointment and proper management of the Council's staff. It is therefore important to ensure the Chief Executive is able to carry out these functions both independently and free from any pressure.
- 5.4 Members can expect the following from Officers:
- (i) a commitment to the Council as a whole and not to any political group;
  - (ii) a performance of their duties effectively and efficiently;
  - (iii) to work to their Service Delivery Plans;
  - (iv) a working partnership;
  - (v) an understanding and appreciation of respective roles and pressures;
  - (vi) timely responses to enquires and complaints;
  - (vii) impartial professional advice;
  - (viii) awareness of and sensitivity to the political environment;
  - (ix) courtesy and appropriate confidentiality;
  - (x) that they will not use their relationship with Members to advance their personal interests to influence decisions improperly;

- (xi) that relationships between Members and Officers will never be so close, or appear to be so close as to bring into question the Officer's ability to deal impartially with other Members, individuals or organisations;
- (xii) compliance with the Officers' Code of Conduct;
- (xiii) that Officers will not go beyond the bounds of their specific or delegated authority;
- (xiv) that Officers named in a report to the Council (or any part of its formal decision-making structure) will always be fully responsible for the contents of it.

5.5 Officers can expect the following from Members:

- (i) a working partnership
- (ii) an understanding and appreciation of respective roles and pressures;
- (iii) courtesy and appropriate confidentiality;
- (iv) not to put Officers under undue pressure and to respect personal and professional boundaries;
- (v) the efficient and agreed use of Council resources;
- (vi) a respect for professional advice;
- (vii) not to use their relationship with Officers to advance their personal interests to influence decisions improperly;
- (viii) that relationships between Members and Officers will never be so close, or appear to be so close, as to bring into question the Officer's ability to deal impartially with other Members, individuals or organisations;
- (ix) compliance with the Members' Code of Conduct;
- (x) to treat officers with respect at all times including during meetings whether public or otherwise, which includes not raising matters relating to the conduct or capabilities of an Officer;
- (xi) to inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work or role.

5.6 Nothing in this protocol shall prevent a Member or Officer expressing a relevant concern under the Council's Whistleblowing Policy.

5.7 Any Officer who is personally connected to a Member must notify the Monitoring Officer in writing. This would include a family, business or social connection.

- 5.8 Both Members and Officers should be guarded, as close personal familiarity, or the perception of such, can damage the relationship or undermine trust, as might a family or business connection. Close personal familiarity between individual Members and Officers may also cause embarrassment to other Members and Officers. Particular care should be taken around the use of social media and the perception it could give in terms of close personal familiarity.
- 5.9 Members should not expect Officers to attend Members homes to conduct or discuss Council business. Nor should Officers expect to attend a Members' home. Generally, for most Officers, Members telephone contact with them should be during normal working hours.
- 5.10 Challenge in a constructive and non-confrontational way is important in ensuring that policies and service performance are meeting the Council's strategic objectives. Nothing in this protocol is therefore intended to stop Members holding Officers to account for decisions made under delegated powers. Nor is the protocol intended to inhibit constructive criticism delivered with courtesy and Officers should not feel their employment is at risk as a result of such intervention.
- 5.11 Correspondence between Members and Officers should not be copied to or by Officers to other Members. Nor should such correspondence be disclosed to any third parties be they members of the public, stakeholders or partners.
- 5.12 Under no circumstances should either a Member or an Officer blind copy any of their exchanges to any external third party, Member or Officer. If it is important to raise an issue, then, in the case of Members, such matter must be raised with the Chief Executive in the first instance and in the case of officers with their Head of Service.
- 5.13 As a rule, Members and Officers must not forward their correspondence to any other Member, Officers or external third parties. There may be service reasons where this may be necessary, therefore, before doing so, either the original author must have specifically requested it or has expressly consented to their correspondence being sent on to a named person. If there is any concern as to what steps should be taken, in the case of officers, advice should be sought from their line manager or for Members advice from the Monitoring Officer.
- 5.14 Members and Officers must take great care when including new parties to on-going existing correspondence. Particular care must be taken to avoid forwarding on email chains from Officers or Members as this could amount to breach of personal data or the unintended release of confidential or sensitive information.
- 5.15 Members should never forward Officer correspondence on to any constituent or other third party. If there is a need to forward contact details for an Officer, Members must only forward details of the relevant Head of Service, and only after they have discussed the matter with the Head of Service.

## **6 When Things Go Wrong**

- 6.1 Where a Member considers that he or she has not been treated with proper respect or courtesy by an Officer, or is otherwise concerned with the performance of an Officer, the Member should first discuss the complaint with the relevant Group Chairman or Leader. If the Member wishes to pursue the matter as a formal or informal complaint, then they will need to complete and submit a complaint form to the Chief Executive (which will be available from the Chief Executive). The complaint will remain confidential and cannot be discussed with, by, or with the relevant Group Chairman or Leader. As the Head of Paid Service, the Chief Executive has responsibility for staff and will take such action as is appropriate.
- 6.2 If an Officer considers that he or she has not been treated with proper respect or courtesy by a Member, he or she should raise the matter with the Monitoring Officer in the knowledge that the matter will be handled with sensitivity and in confidence. In such circumstances, the Monitoring Officer will take such action as is appropriate.
- 6.3 This protocol does not affect the rights of Officers and Members to raise the matters via the Council's usual procedures in cases where such processes apply.

## **7 Officer Advice to Party Groups**

- 7.1 It must be recognised by all Officers and Members that in discharging their duties and responsibilities, Officers serve the Council as a whole and not any political group, combination of groups or any individual Member of the Council.
- 7.2 The assistance provided by Officers can take many forms ranging from a briefing meeting with a Committee Chair or other Members prior to a meeting, to a presentation, to a full political group meeting. It is an important principle that such assistance is available to all political groups and individual Members. All Officers must, in their dealings with political groups and individual Members, maintain political neutrality and treat them in a fair and even-handed manner.
- 7.3 Officers must not do any work that is designed to promote one political group within the Council rather than the whole Council.
- 7.4 If Members require the attendance of an Officer at a political group meeting, they must contact the Chief Executive or the Chief Operating Officer first. Any Officer invited to attend meetings organised by any political group should contact the Chief Executive or the Chief Operating Officer, as appropriate, as soon as possible. It is a matter for the Chief Executive to decide whether it is appropriate for an Officer to attend and if so who that Officer should be.

- 7.5 The Officer's role at any such meeting is limited to providing factual information only and may be called upon to provide a professional opinion. They must not provide a personal opinion. It is important when attending such a meeting, for an Officer to be advised of who else is at the meeting to avoid any confidential or information sensitive to the Council, being inadvertently released to third parties.
- 7.6 Officers must respect the confidentiality of any party group discussions at which they are present. When information is disclosed to an Officer during discussions with a party group, that information should not be passed on to other groups. However, Members should be aware that this would not prevent Officers from disclosing such information to other Officers of the Authority in so far as that is necessary to perform their duties.

## **8 Members and the Media**

- 8.1 Contact with the media on issues related to Council business is handled through the Communications Team who provide support, advice and training to Members and Officers.
- 8.2 Any Member who wishes to approach the media to speak on behalf of the Council on any item involving or affecting the Council, should first consult the relevant Committee Chairman, Chief Executive or Chief Operating Officer as appropriate.
- 8.3 If a member wishes to approach or is approached by the media for a comment or action involving Council business, the Member should make it clear to the media that any comments that are made are those of the Member personally and do not reflect the views or policies of the Council as a whole.
- 8.4 Requests for comments or opinion on Council policy or political matters should be referred to the appropriate Committee Chairman.
- 8.5 Councils are prohibited from publishing any material that appears to be designed to affect support for any political group.

## **9 Conclusion**

- 9.1 This Protocol is intended to build on the sound arrangements that have existed within the Council for years.
- 9.2 Mutual understanding, respect and openness on these sensitive issues are the greatest safeguard of the integrity of the Council, its Members and Officers.
- 9.3 This Protocol can be revised or amended at any time in accordance with Constitutional requirements.

## SECTION 4 - Monitoring Officer Protocol

Issued: December 2007; Revised December 2008: ~~xx~~ 2019

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

### 1 Purpose of Document

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

### 2 The Monitoring Officer and Deputy Monitoring Officer

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

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

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

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

- 3.2 It is the duty of the Monitoring Officer to make a report to the Council about any proposal, decision or omission by the Council, any of its Committees, Sub-Committees or Advisory Panels or any of its office holders or employees which would result in:
- (a) contravention of a statute or rule of law; or
  - (b) maladministration or injustice (but only if a Local Government Ombudsman has investigated the matter).
- 3.3 In preparing such a report, the Monitoring Officer must consult the Council's Head of Paid Service (the Chief Executive) and the Section 151 Officer (Chief Finance Officer).

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

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

- 4.1 Under Section 5 of the Local Government and Housing Act 1989, the Council must provide the Monitoring Officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties to be performed.
- 4.2 Under the Local Authorities (Standing Orders) (England) Regulations 2001, the Council cannot take disciplinary action against its Head of Paid Service, Monitoring Officer or [Section 151](#) Officer except in accordance with a recommendation made by a designated independent person who has investigated the matter. An officer can be suspended on full pay for a maximum period of two months while the investigation is carried out.

