



Constitution

PART 5

Codes and Protocols

PART 5 – Councillor Code of Conduct

Part 1 - General provisions

Introduction and interpretation

1. (1) This Code applies to you as a member or co-opted member of Malvern Hills District Council.
- (2) You should read this Code together with the Seven Principles of Public Life which are set out in Appendix 1 .
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code—
 - "meeting" means any meeting of
 - (a) the authority;
 - (b) any of the authority's, sub-committees, joint committees, joint sub-committees, or area committees;
 - "Monitoring Officer" means the Monitoring Officer for the principal Council which is Malvern Hills District Council.

Scope

2. (1) This Code applies to you as a member of this authority when you act in your role as a Member or as a representative of the authority in the circumstances described in para 2 (b) below.
- (2) Where you act as a representative of the authority:
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. (1) You must treat others with respect.
- (2) You must not:
 - (a) do anything which may cause your authority to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with the authority's Code of Conduct;
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
4. You must not:
 - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:

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- (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
- 5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- 6.** You:
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of, or under the control of, the authority:
 - (i) act in accordance with the authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity.
- 7.** You must:
- (a) when reaching decisions on any matter have regard to any relevant advice provided to you by the authority's officers and in particular by the authority's Monitoring Officer and Section 151 Officer; and
 - (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority
- 8.** You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

Part 2 - Interests

Disclosable Pecuniary Interests (“DPI”)

9. (1) You will have a Disclosable Pecuniary Interest (“DPI”) under this Code if:-
- (a) such interest meets the definition prescribed by Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as amended from time to time and set out in Appendix 2 to this Code; and
 - (b) it is either an interest of yourself; or it is an interest of :-
 - (i) your spouse or civil partner; or
 - (ii) a person with whom you are living as husband and wife: or
 - (iii) a person with whom you are living as if you were civil partners;
- And you are aware that the other person has the interest.

Registration of DPIs

10. (1) You must within 28 days of becoming a member of the authority or being re-elected notify the Monitoring Officer in writing of any DPI which you hold at the time notification is given
- (2) You must within 28 days of becoming aware of any new DPI, or changes to existing DPIs notify the Monitoring Officer in writing.

Other Disclosable Interests

11. (1) You will have a Disclosable Interest in any matter if you are aware that you or a member of your family or person or organisation with whom you are associated have:-
- (a) a pecuniary interest in the matter under discussion which is not de minimis; or
 - (b) a close connection with the matter under discussion.
- (2) If you are a member of another local authority, or public body, or you have been appointed as the Council’s representative on an outside body, you do not have a Disclosable Interest unless a member of the public knowing the circumstances would reasonably regard membership of the body concerned as being likely to prejudice your judgment of what is in the public interest.

Disclosure of Interests

DPIs: formal meetings

12. (1) If you are present at a meeting of the Council and you have a DPI then you must:
- (a) Disclose the nature and existence of the interest; and
 - (b) Leave the meeting (including the meeting room and public gallery) and take no part in the discussion ; and
 - (c) If the interest has not already been recorded notify the Monitoring Officer of the interest within 28 days beginning with the date of the meeting.

DPIs: informal meetings

- (2) If you have a DPI you must not participate in informal meetings or briefings and site visits and must disclose the DPI in any correspondence with the Council.

Other Disclosable Interests

- (3) If you are present at a meeting of the Council and you have an Other Disclosable Interest then you must:
 - (a) Disclose the nature and existence of the interest; and
 - (b) If the interest;
 - a. affects your pecuniary interests or relates to the determination of a planning or regulatory matter; and
 - b. is one which a member of the public knowing the circumstances would reasonably regard as being likely to prejudice your judgment of what is in the public interestthen you must leave the meeting (including the meeting room and public gallery) and take no part in the discussion.

Dispensations

- (4) You may take part in the discussion of and vote on a matter in which you have a been granted a dispensation.

Sensitive Information

- 13. (1)** An interest will be a sensitive interest if the two following conditions apply:
 - (a) That you have an interest (whether or not a DPI); and
 - (b) the nature of the interest is such that you and the Monitoring Officer consider that disclosure of the details of the interest could lead to you or a person connected to you being subject to violence or intimidation.
- (2) Where it is decided that an interest is a "sensitive interest " it will be excluded from published versions of the register. The Monitoring Officer may state on the register that the member has an interest the details of which are excluded under this section.
- (3) Where the sensitive interest is a DPI the usual rules relating to disclosure will apply save that the member will only be required to disclose that they hold a DPI in the matter concerned.

Appendix 1 - The Seven Principles of Public Life

- a. Selflessness
- b. Integrity
- c. Objectivity
- d. Accountability
- e. Openness
- f. Honesty
- g. Leadership

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

This version in force from: **June 6, 2012 to present**

(version 1 of 1)

Made: 6 June 2012

Laid before Parliament: 8 June 2012

Coming into force: 1 July 2012

The Secretary of State, in exercise of the powers conferred by sections 30(3) and 235(2) of the Localism Act 2011, makes the following Regulations.

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Subject: Local government

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

This version in force from: **August 1, 2014 to present**

(version 2 of 2)

1.— Citation, commencement and interpretation

(1) These Regulations may be cited as the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and shall come into force on 1st July 2012.

(2) In these regulations—

“the Act” means the Localism Act 2011;

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

“director” includes a member of the committee of management of [a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union]

¹

;

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

“M” means a member of a relevant authority;

“member” includes a co-opted member;

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

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

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

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

Notes

¹. Words substituted by Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014/1815 Sch.1 para.30 (August 1, 2014 immediately after 2014 c.14)

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Subject: Local government

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

This version in force from: **July 1, 2012** to **present**

(version 1 of 1)

2. Specified pecuniary interests

The pecuniary interests which are specified for the purposes of Chapter 7 of Part 1 of the Act are the interests specified in the second column of the Schedule to these Regulations.

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Subject: Local government

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

This version in force from: **July 1, 2012 to present**

(version 1 of 1)

Signed by authority of the Secretary of State for Communities and Local Government

Grant Shapps

Minister of State Department for Communities and Local Government

6th June 2012

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Subject: Local government

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

Schedule 1

This version in force from: **July 1, 2012 to present**

(version 1 of 1)

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

	(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
	(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

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Subject: Local government

Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464

Explanatory Note

(version 1 of 1)

Section 30 of the Localism Act 2011 provides that a member or co-opted member of a relevant authority as defined in section 27(6) of the Localism Act 2011, on taking office and in the circumstances set out in section 31, must notify the authority's monitoring officer of any disclosable pecuniary interest which that person has at the time of notification. These Regulations specify what is a pecuniary interest. Section 30(3) of the Act sets out the circumstances in which such an interest is a disclosable interest.

A full impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

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Subject: Local government



PART 5 - Arrangements for Investigating Allegations of Breach of the Councillor Code of conduct

1. The Monitoring Officer shall be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
2. The Monitoring Officer shall have delegated power to determine whether a complaint merits formal investigation (after consultation with the Independent Person if he feels it necessary). If the Monitoring Officer determines that an investigation is necessary, he is to arrange such investigation; if he does not, he may decide to take no further action and report this to the Standards Committee;
3. The Monitoring Officer shall seek resolution of complaints without formal investigation wherever practicable, and shall have discretion to refer decisions on investigation to the Standards Committee where he feels that it is inappropriate for him to take the decision, and to report quarterly to Standards Committee on the discharge of this function;
4. Where a complaint relates to a breach of the Code which may also be a criminal offence, the Monitoring Officer shall pass this to the Police for investigation and no further action shall be taken until the Police investigation is closed or the Police otherwise agree that the Council can take action without prejudicing any criminal proceedings;
5. Where an investigation is carried out and the Monitoring Officer finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall close the matter and report the findings to the Standards Committee for information;
6. Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer in consultation with the Independent Person be authorised to seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Committee. Where such local resolution is not appropriate or not possible, he is to report the investigation findings to the Standards Committee for local hearing;
7. That Council delegate to the Standards Committee such of its powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct;
8. The Standards Committee may decide to set up ad hoc or standing Hearings Panels as sub-committees to decide upon matters referred to it or may decide such matters itself. Hearings Panels shall have such terms of reference as a sub-committee to the Standards Committee as the committee may decide;
9. All decisions on complaints taken by the Standards Committee and/ or Hearings Panels must take into account the views of the Independent Person, and members who are the subject of the complaint shall be entitled to consult the Independent Person in accordance with the Localism Act 2011;

10. The following actions are open to the Standards Committee or any Hearings Panel of it as regards members who are found to have been in breach of the code of conduct:
- . Reporting its findings to Council [*or to the Parish Council*] for information;
 - . Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - . Recommending to the Leader of the Council that the member be removed from particular Portfolio responsibilities;
 - . Instructing the Monitoring Officer to [*or recommend that the Parish Council*] arrange training for the member;
 - . Removing [*or recommend to the Parish Council that the member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
 - . Withdrawing [*or recommend to the Parish Council that it withdraws*] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - . Excluding [*or recommend that the Parish Council exclude*] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

PART 5 - Protocol for Member/Employee Relations

The Council recognises that its staff are its most important asset and councillors are fully committed to improving the working relationship with officers at all levels within the organisation in line with the councillors code of conduct.

Every appointment of paid local authority employment must be on merit. The only exception to this is in respect of political assistants appointed under Section 9 of the Local Government and Housing Act 1989. The obligation to appoint officers on merit includes consideration of the terms of appointment, any promotion in employment, and should be applied to any disciplinary action.

Senior Officers cannot be local authority councillors or Members of Parliament, nor can they *“speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party.”* Such officers are nevertheless able to engage in such activity to *“such extent as is necessary for the proper performance of their duties”* – Section 1-3 Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.

The Head of Paid Service, Heads of Service and other staff (except political assistants) are the employees of the Council as a whole and their overriding responsibility is to the Council and not to any party political group. The Head of Paid Service is nevertheless expected to work closely with the administration for the time being, and to give them information, assistance and advice. Subject to maintaining his position as politically neutral, he/she may develop a special relationship with the administration leadership and will not, without consent, disclose to the minority parties any matters discussed with that leadership.

Officers must be politically neutral: they are employed by the Council, not by Committees or other individual councillors. The political neutrality of officers should be respected. They should not be asked to play any role or undertake any task that is likely to prejudice that neutrality.

Councillors may require an officer to provide advice or a briefing note on any issue to enable them to perform their Councillor duties, either as members of the authority and/or ward representatives. A key indicator as to whether such support breaches this Councillor/Officer Code is where the officer concerned would have difficulty being open about the work in question to senior management.

All Members of the Council have a right of access to the Head of Paid Service. Where a member requires information, it will be provided if it is readily available, for example, in committee papers or material published on behalf of the Council. The Head of Paid Service is free to give advice on a confidential basis about procedural matters to any member. In doubtful cases, the Head of Paid Service is entitled to seek the advice of a chairman or the instructions of a committee before responding to a request from a councillor.

Councillors and employees must understand that Council decisions can only be made by full Council, committees or officers acting under delegated authority. Councillors and employees must ensure that representations made to the Council on any matter during any stage of the formal decision making process should be directed to the appropriate

Last updated: October 2015

PART 5 - Protocol for Member/Employee Relations

committee. It is particularly important that councillors understand this when performing their representative role as ward councillors.

In respect of Authorities operating Alternative Arrangements, the law does not allow for decisions relating to the discharge of any of the Council's functions to be taken by a chairman or indeed by any other single councillor.

Reports to committees should be written by the Head of Service or another authorised officer.

At pre-agenda meetings all reports, including sensitive ones, are discussed with the Chairman and the Chairman may make suggestions to the Head of Service as to its contents. However, the report is the officer's and even if the Chairman or another committee member in exceptional circumstances is unhappy with its contents, it should not be amended by the Chairman or another committee member, save with the express approval of the Head of Service.

In most cases, discussion between the Chairman and the appropriate Head of Service will resolve any disagreement over a report; however if the report of the Head of Service is not regarded as appropriate by the Chairman, then exceptionally the Chairman should write his or her own report in addition to the report submitted by the Head of Service. In this instance, the Chairman should, under no circumstances, use undue pressure to persuade the Head of Service to withdraw the original report.

Mutual respect between officers and councillors is essential to good local government. Some employees are required to give advice to councillors as part of their job, but close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other officers - it should therefore be avoided. It may impair others' perception of the objectivity and independence of the officer and lead to loss of confidence.

Breach of this rule can easily undermine the Council's decision making process. A breach can render the officer concerned in contravention of National Conditions of Service; and the councillor concerned may be in breach of the Councillor Code of Conduct.

In line with the Code of Conduct's reference to treating others with respect, it is important that any dealings between councillors and officers should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position. Employees, whether individually or collectively, should not be the subject of attacks or criticism.

In particular, councillors should avoid naming individual employees, if at all possible, and neither councillor nor employee should resort to the media to resolve a disagreement between them.

The Code of Conduct also requires the promotion of equality by not discriminating unlawfully against any person. Council will regard as a serious offence actions by an employee or a councillor which amount to work related bullying, harassment, discrimination against or victimisation of any employee or councillor and particularly so where such action is on the grounds of a protected characteristic.

Last updated: October 2015

PART 5 - Protocol for member/employee relations

Bullying can take the form of shouting at an individual, making persistently negative attacks on an individual's personal or professional performance, criticising an individual in front of others, persistently setting objectives with impossible deadlines or unachievable tasks, excessive monitoring of an individual's performance or withholding information with the intent of deliberately affecting an individual's performance.

Confidentiality is often vitally important, and must be respected by councillors and officers at all times.

A breach of confidentiality may have serious implications for the individual councillor/officer who "leaks" the information. A complaint could be made to the Local Government Ombudsman which could result in a finding of maladministration. For councillors, failure to preserve confidentiality may be a breach of the Code of Conduct and could result in a complaint being made to the Monitoring Officer. There may also be a breach of the Data Protection Act, which could amount to a criminal offence.

It is the duty of the Head of Paid Service and each Head of Service to ensure that the work and responses of employees are conducive to and not undermining of, the foregoing general principles. They are entitled to expect members to respect political restriction and the duties and limitations of employees.

It is also the duty of the Head of Paid Service and each Head of Service to arrange matters so that their employees properly understand the roles of Members and employees and the Council's required approaches to the relations between them. They are also entitled to expect members to respect the degree of seniority of employees with whom they may have dealings and the fact that, while those employees owe duties to the Council as their employer, such duties are first expressed to their respective Head of Service and/ or the Head of Paid service and not to any individual member.

Correspondence or discussion between an individual councillor and an officer should not normally be copied or disclosed (by the officer) to any other councillor. Where, exceptionally, it is necessary to copy the correspondence or disclose a conversation to another councillor, this should be made clear to the original councillor. In particular, a system of "silent copies" should not be employed.

Official letters on behalf of the Council should normally be sent out in the name of the appropriate officer, rather than in the name of the councillor. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of the councillor, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a councillor.

PART 5 - Members' Gifts and Hospitality

This document is intended as a guide to assist members in determining the correct course of action with regard to acceptance and declaration of gifts and hospitality. The guide sets out a recommended approach in dealing with gifts etc, depending on their nature and value. A decision in respect of the gifts and hospitality rests with you, although further guidance can be obtained from the Monitoring Officer.

The Code of Conduct states *"You must not place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties"* This includes any offers of gifts or hospitality and whilst there is general guidance about the value of gifts or hospitality acceptance of any gift or hospitality could still bring you or the Council into disrepute if it creates the impression that someone may be seeking, or has already received, special treatment.

In deciding whether to accept any gifts or hospitality, regardless of the value, you should consider whether a member of the public, knowing the facts, would reasonably think that you might have been influenced by the gift or hospitality received.

The Council has decided that **any gifts or hospitality worth more than £5 should be recorded.**

Gifts

As a general guide, you are strongly advised not to accept any gift which you know or believe to be worth more than £25. If you are unable to refuse such a gift, you must inform the Monitoring Officer who will record the details in the Register of Gifts and Hospitality. The Register is kept in the Democratic Services Section in the Council House.

Where a gift is worth less than £25, but worth more than £5, there is no need to inform the Monitoring Officer but the gift must be entered in the Register so you will need to contact Democratic Services. There is no need to declare a gift worth less than £5 in the Register.

If you accept a gift and subsequently discover that the reason behind it was to exert undue influence, then you should, as soon as is practically possible, write to the Monitoring Officer giving details. For your own protection, you should advise the Monitoring Officer of any situation where you are concerned over the underlying intention behind the offer of a gift, even where such an offer has been refused.

Hospitality

In general, attendance in an official capacity at a function organised by a public authority or local non-profit-making organisation is acceptable. Offers of hospitality from individuals or profit-making organisations should be treated with care. An offer should be declined if you believe that it could have been made to exert influence, or to improve the standing of an individual or organisation, in relation to current or future dealings with the Council.

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PART 5 - Members' Gifts and Hospitality

If you accept an offer of hospitality and subsequently discover that the reason behind it was to exert undue influence, then you should, as soon as is practically possible, write to the Monitoring Officer, giving details. For your own protection, you should advise the Monitoring Officer of any situation where you are concerned over the underlying intention behind the offer of hospitality, even where such an offer has been refused.

Please also note that even if an offer of a gift or hospitality is refused, it is necessary to inform Democratic Services.

The table below sets out examples of hospitality and the recommended course of action:

Example of Hospitality	Action
Light refreshments prior to site meetings; presentations etc (but not related to planning applications or other applications on specific matters, such as grant applications)	No need to record.
Lunch/evening meal provided as part of an event by another public authority	No need to record.
Lunch/evening meal provided as part of a private sector sponsored conference or promotional event	Record in Register.
Meals and overnight accommodation as part of a private sector sponsored conference or promotional event	Caution advised: If possible, decline the offer.
Lunch/evening meal provided by a voluntary body at a meeting or AGM	No need to record.
Lunch/evening meal provided by a voluntary body, at a meeting for the specific purpose of fund raising/lobbying	Caution is advised, especially for Executive Committee Members who might determine grant funding for such bodies. If accepted, it should be recorded in the Register

Last updated: October 2015

PART 5 - Protocol for Councillors and Officers on Dealing with Planning Matters (including site inspections)

Foreword

This protocol clarifies how councillors can get involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way.

It has been written for officers and councillors of Malvern Hills District Council and is based very largely on the Local Government Association (LGA) and Planning Advisory Service (PAS) guidance *“Probity in planning for councillors and officers”*. Councillors should also be familiar with this Council’s member code of conduct and guidance.

Introduction

Planning has a positive and proactive role to play at the heart of local government. It helps councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action and positive outcomes for the community at large. It balances social, economic and environmental needs to achieve sustainable development.

The planning system works best when officers and councillors involved in planning understand their respective roles and responsibilities, and the context and constraints in which they operate. Planning decisions involve balancing many competing interests. In doing this, decision makers need an ethos of decision-making in the wider public interest on what can be controversial proposals. It is recommended that councillors should receive regular training on code of conduct issues, interests and predetermination, as well as on planning matters.

Background

In 1997, the Third Report of the Committee on Standards in Public Life (known as the Nolan Report) resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. In today’s place shaping context, early councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the settlements that communities need.

This protocol is intended to reinforce councillors’ community engagement role whilst maintaining good standards of probity that minimizes the risk of legal challenges. Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework.

Decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before decisions are taken regarding the preparation of a development plan or in relation to development control (decisions on planning applications) Nevertheless, it is important that the decision-making process is open and transparent.

One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning

Last updated October 2015

PART 5 - Protocol for Councillors and Officers on

Dealing with Planning Matters (including site inspections)

necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved.

Whilst councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that planning authorities make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable planning reasons. The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

This protocol is not intended to be prescriptive. Local circumstances may provide reasons for local variations of policy and practice. Every council should regularly review the way in which it conducts its planning business. This protocol refers mainly to the actions of the Area Planning Committees as the principal decision-making forums on planning matters. It is recognised, however, that authorities have a range of forms of decision making e.g. officer delegations and full council.

This protocol applies equally to these alternative forms of decision-making. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local plans and other policy documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in planning enforcement cases or the making of compulsory purchase orders.

The general role and conduct of councillors and officers

Councillors and officers have different but complementary roles. Both serve the public, but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.

Both councillors and officers are guided by codes of conduct. The 2011 Localism Act sets out a duty for each local authority to promote and maintain high standards of conduct by councillors and to adopt a local code of conduct. The Malvern Hills District Council adopted code is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to council business, including the need to register and disclose interests, as well as appropriate relationships with other councillors, staff, and the public.

Staff who are chartered town planners are subject to the Royal Town Planning Institute (RTPI) Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. Many authorities will have adopted a code of conduct for employees and incorporated those or equivalent rules of conduct into the contracts of employment of employees.

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In addition to these codes, a council's procedure rules set down rules which govern the conduct of council business. Councillors and officers should be cautious about accepting gifts and hospitality and should exercise their discretion. Any councillor or officer receiving any such offers should take account of the local protocol contained within the Council's Constitution.

Employees must always act impartially and in a politically neutral manner. The Local Government and Housing Act 1989 enables restrictions to be set on the outside activities of senior officers, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly. Officers and serving councillors must not act as agents for people pursuing planning matters within their authority even if they are not involved in the decision making on it.

Whilst the determination of a planning application is not a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is a formal administrative process involving the application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. All involved should remember the possibility that an aggrieved party may seek a Judicial Review and/or complain to the Local Government Ombudsman on grounds of maladministration or a breach of the code.

Registration and disclosure of interests

Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests and the consequences for a councillor taking part in consideration of an issue in the light of those interests.

The definitions of disclosable pecuniary interests (DPI) are set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. A failure to register a disclosable pecuniary interest within 28 days of election or co-option or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a councillor or co-opted member has a disclosable pecuniary interest, are criminal offences.

If you have any doubts whatsoever about your interests the Monitoring Officer is available to provide advice but advice should be sought well in advance of any meeting. Ultimately, responsibility for fulfilling the requirements rests with each councillor.

The provisions of the Act seek to separate interests arising from the personal and private interests of the councillor from those arising from the councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the councillor's involvement would be appropriate.

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The code of conduct sets out what interests need to be disclosed. All disclosable interests should be registered and a register maintained by the Monitoring Officer is made available to the public. Councillors should also disclose that interest orally at the committee meeting when it relates to an item under discussion.

A councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the councillor becoming aware of such changes.

A disclosable pecuniary interest relating to an item under discussion requires the withdrawal of the councillor from the committee. In certain circumstances, a dispensation can be sought from the appropriate body or officer to take part in that particular item of business.

If a councillor has an other disclosable interest (ODI), he or she should disclose that interest, but then may in certain circumstances speak and vote on that particular item. This includes being a member of an outside body; mere membership of another body does not constitute an interest requiring such a prohibition.

It is always best to identify a potential interest early on. If a councillor thinks that they may have an interest in a particular matter to be discussed at an area planning committee, or other meeting where a planning matter is to be discussed he or she should raise this with the Monitoring Officer as soon as possible.

See Appendix for a flowchart of how councillors' interests should be handled

Predisposition, predetermination, or bias

Members of a planning committee, Local Plan steering group (or full Council when the local plan is being considered) need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application or on planning policies.

The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a 'closed mind' approach and likely to leave the committee's decision susceptible to challenge by Judicial Review.

Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition). The latter is alright; the former is not and may result in a Court quashing such planning decisions.

Section 25 of the Act also provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a councillor may be predisposed on a matter before it comes to

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Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting.

Nevertheless, a councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the councillor was biased. For example, a councillor who states “Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee” will be perceived very differently from a councillor who states: “Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area.”

If a councillor has predetermined their position, they should withdraw from being a member of the decision-making body for that matter. This would apply to any member of the Area Planning Committee who wanted to speak for or against a proposal, as a campaigner (for example on a proposal within their ward).

Development proposals submitted by councillors and officers, and council development

Proposals submitted by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. Proposals could be planning applications or local plan proposals. Such proposals must be handled in a way that gives no grounds for accusations of favouritism. If proposals are submitted by councillors and planning officers the following should apply:

- if they submit their own proposal to their authority they should play no part in its consideration;
- the councillor or planning officer should notify the council’s Head of Housing and Planning and the Monitoring Officer in writing of their proposal before it is submitted formally.;
- such proposals will be reported to committee and not dealt with by officers under delegated powers.

A councillor would undoubtedly have a disclosable pecuniary interest in their own application and should not participate in its consideration. They do have the same rights as any applicant in seeking to explain their proposal to an officer, but the councillor, as applicant and/or land-owner, should also not seek to improperly influence the decision.

Proposals for a council’s own development should be treated with the same transparency and impartiality as those of private applicants.

Lobbying of and by councillors

Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an

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emerging policy, will often seek to influence it through an approach to their ward member or to a member of the planning committee.

As the Nolan Committee's 1997 report stated: *"It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves"*. Lobbying, however, can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved.

As noted earlier in this guidance note, the common law permits predisposition but nevertheless it remains good practice that, when being lobbied, councillors (members of the Area Planning Committees in particular) should try to take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they could choose to restrict themselves to giving advice about the process and what can and can't be taken into account

Councillors can raise issues which have been raised by their constituents, with officers. If councillors do express an opinion to objectors or supporters, it is good practice that they make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material planning considerations at committee.

If any councillor, whether or not a committee member, speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed in order to counter any suggestion that members of the committee may have been influenced by their continuing presence.

It is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual councillor.

Other issues about lobbying:

- Planning decisions cannot be made on a party political basis in response to lobbying; the use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.
- Councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors.

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- Councillors must not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

As previously outlined, councillors must always be mindful of their responsibilities and duties under the local code of conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this guidance.

Pre-application discussions

Pre-application discussions between a potential applicant and a council can benefit both parties and are encouraged. However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process on the part of the applicant.

Some councils have been concerned about probity issues raised by involving councillors in pre-application discussions, worried that councillors would be accused of predetermination when the subsequent application came in for consideration. Now, the LGA and PAS recognise that councillors have an important role to play in pre-application discussions, bringing their local knowledge and expertise, along with an understanding of community views. Involving councillors can help identify issues early on, helps councillors lead on community issues and help to make sure that issues don't come to light for the first time at committee. PAS recommends a 'no shocks' approach.

The Localism Act has given councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that councillors might have fettered their discretion, such discussions should take place within clear, published guidelines.

Although the term 'pre-application' has been used, the same considerations should apply to any discussions which occur before a decision is taken. Councillors that choose to get involved in pre-application discussions on a planning issue or proposal should ensure the following:

- Clarity at the outset that the discussions will not bind the council to making a particular decision and that any views expressed are personal and provisional. By the very nature of pre-application meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place.
- An acknowledgement that consistent advice will be given by officers based upon the development plan and material planning considerations.

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- Officers should where possible be present with councillors in pre-application meetings. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations, which should be done by officers (keeping interested councillors up to date) to ensure that the authority's position is co-ordinated.
- A written note should be made of all meetings. If an officer is to be present, the officer should make the arrangements for the meetings, and write notes. A note should also be taken of any phone conversations, and relevant emails recorded for the file. Notes or letters/ emails should record issues raised and advice given and should be retained for future reference. If there is a legitimate reason for confidentiality regarding a proposal, where appropriate a note of the non confidential issues raised or advice given can still normally be kept to reassure others not party to the discussion.
- A commitment that care will be taken to ensure that officer advice is impartial, otherwise the subsequent report or recommendation to committee could appear to be advocacy.
- The scale of proposals to which these guidelines apply needs to be considered. Councillors talk regularly to constituents to gauge their views on matters of local concern. The Nolan Committee argued that keeping a register of these conversations would be impractical and unnecessary. Councillors and Officers will need to think about when discussions should be registered and notes written.

Authorities may have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions to enable councillors to raise issues, identify items of interest and seek further information;
- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be (with notes taken);
- ward councillor briefing by officers on pre application discussions.

Similar arrangements can also be used when authorities are looking at new policy documents and particularly when making new site allocations in emerging development plans and wish to engage with different parties, including councillors, at an early stage in the process.

The Statement of Community Involvement will set out the council's approach to involving communities and other consultees in pre-application discussions. Some authorities have public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. As well as being transparent, these forums allow councillors and consultees to seek information

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and identify important issues for the proposal to address, although still bearing in mind the need to avoid pre-determination.

Officer reports to committee

As a result of decisions made by the courts and Local Government Ombudsman, officer reports on planning applications must have regard to the following:

- Reports should be accurate and should include a fair summary of the substance of any objections and other responses received to the consultation.
- Relevant information should include a clear assessment against the relevant development plan policies, relevant parts of the National Planning Policy Framework (NPPF), if relevant any local finance considerations, and any other material planning considerations.
- Reports should have a written recommendation for a decision to be made.
- Reports should contain technical appraisals which clearly justify the recommendation.
- If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure from the development plan must be clearly stated. This is not only good practice, but also failure to do so may constitute maladministration or give rise to a Judicial Review challenge on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004 and s70 of the Town and Country Planning Act 1990.

Any oral updates or changes to the report should be recorded.

Public speaking at planning committees

Whether to allow public speaking at a planning committee or not is up to each local authority. Most authorities do allow it. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage.

A protocol for public speaking at the Area Planning Committee meetings is in place. This establishes who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors and how long they are allowed to speak for.

In the interests of equity, the time allowed for presentations for and against the development is the same, and those speaking are asked to direct their presentation to reinforcing or amplifying representations already made where they relate to material planning considerations.

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New documents should not normally be circulated to the committee at the meeting; councillors may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising. This is made clear to those who intend to speak when they register.

Messages should never be passed to individual committee members, either from other councillors or from the public. This could be seen as seeking to influence that member improperly and will create a perception of bias that will be difficult to overcome.

A copy of the public speaking scheme used at this council's Area Planning Committees is contained elsewhere within the Constitution.

Decisions which differ from a recommendation

The law requires that decisions should be taken in accordance with the development plan, unless material considerations (which specifically include the NPPF) indicate otherwise (s38A Planning & Compensation Act 2004 and s70 of the Town and Country Planning Act 1990). This applies to all planning decisions. Any reasons for refusal must be justified against the development plan and other material considerations.

The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant or any other material or non material planning considerations which might cause local controversy will rarely satisfy the relevant tests.

Planning committees can, and sometimes do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 legal agreement. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been interpreted, or different weight being ascribed to material considerations.

Planning committees are advised to take the following steps before making a decision which differs from the officer recommendation:

- if a councillor is concerned about an officer recommendation they should discuss their areas of difference and the reasons for that with officers in advance of the committee meeting;
- recording the detailed reasons as part of the mover's motion;
- adjourning for a few minutes to allow officers to consider the reason(s) and then for those reasons to be discussed further and agreed or otherwise by the committee;
- where there is concern about the validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

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If the Area Planning Committee makes a decision contrary to the officers' recommendation (whether for approval or refusal, or changes to conditions or S106 obligations), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Councillors should be prepared to explain in full their planning reasons for not agreeing with the officer's recommendation. Pressure should never be put on officers to 'go away and sort out the planning reasons'.

The officer should also be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council, should one be made.

All applications that are clearly contrary to the development plan must be advertised as such, and are known as 'departure' applications. If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated.

The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed (s77 of the Town and Country Planning Act 1990). If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

Committee site visits

National standards and local codes also apply to site visits. Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. The following points may be helpful:

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material planning considerations already;
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit. It is a site visit not a site meeting;
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply;
- keep a record of the reasons why a site visit is called;

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers;

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- the comments of the applicant and objectors cannot be expressed adequately in writing;
or
- the proposal is particularly contentious.

Site visits are for observing the site and gaining a better understanding of the issues.

Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

Once a councillor becomes aware of a proposal they may be tempted to visit the site alone. In such a situation, a councillor is only entitled to view the site from public vantage points and they have no individual rights to enter private property. Whilst a councillor might be invited to enter the site by the owner, it is not good practice to do so on their own, as this can lead to the perception that the councillor is no longer impartial.

Annual review of decisions

It is good practice for councillors to visit a sample of implemented planning permissions to assess the quality of the decisions and the development. This should improve the quality and consistency of decision-making, strengthen public confidence in the planning system, and can help with reviews of planning policy. A “Quality Tour” is normally arranged annually by the planning officers for district councillors but may also include parish and town councillors. Reviews should include visits to a range of developments such as major and minor schemes; upheld appeals and listed building works.