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

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

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

- 6.1 [Best practice and good governance requires](#) that the Monitoring Officer should:
- (a) be a Chief Officer or at least have the right to receive agendas and minutes of all meetings and attend and speak at them;
  - (b) have a right of access to any meeting, including Members' Briefings;
  - (c) be recognised as the principal adviser to the Standards Committee and the point of reference for advice on the Council's Constitution and powers;
  - (d) have a protocol approved by the full Council setting out how they are expected to discharge their functions, the support and reporting arrangements required, and reporting duties of fellow officers; and

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- (e) have a team with sufficient expertise to keep the Council's constitutional documents under review.

## 7 Operative Provisions of the Protocol

### The Monitoring Officer will receive:

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

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### The Monitoring Officer has the right:

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

### The Monitoring Officer will:

- 7.9 Ensure the Head of Paid Service and the Section 151 Officer have up-to-date information regarding emerging issues;
- 7.10 Set up arrangements within the authority to ensure that any allegation made in writing that a member of the authority has or may have failed to comply with the authority's Code of Conduct is referred to the Monitoring Officer, immediately upon receipt by the Council;
- 7.11 Maintain a register of such allegations to ensure that the Council can comply with its obligations under the relevant legislation;

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7.12 Refer all substantive allegations of member misconduct to the Standards ~~Hearing~~ Sub-Committee and refer all other matters for action as appropriate;

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7.13 Act as Chairman of the Corporate Governance Group and through this Group will meet the Head of Paid Service and ~~Section 151 Officer~~ regularly (and in any event not less than quarterly) to consider and recommend action in connection with current governance issues and other matter of concern regarding probity;

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7.14 In carrying out any investigation (whether under regulations or otherwise), have unqualified access to any information held by the Council and any employee who can assist in the discharge of his functions;

7.15 Have control of a budget sufficient to enable him to seek Counsel's opinion on any matter concerning ~~the Monitoring Officer's~~ functions;

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7.16 Be responsible for preparing a training programme for members on the ethical framework;

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7.17 Report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation in particular with the Head of Paid Service and ~~Section 151 Officer~~;

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7.18 Appoint a deputy who will be kept briefed on emerging issues. ~~The~~ nominated deputy will have all the rights and powers of the Monitoring Officer when discharging the role of Monitoring Officer.

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#### The Monitoring Officer may:

7.19 in consultation with the Mayor and the Chairman of the Standards, defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved;

7.20 Make a report to the Council from time to time as necessary on the staff, accommodation and resources, ~~require~~ to discharge ~~the Monitoring Officer's~~ functions.

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## SECTION 5 – Protocol on Use of Call-in Procedure

*Issued April 2008*

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

- 1.1 Requests for Audit, Crime & Disorder and Scrutiny Committee to consider use of the call-in procedure should be forwarded to the Scrutiny Officer or the Chairman of the Audit, Crime & Disorder and Scrutiny Committee either by e-mail or in person in the first instance. Each request should set out those principles of decision making of Article 12 of the Constitution which the person considers have not been met. All requests shall be logged by the Scrutiny Officer on Form SC/CI 1.
- 1.2 The Chairman of the Audit, Crime & Disorder and Scrutiny Committee shall consider the request regarding use of call-in. He/she shall reject those requests considered frivolous, as well as those outside the remit of the call-in procedure, i.e. those concerning quasi-judicial decisions. Remaining requests shall then be forwarded to the other members of the Audit, Crime & Disorder and Scrutiny Committee for consideration, together with the Chairman, as to whether they should wish to call-in a decision of a policy committee as per the requirements of the Constitution.
- 1.3 In the absence of the Chairman, requests for Audit, Crime & Disorder and Scrutiny Committee to use call-in should be forwarded to the Scrutiny Officer as per paragraph 1. The Scrutiny Officer shall pass the request for the Committee to consider call-in to all other members of the Audit, Crime & Disorder and Scrutiny Committee. The members shall decide whether they wish to instigate call-in as per the requirements of the Constitution.
- 1.4 To ensure openness, all requests for Audit, Crime & Disorder and Scrutiny Committee to consider call-in shall be reported to the formal meetings of the Audit, Crime & Disorder and Scrutiny Committee. Where the members of the Audit, Crime & Disorder and Scrutiny Committee do not call-in a decision of a policy committee, the Chairman of the Audit, Crime & Disorder and Scrutiny Committee shall inform the person requesting that Audit, Crime & Disorder and Scrutiny Committee consider the matter, the decision of the committee, together with its reasons. The reasons shall be recorded on F. SC/CI 1.

- 1.5 When call-in is instigated by a majority of the members of the Audit, Crime & Disorder and Scrutiny Committee, Form SC/CI 2, 'Record of Call-in', should be used (attached). This should be completed by the relevant members of Audit, Crime & Disorder and Scrutiny Committee before the expiry of five working days after the publication of the policy committee decision. It should be forwarded to the Scrutiny Officer either by e-mail or by use of a hard copy. Audit, Crime & Disorder and Scrutiny Committee members wishing to call-in a decision of a policy committee should set out the reasons for the call-in in detail on page 2 of Form SC/CI 2 with particular reference to Article 12 of the Constitution, 'Principles of Decision Making'.
- 1.6 To ensure openness and transparency, in addition to the members of the relevant policy committee (as required by the Constitution) the following shall, where possible, be informed of a decision of the Audit, Crime & Disorder and Scrutiny Committee to instigate a call-in, and of the Committee's final decision:
- (a) All Councillors
  - (b) Chief Executive
  - (c) Chief Legal Officer
  - (d) Committee Services
  - (e) Relevant officers
  - (f) Member(s) of the public who requested the call-in.

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## SECTION 6 - Code of Conduct and Practice in Licensing Procedures and Hearings

*Effective from 21 March 2005; updated xx 2019*

### 1 Introduction and status of code

- 1.1 The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Sub Committees, and also to Council Officers, where appropriate.

**Deleted:** In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing.

### 2 Definitions and interpretations

- 2.1 "The (Licensing) Authority" means Epsom and Ewell Borough Council.
- 2.2 "Licensing Objectives" means the four objectives the Licensing Authority must have a view to promoting when carrying out its functions under the Licensing Act 2003. The Licensing Objectives are defined in Part 2, paragraph 4 (2) of the Licensing Act 2003.
- 2.3 "Premises" means any vehicle, vessel or moveable structure, or any place or a part of a premises.
- 2.4 "Applicant" means the applicant for the Conversion, Grant or Variation of a licence, or certificate.
- 2.5 "Application" means any application under the Licensing Act 2003, including:-
- (i) Conversion of an existing licence or registration
  - (ii) Grant of a licence, certificate or TEN
  - (iii) Transfer of a licence or certificate
  - (iv) Variation of a licence or certificate (including waiver or modification of a licence condition or to extend the licensed area, amend the licensable activities or extend the licensed hours).
- 2.6 "Authorised Person" is defined in Part 3, paragraph 13 (2) of the Licensing Act 2003, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, Fire Authority Inspectors, Environmental Health Officers and inspectors locally responsible for the enforcement of Health and Safety at Work etc Act 1974.

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

### 3 Licensing Sub Committees

- 3.1 The Council's Licensing & Planning Policy Committee discharges the Council's functions related to Licensing matters, through two Licensing Sub Committees. The Licensing (Hearings) Sub Committee determines matters specific to the Licensing Act 2003 and the Licensing (General) Sub Committee determines all other licensing matters.
- 3.2 This Code applies to both Licensing Sub Committees, but is specifically directed to the Licensing (Hearings) Sub Committee, in light of the specific requirements of the Licensing Act 2003.
- 3.3 The Licensing (Hearings) Sub Committee must consist of three Members. No business shall be transacted unless at least three Members are present.
- 3.4 Councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises.

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## 4 The need for guidance on licensing

4.1 Licensing has a special responsibility to safeguard interests and balance conflicts.

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

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

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5.1 The determination of applications by the Licensing (Hearings) Sub Committee is a quasi-judicial process. The role of Members taking licensing decisions has similarities to that of a court of law (and Licensing Justices). Decisions are made after a hearing at which the applicant and objectors are each given an opportunity to put their case. The decision reached must be based upon the evidence heard and a consideration of any relevant Council policies and government advice.

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5.2 Members of the Licensing (Hearings) Sub Committee should not favour any person, group, company or locality, nor put themselves in a position where they appear to do so, as their overriding duty in making decisions on licensing applications is to do so in a fair and impartial manner, in accordance with the Licensing Objectives, and taking into account any relevant Policy or government guidance.

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## 7 Pre-application discussions

7.1 Pre-application discussions or discussions whilst an application is being processed between Council Officers and applicants can be beneficial. It is often helpful for the Council's officers to be able to give advice at an early stage on relevant licensing policies and to provide details of other known factors, which are likely to be taken into account.

- 7.2 It is however, important that such discussions are not seen as part of a lobbying process, which could prejudice proper consideration of a licensing application. Hence, it should be made clear from the outset that the discussion will not bind the Council to making a particular decision on a licensing application and that any views expressed are personal, provisional and without prejudice. If a pre-application meeting is held this position should be confirmed in a standard letter.
- 7.3 Officer advice should be consistent and based on approved Council policies and known material considerations. It should, as with all officer advice, be politically impartial.