Overview and Scrutiny or the Standards Committee may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to develop their understanding of the impact of their decisions. Planning committee members should be fully engaged in such reviews and are encouraged to attend the Quality Tour where possible.

Complaints and record keeping

The council has a complaints procedure which applies to all council activities. It is general good practice for record keeping to be complete and accurate. Every planning application file (held in hard copy and electronically) should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. This applies to decisions taken by committee and under delegated powers, and to applications, enforcement and development plan matters.

(See Appendix for flowchart)

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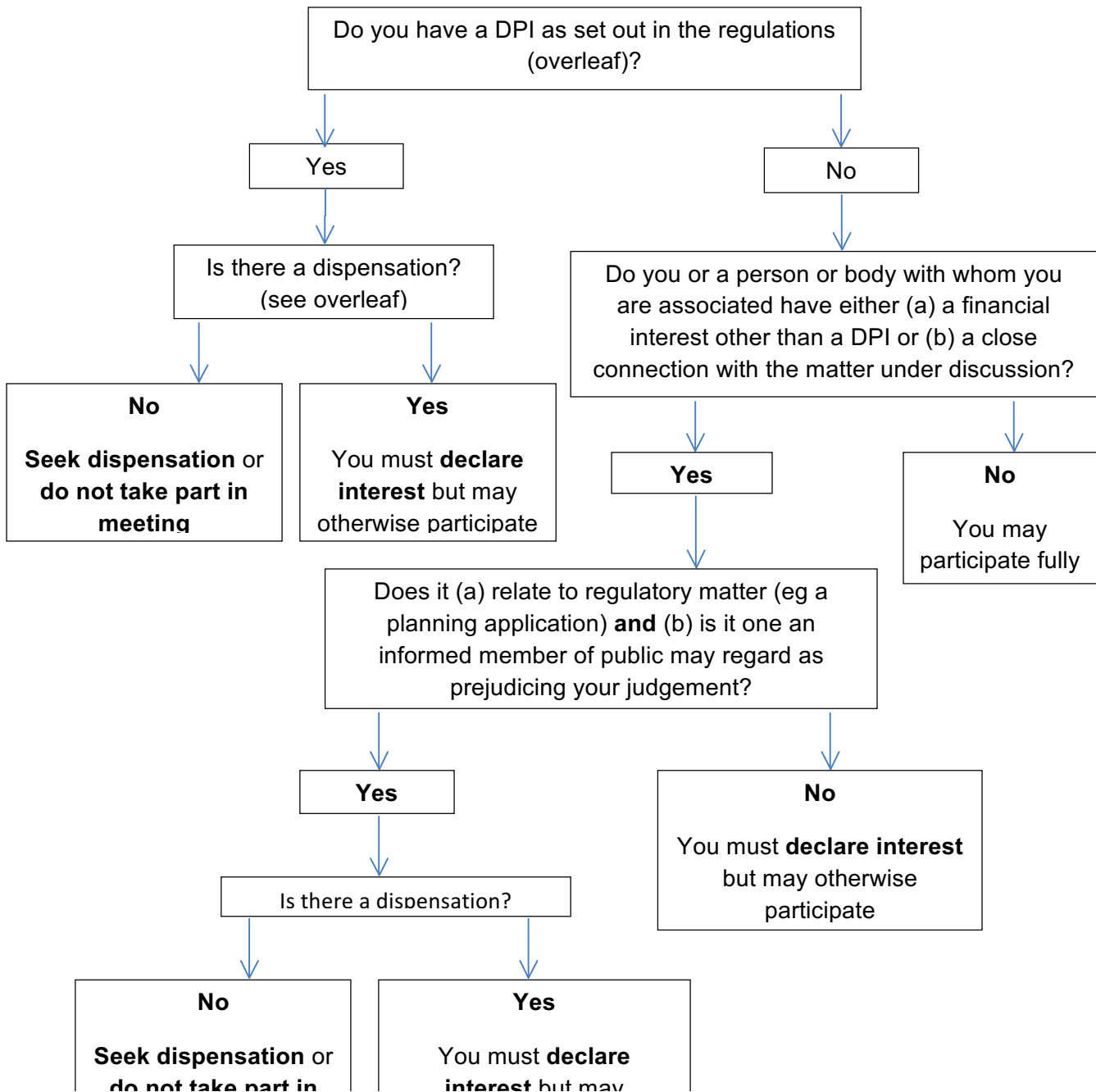
PART 5 - Declaring Interests at Meetings

It is important that you disclose any pecuniary or other disclosable interests that you have in relation to matters to be considered on an agenda at a meeting. These interests extend by association to your friends and family. Depending upon the exact nature of your interest, this may involve removing yourself from a meeting during consideration of that item of business.

It is important that the decision-making is open, accountable and fair and that there can be no accusations of bias or impropriety in decision-making

The general test in disclosing interest is to consider whether the public may consider you to have been influenced/prejudiced by a particular interest.

Do I have an interest affecting my participation in a meeting?



Disclosable pecuniary interests (DPIs) - The table below sets out which interests are DPIs. **Please note** that an interest is a DPI if it is your interest or that of your spouse or civil partner or a person you are living with as spouse or civil partner:

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M
	This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—
	(a) under which goods or services are to be provided or works are to be executed; and
	(b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)—
	(a) the landlord is the relevant authority; and
	(b) the tenant is a body in which the relevant person has a beneficial interest.
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— <ul style="list-style-type: none"> I. the total nominal value of the securities exceeds £25,000 or one

	<p>hundredth of the total issued share capital of that body; or</p> <p>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.</p>
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There are two general dispensations currently in effect. The first to allow the full participation in Council and committee meetings where members of the Council or their spouse or partner are also members of one or more of the following bodies, and who because of this would or could be prevented from participating in such meetings: (a) any parish or town council; (b) the Malvern Hills Conservators; (c) Worcestershire County Council; (d) any other body of a public nature to which the member has been appointed as the Council's nominee or representative.

The second to allow members who would otherwise be prevented from doing so to address Council and committees in the same way as a member of the public may *[NB Such a member must still then withdraw from the meeting once they have addressed it.]*

If you are in any doubt as to whether you have an interest or not, please contact the monitoring officer or legal services as far in advance of the meeting as possible.

This information is printed in all agendas but if you want advice please contact Legal Services of the Monitoring Officer. Remember, not declaring a DPI at a meeting can be a criminal offence and you are advised to err on the side of caution in all your interests.

PART 5 - Protocol for Use of Call - in Procedure

Rule 23 of the Council's rules of procedure provides for decisions of the Executive Committee to be called in for scrutiny. This protocol sets out the criteria against which the Council expects any request for call-in to be judged. The call-in procedure applies to all decisions made by the Executive Committee.

The Council does **NOT** expect Members to call in an Executive Committee decision **UNLESS** there is demonstrable evidence to support the view that one or more of the following circumstances applies:

- the decision appears, having regard to advice from the Monitoring Officer, to be contrary to the Budget or one of the policy framework plans or strategies;
- the decision appears to be inconsistent with any other form of policy approved by Council or the Executive Committee;
- the decision appears to be inconsistent with recommendations previously made by the Overview & Scrutiny Committee (and accepted by Council or the Executive);
- the Executive Committee appears to have overlooked some relevant consideration in arriving at its decision;
- the Executive Committee appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
- the decision in question has already generated particular controversy amongst those likely to be affected by it or there is evidence that it is likely so to do;
- the decision appears to be particularly "novel" and therefore likely to set an important precedent; or
- the decision appears to give rise to significant legal, financial or propriety issues.

In addition, the Council expects Members to satisfy themselves, before deciding to call in a particular Executive Committee decision that –

- the decision in question is more than **"a day to day management or operational decision of the type normally taken by officers"** – such decisions should **not** be called in; and
- the delay which will ensue, as a consequence of calling in the decision in question, is unlikely to cause prejudice to the interests of the Council or third parties.

PART 5 - Protocol for the Role of the Monitoring Officer

1. The Monitoring Officer undertakes to discharge his or her role with determination and a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and members but also the flow of information and access to debate particularly at early stages.
2. The following arrangements and understandings between the Monitoring Officer and colleagues and councillors are designed to help ensure the effective discharge of their functions:
 - (a) If not a member of the Joint Senior Management Team, the Monitoring Officer will have advance notice of those meetings and agenda and reports and the right to attend and speak;
 - (b) Advance notice of meetings whether formal or informal between Chief Officers and members of the Executive Committee or Chairmen will be given to the Monitoring Officer where any procedural, *vires* or other constitutional issues are likely to arise;
 - (c) Strategic Management Team and Heads of Service will alert the Monitoring Officer to all emerging issues of concern including legality, probity, *vires* and other constitutional issues;
 - (d) The Monitoring Officer and his/her deputy will have copies of all reports to members;
 - (e) The Monitoring Officer is expected to develop good liaison and working relations with the Local Government Ombudsman, including the giving and receiving of relevant information whether confidential or otherwise;
 - (f) The Monitoring Officer will have a special relationship with the Chairman of the Council, Chairman of Standards Committee and Overview and Scrutiny Committee and will ensure the Head of the Paid Service and Chief Financial Officer have up-to-date information regarding emerging issues;
 - (g) The Monitoring Officer will be expected to make enquiries into allegations of a breach of the Code of Conduct and if appropriate will seek an informal resolution in consultation with the Independent Person. If this is not possible then he/she will make a written report to the Standards Committee who will decide on the merits of any complaint and the action to be taken.
 - (h) The Head of the Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity;

PART 5 - Protocol for the Role of the Monitoring Officer

- (i) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions;
- (j) The Monitoring Officer will have control of a budget sufficient to enable him to seek Counsel's opinion on any matter concerning their functions;
- (k) The Monitoring Officer will be responsible for preparing a training programme for members on the ethical framework, subject to the approval of the Standards Committee;
- (l) The Monitoring Officer will report to Council from time to time on the Constitution and in accordance with authority delegated by Council can make minor changes to the Constitution where it is necessary arising from decisions of the Council and changes to legislation.
- (m) In consultation with the Chairman of the Council and the Chairman of Standards Committee the Monitoring Officer may defer the making of a formal report under Section 5 LGHA 1989 where another investigative body is involved;
- (n) The Monitoring Officer will make a report to the Council, as necessary, on the staff, accommodation, and resources required to discharge their functions;
- (o) The Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues;
- (p) The Monitoring Officer will make arrangements to ensure good communication between their office and Clerks to Parish Councils.

Code of Conduct for Employees HR Services

Malvern Hills and Wychavon District Council

Last Review Date: February 2017



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Section A – Policy Overview

1. Introduction

- 1.1 The public is entitled to expect the highest standards of conduct from all employees who work for Malvern Hills District Council and Wychavon District Council in order to uphold the strong reputation of the Council and its services.
- 1.2 This Code describes the standards of conduct required from all employees and anyone seconded or engaged from other organisations to work for the Council.
- 1.3 Please take time to read this Code and ensure your conduct meets these requirements. If you are at all uncertain about what is expected, seek further clarification from your Service Manager.
- 1.4 Contravening or failing to act within the guidelines set down by this Code and within the Council's policies, or at any time behaving in a manner which could bring the Council in to disrepute, may result in action being taken against employees under the Disciplinary Policy and Procedure.

2. Supporting policies

- 2.1 This Code is supported by a number of more detailed policies and further guidance with which you should make yourself aware and follow accordingly. In particular (but not exclusively), the following:
 - Disciplinary Policy and Procedure
 - Declarations of Interest by Officers – Guidance notes and Procedure
 - Protocol for Members & Officers on Planning Matters
 - Anti-Fraud and Corruption Strategy – Policy Statement
 - Whistleblowing Policy
 - Health and safety policies
 - Equal Opportunities Policy
 - Smoking Policy and Procedure
 - IT and information security policy
 - Any rules, regulations, professional standards, codes of practice, financial regulations and accounting instructions, etc. relevant to your job

3. Roles and Responsibilities

3.1 All Employees

All employees must read, understand and work in accordance with the latest Code of Conduct and:

- Maintain the highest standards of professional competence, knowledge, integrity, confidentiality, financial propriety and personal conduct
- Be fair and honest in all activities at work
- Remain impartial and maintain the highest standards of integrity
- Incorporate and promote equality and diversity in all that that you do

3.2 Managers – in addition to the above

All Managers are responsible for the application of this Code in their work area. They must ensure the Code is adhered to and will:

- Role model the required standards of behaviour
- Reinforce the required standards of behaviour through appropriate communications with their teams
- Explain the provisions of the Code to promote understanding
- Coach, support and provide feedback to employees on their performance in relation to the required standards of conduct
- Take appropriate action at the earliest opportunity to deal with non compliance with the standards of the Code

3.3 Throughout this Code the following positions/titles are referred to:

- Chief Executive/Managing Director
- Deputy Chief Executive/Deputy Managing Director
- Senior Manager (meaning the relevant member of SMT for the employee's service area)
- Service Manager
- Section 151 Officer (Deputy Chief Executive/Deputy Managing Director)
- Monitoring Officer

4. Guiding principles

- 4.1 All employees of the Council are expected to give the highest possible standard of service to the public and provide appropriate advice to the public, Councillors and fellow employees with impartiality.
- 4.2 Employees will be expected to bring to the attention of the appropriate level of management any deficiency in the provision of service. You must report to the appropriate manager any impropriety or breach of procedure.
- 4.3 To the public employees represent the Council. You must adhere to council policies and procedures and be familiar with the performance standards for customer care and the procedures for handling complaints.
- 4.4 It is not acceptable for employees to criticise or blame colleagues, council departments or our Councillors publicly through any medium including social media. Offensive, defamatory, discriminatory or otherwise inappropriate comments will not be tolerated and may constitute a disciplinary and/or criminal offence.

5. Health and Safety

- 5.1 Unsafe working can endanger you, your colleagues and members of the public. You must familiarise yourself with and follow the Council's Health and Safety Policy and guidelines, rules, codes and safe practices for your particular area of work.

6. Standards of appearance

- 6.1 Employees are expected to present a suitable business-like appearance and dress

appropriately to the circumstances within their working environment, the nature of work they are undertaking and the levels and types of both internal and external contacts encountered in the normal course of their duties. Where protective clothing is issued it must be worn as required when at work or representing the Council. When wearing items which identify you as an employee of the Council you must maintain appropriate standards of conduct whether or not on duty e.g. when travelling to and from work.

7. Expressing concern about irregularities and tackling malpractice

- 7.1 If you feel there is something seriously wrong at work please tell an appropriate person. It might be the conduct of another employee, the way a contractor is behaving, a work practice, something that might affect the environment, misuse of plant, machinery or a building.
- 7.2 For further information please see the Council's Whistleblowing Policy.

8. Anti-fraud and corruption

- 8.1 Fraud and corruption are serious issues which can affect the services the Council provides to the community and the public's perception of the integrity of Council Officers and Members. If you suspect fraudulent activity inform the Section 151 Officer and/or Internal Audit who will investigate any concerns raised in the strictest confidence.
- 8.3 For further information please see the Council's Anti-Fraud and Corruption Policy.

9. Confidentiality

- 9.1 You may acquire information at work which has not been made public or is confidential. You must ensure that sensitive and/or confidential information is properly secured and safeguarded at all times.
- 9.3 Confidential information which comes into your possession must not be used for personal benefit or divulged to other parties except in the proper course of duty.
- 9.4 You must decline any approaches or offers made asking for information which could be detrimental to, or help others to gain a contract, grant or any other advantage from the Council and/or its employees. Approaches or offers of this kind must be declared to the Section 151 Officer without delay.
- 9.5 Upon termination of employment, employees are required to return any documents or files (electronically readable or otherwise) in their possession and may not copy, take or retain any documents containing confidential information.

10. Information Technology and Data Protection

- 10.1 You must familiarise yourself with all IT Security documents particularly Information Security, Internet and e-mail Policy, Network and Workstation Security and Virus Protection Policy. You must also comply with any general management, usage and security guidelines for IT within your section.

11. Copyright

- 11.1 You should be aware that "intellectual property" such as software, ideas, documents etc. created during your employment, belong to the Council. All files, materials, the media upon which they are located and all software programmes or packages which are utilised or developed solely for or in connection with your job remain Council property.

Section B – Conflicts of Interest

12. Personal interests

- 12.1 The interests of the Council and the way you do your job must not be influenced by or conflict with your personal interests or those of relatives, friends or membership of external organisations or societies. There should be no grounds for suspicion that you are using your position with knowledge of the Council for personal gain or that you could be influenced by improper motives.
- 12.2 Employees must formally declare any financial or non-financial interests where it may be perceived that they could give rise to a conflict with the Council's interests (see further guidance and Declaration of Interests form at the end of this document).

13. Secondary employment

- 13.1 Employees 'off duty' hours are their own personal concern, but you should not put yourself in a position where your work and private interests conflict. The Council will not unreasonably attempt to prevent Officers from undertaking additional employment.
- 13.2 You must advise your Service Manager or Senior Manager before engaging in any other paid or voluntary work especially if it could reasonably be seen to conflict with your employment with the Council or lead to misunderstanding or criticism. All employees intending to undertake additional employment are required to consult their Service Manager and complete a Declaration of Interest form which will be kept on the employee's personal file.
- 13.4 Your average working time should not exceed an average of 48 hours per week, taking account of secondary employment. You may be required to disclose your total working hours, to enable the Council to monitor your hours worked in order to comply with the Working Time Regulations (for further information visit HSE.gov.uk).

14. Gifts and hospitality

- 14.1 Employees should only accept offers of hospitality if there is a genuine need to represent the Council in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community and where the authority should be seen to be represented. They should be properly authorised and recorded.
- 14.2 Minor gifts and hospitality may be offered, especially at Christmas or as a token of appreciation, and in an office situation simple items such as diaries and calendars are often distributed as advertising matter. As a guideline, any gift or hospitality with a value of £25.00 or more is highly unlikely to be viewed as a 'token'. With the exception

of these "tokens", all gifts, vouchers, fees, special discounts, rewards or preferential treatment must be refused.

- 14.3 Employees must consider whether it is appropriate to accept even token gifts e.g. when you are dealing with regulatory or procurement matters it would usually be inappropriate to receive any gift from involved parties. In case of doubt, consult your line manager.
- 14.4 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal. Where possible the Chief Executive/Managing Director (or relevant Deputy) should give consent in advance and be satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment etc. are required, employees should ensure that the Council meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.
- 14.5 Employees must not accept any personal commission, discount, allowance, direct or indirect profit, inducement, payment, perk or benefit in connection with any professional work undertaken, other than any fee recoverable on behalf of the Council.
- 14.7 Any offer of gifts and/or hospitality must be notified by completion of a Declaration of Interest form or alternative formal register approved by SMT.

15. Sponsorship – giving and receiving

- 15.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a council activity, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 15.2 Where the Council wishes to sponsor an event or service, neither an employee, nor any partner, spouse nor relative should benefit from such sponsorship in a direct way. If in doubt, employees must discuss with their Senior Manager and complete a Declaration of Interest form. Similarly, where the Council through the sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

16. Procurement of goods and services

- 16.1 Procurement procedures must be strictly adhered to and you must not accept any inducement or preferential treatment if you are responsible for procuring goods or services for the Council or disposing of surplus property.

17. Political neutrality

- 17.1 You serve the Council as a whole and must serve all elected Members – not just those of the controlling group – and must ensure the individual rights of all Councillors are respected.
- 17.2 Your post may be or become 'politically restricted' if it is considered politically sensitive in accordance with statutory provisions e.g. officers who regularly advise any committee or speak publicly on behalf of the Council, for instance to the media. If your job is politically restricted your political activities (e.g. canvassing on behalf of a political party or on behalf of a candidate for election, or speaking to the public at

large with the apparent intention of affecting support for a political party) normally will be restricted unless it can be shown that such restriction would be unreasonable.

- 17.3 Employees, whether or not politically restricted, must follow every lawful expressed policy and instructions of the Council and must not allow their own personal or political opinions to interfere with their work.

Section C – Relationships

18. Councillors

- 18.1 Some employees are required to give advice to Councillors in the course of their duties. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

19. The local community and service users

- 19.1 If you work in close proximity with service users or other employees to whom you are related or have a close personal connection you must maintain a strictly professional relationship at work. You should also be aware that if any relationship leads to disruption in the workplace, unacceptable conduct or performance or situations involving undue favouritism or detriment, action may be taken under the appropriate procedure, which could include disciplinary action.

20. Contractors

- 20.1 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to your Service Manager and formally recorded. Orders and contracts must be awarded on merit, by fair competition against other tenders and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process.

21. Appointments and other employment decisions

- 21.1 In order to avoid any possible accusation of bias you should not be directly involved in the appointment, promotion, discipline or other employment decision relating to another employee to whom you are related or with whom you have a close personal relationship. If a situation arises in which you feel you may be in such a position, please seek the advice of the HR Manager.

22. Dealing with the media

- 22.1 In general, all communications with the media relating to the activities of the Council are handled through the Communications Team.
- 22.2 The Chief Executive/Managing Director and Senior Managers may respond directly to media requests relating to matters under their control.
- 22.3 No other employee should initiate contact with the media or respond to media enquiries without consulting the Communications Team and receiving the approval of

their Senior Manager to do so.

Section D – Use of Council Resources and Equipment

23. Council equipment and materials

23.1 Facilities, equipment, vehicles, materials and other resources provided by the Council for use in your work must not be used for any other purpose without permission or appropriate payment e.g. photocopying, private telephone calls.

24. Use of financial resources

24.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner, following regulations and council policy on procurement as applicable. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

25. Overseas travel on official business

25.1 Any proposal to travel overseas on official business must be approved by the Chief Executive/Managing Director before the travel takes place.

Section E – Criminal Charges, Cautions and Convictions

26. Criminal charges, cautions and convictions

26.1 You must advise your Service Manager immediately if you are charged with or cautioned or convicted of any criminal offence whilst you are an employee of the Council. While such proceedings will not necessarily affect your employment, the Council needs to be sure there are no implications for its clients, reputation, service delivery or in relation to the role you undertake.

26.2 You must also advise your Service Manager immediately if you have been arrested or appeared in court and released on bail in circumstances where bail conditions have been applied which could have consequences for your work. If you are in any doubt about whether you should report bail conditions, especially where safeguarding could be an issue, you must discuss it with your line manager or HR Services Manager so that any concerns can be addressed from the outset. Failure to report such conditions would be considered as serious misconduct and could potentially lead to a breach of bail.

CODE OF CONDUCT – OFFICERS’ DECLARATION OF INTEREST

FULL NAME:

POST TITLE:

I wish to declare the following interests that conflict with my duties as an officer of Malvern Hills District Council and/or Wychavon District Council (including duties for either Council in the case of joint services) and agree not to take part in any Council matters affected by this interest.

NATURE OF INTEREST:

Signed.....

Dated.....

Please hand this form to your Service Manager.

PART 5 – Councillors - Leave of Absence from Council Meetings

Introduction

1. Councillors are elected to represent the interest of the whole District and those of their ward in particular. In order to fulfill this role it is expected that all councillors will make a full contribution to the work of the Council throughout their term of office. This will include:
 - attendance at meetings of the Council
 - attendance at meetings of committees and working parties to which they may be appointed
 - being available to deal with queries, complaints and requests for assistance from residents and businesses in their ward in person, by telephone, correspondence and email as appropriate
 - responding to consultations from officers on matters such as planning applications
2. All councillors will hopefully have satisfied themselves before standing for election that they are able to commit the necessary time to fulfilling this important and rewarding role within the community. Any councillor who, whether through change of circumstances or otherwise, finds they are no longer able to give sufficient time to the role should in the first instance consult their group leader and/or the Monitoring Officer to discuss what further support may be available but may ultimately have to consider whether, in the interests of their electorate, it is appropriate for them to continue as a councillor.

Non-attendance at meetings

3. Being a councillor is about much more than just attending meetings; the role as a community leader is equally important but it is at meetings of the Council and its committees where issues are debated and formal decisions are made.
4. Councillors should make every effort to attend all meetings of which they are a member but where this is not possible they should submit their apologies to the Democratic Services Team in advance, inform their group leader and in the case of committees to which the procedure for substitute members apply, arrange for another member to attend as substitute wherever possible.
5. **A Councillor who is absent from all meetings of the Council and any committees of which they are a member for a period of six months automatically ceases to be a member of the Council unless they have been given leave of absence by the Council before the expiry of that six month period – s.85 Local Government Act 1972**
6. Whilst the Democratic Services Team will make every effort to monitor attendance and forewarn any councillors who may be nearing the expiry of the six month period, the

Last updated: May 2017

PART 5 – Councillors - Leave of Absence from Council Meetings

responsibility for ensuring that they comply with the requirements of s.85 is that of the individual councillor.

7. There are some specific points and exceptions to note:
 - s.85 relates to meetings of Council, committees and sub-committees. It does not apply to working parties or task or policy groups and so attendance at those meetings is not sufficient for the purposes of the s.85. Neither does attendance as an observer at a meeting of a committee of which the councillor is not a member count, even if invited to speak by the Chairman.
 - A councillor who is represented at a committee meeting by a substitute is regarded as being absent from that meeting.
 - A councillor who attends a meeting as the appointed substitute for another councillor is a member of the committee for that particular meeting and this is therefore sufficient for the purposes of s.85
 - Where a councillor has been suspended from office (e.g. following a breach of the code of conduct) the period of suspension is disregarded for the purposes of calculating the six month period of absence
 - Absence due to service in HM Forces (including Territorial or reserve duties) will normally be disregarded for the purposes of s.85

Requests for leave of absence

8. Any councillor whose absence from meetings is likely to extend to six months or more should request a leave of absence by writing to the monitoring Officer stating:
 - the reasons for the absence
 - the anticipated period of absence
 - whether the councillor will be available to continue performing any Council functions during this period e.g. continuing to deal with ward matters by telephone or email
 - what arrangements (if any) have been made to cover for the Councillor's absence e.g. a fellow or neighbouring ward councillor representing the interests of their ward
9. Requests will normally be considered by full Council and should therefore be made in sufficient time, having regard to the programme of meetings, to allow this to happen before the period of six months expires. Only in the most exceptional circumstances will a request for a leave of absence be considered under the Council's 'urgent business procedure'.

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PART 5 – Councillors - Leave of Absence from Council Meetings

Granting leave of absence

- 10.** Each request for a leave of absence will be considered on its own merits having regard to:
- the reasons for the proposed absence, from future meetings, and the extent to which this is unavoidable;
 - the duration of the proposed absence;
 - the extent to which the member will be able to continue carrying out any functions of a councillor notwithstanding their absence from meetings;
 - the suitability of any alternative arrangements that are proposed for ensuring that the interests of the ward are adequately represented
- 11.** Requests for leave of absence will normally be granted in cases of:
- serious illness for periods up to 12 months in total
 - pregnancy (for the equivalent period during which an employee of the Council would normally be entitled to maternity leave)
- 12.** A leave of absence may be granted for such period as the Council thinks is reasonable in all the circumstances. Once that leave of absence expires, the clock re-starts so far as s.85 is concerned and the councillor has a further six months in which to attend a meeting (or seek a further leave of absence)
- 13.** A councillor granted a leave of absence from meetings is still entitled to payment of the basic allowance. However, where it considers it appropriate the Council may request the Councillor to voluntarily waive their entitlement to all or part of that allowance depending upon the degree to which the councillor will be unable to carry out their normal duties.

PART 5 - Whistleblowing Policy

1. Preamble

- 1.1 Employees and workers are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of wrongdoing. However, this is not a culture that the Council wishes to encourage.
- 1.2 The Council is committed to the highest possible standards of openness, probity, and accountability. In line with that commitment, we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis. This policy document makes it clear that anyone wishing to highlight wrongdoings can do so without fear of reprisals. This Whistleblowing Policy is intended to encourage and enable persons to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.
- 1.3 This policy applies to all workers of the Council, that is: employees, casual workers, temporary and agency staff, trainees, work experience placements and contractors. Further details on the application of this policy in respect of contractors can be found towards the end of this policy.
- 1.4 The policy does not form part of the contract of employment.
- 1.5 This policy has been discussed with the relevant trade unions and staff representatives and has their support.

2. Aims and Scope of this Policy

- 2.1 This policy aims to:
 - provide confidential avenues for you to raise concerns of wrongdoing (see below for examples) and receive feedback on any action taken.
 - allow you to take the matter further if you are dissatisfied with the Council's response, and
 - reassure you that you will be protected from reprisals or victimisation for whistleblowing in good faith, provided that you have followed the recognised procedure.
 - recognise that whilst such concerns will be voiced in good faith, the fundamental principle of natural justice will operate in respect of any individual or collective group against whom a concern has been expressed. This will not, however, prevent the Council from suspending such individuals from their employment if it is considered appropriate to do so. In such circumstances suspension will not be regarded as a punitive measure.

- 2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment and also for dealing with corporate complaints. This whistleblowing policy is intended to cover concerns about wrongdoing that fall outside the scope of those other procedures and is not intended to replace them.

3. **Qualifying Disclosures and Examples of Wrongdoing**

In order for you to be protected by the Public Interest Disclosure Act, the disclosure needs to fall under one (or more) of the following:

- A criminal offence has been committed, is being committed or is likely to be committed;
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject;
- A miscarriage of justice has occurred, is occurring, or is likely to occur;
- The health and safety of an individual has been, or is being, or is likely to be endangered;
- The environment has been, is being, or is likely to be damaged;
- Information tending to show any matter falling within any one of the preceding paragraphs has been, is being, or is likely to be deliberately concealed.

Taking these criteria, examples of concerns that you may have are considered to be:

- Unlawful behaviour by an individual or a collective body;
- Corrupt or fraudulent behaviour;
- A breach of the Council's Standing Orders or Financial Regulations;
- A breach of agreed procedures;
- Discrimination on grounds of sex, race, disability or age;
- Harassment or victimisation;
- An unsafe working practice.

Last updated: October 2015

4. Safeguards

Gagging Clauses

- 4.1 Such clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Harassment or Victimisation

- 4.2 The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect you when you raise a concern in good faith.
- 4.3 The District Council has adopted a policy and procedure to ensure that any complaint of harassment will be treated seriously and dealt with quickly and fairly in a confidential, sensitive, and supportive manner.
- 4.4 This does not mean that, if you are already the subject of disciplinary or redundancy procedures, or if you have raised a separate grievance, that those procedures will be halted as a result of your whistleblowing.
- 4.5 Additional protection is afforded by the Act, such that if you are victimised for blowing the whistle, you may bring a claim for compensation to an employment tribunal.

Confidentiality and Support

- 4.6 The Council will do its best to protect your identity when you raise a concern and do not want this to be disclosed. It must be appreciated that the investigation process may reveal the source of the information and a statement by you will be required as part of the evidence (albeit that it may be presented anonymously).
- 4.7 The Council will do all that it reasonably can to support you once you have taken the decision to voice your concern. It recognises that people are all individual and that they will each deal with the circumstances in different ways. The type and level of support offered will therefore depend upon the person concerned. The Council does, however, fundamentally believe that you should not feel "shut out" once you have voiced your concern. You are, therefore, encouraged to talk to the person that you have raised the concern with, or any of the nominated people within this document at any time whilst your concern is being dealt with.
- 4.8 In accordance with the spirit of the Public Interest Disclosure Act and this policy itself, there is no question that you will be suspended from your employment once you have voiced a genuine concern in good faith.

Anonymous Allegations

- 4.9 This policy encourages you to put your name to your allegation. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council.

4.10 In exercising the discretion, the factors to be taken into account would include:

- The seriousness of the issues raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation from attributable sources.

Untrue Allegations

4.11 If you make an allegation in good faith, but it is not substantiated, no punitive action will be taken against you. If, however, you make malicious or vexatious allegations, disciplinary action may be taken against you.

5. The Procedure in Practice

5.1 As a first step, you should raise concerns with your Line Manager or Service Unit Manager. Alternatively, you may, if you wish, contact anyone from among the list of persons below:

- Monitoring Officer
- Head of Paid Service
- Head of Resources/Section 151 Officer
- HR Manager
- Internal Audit Manager
- Chairman of Council or Chairman of Standards Committee (for the time-being)

5.2 You are welcome to raise your concern by telephone or through a direct meeting with the officer/member in question. If you wish to set out the background to your concern in writing and provide documents in support, this would be helpful. Alternatively, you may choose to explain the reasons for your concern verbally. A contemporaneous note will be taken when you express your concern and this note will be used as evidence.