## 8 Lobbying

- 8.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the application in accordance with the Rules of Procedure of the Committee (see paragraph 8.3 below). However, personal lobbying of the Members of a Committee, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Sub Committee being challenged by way of Judicial Review.
- 8.2 A Member who is lobbied by an applicant or objector in relation to an application which may come before a Sub Committee on which that Member may sit, should accordingly refer the person lobbying to another Councillor.
- 8.3 Any Member wishing to rely upon any written material or other evidence which they wish to be considered by a Licensing Sub Committee, must provide such evidence, in advance to the relevant officers, and within the timescales prescribed in any Regulations or Council procedures.
- 8.4 Members of any Licensing Sub Committee must make decisions based on the facts of the case. Their decisions must not be predetermined or be subject to a party "whip". The use of the party whip is considered by the Ombudsman as contrary to the former National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.
- 8.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Sub Committee determining the application.

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- 9.2 All offers or receipt of gifts or hospitality must be reported to the Monitoring Officer, on the prescribed form and they will be recorded in the register of gifts and hospitality.

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## 10 Declaration of interests

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

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

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

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## 12 Member and officer relations

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

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### 13 The role of the Licensing Officer

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

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13.2 Licensing Officers do not make recommendations in reports to a Licensing Sub Committee, in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:

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

#### Licensing (Hearing) Sub Committees

### 14 Period of time in which Licensing (Hearing) Sub Committees to be held

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

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### 15 Notice of hearing

15.1 In the case of a hearing for cancellation of an interim authority notice following Police objection, or counter notice following Police objection to a Temporary Event Notice (TEN), the Authority shall give notice of hearing no later than two working days before the day or the first day on which the hearing is to be held.

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

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

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

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

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

## 18 Withdrawal of representations

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

## 19 The committee procedure

- 19.1 The Licensing Sub Committee is serviced by a number of officers. These include a Committee Services Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Licensing Team acts as a presenting officer: introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.
- 19.2 The Licensing Sub Committee agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the sub committee will be the subject of a written report from officers.
- 19.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall as appropriate, consider any request made by a party under regulation 8(2) of the Licensing Act 2003 (Hearings) Regulations 2005 for permission for another person to appear at the hearing.
- 19.4 The Licensing (Hearings) Sub Committee shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.
- 19.5 The Licensing (Hearings) Sub Committee shall allow parties an equal maximum time period in which to support their representation or application.
- 19.6 The Chairman of a Licensing Sub Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the meeting and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the hearing of their matter, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

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## 20 Power to extend time and adjourn hearings

- 20.1 The Authority may extend a time limit provided for in the Licensing Act 2003 (Hearings) Regulations 2005 for a specified period where it considers this to be necessary in the public interest. In such circumstances, the Authority will issue a notice to the parties stating the period of the extension and the reasons for it.

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

## 21 Hearing to be public

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

## 22 Right of attendance, assistance and representation

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

## 23 Councillor representations

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

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## 24 Representations and supporting information

- 24.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.
- 24.2 Anonymous representations will not be considered by the Authority.

24.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application was given to the authority by the applicant.

24.4 At the hearing a party shall be entitled to: -

- (i) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d) of the Licensing Act 2003 (Hearings) Regulations 2005, give further information in support of their application, representations or notice (as applicable),
- (ii) if given permission by the Authority, question any other party; and
- (iii) address the Authority.

24.5 Members of the Licensing Hearings Sub Committee, may ask any question of any party or other person appearing at the hearing.

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24.6 In considering any representations or notice made by a party the Authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

24.7 The Authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to: -

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

## 25 Frivolous, vexatious or repetitious representations

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

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

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## 26 Failure of parties to attend the hearing

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

- 26.2 If a party who has not so indicated fails to attend or be represented at a hearing the Authority may: -
- (i) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
  - (ii) hold the hearing in the party's absence.
- 26.3 Where the Authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 26.4 Where the Authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

## 27 The committee decision making process

- 27.1 The Licensing Sub Committee shall normally adjourn from the Hearing to deliberate their decision. The Committee may require that the Legal Adviser withdraws with the Panel. In such cases, any advice given by the Legal Adviser shall be relayed in open session once the Panel has reconvened.
- 27.2 The decision on an application should be taken on all of the relevant factors in the case, and in particular the evidence submitted to the Licensing Sub Committee meeting. Each application will be treated on its individual merits. The Sub Committee shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.
- 27.3 Members may add extra conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition of such conditions would be necessary and reasonable.
- 27.4 The Licensing (Hearings) Sub Committee must make its decision at the conclusion of the Hearing for cases under:
- (i) Section 35 or 39 which is in respect of an application made at the same times as an application for a conversion of an existing licence under paragraph 2 of scheduled 8 (determination of application under section 34 or 37)
  - (ii) Section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85)
  - (iii) Section 105 (2) (a) - counter notice following police objection to TEN
  - (iv) Section 167 (5) (a) - review of premises licence following closure order

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- (v) Paragraph 4 (3) (a) of Schedule 8 - determination of application for conversion of existing licence
- (vi) Paragraph 16 (3) (a) of Schedule 8 - determination of application for conversion of existing club certificate, or;
- (vii) Paragraph 26 (3) (a) of Schedule 8 - determination of application by holder of a justices' licence for grant of personal licence

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

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

## **28 Record of proceedings**

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

## SECTION 7 - Code of Conduct and Practice in Licensing Procedures and Hearings – Gambling Act 2005

*Effective from April 2007*

### 1 Introduction and Status of Code

- 1.1 The purpose of this Code is to assist Members in the discharge of the Council's licensing function and to guide applicants and other interested parties. The Code relates to all Councillors and not just to those who are members of the Licensing Committee, and also to Council Officers, where appropriate.

**Deleted:** In 2002 the Planning Committee adopted a Code of Practice in Planning Procedures in response to recommendations of the Nolan Committee on the Standards of Conduct in Public Life. Subsequently, the Social Committee and Scrutiny Committee considered that a similar Code should be drafted with respect to Licensing.

### 2 Definitions and interpretations

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

**Deleted:** <#>This code is based on guidance contained in the National Code of Local Government Conduct, the Nolan Committee's recommendations and experience within the Council.¶



- 2.6 "Authorised Person" is defined in Part 15, of the Gambling Act 2005, and includes bodies empowered by the Act to carry out inspection and enforcement roles. In respect of all premises, these include; Licensing Authority Officers, an Inspector appointed under section 18 of the Fire Precautions Act 1971, an Inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974, Environmental Health Officers, and a person who is within a class prescribed by the Secretary of State by Regulations.
- 2.7 "Interested Parties" is defined in Part 8, paragraph 158 of the Gambling Act 2005, and includes persons who (in the opinion of the Licensing Authority) live;
- (i) Sufficiently close to the premises to be likely to be affected by the authorised activities;
  - (ii) Has business interests that might be affected by the authorised activities, or;
  - (iii) Represents persons who satisfy paragraph (a) or (b).
- 2.8 "Responsible Authorities" is defined in Part 8, paragraph 157 of the Gambling Act 2005, and includes;
- (i) The Licensing Authority;
  - (ii) The Gambling Commission;
  - (iii) The Chief Officer of Police;
  - (iv) Surrey Fire and Rescue service;
  - (v) Chief Planning Officer;
  - (vi) Environmental Health;
  - (vii) Surrey Area Child Protection Committee (or other body designated in writing to advise the Authority about the protection of children from harm);
  - (viii) HM Commissioners of Customs and Excise;
  - (ix) Any other person prescribed under Regulations made by the Secretary of State.
- 2.9 "Representation" means any Interested Party or Responsible Authority person who has lodged a written objection to an application in accordance with these rules, and as defined in the Regulations.
- 2.10 "Regulations" means Regulations made under the Gambling Act 2005
- 2.11 In these rules, the masculine always includes the feminine.

### 3 Composition of Licensing General Sub Committee

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

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### 4 The need for Guidance on Licensing

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

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

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

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### 6 Training

- 6.1 Members appointed to the Licensing Sub Committee will undertake a period of training in Gambling Act procedures and legislation as specified by the Council, with additional training as necessary.

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**Deleted:** either before serving on the Committee or as soon as possible after their appointment to the Committee

## 7 Lobbying

7.1 Lobbying is a normal and perfectly proper part of the licensing process provided that it does not affect the impartiality of the decision-making. Those likely to be affected by a licensing application may seek to influence it through an approach to their elected Ward Member or other Councillor, who may make representations to the Panel. However, personal lobbying of the Members of a Panel, by anybody, including other Councillors, that is to determine the application in question is not appropriate, and can lead to the impartiality and integrity of a Councillor being called into question with the risk of findings of maladministration by the Ombudsman and/or the decision of the Panel being challenged by way of Judicial Review.

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7.2 A Member who is lobbied by an applicant or objector in relation to an application which may come before a Sub Committee on which that Member may sit, should accordingly refer the person lobbying to another Councillor.

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7.3 Any Member wishing to rely upon any written material or other evidence which they wish to be considered by a Licensing Sub Committee, must provide such evidence in advance to the relevant officers, and within the timescales prescribed in any Regulations or Council procedures.

7.4 Members of any Licensing Sub Committee must make decisions based on the facts of the case. Their decisions must not be predetermined or be subject to a party "whip". The use of the party whip is considered by the Ombudsman as contrary to the former National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.

7.5 Should an Officer be subject to lobbying by an applicant, objector, or any Councillor, this will be reported to the Panel determining the application.

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<#>Given that the point at which a decision on a licensing application is made cannot occur before the Licensing Hearings Panel meeting when all relevant information is available for consideration, any political meeting before the Licensing Hearings Panel meeting should not be used to decide how Councillors should determine an application. Such use of party "whips" was considered by the Ombudsman as contrary to the former National Code of Conduct amounting to maladministration if it leads to Members making a particular decision without taking into account all relevant matters.¶

## 8 Gifts and Hospitality

8.1 Councillors and officers should observe extreme caution in respect of any personal offer of a gift, favour or hospitality from someone who has or is likely to submit a licensing application to the Council. Further guidance on this matter is given in the Council's Code of Conduct for Members.

8.2 All offers or receipt of gifts or hospitality must be reported to the Monitoring Officer and will be recorded in the register of gifts and hospitality.

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## 9 Declaration of Interests

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

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

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

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

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

## 11 Member and Officer Relations

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

## 12 The role of the Licensing Officer

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

12.2 Licensing Officers do not make recommendations in reports to a Licensing Sub Committee, in terms of the outcome of the hearing, but will introduce the Report and provide the Committee only with summary information such as the following:

- (i) Summary of the application;
- (ii) Summary of the representations made;
- (iii) Summary of how s/he views the provisions of the Licensing Policy Statement;

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

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

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

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

### **14 Notice of Hearing**

- 14.1 In the case of a hearing for an Application for a Temporary Use Notice (TUN) which has been subject to representation, the Authority will arrange for a Hearing to take place no later than six weeks from the date the Authority received the TUN. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.
- 14.2 In the case of a hearing for all applications for Premises Licences, Application for variation, Application for Transfer, Application for reinstatement or Application for Review other cases, the Authority will arrange for a Hearing to take place as soon as reasonably practicable following the day after the end of the period during which representations may be made. The Authority shall give notice of the hearing no later than ten working days before the day or the first day on which the hearing is to be held.

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

- 15.1 A party shall give (no later than five working days before the hearing) notice to the Authority stating:
- (a) whether he/she intends to attend or be represented at the hearing
  - (b) whether he/she intends to call any witnesses at the hearing and their names and addresses, and;
  - (c) whether he considers a hearing to be unnecessary.

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

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

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

## 17 Withdrawal of Representations

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

## 18 The Committee Procedure

- 18.1 The Licensing [Sub Committee](#) is serviced by a number of officers. These include the Committee Officer and a Legal Advisor who are responsible for ensuring that the correct procedures are followed and that the discussion and the decisions made are properly recorded. An officer from the Grants and Licensing Team acts as a presenting officer, introduces the report and answers Members' questions. In addition, other officers such as Environmental Health Officers may attend to address specific technical matters raised by applications included in the agenda.

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- 18.2 The Licensing [Sub Committee](#) agenda may comprise a single report, or set of reports concerning specific licensing applications. Each report summarises the main issues raised by the application and details the representations received. Applications to be considered by the [Sub Committee](#) will be the subject of a written report from officers.

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- 18.3 At the beginning of the hearing, the Chairman shall explain to the parties, the procedure which he/she proposes to follow at the hearing, and shall consider any request made by a party for permission for another person to appear at the hearing.

- 18.4 The Licensing Hearings Panel shall not permit cross-examination unless it considers it is required for it to consider the representations, application or notice.

- 18.5 The Licensing [Sub Committee](#) shall allow parties an equal maximum time period in which to support their representation or application.

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18.6 The Chairman of the Licensing [Sub Committee](#), may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the [meeting](#), and may refuse to permit that person to return, or permit that person to return only on such conditions as the Authority may specify. However, such a person may, before the end of the Hearing, submit to the Authority in writing any information which they would have been entitled to give orally, had they not been required to leave.

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## 19 Power to adjourn hearings

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

## 20 Hearing to be public

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

## 21 Councillor Representations

21.1 Where a Councillor wishes to express a view on an application either in their own right in the capacity as an interested party, or in a specific representative capacity, he/she must do so in accordance with the procedural rules of the Panel, and the Regulations.

21.2 To avoid conflicts of interest, councillors shall not normally hear an application if they represent the Ward in which the applicant's premises are situated, or if they live within the vicinity of the premises. A member of the relevant Licensing [Sub Committee](#), who represents or lives in the [Ward](#), which may also be affected by a licensing application, may be in a difficult position if it is a controversial application that has generated opposition. Members in such a situation should therefore not publicly support or oppose a particular outcome unless they are prepared to make their own valid representation. The [Member](#) would then become ineligible to take part in the deliberative and decision making process of the Licensing Hearings Panel concerned with determining that application.

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## 22 Representations and supporting information

22.1 A relevant authority or responsible person may make a representation at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.

22.2 Anonymous representations **will not** be considered by the Authority.

22.3 Letters of support of an application may be made at any time in writing, up to and including, 20 working days after the day on which the application for a Premises Licence was given to the authority by the applicant.

22.4 At the hearing a party shall be entitled to call witnesses and address the Sub Committee. The Sub Committee will consider if it wishes to allow a party to question any party to the hearing or any witnesses.

22.5 The Sub Committee will disregard any evidence produced by parties or witnesses which is not relevant.

22.6 The Sub Committee will have discretion as to whether they wish to take into account any documentary or other evidence produced by a party in support of their application, representation or notice (as applicable), either before the hearing, or, with the consent of all the other parties, at the hearing.

22.7 Members of the Licensing Sub Committee may ask any question of any party or other person appearing at the hearing.

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

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

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

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

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

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

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

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

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## 25 The Committee decision making process

- 25.1 The Sub Committee shall normally adjourn from the Hearing to deliberate their decision. The Sub Committee may require that the Legal Adviser withdraws with the panel. In such cases, any advice given by the Legal Adviser shall be relayed in open session.
- 25.2 The decision on an application should be taken on all of the relevant factors in the case and in particular the evidence submitted to the Sub Committee. Each application will be treated on its individual merits. The Sub Committee shall have due regard to, and shall normally follow, any relevant Council approved licensing policies and legislation and regulations that are relevant to the application.
- 25.3 Members may add or remove conditions if they are satisfied the imposition of such would go some way to address concerns raised in representations considered valid and pertinent to the application. Due consideration would be given to ensure the imposition or removal of such conditions would be necessary and reasonable.
- 25.4 The Sub Committee will usually make its decision at the conclusion of the Hearing, or within 5 working days following the last day on which then hearing was held.

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## 26 Record of proceedings

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

## **SECTION 8 - Model Code of Practice in respect of Planning Matters: Probity in Planning**

*Incorporated into the Constitution in December 2007; Revised January 2018*

### **1 Introduction**

- 1.1 Planning matters have a significant impact on our lives and the area in which we live. It is important that the system operates and is seen to operate, in an honest, open and transparent manner.
- 1.2 The purpose of the planning system is to consider development proposals in the light of wider public interests, with the Government requiring a positive approach to be taken towards allowing substantial development. To succeed, the planning system relies on Councillors and Officers acting in a way, which is fair and is clearly seen to be fair. This includes acting in accordance with Planning Law in all instances and paying due regard to national and local policies in addition to all other “material planning considerations.”
- 1.3 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act 2011 are relevant to this code. Firstly, with regard to pre-determination the Act makes clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the Act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stages.

### **2 Status of the Code**

- 2.1 This Planning Code is contained in the Council's Constitution and is complimentary to the Council's Code of Conduct for Members. Members of the Planning Committee should apply both the general Code of Conduct and the Planning Code in dealing with planning issues. This is to help Members maintain the Council's high standards of conduct, avoid placing the Council at risk of legal challenge or a finding of maladministration by the Local Government Ombudsman, and avoid putting an individual member at risk of a complaint. A breach of this Code whilst not usually amounting to a breach of criminal law, may adversely affect the standing of the Council.
- 2.2 The purpose of this Planning Code is to:

- Set the standards of conduct the Council requires all Members and Officers of the Council to follow when dealing with and determining planning applications including policy, development and enforcement
- Guide the way in which Members and Officers of the Council deal with all planning decisions, supporting their respective roles, and protecting their reputation for probity
- Set the standard of conduct which other parties to the process can expect from Members and Officers when dealing with planning matters

2.3 This Code applies to all Members and Officers when making decisions on planning matters. It has been drawn up to:

- Support Members effective engagement in all aspects of the planning process and, in this context, to fulfil their democratic role
- Ensure transparency and fairness in the way in which decisions are taken and that there are no grounds for suggesting that a decision has in any way been biased, partial or not well founded

2.4 A key purpose of this Code is to help Members of the Planning Committee make formal planning decisions that are safe from legal challenge. It is also intended to be helpful to members of other committees and to ward members in relation to various planning decisions.