5.3 Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the officer/member contacted that there are sufficient grounds for your concern. Remember that the earlier you express the concern, the easier it may be for action to be taken. If in doubt, you should contact one of the officers/members named above and talk to them about the situation.

5.4 If you wish, you may ask your trade union, staff representative, professional association, or solicitor to raise a matter on your behalf. They will have an equal right to contact the officers/members named above on the same terms as you.

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6. How the Council will respond

6.1 Any action taken by the Council will depend on the nature and scale of the alleged wrongdoing and the evidence that is available.

6.2 The matters raised may:

- Be investigated internally
- Be referred to the Police
- Be referred to the District Auditor
- Form the subject of an independent inquiry

There could also be any combination of all four of these avenues.

6.3 In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Allegations or concerns which fall within the scope of specific procedures (for example, harassment, or fraud/corruption) will normally be referred for consideration under those procedures.

6.4 Some matters may be resolved without the need for investigation or formal action.

6.5 Within ten working days of an allegation or concern being received, the Council will write to you:

- Acknowledging receipt of the allegation or concern
- Indicating how it proposes to deal with the matter
- Telling you whether any initial enquiries have been made
- Telling you whether further investigations will take place, and if not, why not
- If the matter is to be dealt with internally, giving you an estimate of how long it is likely to take to provide a full response.

6.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from you. Depending on the circumstances, you may be asked to maintain confidentiality.

6.7 When any meeting is arranged with you, you have the right, if you so wish, to be accompanied by a trade union or professional association representative, a staff representative, solicitor or friend; such a person must respect any confidentiality that applies.

6.8 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will advise you about the procedure.

6.9 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcome of any investigation which may still remain confidential.

7. How the matter can be taken further – wider disclosures

7.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied.

7.2 If you are not satisfied, and if you feel it is right to take the matter outside the Council, the following are possible contacts:

- District Auditor
- Relevant professional bodies or regulatory organisations
- Solicitor
- Police

7.3 If you do take the matter outside the Council, you need to take care with regard to the possible disclosure of confidential information. If you are in any doubt as to your position, you should check with either your external contact or the Council's Monitoring Officer.

7.4 You are strongly advised not to refer concerns to the media (TV, Radio and press). If, notwithstanding this advice, you do decide to contact them, you should make certain that:-

- (a) you have exhausted all the avenues described above;
- (b) you do not disclose confidential information;
- (c) you do not make false allegations which could result in libel proceedings.

7.5 Adverse publicity can damage the reputation of the Council. If you do not follow the advice at 7.4 above it is likely that you will be in breach of your contract of employment and liable to disciplinary action. You may also lose your right to statutory protection for whistleblowing.

7.6 Wider disclosures are protected provided they are not made for personal gain and they were not raised internally because there was a reasonable belief of victimisation or that there would be a cover up and the matter was exceptionally serious.

Last updated: October 2015

8. Persons working for Council Contractors, Partners, and Agents

- 8.1 The Council wishes the principles and procedures set out above to apply, so far as possible, to persons working for Council contractors, its partners and agents.
- 8.2 Such persons or organisations may have concerns about possible wrongdoing:
- By Council officers
 - By work colleagues engaged in performing works or services for the Council.
- 8.3 If persons have any concerns, they are encouraged to contact either their Manager or the Council's Monitoring Officer or the Head of Resources/Section 151 Officer in the first instance.
- 8.4 The Monitoring Officer will follow the same approach and endeavour to provide the same safeguards as would apply to a concern expressed by a Council employee.
- 8.5 If the concerns relate to an elected Member of the Council then they may contact the Monitoring Officer who will investigate.

9. Statutory Protection

- 9.1. The Public Interest Disclosure Act 1998 gives statutory protection to persons who raise concerns in good faith about possible wrongdoing. Additional provisions are inserted in to the Employment Rights Act 2006 related to “protected disclosures” and the rights of employees not to suffer detriment through making such disclosures. This protection applies provided that the disclosure is itself classed as “protected disclosure” and that the individual choosing to “blow the whistle” does so in accordance with the requirements set out.
- 9.2. The Council's Whistleblowing Policy is intended to complement the statutory protection now given to employees, rather than detract from it. For the avoidance of doubt, an employee's statutory rights will not be affected in any way by the Whistleblowing Policy.

10. What happens if you are the subject of a concern in accordance with the Public Interest Disclosure Act?

- 10.1 The Council believes that everyone has the right to be treated fairly and in accordance with the principles of natural justice, and will therefore apply these principles to you if you are the subject of someone voicing their concern.
- 10.2 The following steps will be taken by the Council if you are the subject of such a concern:
- You will be informed both verbally and in writing of the concern, and will be advised to seek the advice of your trade union or staff representative, solicitor or professional association.

- You will be assigned an officer or member of the Council who will be responsible for advising you at regular intervals on how the investigation is proceeding.
- You may be suspended from work on full pay during the investigative process but this will not be regarded as a punitive measure. It will be used in circumstances, where for example, public interest is likely to be high or where, it may aid the investigation itself.
- You will be advised of the outcome of the investigation and how this may impact upon your employment with the Council as soon as possible, once the investigation has been concluded.

Last updated: October 2015

PART 5

MALVERN HILLS DISTRICT COUNCIL

ANTI-FRAUD AND CORRUPTION POLICY STATEMENT

1. The Council is committed to maintaining an honest and open culture within the organisation.
2. Members, employees and all other people that work on behalf of the Council must have high standards of conduct. They are expected to follow the principles of public life, and national and local standards of corporate governance. This includes all local and national codes of conduct.
3. Systems of internal control will be maintained to prevent and detect fraud and corruption, but the Council will not be complacent. When it is suspected that fraud and/or corrupt action has occurred, it will be investigated promptly and fully. Appropriate action will be taken in all cases, including:
 - taking disciplinary action
 - criminal prosecution
 - imposing sanctions
 - seeking compensation
4. This policy applies equally to all members, employees and other people acting on behalf of the Council.
5. From time to time, as necessary, the Council will adopt a strategy for ensuring the compliance of this policy.

Council meeting 25th June 2002

MALVERN HILLS DISTRICT COUNCIL

ANTI-FRAUD AND CORRUPTION STRATEGY

Council meeting 25th June 2002

INTRODUCTION

The Council has agreed a policy on fraud, theft and corruption which embodies the principles of integrity, accountability, openness and leadership.

This strategy details a series of measures which are designed to prevent fraudulent or corrupt acts and the steps to be taken when such acts occur.

For ease of understanding, the strategy is separated into six areas:

- Culture
- Prevention
- Deterrence
- Detection and Investigation
- Awareness and Training
- Fraud Response Plan

Definitions

Fraud and corruption are defined by the Audit Commission as:

Fraud: “the intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain”.

Corruption: “the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”.

Misuse of assets: the use of council assets for personal gain and the abuse of property.

This strategy also covers: “the failure to disclose an interest in order to gain financial or other pecuniary gain.”

CULTURE

The culture of the Council is one of openness, equity, fairness and mutual respect. The prevention and detection of fraud/corruption are everyone's responsibility - elected members and employees play an important role in creating and maintaining this culture. They are positively encouraged to raise concerns regarding fraud and corruption, immaterial of seniority, rank or status, in the knowledge that such concerns will be treated in confidence.

Concerns must be raised when members or employees reasonably believe that one or more of the following has occurred, is in the process of occurring or is likely to occur:

- **a criminal offence**
- **a failure to comply with a statutory or legal obligation**
- **improper, unauthorised use of public or other funds**
- **a miscarriage of justice**
- **maladministration, misconduct or malpractice**
- **deliberate concealment of any of the above.**

Management will ensure that all allegations received in any way, including by anonymous letters or phone calls, will be taken seriously and investigated in an appropriate manner, subject to the requirements of the Human Rights Act 1998.

There is, of course, a need to ensure that any investigation process is not misused and, therefore, any abuse (such as employees raising malicious allegations) may be dealt with as a disciplinary matter.

When fraud or corruption have occurred because of a breakdown in systems or procedures, senior management will ensure that appropriate improvements in systems of control are implemented to prevent a reoccurrence.

PREVENTION

ELECTED MEMBERS

The Role of Elected Members

As elected representatives, all members of the Council have a duty to the community to protect the Council from all forms of abuse. This is carried out through this anti-fraud and corruption strategy, compliance with the code of conduct for members, the Council's financial procedure rules, and the relevant legislation.

Elected members sign to the effect that they have read, understood and will observe the Council's code of conduct when they take office. This is brought to the attention of members during induction, which includes the declaration and registration of interests. An annual reminder takes place.

EMPLOYEES

The Role of Managers

Managers at all levels are responsible for the communication and implementation of this strategy to employees. Managers are also responsible for ensuring that their employees are aware of the Council's financial rules. Furthermore, managers are required to make employees aware of the requirements of any code of conduct for local government employees.

Managers are expected to strive to create an environment in which employees feel able to approach them with any concerns about suspected irregularities. Where managers are unsure of the necessary procedures, they will refer to the Council's Whistleblowing policy.

Special arrangements will apply where employees are responsible for cash handling or are in charge of financial systems and systems that generate payments, for example payroll, housing benefits or council tax. Managers must ensure that proper controls are in place.

It is recognised that a key preventative measure for dealing with fraud and corruption is for managers to follow correct procedures at the recruitment stage to establish, as far as possible, the honesty and integrity of potential employees.

Formal recruitment procedures are in place which contain appropriate safeguards on matters such as written references and verifying qualifications held. As with other public bodies, police checks are undertaken on employees working with children.

The Responsibilities of Employees

Each employee is governed in his/her work by the Council's financial and other procedure rules, codes of conduct and various protocols and policies. These guidelines cover the acceptance of gifts and hospitality, professional and personal conduct, and conflicts of interest. The guidelines are issued to all employees when they join the Council, and are updated from time to time.

Employees are responsible for ensuring that they follow the instructions given to them by management, particularly in relation to the safekeeping of the Council's assets.

Employees are expected always to be aware of the possibility that fraud, corruption or theft may exist in the workplace and be able to share their concerns with management.

Concerns will be raised, in the first instance, directly with the line manager, or in accordance with the Council's Whistleblowing Policy.

Conflicts of Interest

Both elected members and employees must ensure that they avoid situations where there is a potential for a conflict of interest and the appropriate entry must be made in the Register of Interest. Such situations can arise with externalisation of services, tendering, planning and land issues, etc. Separation of duties will ensure decisions made are seen to be based upon impartial advice and avoid questions about improper disclosure of confidential information.

Official Guidance

In addition to financial and other Council procedure rules, services will have their own procedures to prevent and detect fraud. There may also be audit reports that recommend methods to minimise losses to the authority. Managers and employees must be made aware of these various sources of guidance and alter their working practices accordingly.

The Role of Internal Audit

Internal audit plays an important preventative role in ensuring that systems and procedures are in place to prevent and detect fraud and corruption. Audit will investigate cases of suspected irregularity, and liaise with management to recommend changes in procedures.

The Role of External Audit

Independent external audit is an essential safeguard in the stewardship of public money. The external auditor has a responsibility to review the Council's arrangements to prevent and detect fraud and irregularity.

Co-operation with Others

Arrangements are in place to develop and encourage the exchange of information on national and local fraud and corruption activity with external agencies such as:

- the police service
- local government groups
- the Audit Commission
- Department for Work and Pensions
- the Electoral Commission

DETERRENCE

Prosecution

The Council operates a prosecution policy in respect of housing and council tax benefit in line with guidance issued by the Department of Work and Pensions. The policy is designed to clarify the actions taken in specific cases and to deter others from committing offences. However, it also recognises that it may not always be in the public interest to refer cases for criminal proceedings.

Disciplinary Action

Theft, fraud and corruption are serious offences, and employees will face disciplinary action if there is evidence that they have been involved in these activities. Disciplinary action will be taken in addition to, or instead of, criminal proceedings, depending on the circumstances of each individual case. It will be applied in a consistent manner, after consultation when necessary with the Chief Executive, the Monitoring Officer, and the Section 151 officer.

Action will be taken against members if they are found to have been involved in theft, fraud or corruption against the Council, depending on the circumstances of each case. Such action will be taken after the matter has been referred, as appropriate, by the Monitoring Officer to the Standards Committee for England and the police.

Publicity

Any appropriate publicity opportunities associated with anti-fraud and corruption activity will be taken, and the Council will ensure that the results of any action taken, including prosecutions, are reported in the media. In all cases where financial loss to the authority has occurred, the Council will seek to recover the loss and advertise this fact.

All anti-fraud and corruption activities, including updates to this strategy, will be publicised in order to make the public aware of the Council's commitment to taking action on fraud and corruption when it occurs.

Regular reports will be made to the Standards Committee and the Audit Committee.

DETECTION AND INVESTIGATION

Internal audit plays an important role in the prevention of fraud and corruption. Included in the three-year audit plan are reviews of financial system controls and specific fraud and corruption tests, spot checks and unannounced visits.

System controls are in place to deter fraud and corruption, but it is the vigilance of employees and members of the public that often aids detection. In some cases frauds are discovered by chance or 'tip-off', and arrangements are in place to enable such information to be properly dealt with in accordance with the requirements of the Human Rights Act 1998.

All suspected irregularities are required to be reported (verbally or in writing) either by the person with whom the initial concern was raised or by the originator. This:

- ensures the consistent treatment of information, and
- facilitates a proper and thorough investigation by management

This process will apply to all the following areas:

- a) fraud/corruption by elected members
- b) internal fraud/corruption
- c) other fraud/corruption by authority employees
- d) fraud by contractors' employees
- e) external fraud (the public).

Any decision to refer a matter to the police will be taken by senior management after consultation with the Audit Manager, the Monitoring

Officer and the Section 151. The police will normally be informed of any financial impropriety.

The Role of the Benefits Investigation Team

The Council's benefits investigation team is responsible for all benefit fraud investigations. They will work in partnership with internal audit in cases where employees of the Council are suspected of benefit fraud.

AWARENESS AND TRAINING

The Council recognises that the continuing success of this strategy, and its general credibility, will depend on the awareness of all elected members and employees, and the effectiveness of programmed training.

CONCLUSION

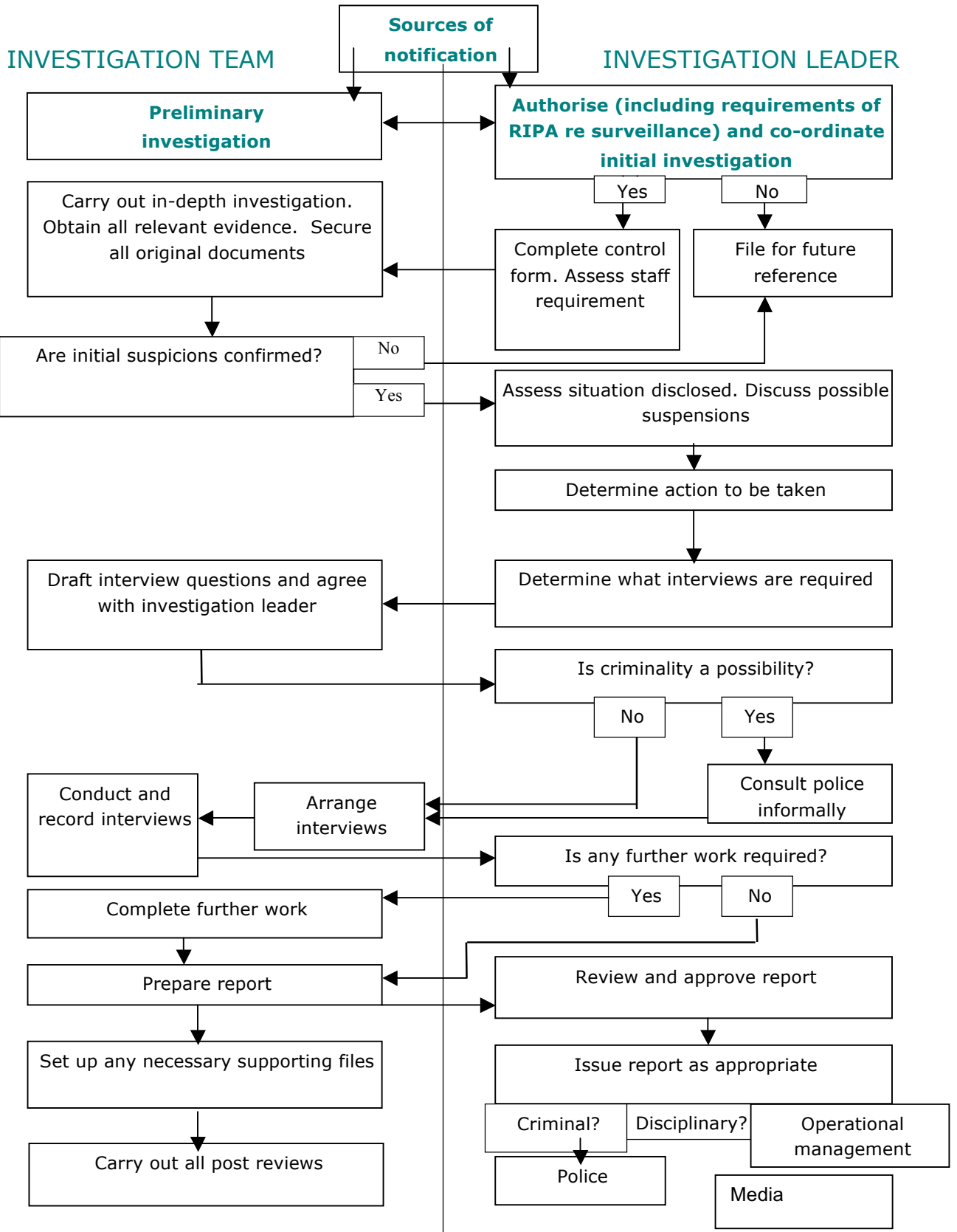
The Council sets and maintains high standards, and encourages a culture of openness, equity, fairness and mutual respect. This strategy fully supports the commitment to maintain an honest authority, free from fraud and corruption.

A network of systems and procedures is in place to assist in dealing with fraud and corruption when it occurs. The Council is determined that these arrangements will keep pace with any future developments in techniques to both prevent and detect fraudulent or corrupt activity that may affect our operation.

This strategy will be reviewed annually with the advice of the Monitoring Officer and the Section 151 Officer.

MALVERN HILLS DISTRICT COUNCIL FRAUD RESPONSE PLAN

OPERATIONAL CONTROL



Ethics and You

A Guide to the CIPFA Standard of Professional Practice on Ethics

February 2011

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance.

Our 14,000 members work throughout the public services, in national audit agencies, in major accountancy firms, and in other bodies where public money needs to be effectively and efficiently managed.

As the only UK professional accountancy body to specialise in public services, CIPFA's qualifications are the foundation for a career in public finance.

We also champion high performance in public services, translating our experience and insight into clear advice and practical services for our public sector clients.

Globally, CIPFA shows the way in public finance by standing up for sound public financial management and good governance around the world.

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INTRODUCTION

The Standard of Professional Practice (SOPP) on Ethics, is published in full on CIPFA's website (<http://www.cipfa.org.uk/conduct/ethics.cfm>). It applies to all CIPFA members and students. It adopts the IFAC Code of Ethics in full; the IFAC Code, together with a CIPFA foreword, is the SOPP. Adherence to the SOPP is an obligation of membership of the Institute, and all members and students are required to act in accordance with it. As is general practice in all professional bodies, departures from the standard may be subject to disciplinary action. CIPFA members and students are therefore encouraged to make sure that they understand the SOPP, and know how to seek guidance if a situation arises in which they are uncertain whether they are complying with it.

This text contains reference to UK legislation. CIPFA members and students elsewhere should inform themselves about relevant local legislation.

BACKGROUND

Following widely publicised company scandals, in which the actions of accountants both within the organisations concerned and in their external auditors were criticised, there has been a worldwide movement in the accountancy profession to review and update standards. This first covered governance and financial reporting and has now extended to the ethical and behavioural context in which accountants operate. Professional accountancy bodies generally issued guidance on ethics, and adherence to a code of ethics is indeed one of the hallmarks of true professionalism. But they contained differences of emphasis, and their existence did not prevent a number of widely publicised corporate failures, such as Enron, Parmalat, WorldCom.

In response to this the International Federation of Accountants (IFAC) took the initiative to draft a Code of Ethics that would apply to all accountants, all over the world and in all types of work environment, which would address the perceived causes of failure. The Code was agreed by the IFAC Board in 2005, and elevated to the status of a membership obligation. That means that all member bodies, including CIPFA, and the other CCAB bodies, must adopt the Code as their own or show that their own code complies with the IFAC Code in all material respects. IFAC issued a revised Code in 2009, and this has been adopted by CIPFA with effect from January 2011.

CIPFA has adopted the IFAC Code as it stands; a CIPFA foreword has been added highlighting and interpreting ethical issues with particular reference to the public service context in which most CIPFA members work. The IFAC Code with the foreword form the CIPFA SOPP. The original American English (IFAC's working language) of the IFAC document has been retained in the interest of economy and simplicity. This

accompanying guide explains how it works and why it is important, including some case studies on applying it. **While this introduction will give a general understanding, and is designed to be more accessible, it is not itself the Standard, to which CIPFA members and students will need to refer whenever a professional ethical dilemma arises.**

THE IFAC CODE

The IFAC Code is divided into three sections:

- part A applies to all accountants and students irrespective of their work role
- part B is intended only for those who work as auditors in public audit practice
- part C applies to everyone else.

IFAC uses the expression 'in business' to describe the general working environment of accountants outside public practice: this description embraces all public and voluntary sector roles, as well as consultancy.

Most CIPFA members and students will therefore need to be familiar with parts A and C. Staff of the United Kingdom national audit agencies (National Audit Office, Audit Commission, Audit Scotland, Accounts Commission, Wales Audit Office, Northern Ireland Audit Office) will be aware that the agencies have agreed that public auditors should in general follow the Auditing Practices Board's Practice Note 10, which is consistent with part B of the IFAC Code. Although IFAC includes public audit within its definition of 'in business', it will be necessary for CIPFA members and students in the national audit agencies to be familiar with part B of the SOPP, and to secure an understanding of how their employing body is applying those parts of the Standard. Any CIPFA member working in an audit firm must become familiar with parts A and B of the SOPP.

This is a principles-based Standard, which, although it contains some highly prescriptive requirements, especially for auditors, needs to be approached by understanding the concepts. It is not a set of rules for all occasions.

THE IMPORTANCE OF ETHICAL BEHAVIOUR

The work of accountants needs to be trusted by society at large, as well as by individual employers, clients and other stakeholders. It is expected to be free from personal bias, done competently, and capable of being verified. It is the principal added value of the accountancy professional that such matters are assured by membership of a professional body, which enforces standards of independence and competence; all the more so now that these standards are international in application. CIPFA members should also have in

mind that a further expectation of high standards of behaviour is overlaid on those who work in the public services, who are perceived as being in positions of public trust.

Whether by accepting a public role, or by becoming a professional accountant, we put ourselves in the public eye, observed by those around us, and potentially vulnerable to the attention of the media. So what we do reflects not only on ourselves, but on our employing organisation, on the Institute to which we belong, and ultimately on our profession.

As accountants, we submit to rigorous education, training and assessment, coupled with continuing professional development (CPD). This equips us to deal with complex issues, frequently with a high technical content that might not be accessible to everyone who relies on our work. Accepting to be bound by published, high standards of ethical behaviour is a powerful way of creating confidence that we will not use our knowledge power to mislead, or gain personal advantage.

HOW THE IFAC CODE AND OUR SOPP WORK

The Standard is built on two conceptual foundations:

- (i) a set of fundamental principles
- (ii) awareness of threats to complying with the principles, which must be addressed by safeguards.

Fundamental principles

The principles in the Code have been adopted by IFAC member bodies worldwide. The value of this is that it brings CIPFA into line with the principles underlying ethics for accountants everywhere where there is a professional body affiliated to IFAC.

The terms will be familiar, and may cover ground we tend to take for granted, but collectively they are a tough requirement. Occasionally to work through them and ask ourselves self-critically how we stack up against them would be a valuable check. The principles are:

Integrity: this is about being truthful, straightforward and honest, dealing fairly with people and situations; it rules out making misleading or false statements, whether by omission or inclusion of information, either knowingly or without taking care to find out.

Objectivity: the avoidance of bias, whether for personal self-interest, or because of pressure from another, and closely allied to independence.

Professional Competence and Due Care: this is about acquiring and maintaining appropriate technical and other relevant skills and competence to perform our work, doing it thoroughly and correctly, on a timely basis, and ensuring that users of our output understand its context and limitations. (It is why IFAC has also made CPD compulsory in all its member bodies.)

Confidentiality: information about organisations and people encountered in the course of accountancy assignments should not be disclosed, inside or outside the work environment, to anyone who does not have a legal or professional right to it, and especially not to secure a personal advantage for anyone. This principle is overridden only by the force of law. But if information has to be released, for example under the Freedom of Information Act 2000, or other Acts of Parliament (eg as a 'protected disclosure' under the Public Interest Disclosure Act 1998), the SOPP expects it be reviewed to ensure that it is complete and presented in its proper context. So although at first sight this may appear at odds with the openness principle of public life, there is no material conflict.

Professional Behaviour: this is about complying with standards and laws, and avoiding actions that might bring the profession into disrepute, such as making unsubstantiated criticisms of a fellow professional, or exaggerating one's experience.

Principles of public life

In addition to the ethics principles, public sector people are expected to be familiar with, and to apply, the seven 'Principles of Public Life'. Of these, integrity, honesty and objectivity are clear overlaps with the fundamental ethics principles.

Selflessness – the avoidance of doing things for personal gain – resonates closely with the notion of professional conduct, buttressed by the specific prohibition of insider dealing under confidentiality.

Openness, as noted above, may seem to sit uncomfortably alongside the exhortation to confidentiality, but in practice they are complementary. Openness recognises that activities undertaken with public money ought to be visible to the public, so that temptation to doubtful or corrupt activity is made harder: so a breach of the confidentiality principle through abuse of a piece of inside information for personal gain would be easier to spot if the consequent transaction was open.

Accountability is required in the overall conduct of business. It applies to public sector accountants as to other public sector employees. It might be argued that this principle is encompassed within professional competence and due care, but it is possible to say that this is not a special requirement that marks the accountancy professional out from public service people in general.

Leadership in public life is about setting a good example, implicit for all professional accountants in the fundamental principles. But the SOPP reminds us that the burdens of example setting grow with seniority. So while all professionals must set a good example by their conduct, there is an extra obligation on those who are finance directors, chief executives or heads of other functions. All professional accountants who manage staff should ensure that they lead by example, and provide proper training, including in ethics and other aspects of professional behaviour, for their teams.

For the public sector accountant this combination of principles represents a formidable standard to live up to. For some accountants (like the local government Section 151 responsible officer) there are specific additional statutory or regulatory duties to maintain independence. The remit to operate and report ethically applies across the whole range of an accountant's duties, too, including those exercised in a role outside the finance function. Many public sector accountants and students work in areas that process information about non-financial performance. Recognising that the systems supporting non-financial performance information may not contain all the controls, checks and balances associated with financial figures, there is no less duty on the accountant to report accurately, objectively and fairly – ie professionally – on such measures.

The concept of threats and safeguards

The approach of IFAC and the CIPFA SOPP is to consider the most likely reasons why someone would fall short of the standards of behaviour called for by the fundamental principles. It identifies a series of motivations that could persuade an individual to override objectivity, cut corners, mislead or otherwise breach any of the principles, which

it calls **threats**. Some are more likely to be experienced in the circumstances of an audit, where independence may be compromised, but wherever members and students work, the Standard expects us to watch out for them.

A *threat* needs to be countered by a **safeguard**, ie an action or process put in place to make the *threat* unlikely to result in an ethical lapse. Safeguards range from removing the threatened individual from the threat or entirely eliminating it, to introducing checks and balances in organisational procedures.

While this does not of itself introduce new ethical issues, the systematic consideration of situations to identify whether a threat exists, how it might influence matters, and how to counter it with *safeguards* is a useful way of looking at things. The approach strongly resembles what we are accustomed to doing in another context under the badge of 'risk management'.

Threats

Self-interest can arise in many forms to threaten our professionalism. Any situation in which we have, or someone close to us has, a vested interest in an outcome, over which we have some degree of influence or control, has the potential to tempt us to unethical behaviour. We might be charged with calculating a particular result on a particular outcome of which we might be due a bonus, for example. This threat is not limited to purely financial interests: if something we were working on had the ability to influence a child's education, a friend's planning application, a relative's healthcare, or the activities of a voluntary body on which we serve, our objectivity might be compromised. And a *self-interest* threat would exist if our employment status were under question: it might make us more vulnerable to *intimidation*.

Intimidation involves the exercise of disproportionate pressure by someone in a position of power and influence. At worst this could involve threats of violence against the accountant or someone close, but in the work context is more likely to take the form of a hint at damage to your career, the loss of a contract, or some withdrawal of co-operation that will make your life difficult. In the public sector, top managers and politicians are themselves under significant pressure to achieve, and *self-interest* may occasionally drive them to create downwards pressure to report a particular result, say, that can feel like *intimidation*: the perception of this threat can be as powerful as its actual existence.

Self-review is a threat to independence caused when you are called on to check, audit or approve a piece of work you were involved in originating. This might happen if, for example, you took up a position in a central unit involved with approving investment cases, having moved from a position in a unit where you had been working on the data that justified a case currently under review. A public auditor who had previously worked in an authority that is now an audit client would be vulnerable to *self-review* if later undertaking its audit.

Familiarity arises through long association with individuals, whether in your own organisation, a client, a supplier or a customer. Objective critique of the work of someone you know well becomes harder because it impacts on the relationship. Similarly, long association with a buyer or salesperson may influence the commercial relationship, substituting habit or 'not wanting to upset' an individual for objective analysis and judgement. The offering of inducements becomes a more potent temptation in the context of a relationship of familiarity.

Advocacy is a threat to independence mainly affecting auditors who take on a role representing a client, or pushing the client's interest in another context. There are legitimate circumstances for this to happen, but the threat to independence is that in taking the client's part the accountant is compromised if an issue arises where the facts do not suit the case. Accountants in business are expected to promote the interests of their employing organisation: an *advocacy* threat only arises if it leads to making false or misleading statements, or presenting judgement as fact.

Political Bias is not specifically recognised as a threat in the IFAC Code and the SOPP. But in the UK and Ireland it is normally expected that public servants will be politically neutral. So this variant of the *advocacy* threat may arise in any public body where the leadership is democratically elected. Accountants and students in such an organisation should of course act in accordance with its policies: they should however be aware that the fundamental principles require them to ensure that their support of (or opposition to) proposals having a party-political dimension is based on sound evidence and objective analysis. It is unethical knowingly to misstate or falsify a case, or deliberately to suppress relevant information, in furtherance of a party-political position.

Safeguards

The SOPP catalogues many safeguards that can be used to counter the risk of unethical behaviour arising from these threats. It might be helpful to think of them in two broad categories.

Institutional safeguards

Public service organisations and the accountancy profession are heavily controlled by statute and regulation, which include standards of conduct. Extensive safeguards are also built into internal procedures. Financial regulations, schedules of reserved or devolved authority, separation of powers, regimes of corporate governance and internal control, declaration of personal and financial interests, rules for reporting gifts and hospitality and contact with suppliers and so on all exist to create an environment free from abuse, fraud and corruption.

Sound systems like these are the first line of defence against unethical conduct. As professional accountants, particularly in senior positions, we should review such procedural mechanisms to ensure that they are fit for the purpose of countering the *threats* identified above. Operating in compliance with these institutional safeguards should be second nature. But following the rules is not enough on its own: professional, ethical conduct requires us to think about the reasons behind the rules, and constantly to monitor their effectiveness.

Our organisation may also have adopted a code of conduct for all its people. This is another helpful safeguard. In this case we should ensure that it does not conflict with any of the ethical requirements of the SOPP, and work to secure changes to the local code if necessary. And we should make sure we understand where the SOPP imposes ethical considerations specific to our profession. In auditing organisations the SOPP specifically requires the creation of dedicated controls and monitoring of ethical issues, with a very senior person holding an ethics brief.