2.5 The benefit of a detailed Code is that it sets out clear lines of engagement and expectations for each of the parties involved including members of the public and developers.

### **3 General Role and Conduct of Councillors and Officers**

3.1 Members and Officers have different but complimentary roles in the planning process. Members of the Planning Committee have different roles to those of other Councillors.

3.2 Mutual trust, respect and understanding between Councillors and Officers are key to achieving effective local government. Officers' views, opinions and recommendations will be presented based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

3.3 Officers, in their role of advising and assisting Members in their determination of planning matters in the public interest, do not represent either the landowner/applicant or the objector. They will:

- Provide impartial professional advice
- Seek to ensure consistency of interpretation of national, regional and the Council's planning policies

- Complete written reports with clear written recommendations and all necessary information for the decision to be made
- 3.4 The Code of Conduct for Officers is set out in full in Part 5 of the Council's Constitution. In addition, many professional staff within the planning service will be members of the Royal Town Institute (RTPI) and are required to comply with the RTPI Code for professional conduct. Planning officers, who are not RTPI members, are also expected to conduct themselves in the same manner.
  - 3.5 It is important and best practice that Members recognise that Officers are part of a management structure and any concerns that they may have about the handling of a planning matter should be raised with the department manager. In general, officers and members should adopt a team approach and should recognise and respect each other's different roles.
  - 3.6 Members must not put pressure on Officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views if submitted in written form will be placed on the planning file and considered together with other material planning considerations.
  - 3.7 In reaching a decision, Members must ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
  - 3.8 The Members of the Planning Committee should make all decisions in an open and transparent manner and this should not be compromised in any way. Such actions as messages being passed to Members of the Planning Committee during debate should be avoided as this could give an impression of undue influence from a third party. In an emergency, any communication should go through the Democratic Services Officer.
  - 3.9 In order to ensure that decisions are taken on planning grounds and are sound, it is **imperative** that all Members of the Planning Committee read the reports prepared by Officers and familiarise themselves with all relevant National Planning Guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the Planning Committee itself. It is important that Members be **seen** to be meeting this provision of the Code. Information on specific applications will be available on the Council's website via "Public Access".
  - 3.10 Councillors who are Members of the Planning Committee are responsible for the determination of planning applications for major and controversial applications. The Planning Committee must assess proposals against national and local planning policy, are restricted to planning considerations, and **cannot** seek to control non-planning issues or duplicate other legislative controls.

- 3.11 Members of the Planning Committee must always approach their decision making with an **open mind**; have regard to **all** material planning considerations and be prepared to change their views if persuaded that they should. Members should remember that planning law requires determination to be based on **planning consideration** and not on any political or other reasons.
- 3.12 If Members do anything, which would show they had closed minds and had predetermined an application, then they should **not take part**. Showing a predisposition towards a particular course of action does not in itself demonstrate bias and prevent Members from taking part in the decision making, however it may well encourage legal challenge.
- 3.13 Members should **not** vote or take part in the meeting's discussion on an item unless they have been present to hear the entire debate, including the officer's introduction to the item.
- 3.14 Members should ensure that if they are proposing, seconding or supporting a decision contrary to an officer's recommendations or the development plan, they **clearly identify** and understand the planning reason leading to this decision. The reason/s must be given **prior** to the vote and be recorded. Members must be aware that the resulting decision may have to be justified by evidence at a planning appeal in the event of challenge.

#### **4 Interests: Registration and Disclosure**

- 4.1 The Law and the Councillor's Code of Conduct set out rules and guidance on declaring their interests. Councillors **must** follow these rules and guidance and review their own situation regularly.
- 4.2 If a Member has a Code of Conduct interest in any matter, the existence and nature of the interest **must be disclosed** at any relevant meeting. This is best done at the beginning of the meeting.
- 4.3 The Members' Code of Conduct states that Members must, within 28 days of taking office as a member or co-opted member, notify the authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is that of the Member, their spouse or civil partner, or is the pecuniary interest of somebody with whom a Member is living with as a husband or wife, or as if they were civil partners.
- 4.4 If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.

- 4.5 If a Member does have a pecuniary interest, unless granted a dispensation, the Member **may not** participate in making the decision, either formally or informally. The Member should also avoid giving **any** impression of participation, as it is important to maintain public confidence in the impartiality of Councillors in decision-making. Taking part whilst having a pecuniary interest **is** a criminal offence.
- 4.6 In relation to planning decisions, any interest that does not amount to a pecuniary interest, but which would have a significant impact upon a member's judgement, should be declared by the Member at the meeting. In each case, this would be a matter for the Member's **own** judgement having full regard to the facts.
- 4.7 An example of this type of interest might be in relation to a planning application on a site very near to the member's home (where it may well be advisable for the member not to take part).
- 4.8 Even if a member considers a non-pecuniary interest would not have a significant impact on their judgement, there are likely to be situations where the public expectation would be for the member not to participate. Equally, there may be circumstances in which a member of the public would not regard it necessary for a member to declare an interest or involvement in a matter but for reasons of good practice and transparency, a member chooses to do so, simply to be as open as possible. In these circumstances, the declaration would have no impact on the Member's participation.
- 4.9 Councillors who are unsure whether an interest should be declared or need guidance, should do so before the Planning Meeting, by seeking advice from the Monitoring Officer or Deputy Monitoring Officer.

## **5 Predetermination, Predisposition and Bias**

- 5.1 Members of the Planning Committee must ensure that they do not fetter their ability to take part in the decision making process by making up their minds or clearly giving any appearance that an application or other matter referred to the Planning Committee has already been determined, before the Planning Committee has the opportunity to consider the merits or demerits of an application.
- 5.2 The Planning Committee should when considering an application, take into account **all views** that are expressed in such a way that they are **openly heard** and **fairly** considered in a **balanced** way before the Committee reach a decision.
- 5.3 The courts have sought to distinguish between situations that involve predetermination or bias, on the one hand **and predisposition** on the other.

- 5.4 **Predetermination** is indicative of a “**closed mind**” approach and could leave the committee’s decision open to challenge by Judicial Review. Such “pre-determination” has been held to amount to the “surrender by the decision-maker of its judgement by having a closed mind and failing to apply it to the task”.
- 5.5 Members of the Planning Committee can have a **predisposition** to an initial view, but **must make it clear** that they have an **open mind** and are willing to listen to **all material considerations** presented before deciding on how to vote.
- 5.6 A councillor who has **predetermined** their position should **withdraw** from being part of the decision making body. If the councillor takes part in the decision making process it will put the Council at risk of finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to take into account all of the factors enabling the application to be considered on its merits.
- 5.7 Members and Officers should also avoid the **appearance of bias**, that is, appearing to give undue weight to particular matters on the basis of personal attributes, or social acquaintance, that might influence their conduct generally and ties in with comments made in relation to declarations of interest above. Whilst it might remain possible for a Member to apply an open mind to the matter to be determined in such circumstances Members must avoid giving the impression or appearance that particular personal interests or attributes would lead them to consider aspects of an application more carefully or with more regard than other aspects unaffected by their own character and experience. It should be understood that the perception of justice *“is rooted in confidence, and that confidence is destroyed when right minded people go away thinking that the judge was biased”*.
- 5.8 For Planning Committee Members the aim is that they act, and are seen to act, impartially and honestly by approaching each planning decision fairly between the parties and with an open mind. Should a Member wish to take a particular stance in relation to a development, or feel that it would be difficult to demonstrate that they have followed a consistently fair approach between all parties in a case, then it is perfectly possible for them to decide not to be part of the decision making process on the particular issue or application but to act as a ward member in that instance.
- 5.9 From time to time, members are invited by prospective developers or objectors to attend meetings to discuss proposed development schemes and questions have been asked about the propriety of such attendance. Members and the Council could be challenged where they have expressed their opinion on proposals during or after such meetings, or in advance of Committee consideration.

- 5.10 The administrative system by which planning applications are determined in accordance with the law, and as necessary in a democratic society, would be brought into disrepute if it became evident that decisions favourable to an applicant or an objector could be obtained by lobbying members outside the procedural framework. On the other hand, members may be said to have a duty, particularly as Ward Councillors, to inform themselves of proposals that affect their wards and to be alive to public opinion. Members can play a constructive role in listening to and objectively gathering and reporting such views to the Councillors who will determine the application.
- 5.11 With these points in mind, it is suggested that the following guidelines may be helpful to members when considering whether to accept an invitation to a meeting:
1. Where members accept invitations to meetings from prospective developers or objectors when an application for planning permission has been received, even if the invitation is made to them ostensibly as a Ward Councillor, they should avoid expressing any fixed view on the matter.
  2. Councillors must not make any commitment to determine a matter in a particular way, for any reason .
  3. Ward Councillors (subject to paragraphs 1 and 2 above) should not accept invitations to meetings from prospective developers or objectors unless it is clear to them that the meeting is either a public meeting or one to which residents or other persons with an interest in the potential development have also been invited. If a Ward Councillor attends such a meeting in the belief that others have been invited but finds that no other persons are present, apart from the developer, s/he should decline to take part in any discussion of the scheme. There is no reason to distinguish between meetings in neutral premises and meetings in the prospective developer's or objector's own premises.
  4. There is nothing to stop members inspecting a site from the public highway if they choose to do so in order to better acquaint themselves with the details, but members should be aware of the risk of contact with the applicant or objector and inferences, which might be made. If access to a site is required, a formal site visit should be sought through the planning Case Officer.
  5. There is nothing to stop members responding to invitations to a meeting if properly convened through the Chief Executive or by officers in the planning service to which all relevant members (but not members of the public) have been invited, provided that if the merits and problems of the application are discussed Councillors make it clear that they have no fixed view of the matter at that stage.
- 5.12 It will, of course, remain open for the Council to sanction a departure from these guidelines in special circumstances.



## **6 The Decision Making Process and Decisions Contrary to Officer Recommendations and/or the Local Plan**

- 6.1 All Committee decisions are made by a simple majority.
- 6.2 In discussing, and determining a planning application or other planning matter, Councillors should try to confine their discussion to the policies of the Development Plan, and to those material considerations that should influence their decision. The reasons for making a final decision should be clear, convincing and supported by material considerations and the planning merits.
- 6.3 However, it is acknowledged that deputations by applicants or members of the public may refer to matters that should not properly be part of the reasoning of the members' decision. On such occasions, it may be difficult for members of the Planning Committee to confine their comments to the appropriate planning issues without appearing to disregard expressed concerns. Where it appears that the clarity of the decision-making process may be undermined, the Committee Chairman and officers may give guidance on any elements of the discussions that refer to irrelevant or immaterial considerations, and any elements that should be disregarded by the Committee in formulating its decision. Officers will clarify the weight to be given to the details of reports, or information that comes forward during deputations or in the course of debate.
- 6.4 If Councillors wish to refuse an application against officer advice, to impose additional conditions on a planning permission, or to approve an application contrary to officer recommendation, an officer should explain the implications of such action.
- 6.5 In circumstances where it seems likely that a planning application is likely to be refused against the officer's recommendation, the Chairman should consider whether it would be appropriate to require an adjournment of the meeting or even a deferral of that item to the next Planning Committee meeting to allow further discussions to be had. This is both to ensure that any potential reasons for refusal would be defensible at appeal and to give opportunity for any amendments that may overcome the potential ground for refusal.
- 6.6 Where they do not accord with the officer's recommendation, the Committee's reasons to grant an application or to refuse it or any additional conditions to be applied must be clearly stated by the member making the proposal.
- 6.7 If members cannot give sound and clear-cut reasons for a decision which may override the recommendations of the officers, it is not appropriate to require, or expect, that officers can explain such decisions to applicants, objectors or a planning inspector. When the Committee has made such a decision, the Chairman will allow brief discussion to ensure that officers have understood the intentions and reasons of the Committee. All conditions, including ones that the Committee may wish to impose on a planning permission, must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

- 6.8 If the report of the Head of Planning recommends approval of a departure from the Local Plan, the full justification for that recommended departure will be included in the report.

## **7 Lobbying**

- 7.1 Lobbying is a normal part of the planning process and may not be restricted to members of the Planning Committee. If a Member, who is not on the Planning Committee wishes to support a particular viewpoint then that Member has a right to appear at Planning Committee and seek permission to address the meeting. This approach is recommended to protect the integrity of the members of planning committee against accusations of bias and/or predetermination as the public perception could be that the member added more weight to, or was swayed by views, of a colleague.
- 7.2 Since lobbying can lead to the impartiality and integrity of a Member being called into question it is clear that care should be taken, and all parties involved should exercise common sense. It is therefore important that Members protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the Code by listening to or receiving viewpoints from residents or other interested parties as long as they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.

## **8 Councillor “Call-in” Procedure**

- 8.1 Most planning applications are determined by Planning Officers in line with the Council’s Scheme of Delegation. However even when the Scheme of Delegation authorises Officers to determine the application a Planning Committee Member or a member representing the Ward in which development is proposed, may wish for a planning application to be considered by the Planning Committee. In these circumstances, the following rules must be complied with. Failure to do so entitles Officers to refuse to put the application to committee and determine it under delegated authority.
- A “call-in” request must be received within **28 calendar** days following the date of public notification by the Planning Services. This gives the Councillors enough time to read the comments being received from other parties (who have 21 days to comment).
  - The request must be in writing (email is acceptable) to the Case Officer, copied to the Head of Planning and Planning Development Manager asking that the item being referred to, be “called-in” to the Planning Committee,
  - The request must be on **relevant planning grounds** or **merit** intervention to have the application placed before the Planning Committee.

- 8.2 It is not the case that just because a member of the public requests call-in of an application on their behalf, that this should be actioned. It is the responsibility of members to explain to their electorate that a call-in cannot be justified, as there are no planning grounds for doing so.
- 8.3 **All** “call-ins” made by Councillors stating **material planning grounds** and within **28 calendar days** will be valid.
- 8.4 Where the “call in” is not made on material planning grounds, the “call-in” will be **invalid**. The decision as to whether the grounds are justifiable will be at the discretion of the Head of Planning, in consultation with the Chairman of Planning and the members concerned.
- 8.5 A Member who has a Disclosable Pecuniary Interest should **NOT** ask for an item to be called in or if there is a risk of the Member being seen as biased: for example if the Member has a very strong connection through a non-pecuniary interest.
- 8.6 Members who have asked for a call-in must ensure that they attend the committee meeting to which the item is being discussed to explain the planning reasons why the application merits consideration by the Planning Committee.

## **9 Planning Applications made by Members and Officers**

- 9.1 When a planning application is submitted by a Member or by a close relative of a Member, the Member will:
- Advise the Monitoring Officer of the application
  - Take no part in the processing and determination of the application
- 9.2 All such applications will be reported to the Planning Committee. The Committee will determine such applications. An Officer will not determine such applications under delegated authority.
- 9.3 The same considerations shall apply to planning applications submitted by Chief Executive, Chief Operating Officer or Heads of Service, including the Head of Planning, Planning Development Manager or Planning Policy Manager.
- 9.4 Officers and Members must not act as agents for people pursuing matters within Epsom & Ewell Borough.

## **10 Late Representations**

- 10.1 Late representations by the applicant or objectors regarding applications being presented to Committee will be considered up until midday on the Monday immediately before the Planning Committee meeting (Thursday) and will be summarised by the Case Officer and sent to the Planning Committee Members at least one day before the meeting on the Thursday.

- 10.2 Comments or any other information received after the deadline will only be taken into consideration in exceptional circumstances at the discretion of the Head of Planning. This process ensures the Planning Committee Members have sufficient time to read any additional papers.
- 10.3 **No** material will be handed out at committee by anyone other than the Officers presenting the item before committee.

## **11 Public Speaking at Planning Committee**

- 11.1 Certain members of the public or organisations that have a planning related interest or could be affected directly by the matter under consideration will be entitled to speak at the Planning Committee.
- 11.2 These individuals/organisations fall into the following categories:
- Ward councillors who are not members of the planning committee
  - applicants or their agents
  - local groups
  - neighbouring occupiers or
  - owners of any premises which is the subject of an enforcement report
- and may either support or oppose the application.
- 11.3 An individual or representative of a local group/organisation who wishes to speak at a Planning Committee must register their wish to do so between 6pm and 7pm on the evening of the meeting at the Town Hall reception desk.
- 11.4 Normally, in addition to the applicant/agent, only one member of the public may speak for or against a single application. Registration will normally be on a first come first served basis but an individual may choose to waive this right in favour of an individual who attempted to register at a later time. Alternatively, several members of the public may appoint one person to speak on their behalf provided they can reach agreement to this amongst themselves.
- 11.5 A speaker shall have a maximum of three minutes to address the Committee and must confine their remarks to the application upon which they requested to speak. The applicant/agent shall be given an amount of time equal to the amount of time allocated to the all the objectors. The address shall be in the form of a statement, not attempts to question the applicant or other persons but may address issues raised by other speakers.
- 11.6 Speakers should only raise issues concerning planning matters such as;

- appearance and character of the application
- traffic issues, highway safety and parking
- layout and density of buildings
- loss of light overshadowing and loss of privacy
- noise, disturbance and other loss of privacy
- other relevant planning considerations

11.7 There will be no opportunity for displaying any materials, such as maps, photographs or circulate any other materials or ask any questions of anyone at the meeting.

11.8 If the Chair considers that any remarks made are defamatory, no further representation will be allowed. Individuals or organisations will be invited to address the Committee following the presentation of the item by the Officer. The order of speakers will be:

- Ward councillors wishing to speak
- Objector
- Supporter
- Applicant or their agent

## **12 Monitoring and Review of Decisions**

12.1 Planning Committee Members should play an active part in regularly reviewing the outcome of planning decisions so that lessons can be learned and the future consideration and determination of planning applications can be improved as part of a broader commitment to continuous improvement.

12.2 Arrangements will be made for Members to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken.

12.3 The outcome of the review will be considered by the Planning Committee and may lead to the possible amendments to existing policies or practices

## **13 Training**

13.1 No Member (or Member substituting on a Planning Committee) may attend a Planning Committee meeting without first having received appropriate mandatory training as set out below.