Unethical conduct is always less likely in an open organisation subject to public scrutiny. Where public feedback and complaint is encouraged, even though it probably usually focuses on operational performance, it can be monitored for hints of ethics issues. The existence of 'whistle-blowing' procedures also provides a route to detection of unethical conduct.

Personal safeguards

Although this expression does not occur in the SOPP and IFAC Code it is included here as a reminder that ultimately the responsibility for our ethical conduct is a personal one for each of us. However good the procedural framework is, sometimes the threats will be strong enough to create pressure to bypass a control, ignore the procedures, and breach the ethical standards. Whether it is we ourselves or a colleague who has reached that

point, if we have analysed the threat as suggested above, we should at least recognise the situation. The ethics principles should guide what we should do, but some situations are not clear-cut. In such cases, taking guidance from a fellow professional would be a sensible step.

This would normally take place within the organisation, but if the matter concerns a colleague, and particularly a superior in the reporting line, one may need to seek advice outside the organisation. For such situations CIPFA offers the opportunity to get confidential, informal advice on ethical issues from members of a carefully selected group of members – the Ethics Sounding Board.

A conflict of interest is best resolved by removing its cause. This can be achieved by withdrawing from the activity or decision that involves the conflict, by passing it to a colleague, perhaps in a different department or to someone more senior: devolving the matter to someone who reports to you may put them under pressure if they know your interest, and is not guaranteed to remove the *threat*. Where extreme conflict of interest exists, possibly fostered by intimidation, it may be impossible to apply sufficient safeguards: in such a (hopefully extremely rare) case the situation may become intolerable for the accountant. Where the employment context does not permit compliance with the fundamental principles (for other than legal reasons), resignation may be the only remaining course.

Financial interests

A financial interest in the outcome of a matter you are dealing with can often simply be disposed of. If the interest is material and the link to your activity direct, that would be essential. From an ethical point of view the potential beneficiary may be, for instance, a family member or someone close to you, not necessarily yourself.

Gifts and hospitality

Just as openness and transparency work at the organisation level to reduce the risk of unethical behaviour, documenting and disclosing potential threats to objectivity and independence is a sound course for an individual. For example, it should be routine to report the offer of hospitality or gifts to a superior, and to consider whether it would appear reasonable to an outside observer. Public service organisations generally have rules on this. CIPFA recommends that a register of all gifts and hospitality should be maintained, irrespective of whether they are accepted, declined, returned, or given to

charity. Members should be aware of the Public Bodies Corrupt Practices Act 1889, and the Prevention of Corruption Acts 1906 and 1916. Offering or accepting **bribes** is of course illegal, and if there is any doubt about the intention behind hospitality or a gift as an inducement, or the possibility of its being perceived as influencing an outcome such as the award of a contract, it should be declined.

Insider dealing

In contrast there are clearly situations where openness is not the correct response. If you have knowledge not yet in the public domain, whether of a current situation or an impending decision, it is unethical – and probably illegal – to use it for personal advantage or that of another, and care must be taken not to leak it even inadvertently. Public sector work can involve knowledge of future legislative plans, upcoming regulations affecting sectors of industry or individual companies, large contracts, planning applications and a host of other matters that could give advantage to someone having the knowledge in advance. This area is not only concerned with information about clients.

CONCLUSION

The SOPP requires members and students to uphold fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. In the public services it is expected that behaviour will also accord with the principles of public life, especially, in this context, openness and selflessness. Because it is a principles- rather than rules-based Standard, it does not attempt to define a set of exhaustive rules to follow, but rather considers how threats such as self-interest, intimidation and familiarity create the conditions in which people might be tempted to act contrary to the principles, and invites the application of safeguards in the form of institutional procedural frameworks and personal responses to overcome them.

Although the Standard contains some quite prescriptive actions, neither the SOPP nor this introductory digest can hope to cover all the circumstances that may face the professional accountant in the public services. It is for the individual to become familiar with the principles, and regularly review his or her work situation for threats to integrity, objectivity and independence.

A short series of generic case studies follows, in which some ethical dilemmas are worked through in this way. These are intended to help CIPFA members and students understand the ethical issues in particular circumstances. They are neither prescriptive nor exhaustive, because every ethical dilemma is different.

WHERE CAN MEMBERS GET HELP?

CIPFA members and students should usually find it sufficient to follow the advice in this guide. But if an ethical issue arises, and particularly if a disciplinary case may result, then it is essential to refer to the full SOPP, which will be the benchmark in any disciplinary case. The full SOPP can be found at <http://www.cipfa.org.uk/conduct/ethics.cfm>

The Ethics Sounding Board (previously known as the Ethics Advisory Panel) is a list of CIPFA members who are willing to discuss ethical issues with members. It is a confidential service and is separate from the Institute. The advice which may be offered is not considered to be official CIPFA advice and it is not intended that this advice should have any legal status.

Queries should be about ethical issues concerning a member's professional conduct in relation to the Standard of Professional Practice on Ethics.

CASE STUDY – GRANT CLAIM

Sector

Any

Scenario

An accountant is responsible for the preparation of a grant claim. This is the first year she has prepared the claim as she is new to the organisation, although the organisation has been claiming the grant for a number of years.

When reviewing the detailed cost information, she found that some inappropriate expenditure items were included which increased the amount of grant awarded. This incorrect approach was consistently applied to previous claims where the auditor has signed off the claim without qualification. The accountant's predecessor had a close working relationship with the auditor.

Her manager is also new to the organisation. He is a member of the same golf club as the appointed auditor, and she is concerned that they might have a close working relationship that could prevent the issue being addressed.

The accountant must decide if she should raise her concerns over claims with her manager and the auditor so that both are aware of the previous ineligible claims.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- **Objectivity**
- **Professional competence and due care**
- Confidentiality
- Professional behaviour

Threats and safeguards which could apply

- **Self-interest**
- Self-review
- Advocacy
- **Familiarity**
- Intimidation

Suggested course of action

The accountant should bring her findings to her manager's attention so that he is aware of the errors included in previous claims.

Following the discussion with her manager, they should agree to raise the error with the external auditor so that they can make a decision on how to approach the previous grant claims. She should ensure that her manager will not allow his friendship with the auditor to prevent the issue being addressed. Making the manager and auditor aware demonstrates that the accountant is not afraid of raising difficult issues.

Comments

Integrity – by being open and honest about the situation with both her manager and the auditor.

Objectivity – by recognising that previous claims may have been based on ineligible items and making the relevant individuals aware.

Professional competence and due care – by acknowledging that she cannot address the previous errors alone, and ensuring that her manager and auditor make any final decisions.

CASE STUDY – CONTRACT INSIDER INFORMATION

Sector

Any

Scenario

The head of internal audit in a public sector organisation is about to tender for the contract for the internal audit service.

A new member of her team has been recruited in the normal course, from the department responsible for devising the tender contract. He is employed as a support administrator. Although he was not involved with the tender process, his former colleague and friend is responsible for the tender specification document and the evaluation process.

Her new employee had sight of some of the requirements and has offered to share with her information that may be of use when preparing the tender. However, this information is confidential and should not be seen by any of the tendering parties.

It will be an open tender process for both external and internal providers. Bids from external providers are being encouraged. The evaluation process has been designed with this in mind.

If the contract is awarded externally, the head of internal audit will be unsure of her personal position in the organisation.

She understands the use of any insider knowledge of the tendering process would be inappropriate when preparing the tender proposal, but she feels she would have a better chance of success if she used this confidential information.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- Objectivity
- **Professional competence and due care**
- **Confidentiality**
- Professional behaviour

Threats and safeguards which could apply

- **Self-interest**
- Self-review
- Advocacy
- **Familiarity**
- Intimidation

Suggested course of action

The information that is being made available is confidential and should not be used in her tender document. Although there is potential personal gain from using the evaluation information, she should not refer to it in the proposal.

She should explain to the member of staff who is making the information available that his offer of assistance cannot be acted upon as this would be in breach of CIPFA guidelines.

She should stop her member of staff from saying anything further about the tender. She should explain to the tendering department if she has been made aware of any additional information so that they can make it available to the other bidders.

She must also make her employee aware that she will not be using any confidential information and that he should inform his former colleague of this. She does not want to be subject to any rumour that she had sight of any evaluation documentation as this could jeopardise her tender proposal.

By openly stating her intended actions, she is also demonstrating a level of expected ethical behaviour to the department.

Comments

Integrity – the head of internal audit's decision demonstrates integrity as she has not allowed herself to be influenced by the information that could be made available to her.

Professional competence and due care – she has resisted temptation to use the information and has chosen to base her tender proposal on her own professional knowledge and ability.

Confidentiality – her actions have respected the confidential nature of the process.

CASE STUDY – SELF-EMPLOYED

Sector

Any

Scenario

A self-employed CIPFA member prepares accounts on behalf of a small independent trader. An annual audit certificate is not required.

This is the first year the member has prepared these accounts. When compiling the most recent accounts, he noticed that some errors were noted in the previous accounts. It appeared that the accounts were based on incomplete records as certain costs were excluded, either intentionally or because records were not maintained.

The client has also requested some additional work to be completed on a complex tax issue. However, the member has no prior experience and does not feel competent to do the work.

The client would also like him to provide an audit opinion as they are planning to apply for a bank loan and the bank would like some additional assurance.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- Objectivity
- **Professional competence and due care**
- Confidentiality
- **Professional behaviour**

Threats and safeguards which could apply

- Self-interest
- **Self-review**
- Advocacy
- Familiarity
- **Intimidation**

Suggested course of action

The accountant should raise his concern about the previous accounts as there could be an explanation for the excluded items. Based on the reason provided by the trader, he can either update the approach taken to the accounts preparation or he can maintain the previous methodology. If he feels that the response is not adequate, he should explain to the client how the disputed items should be disclosed.

He should consider what sort of tax advice the client requires. When he has a clear idea what type of work is required he should establish whether he has sufficient knowledge and experience to offer advice on such a matter. If he has any doubt about the type of work, he should not complete the tax assignment as he would not be competent enough to do the work.

As the client would like him to also provide an opinion on the accounts, he should explain that an opinion or independent examination is normally given by an accountant independent of the accounts preparation process. He should establish why the client would like the accounts to be signed and if so, any thresholds that apply. It would be best practice not to prepare and audit the same set of accounts.

Comments

Integrity – the accountant has highlighted his concerns to his client and explained his views with a clear rationale.

Professional competence and due care – the accountant has acknowledged his professional ability and has identified a situation where he may not be the most appropriate accountant to complete a specific piece of work.

Professional behaviour – throughout this scenario, the accountant has behaved professionally as he has explained his rationale to his client and not completed any work that he was unable to finish to an appropriate standard.

CASE STUDY – EXTERNAL AUDITOR

Sector

Public sector external audit

Scenario

An NHS trust expects to achieve foundation trust status on the following 1 April. As the trust approaches the year-end, unexpected financial liabilities come to light and the director of finance identifies a number of accounting adjustments which will ensure the trust achieves its statutory financial duties including breakeven. The adjustments include changing the accounting policy for some items of stock, capitalising certain salaries and failing to account for its share of liabilities under a partnership agreement with a local authority which has yet to prepare the memorandum account.

The director of finance and chief executive have reported to the board and local strategic health authority that the trust will break even for the year.

The adjustments come to light during the audit, and the external auditor does not accept that the accounting treatments are correct. As the adjustments are material, if the trust does not amend its accounts the external auditor will have to qualify her opinion/report on the accounts. When the issues are discussed with the director of finance, he states "These are legitimate interpretations of accounting policy and if you do not accept them I will ensure that we appoint different auditors when we are a foundation trust." He also tells the local newspaper that "Our auditors are determined to make our financial position look worse than it is."

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- **Objectivity**
- **Professional competence and due care**
- Confidentiality
- Professional behaviour

Threats and safeguards which could apply

- **Self-interest**
- Self-review
- Advocacy
- Familiarity
- **Intimidation**

Suggested course of action

The external auditor should report the implications of the director of finance's proposals to the trust's audit committee, setting out her interpretation of the accounting treatment based on the evidence and professional standards, and amendments required. She should also explain the consequences for her report (a qualified audit opinion) if the trust fails to amend the accounts.

The external auditor should also consider whether the director of finance's threat should be reported to the chief executive and the chair of the audit committee, and given the director of finance's comments in the local press, consider whether a public interest report is warranted to explain the circumstances around the trust's financial position.

Comments

Integrity – the approach demonstrates integrity because the external auditor has not been influenced by the director of finance's comments about future audit appointment.

Objectivity – the auditor has reported the facts and her interpretation of accounting and auditing standards to the appropriate committee of the trust, and potentially the public.

Professional competence and due care – by following the relevant standards, the external auditor has demonstrated her professional competence.

CASE STUDY – SCHOOL GOVERNOR

Sector

Voluntary

Scenario

A CIPFA member has been appointed as a member of a school governing body on a voluntary basis. She has also been appointed to the finance and buildings committee that awards building contracts. The membership of this committee includes a number of individuals with private sector experience and local businessmen. One is a local builder who has been a governor for a number of years and is well respected in the community and by the governing body.

At her first meeting, the committee considers a report from the head teacher about the condition of the school hall and sets out a scheme of remedial building works with estimated costs. After discussion of the scheme, and recognising the need to move quickly if the work is to be carried out during the summer vacation, the builder governor offers to do the work at a competitive price and the other governors on the committee are minded to accept the offer.

However, although the offer has been made, the governors are not considering the use of a formal tender process or making any reference to governance arrangements that could exist for tenders. The CIPFA member is concerned that the committee is unable to demonstrate reasonable decision making, stewardship of public money and reputational risk.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- **Objectivity**
- **Professional competence and due care**
- Confidentiality
- **Professional behaviour**

Suggested course of action

The CIPFA member should make her concerns known and explain to the other committee members why she feels acceptance of the builder governor's offer could be inappropriate.

She should explain that award of such a contract should be subject to a proper tendering evaluation process. This would ensure that any tenders awarded would be subject to a proper process with integrity.

The member should also explain that the committee needs to demonstrate a proper decision-making process that would support any contracts awarded. This would also protect the governors from any potential reputational risk that the school did not properly award contracts, especially as it is funded by public money.

Comments

Integrity – by identifying that the committee could be exposing itself to accusations of inappropriate activity when awarding contracts, she is demonstrating personal integrity to the committee.

Objectivity – the information provided to her could result in the CIPFA member saying nothing. However, when evaluating the situation and identifying the potential risk, she has not been tempted to agree to the apparently easy solution.

Professional competence and due care – this is demonstrated through understanding the issues before explaining the consequences of the committee's actions.

Professional behaviour – a CIPFA member should continue to demonstrate professional behaviour when holding a voluntary appointment and not just when in paid employment.

CASE STUDY – STUDENT OR JUNIOR OFFICER

Sector

Any

Scenario

A second-year trainee accountant is due to go on study leave. However, he has been told by his manager to complete some complicated reconciliation work before his leave commences, because a more senior colleague is on long-term sick leave. The deadline suggested is unrealistic, given the complexity of the reconciliation work.

The student feels that he is not sufficiently experienced to complete the work as he would need additional supervision to complete the work to the required standard. The manager is unable to offer any additional support.

If he completes the work within the deadline suggested, he will be unable to meet the expected quality standards of his work and could face repercussions on his return.

He feels threatened and intimidated by the deadline given.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- Objectivity
- **Professional competence and due care**
- Confidentiality
- Professional behaviour

Threats and safeguards which could apply

- Self-interest
- Self-review
- Advocacy
- Familiarity
- **Intimidation**

Suggested course of action

The student should explain to his manager that he does not have sufficient time to complete the allocated work.

He should explain that if he commences the work, he would require supervision from a more senior member of staff due to its complexity.

It is unlikely that he could finish all of the work before his study leave commences: however, he could suggest completing it on his return.

Comments

Integrity – by being open and honest about the situation.

Professional competence and due care – he has correctly refused to complete work that is technically beyond his abilities, but he suggested to his line manager an alternative approach which would enable him to complete the suggested work with the necessary supervision.

Professional behaviour – in that he raised his concerns with his manager, and provided an alternative solution.

CASE STUDY – PERFORMANCE INFORMATION

Sector

NHS

Scenario

The deputy director of finance and information in an NHS trust has overall responsibility for the preparation and submission of non-financial performance information.

The newly appointed director of finance and information is putting considerable pressure on him to ensure that the collection and reporting of this year's performance information will result in the organisation retaining its 'excellent' rating by the Healthcare Commission. He is willing for performance information that is not wholly accurate or checked to be reported if it enhances the performance of the trust.

The deputy director is aware that some specialities have had difficulties hitting the targets during the last year due to funding constraints and staff shortages. From his scrutiny of the information systems he is concerned that the correct performance information could highlight severe performance shortfalls within the trust.

Furthermore, the deputy director is also aware of some instances where departments are double counting activity and are 'upcoding' patient spells to increase the income to the trust. This was highlighted in a recent audit report that will shortly be submitted to the audit committee.

The director is putting considerable pressure on the deputy director to conceal some of these performance issues in the short term whilst he reviews the position and puts in place a rectification plan.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- **Objectivity**
- **Professional competence and due care**
- Confidentiality
- Professional behaviour

Threats and safeguards which could

- **Self-interest**
- Self-review
- Advocacy
- Familiarity
- **Intimidation**

Sector

It is important that the deputy director maintain a good working relationship with the director. However, he should provide a rational, firm and honest statement of the position which is delivered with authority to the director.

As the responsible officer (which is a position that cannot be abdicated), the deputy director must explain to the director that the department has an absolute duty to ensure that the integrity of the performance information is maintained. This means that the reported information is a true reflection of the performance within the trust. This is enshrined in the Code of Conduct for NHS Managers issued by the Department of Health on 9 October 2002, which stated, *inter alia*, "I will be honest and will act with integrity and probity at all times. I will not make, permit or knowingly allow to be made, any untrue or misleading statement relating to my own duties or the functions of my employer".

However, the deputy director should prepare an action plan for the director that:

- (a) ensures that those collating the information are aware of the procedures for recording performance data and that they are aware of and follow the relevant definitions and guidance documents
- (b) introduces checks within the department to confirm that the correct processes and arrangements are being followed
- (c) requires reporting managers to verify, in writing, the completeness and veracity of the information that is submitted
- (d) reinforces the message to all involved about the need for timely and accurate submission of information.

Following circulation of the audit report, departments will need to be reminded that the correct performance information should be collected and agree a follow-up report with the audit committee in, say, six months' time.

Comments

Integrity – by identifying that there could be issues relating to the preparation of the performance information. The deputy director could protect his own position by following the wishes of the director, but he is not acting with a self-interest – he is trying to maintain the integrity of the information.

Objectivity – the deputy director is not swayed by the views of or intimidation from the director, especially as he is seeking to ensure the performance information reported is a true reflection of the position in the trust.

Professional competence and due care – by acknowledging that there are some specific issues relating to the collation and processing of information in the department, and putting an action plan in place, the deputy director is acknowledging that improvements need to be made.

CASE STUDY – POLITICAL PRESSURE

Sector

Local authority

Scenario

The end-of-year accounts for a local authority have been closed and prepared. They will soon be adopted by council, ready for audit.

The head of social services finance has become aware that some work has been commissioned from a consultant which has resulted in a proposal to close an elderly persons' care home. Members want to suppress this information from becoming public knowledge because there is a forthcoming by-election in the electoral division where the care home is located. The consultants have agreed not to submit their fees, which are significant, for payment until after the by-election.

Normal accounting treatment would require consultants' fees to be included in the accounts. Additionally, the actual cost of the potential closure may need to be included as a provision and a contingent liability. As the cost would be a material item, the accounts may also need to include narrative explaining the policy decision. However, the members will not make their decision known until the election is held, which is after the formal audit is completed and the opinion is signed.

The head of social services finance would like to highlight his concerns to the S151 officer, who is unaware of this matter, and the external auditor, so that they are aware that the policy decision is being delayed, as the item may need to be included in the accounts under FRS 12.

IFAC principles involved

State which principles apply and comment on their relevance:

- **Integrity**
- Objectivity
- **Professional competence and due care**
- Confidentiality
- **Professional behaviour**

Threats and safeguards which could apply

- Self-interest
- Self-review
- Advocacy
- Familiarity
- **Intimidation**

Suggested course of action

The head of social services finance needs to formally raise his concerns to the S151 officer so that he is aware of:

- the significant omission of the consultants' fees
- members' decision to delay formalising their decision.

He should also request that the external auditor be informed, but feels that this would be most appropriately communicated by the S151 officer. If the matter is not raised with the external auditor, it could be a potential item for inclusion in the auditors 'Report to those Charged with Governance', issued at the end of the audit.

The consultants' fees, which are significant, should be included in the accounts and he and the S151 officer should discuss whether the accounts should reflect the pending policy decision of the home closure or whether it is more appropriate to exclude it.

It should be explained to the members who want to delay the formal approval of the home closure that although they have not formally made a policy decision, there could be an impact on the current accounts and that the decision may need to be mentioned. The head of social services finance could liaise with another responsible director (eg the director of social services) so that senior management within the authority are fully aware of the implications of the members' policy decision.

Comments

Integrity – the head of social services finance needs to report the facts to the S151 officer so that he is fully aware of the members' plans. The head of social services finance cannot change the accounts on his own, and as the accounts will shortly be adopted by council, the S151 officer would need to instigate and approve any amendment that could be significant or material in nature. Furthermore, the involvement of the external auditor on a material item would be best initiated by the S151 officer.

Professional competence and due care – the current policy decision means that the accounts could be materially misstated as they stand. In order to demonstrate competence, the head of social services finance needs to raise his concerns and make the S151 officer aware.

Professional behaviour – the head of social services finance is aware that the accounts may need to include the proposed closure. By raising this matter, he is demonstrating that he is not content with a situation that could reflect badly on his department and on him professionally.

CASE STUDY – DEALING WITH STAFF, PERFORMANCE ISSUES

Sector

Any

Scenario

A junior member of staff responsible for account reconciliations has just returned to fulltime work after taking special leave to care for her elderly mother. For financial reasons she needs to work full-time.

She begins to have difficulties with her mother's home care arrangements, causing her to miss a number of team meetings, which usually take place at the beginning of each day, and to leave work early. She is very competent in her work but her absences are putting pressure on her and her overworked colleagues.

Her manager, the chief accountant, is aware that targets are not being met. One of her colleagues is beginning to make comments that "a woman's place is in the home" and is undermining her at every opportunity, putting her under even greater stress.

IFAC principles involved

State which principles apply and comment on their relevance:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- **Professional behaviour**

Threats and safeguards which could apply

- Self-interest
- Self-review
- Advocacy
- Familiarity
- **Intimidation**

Suggested course of action

The chief accountant has to balance the needs of the individual with those of the organisation, whilst being fair to other members of staff. He must ensure that his department is managing its workload properly so that it is performing effectively and that all staff needs are being considered.

He could suggest a more flexible approach to team meetings so that they do not always take place first thing in the morning. At the same time, he might consider what work could be done from home. Clearly, he also needs to deal with the other member of staff, who needs to be reminded about proper conduct and that his behaviour amounts to harassment.

It is the chief accountant's responsibility to ensure that his team have the necessary professional competence to carry out their responsibilities and that they are appropriately trained for their roles.

Comments

Professional behaviour – the chief accountant has acknowledged that the difficulties facing his employee should be addressed. Considering the issues and trying to identify a solution enables him to demonstrate that he is behaving professionally and trying to resolve the difficulties that the junior member of staff faces.

CASE STUDY – SELF-EMPLOYED CONSULTANT

Sector

Local government

Scenario

A director of finance has recently retired, and she has decided to become a self-employed consultant.

In her first roles since retirement, she is filling an interim manager/consultant position in two organisations neighbouring her previous employer.

She has been employed due to her previous senior officer experience and her understanding of the local area.

The work being completed will include reference to politically sensitive and confidential information that cannot be shared between clients. However, she is aware of confidential information from her previous role that would be beneficial to both projects she is working on.

IFAC principles involved

State which principles apply and comment on their relevance:

- Integrity
- Objectivity
- Professional competence and due care
- **Confidentiality**
- Professional behaviour

Threats and safeguards which could apply

- Self-interest
- Self-review
- Advocacy
- **Familiarity**
- Intimidation

Suggested course of action

The retired director of finance should not share any confidential information between the clients nor should she use any confidential information from her former authority.

Although her previous experience is valuable when completing the assignment, she should exercise very careful judgement when determining what information can or cannot be shared.

Should she want to use any politically sensitive or confidential information, she should seek formal approval for sharing or disclosing any further information from the relevant authority.

Comments

Confidentiality – although she has been employed by the two organisations because of her previous experience, she should ensure that she does not share any information which would be politically sensitive or confidential to one of the organisations.

PART 5 - Malvern Hills District Council Petitions Scheme

Malvern Hills District Council recognises that petitions are an important way in which people can raise their concerns. We have provided a pro forma to assist you in drawing up your petition which can be accessed on our website.

Petitions in paper form can be sent to Malvern Hills District Council at the address below:

Democratic Services
Malvern Hills District Council
The Council House
Avenue Road
Malvern
WR14 3AF

Petitions can also be presented to a meeting of the Executive Committee or Council as part of the public participation at those meetings. Dates can be found from the website.

If you would like to present your petition to the meeting, or would like your Councillor or someone else to present it on your behalf, please email committee@malvernhills.gov.uk or telephone 01684 862416 preferably 5 working days before the meeting and we will talk you through the process.

Your petition will not be debated at that meeting but will be passed to the appropriate officer or Councillor for a response to you. The response to your petition will depend on the number of signatures as detailed below, however if your petition has received 750 signatures or more it will be scheduled for a Council debate and if this is the case we will let you know whether this will happen at the next meeting or a later meeting of the Council.

What are the guidelines for submitting a petition?

Anyone who lives, works or studies in the Malvern Hills District, including under 18s, can sign or organise a petition.

Petitions must include:

- a clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take or cease to take
- contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, we will treat the first named signatory as the petition organiser
- the name and address and signature of every person supporting the petition

Where the Monitoring Officer, in consultation with the Portfolio Holder for Customer Services, HR and Performance, considers a petition to be vexatious, abusive or otherwise inappropriate it will not be accepted.

Last updated : May 2017

PART 5 - Malvern Hills District Council Petitions Scheme

In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply.

If a petition does not follow the guidelines set out in this Scheme, the Council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

Petition Scheme Summary of Council Response

Less than 100 signatures

We will acknowledge receipt within 10 working days and tell you how we intend to deal with your petition, including giving a timescale for providing a substantive response if we cannot do this within the initial 10 working days

100 or more signatures

In addition to the above we will include details of the petition and our response to it on the Council's website for others to see.

If the petition organiser is not satisfied with the Council's response, you can ask for this to be reviewed by the Overview and Scrutiny Committee

350 or more signatures

You may ask for a relevant senior officer of the Council to appear before a meeting of the Overview and Scrutiny Committee to give an account of the matters referred to in the petition

750 or more signatures

Unless the petition is one asking for a senior officer to appear before Overview & scrutiny Committee, it will automatically be scheduled for a debate at a meeting of the full Council and the petition organiser will be invited to attend.

This scheme does NOT apply where other statutory procedures are applicable or to petitions in respect of planning applications, licensing applications or other regulatory functions. Such petitions will continue to be presented to the appropriate Committee considering the application, subject in the case of Licensing Act matters to restrictions on relevant representations.

All other petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

Last updated : May 2017

PART 5 - Malvern Hills District Council Petitions Scheme

What will the Council do when it receives my petition?

An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again with a more substantive response if this is not available within those 10 working days.

If the petition has 100 or more signatories to it, information on the petition along with details of the Council's subsequent response will also be published on our website for others to see. Correspondence relating to the petition may also be published (all personal details will be removed).

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgment will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation or consideration, we will tell you the steps we plan to take.

If the petition relates to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or is on a matter where there is already an existing right of review or appeal, it falls outside this Scheme and other procedures apply. If you are unsure, we are happy to advise.

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

How will the Council respond to petitions?

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a Council meeting or relevant Committee
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the Council's Overview and Scrutiny Committee*
- calling a referendum
- writing to the petition organiser setting out our views about the request in the petition

Last updated : May 2017

PART 5 - Malvern Hills District Council Petitions Scheme

*Overview and Scrutiny Councillors are responsible for scrutinising the work of the Council – and the Committee has the power to hold the Council’s decision makers to account.

In addition to these steps, the Council may consider all the specific actions it can potentially take on the issues highlighted in a petition.

If your petition is about something over which the Council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information on the services for which the Council is responsible at <http://www.malvern hills.gov.uk>

If your petition is about something that a different Council is responsible for we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other Council, but could involve other steps. In any event we will always notify you of the action we have taken.

Full Council Debates

If a petition contains more than 750 signatures it will be debated by the full Council unless it is a petition asking for a senior Council officer to give evidence at a public meeting – see below.

(Petitions containing less than 750 signatures can also be presented to the full Council or the Executive Committee in accordance with our public participation scheme indicated above, although they will not trigger a debate on the issue).

This means that the issue raised in the petition meeting this threshold of signatures will be discussed at a meeting of Council – at which all 38 District Councillors can attend and speak. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by Councillors for a maximum of 15 minutes.

The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee.

The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

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Officer Evidence

Your petition may ask for a senior Council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior Council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision.

If your petition contains at least 350 signatures, a relevant senior officer i.e. the Chief Executive, Monitoring Officer, Responsible Financial Officer (s.151) or another Head of Service will give evidence at a public meeting of the Council's Overview and Scrutiny Committee.

You must give grounds for your request which must relate to the discharge of functions for which the officer is responsible, not personal circumstances or character. Vexatious, abusive or otherwise inappropriate petitions will not be accepted.

You should be aware that the Overview & Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs or is not responsible for the issue in the petition.

The Committee may also decide to call the relevant Councillor to attend the meeting. Petitioners will not be able to question the officer directly but you will be able to suggest questions to the Committee Chairman up to three working days before the meeting. The report or recommendations arising from that meeting will be copied to the petition organiser.

E-Petitions

The Council recognises the importance of e-petitions which can be created and submitted through our website and where other people can then add their support. We are working to develop a process for enabling this and expect to have a system in place by December 2010.

E-petitions must follow the same guidelines as paper petitions – see above. The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. You can choose a shorter or longer timeframe, up to a maximum of 12 months.

What can I do if I feel my petition has not been dealt with properly?

If the petition contained at least 100 signatures, once the Council has informed the organiser of the steps to be taken in response to the petition, if you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the Council's Overview and Scrutiny Committee to review the adequacy of the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects

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for a review, if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate.

The Overview & Scrutiny Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to Executive Committee and arranging for the matter to be considered at a meeting of the full Council.

Once the appeal has been considered the petition organiser will be informed of the results within 10 working days. The results of the review will also be published on our website.

In the case of petitions containing fewer than 100 signatures, if you are dissatisfied with the Council's response you may write to the Council's Chief Executive in accordance with the Council's complaints procedure.

For further information on any matter relating to this scheme, please contact our Democratic Services team by emailing committee@malvern hills.gov.uk or by telephone on 01684 862416.

PART 5 - Petitions Scheme - Summary

<i>Less than 100 signatures</i>	<i>We will acknowledge receipt within 10 working days and tell you how we intend to deal with your petition, including giving a timescale for providing a substantive response if we cannot do this within the initial 10 working days</i>
<i>100 or more signatures</i>	<i>In addition to the above we will include details of the petition and our response to it on the Council's website for others to see. If the petition organiser is not satisfied with the Council's response, you can ask for this to be reviewed by the Overview & Scrutiny Committee</i>
<i>350 or more signatures</i>	<i>You may ask for a relevant senior officer of the Council to appear before a meeting of Overview & Scrutiny Committee to give an account of the matters referred to in the petition</i>
<i>750 or more signatures</i>	<i>Unless the petition is one asking for a senior officer to appear before Overview & scrutiny Committee, it will automatically be scheduled for a debate at a meeting of the full Council and the petition organiser will be invited to attend.</i>

Malvern Hills District Council recognises that petitions are an important way in which people can raise their concerns.

This scheme does NOT apply where other statutory procedures are applicable or to petitions in respect of planning applications, licensing applications or other regulatory functions. Such petitions will continue to be presented to the appropriate Committee considering the application, subject in the case of Licensing Act matters to restrictions on relevant representations.

All other petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

Last updated: October 2015