- 13.2 The validity of this training will expire if the Member has not attended a meeting of the Planning Committee within 12 months of receiving it, or has had a gap in membership from the Committee of more than 6 months. Where the validity of the training has expired, the Member may not sit on the Planning Committee until they have received further training.
- 13.3 Given the complex legislative framework for determining planning applications and the constant reforms and changes within the planning system, the Head of Planning will provide a Planning Committee Training Programme to include:
- An annual training session that will provide an overview of the key role of planning and the role Members play in the planning process. This training will usually be held once the membership of the Planning Committee has been confirmed at Annual Council and should be attended by both new and continuing Members of the Committee. However, all members of the Council will be encouraged to attend to help them understand planning issues. If Members are appointed to the Planning Committee after the training has been held and have not received the necessary training, or act as a substitute for a Planning Committee Member, they will receive separate training.
  - A six month mandatory refresher session
  - Further training sessions as necessary on new Council and Central Government policy and legislation or other planning issues that are requested by Members or Officers. Again, all members of the Council will be encouraged to attend such sessions.
- 13.4 It is expected that Members will be available to attend training sessions and it will be the responsibility of each Member to ensure they have attended at least the annual training and the six-month refresher to enable them to sit on the Planning Committee. Democratic Services will maintain a register of Members who have received this training.

## **14 Complaints**

- 14.1 A complaint that a Member or Officer has breached this Code should be made in writing to the Monitoring Officer for investigation and determination
- 14.2 There is a specific right of appeal for applicants who are not satisfied with a planning decision. In all other cases, the Head of Planning will investigate a complaint made in writing regarding the determination of a planning application or a related planning matter and would deal with it in accordance with the Council's complaints procedure.
- 14.3 In order that planning procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interest by Councillors.

- 14.4 The same principles of good record keeping will be observed in relation to all enforcement and planning policy matters. The Planning Development Manager will regularly monitor record keeping.
- 14.5 A complaint may be made to the Local Government Ombudsman in the event that the complainant was not satisfied with the result of the investigation under the Council's complaints procedure. This must be done directly to the Local Government Ombudsman.

## **15 Site Visits**

- 15.1 Members and Officers must remember, in conducting a site visit anything said or done by them should be restricted to relevant planning considerations and should remain open minded.
- 15.2 The purpose of an organised Council site visit is for Councillors to gain knowledge of the development proposal, the application site and its relationship to adjacent sites. The potential benefit of attending the site should be sufficient to justify the administrative expense and any consequential delay to determining the application.
- 15.3 The decision to hold a site visit prior to the Committee meeting is to be made by the Head of Planning in consultation with Chairman.
- 15.4 The purposes of a formal site visit prior to the Committee meeting are:
- to view the setting of the application,
  - to consider any other matters seen on site which may be material to consideration of the application, and
  - to find facts, especially when the application site is not visible from public land.
- 15.5 During a site visit members and officers should avoid any appearance of impropriety, and must not accept gifts or hospitality. Comments should be restricted to planning matters, and questions should be put through the planning officers attending the site visit. Officers and members must refrain from making comments that might be construed as supporting or opposing a particular view, and from making any personal comments.
- 15.6 The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. If, on a site visit, Members and Officers are approached by persons wishing to speak about the application, Officers will explain that any representations may be made to the Committee at the meeting, and explain the procedure.

- 15.7 Site visits should be requested by Members prior to the application being reported to Committee. Councillors should only request a site visit when the application has reached the determination stage if they consider it essential to clarify an issue that cannot be understood without such a visit, and which could not have been considered earlier. The Committee may decide to visit a site because particular factors to be seen on site are significant in terms of the weight to be afforded to them in determining the application and because, following discussion in Committee, members have reduced confidence that such factors can be fairly considered in the absence of a site visit to assess such details. In proposing a site visit, the member who wishes the Committee to have additional opportunity to do so should specify the factors to be noted if the site visit is agreed.
- 15.8 Members with a pecuniary interest in a planning application should not make representations seeking a site visit in respect of an application. Members with a pecuniary interest in a particular application or agenda item must not attend any related site visit.

## **16 Development proposed by the Council**

- 16.1 Parliament has decided that local planning authorities are, in the majority of circumstances, the appropriate body for determining planning applications affecting the area, including where the Council itself submits a planning application. There are separate statutory requirements for the Council in determining applications to develop its own land, or to develop it jointly with another body.
- 16.2 Members and Officers involved in reaching a determination of the application should treat proposals for the Council's own development (or development involving the Council and another party) in the same way as those by private developers. This means that not all applications on Council owned land need to be considered by Committee. However, the planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council be seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

## **17 Member/Officer Relations and Planning Decisions**

- 17.1 The Head of Planning or the Planning Development Manager will always attend meetings of the Planning Committee to ensure that procedures are properly followed and planning issues properly addressed.
- 17.2 Other senior officers with appropriate professional and technical experience will also be present when an application has aspects relating to their professional expertise. Where the Council's professional experts, such as environmental health officers or highway engineers, attend Committee to ensure that appropriate advice can be given and discussed with their assistance, Members must give due weight to such advice. It is the obligation of such officers to give considered and independent advice for the benefit of the Council.



## **18 Review of Protocol**

18.1 This Code will be reviewed as necessary and at least every four years to take account of:

- new planning legislation
- changes to national codes of conduct
- emerging examples of good practice

## **SECTION 9 - Whistleblowing Policy**

*Issued August 2003; Revised April 2011*

### **1 Introduction**

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

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

- 2.1 This policy aims to:-
  - Make you feel able to raise a concern in confidence and without risk to your own job;
  - Provide avenues to raise concerns and receive feedback;
  - Provide a guarantee that you will receive a response to your concerns and ensure that you are aware of the processes to follow if you are not satisfied;

- Reassure you that you will be protected from possible reprisals for victimisation;
- Provide other sources of reference for advice.

2.2 There are existing procedures in place if you have a grievance relating to your own employment or if you consider that you are harassed due to race, sex or age, or if you are concerned about health and safety issues. These are available on E-hub under HR.

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

### **3 Safeguards**

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

### **4 Malicious Allegations**

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

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

- 5.1 In order to deal with an allegation the earlier you raise your suspicions, the easier it is to take action.
- 5.2 As a first step, you should raise concerns with your immediate Manager or Director. Who you chose to raise your concerns with may depend on the seriousness and sensitivity of the issues involved and who is suspected of malpractice. For example if you believe that your manager is involved you should approach your Director or one of the Designated Whistleblowing Officers.
- 5.3 Your Manager or Director receiving notification of a concern under this policy must inform one of the Designated Whistleblowing Officers providing a copy of all relevant paperwork. The Council has two designated Whistleblowing Officers, who are the Director of Finance and the Director of Human Resource and Communication (the names of the individuals who currently hold the designated posts are set out at the end of this policy). If the matter relates to financial irregularities or failures of financial control, the Director of Finance must be informed. Further guidance on dealing with such matters can be found in the Fraud Response Plan available on the Council's intranet, E-hub.
- 5.4 When making a complaint you should provide accurate details such as background, names and, where possible, documentary evidence.
- 5.5 You may raise your concerns verbally or in writing. However, it is preferable for complaints to be raised in writing to provide more accurate details. You may find the proforma report form attached to this policy helpful, although it is not compulsory to use it.
- 5.6 Your complaint will be treated in confidence and you should also treat the matter as confidential whilst your complaint is on-going.
- 5.7 If you are a contractor working for the Council, the procedures for whistleblowing are similar but in the first instance, you should normally raise your concerns with your own manager who will then contact the Council's lead officer dealing with the particular contract. If you do not have a line manager, you should contact the Council's lead officer dealing with the particular contract or, alternatively, one of the Council's Designated Whistleblowing Officers.
- 5.8 If you are a Council employee you can obtain advice and guidance on how to raise matters of concern from the Director of Human Resource and Communication. If you are a contractor working for the Council, agency staff or a supplier, you can obtain confidential, independent advice from the charity Public Concern at Work (the contact details for this organisation are set out at the end of this policy document).

- 5.9 During initial investigations it may be necessary to conduct an interview to ascertain facts. You can invite your trade union or professional association representative or a work colleague to be present during any interviews in connection with the concerns you have raised.
- 5.10 If you are a council employee, you can leave a message on the 24 hour Whistleblowing/Fraud Hotline (0800 1974 520) operated by the Council's Internal Auditors RSM Tenon. This service is strictly confidential and you do not need to provide your name if you do not want to.

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

- 6.1 The action taken will be dependent on the nature of your allegation. In the first instance, the matter will be investigated internally, by or on behalf of the Designated Whistleblowing Officer, to establish the facts. Should it relate to a financial matter then the Fraud Response Plan may be implemented.
- 6.2 In order to protect you, and those about whom concerns are raised, initial enquiries will be made to decide whether an investigation is warranted and if so, what form it should take. If you have raised concerns or made an allegation which is the subject of its own policies and procedures, such as discrimination for example, such matters will normally be referred for consideration under the relevant policies and procedures rather than dealt with by the Designated Whistleblowing Officer. It may be possible at this stage to agree action without the need for further investigation. If urgent action is required this will be taken before any investigation is concluded.
- 6.3 The Designated Whistleblowing Officer dealing with the case will endeavour to acknowledge your complaint within 5 working days. Then, depending on the circumstances of your complaint, will formally respond in more detail within 21 working days or once the investigation is completed.
- 6.4 The initial written response will:
- Acknowledge that your complaint has been received;
  - Indicate how the Council proposes to deal with the matter;
  - Give an indication or estimate of how long it will take to provide a final report;
  - Outline what initial enquiries have been made;
  - Supply you with information of staff support mechanisms.
- 6.5 Further action will depend on the results but the case may be: -
- Passed to an appointed independent person or body such as internal audit for further investigation.
  - Referred to Director of Human Resources & Communications for disciplinary action
  - Referred to the District Auditor
  - Referred to the Police

- 6.6 The amount of contact the Designated Whistleblowing Officer dealing with the allegation will have with you will depend upon the nature of the matters you raised. It may or may not be necessary to seek further information from you during the course of an investigation.
- 6.7 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcomes of any investigation. However feedback may be limited during an investigation.

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

- 7.1 This policy is intended to provide you with an avenue within the Council to raise concerns and has been written to take account of the Council hopes that you will be satisfied with any action taken. If you are not satisfied with the outcome of your confidential report you can write to the Chief Executive and ask for the outcome to be reviewed. If you remain dissatisfied, you feel it is right to take the matter outside of the Council. In this case, you may wish to rely on your rights under the Public Disclosure Act 1998.
- 7.2 This Act protects you if you make certain disclosures regarding information in the public interest and those disclosures are made in accordance with the provisions of the Act. The provisions are quite complex and include a list of prescribed persons outside of the Council who can be contacted in certain circumstances. If in doubt, you should seek advice on the provisions of the Act. If you do take the matter outside the Council, you should ensure that you do not disclose information where you owe a duty of confidentiality as by doing so you may commit an offence by making such a disclosure. Where you are in any doubt you should obtain your own legal advice.

## **8 The Law**

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

## **9 Contact Details**

- 9.1 The Council has two Designated Whistleblowing Officers, who are the:
- Chief Finance Officer (Lee Duffy, Tel: 01372 732210 or e-mail [lduffy@epsom-ewell.gov.uk](mailto:lduffy@epsom-ewell.gov.uk))
  - Monitoring Officer (also the Council's Chief Legal Officer), (Amardip Healy, Tel 01372 732148, or e-mail: [ahcally@epsom-ewell.gov.uk](mailto:ahcally@epsom-ewell.gov.uk))

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

- Chief Executive (Kathryn Beldon, Tel 01372 732104, or e-mail: [kbeldon@epsom-ewell.gov.uk](mailto:kbeldon@epsom-ewell.gov.uk))
- Head of Corporate Governance (Gillian McTaggart, Tel: 01372 732224 or e-mail: [gmctaggart@epsom-ewell.gov.uk](mailto:gmctaggart@epsom-ewell.gov.uk))
- A local Councillor – Residents of the Borough of Epsom and Ewell can contact their local Councillor. A list of local Councillors is available on the Council's web site or by contacting the Council (01372 732000).

#### **External Contact Details**

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

- External Audit, Sarah Ironmonger (Associate Director, Grant Thornton UK LLP), Tel 01293 554072 or e-mail: [Sarah.L.ironmonger@uk.gt.com](mailto:Sarah.L.ironmonger@uk.gt.com))
- Your Trade Union or staff representative
- Public Concern at Work – [www.pcaw.co.uk](http://www.pcaw.co.uk). Tel 0207 404 6609
- The Police

## SECTION 10 - Recording, Photography and Use of Social Media Protocol and Guidance

Issued: December 2018

### 1 Introduction

The Local Audit and Accountability Act 2014 and the “Openness of Local Government Bodies Regulations 2014” set out the statutory provisions that permit the recording of proceedings by any person attending the meeting.

Epsom and Ewell Borough Council recognises that it operates in a modern digital world where the use of filming and communication methods such as tweeting and blogging is commonplace. The Council has responded to the Government’s requirements to increase citizens’ rights to attend and report on meetings by adopting a “Standing Order” and this Protocol.

To ensure the work of a meeting is not interrupted, and to safeguard the rights of others, any member of the public or of the media wishing to photograph and / or audio or visually record a meeting will be asked to sign the recording and filming protocol.

### 2 Procedure Prior to the Meeting for those Wishing to Record or Photograph a Meeting

Requests to take photographs or undertake audio or visual recordings of meetings open to the public, by members of the public or by the media, should wherever possible be made to **the Democratic Services Officer listed as a contact for that committee on the agenda for each meeting** at least two working days before the meeting.

The request should include the following information, as this will assist the Council in preparing for the meeting to avoid any disruption to the proceedings:

1	the name, organisation (if applicable) and contact details of the person making the request
2	which meeting do you wish to record
3	what equipment will you be (e.g. camera/audio recorder/video camera)
4	What will the photographs, or audio / visual recording will be used for and / or where the information is to be published

All recording and filming of Council meetings are subject to the following terms:



1	Any photography or audio / visual recording must take place from a fixed position in the meeting room approved by the Chairman so as to minimise disruption to the proceedings;
2	The use of flash photography or additional lighting will only be permitted for a limited period during the meeting at a point in the proceedings agreed in advance with the Mayor or Chairman, so as to minimise disruption to the proceedings;
3	If the Mayor or Chairman feels that any photography, audio or visual recording is disrupting the meeting in any way or any pre-meeting agreement has been breached then the operator of the equipment will be required to stop;
4	If during the meeting a motion is passed to exclude the press and public, because confidential or exempt information is likely to be disclosed, then all rights to record the meeting are removed and the operator of the equipment will be required to stop recording and /or photography;
5	If the Mayor or Chairman adjourns the meeting, then the operator of the equipment should stop any recording or photography at the point at which the meeting is adjourned;
6	Those making audio or visual recordings must comply with any request made by the Mayor or Chairman regarding respecting the public's right to privacy;
7	People seated in the public gallery / seating area should not be photographed, filmed or recorded without the consent of the individuals concerned. This also applies to those individuals who may ask a public question, present a petition or make a representation at a Council meeting open to the public and who are seated in a "public seating area";
8	Use must not be made of an image or recording if consent is refused by an individual;
9	Photographs, audio, and visual recordings should not be edited in a way that could lead to misinterpretation of the proceedings. This includes refraining from editing the views being recorded in a way that may ridicule or show lack of respect.

It should be noted that failure to comply with this Protocol might lead to the refusal of any future requests to photograph or audio or visually record any future Council meetings in view of the risk of future disruption to proceedings.

If a request has been received to take photographs, or to audio or visually record a particular meeting, notices to this effect may be displayed in the relevant meeting room.

To assist the public, the Mayor or Chairman will, in accordance with the Council's Rules of Procedure (FCR 7.10 or CPR 18.5), announce the meeting will be photographed and /or recorded or filmed.

The Council may, on occasion, audio record meetings for minuting purposes only. The relevant Chair will make an announcement to this effect and these recordings will not be made available to anyone outside the Council.

### **3 Audio and Visual Recording – the Public Rights**

If as a member of the public you do not wish to be photographed, filmed or recorded please inform the Committee Officer in attendance at the meeting, or the Mayor or Chairman of the relevant committee if notice that a request to photograph / record has been received is given.

### **4 Procedure at the Meeting**

Equipment must be set up before the meeting starts. The use of flash photography or additional lighting will only be permitted for a limited period during the meeting at a point in the proceedings agreed in advance with the Mayor or Chairman. This will be communicated to all relevant parties. This is to minimise disruption to the proceedings.

If the Mayor or Chairman feels the photography/audio / visual recording is disrupting the proceedings, the operator of the equipment will be required to stop.

If use continues, the Mayor or Chairman will ask the person to leave the meeting. If the person refuses to leave then the Mayor or Chairman may adjourn the meeting or make other appropriate arrangements for the meeting to continue without disruption.

Anyone asked to leave a meeting because they have refused to comply with the Mayor or Chairman's requests may be refused permission to photograph, record or film at future Epsom and Ewell Borough Council meetings, to minimise the risk of future disruption to the proceedings.

If during the meeting a motion is passed to exclude the press and public, because confidential or exempt information is likely to be disclosed, then all rights to record the meeting are removed.

If a meeting for which agreement is given to record or photograph is adjourned by the Mayor or Chairman then any recording or photography should stop at the point at which the meeting is adjourned.

### **5 Social Media**

There are no restrictions placed on anyone at the meeting using Twitter, blogs, Facebook or similar "social media" provided that the Mayor or Chairman does not consider their actions are disrupting the proceedings of the meeting.

If the Mayor or Chairman feels the use of social media is at the time disrupting the proceedings the Councillor, member of the public or media representative may be required to stop.

If use continues, the Mayor or Chairman will ask the person to leave the meeting. If the person refuses to leave then the Mayor or Chairman may adjourn the meeting or make other appropriate arrangements for the meeting to continue without disruption.

Councillors and members of the public are reminded that there are laws which apply to social media use – including the law of defamation and the law on public order offences.