

# PART 7

## CODES AND PROTOCOLS

**Brent Members Code of Conduct**

**Planning Code of Practice**

**Licensing Code of Practice**

**Code of Practice on Publicity**

**Code of Corporate Governance**

**Protocol for Member/Officer Relations**

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## BRENT MEMBERS CODE OF CONDUCT

This Code of Conduct incorporates the whole of the model code of conduct for authorities operating executive arrangements set out in Statutory Instrument 2001/3575. It also sets out the ten principles which are to govern the conduct of members and which principles all members are required to adhere to.

### PART 1 GENERAL PROVISIONS

#### Scope

1. (1) A member must observe the authority's code of conduct whenever he or she:-
  - (a) conducts the business of the authority;
  - (b) conducts the business of the office to which he or she has been elected or appointed; or
  - (c) acts as a representative of the authorityand references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority:-
  - (a) on another relevant authority, he or she must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, he or she 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.
- (4) In this code, "member" includes a co-opted member of an authority.

#### General Obligations

2. A member must:-
  - (a) promote equality by not discriminating unlawfully against any person;
  - (b) treat others with respect; and
  - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
3. A member must not:-
  - (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature,

without the consent of a person authorised to give it, or unless he or she is required by law to do so; nor

- (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.
5. A member:-
- (a) must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of the authority:-
    - (i) act in accordance with the authority's requirements; and
    - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions:-
- (a) have regard to any relevant advice provided to him or her by:-
    - (i) the authority's Chief Finance Officer acting in pursuance of his or her duties under section 114 of the Local Government Finance Act 1988; and
    - (ii) the authority's Monitoring Officer acting in pursuance of his or her duties under section 5(2) of the Local Government and Housing Act 1989.
  - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.
- (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.
7. A member must, if he or she becomes aware of any conduct by another member which he or she reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so.

**PART 2  
INTERESTS**

**Personal Interests**

8. (1) A member must regard himself or herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or –
- (a) any employment or business carried on by such persons;
  - (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
  - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
  - (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

**Disclosure of Personal Interests**

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

**Prejudicial Interests**

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.

- (2) A member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to –
- (a) another relevant authority of which he or she is a member;
  - (b) another public authority in which he or she holds a position of general control or management;
  - (c) a body to which he or she has been appointed or nominated by the authority as its representative;
  - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he or she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
  - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
  - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
  - (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

### **Overview and Scrutiny Committees**

11. (1) For the purposes of this Part, a member must if he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself or herself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –
- (a) committees or sub-committees; or
  - (b) joint committees or joint sub-committees, of which he or she may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

### **Participation in Relation to Disclosed Interests**

12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered

at that meeting, unless he or she has obtained a dispensation from the authority's standard's committee;

- (b) not exercise executive functions in relation to that matter; and
  - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
- (a) overview and scrutiny committees; and
  - (b) joint or area committees

to the extent that such committees are not exercising functions of the authority or its executive.

13. (1) For the purposes of this Part, "meeting" means any meeting of –
- (a) the authority;
  - (b) the executive of the authority; or
  - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

### **PART 3 THE REGISTER OF MEMBERS' INTERESTS**

#### **Registration of Financial and Other Interests**

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his or her election or appointment to office (if that is later), a member must register his or her financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him or her;
  - (b) the name of the person who employs or has appointed him or her, the name of any firm in which he or she is a partner, and the name of any company for which he or she is a remunerated director;
  - (c) the name of any person, other than a relevant authority, who has made a payment to him or her in respect of his or her election or any expenses incurred by him or her in carrying out his or her duties;
  - (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
  - (e) a description of any contract for goods, services or works made between the authority and himself or herself or a firm in which he or she is a

- partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
- (f) the address or other description (sufficient to identify the location) of any land in which he or she has a beneficial interest and which is in the area of the authority;
  - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
  - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he or she has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his or her other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's Monitoring Officer of his or her membership of or position of general control or management in any –
- (a) body to which he or she has been appointed or nominated by the authority as its representative;
  - (b) public authority or body exercising functions of a public nature;
  - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (d) body whose principal purposes include the influence of public opinion or policy; and
  - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's Monitoring Officer of that change.

### **Registration of Gifts and Hospitality**

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's Monitoring Officer of the existence and nature of that gift or hospitality.

### **THE 10 GENERAL PRINCIPLES OF CONDUCT**

18. Members are reminded of the 10 General Principles of Conduct (as set out below) which are to govern the conduct of members when acting in an official capacity or when acting in any way which is connected to or relates to the Council. In addition, a member's conduct must be governed by principles 2 and 8 at all times.

**THE 10 GENERAL PRINCIPLES OF CONDUCT**

***Selflessness***

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

***Honesty and Integrity***

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

***Objectivity***

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

***Accountability***

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

***Openness***

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

***Personal Judgement***

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

***Respect for Others***

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

***Duty to Uphold the Law***

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

***Stewardship***

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

***Leadership***

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.



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## PLANNING CODE OF PRACTICE

### **Purpose of this Code**

The Planning Code of Practice has been adopted by Brent Council to regulate the performance of its planning function. Its major objectives are to guide Members and officers of the Council in dealing with planning related matters and to inform potential developers and the public generally of the standards adopted by the Council in the exercise of its planning powers. The Planning Code of Practice is, in addition to the Brent Members Code of Conduct, adopted by the Council under the provisions of the Local Government Act 2000. The purpose of the Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters. The provisions of this code are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members of the Planning Committee making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members of the Council in dealing with and recording approaches from developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

### **General**

1. Members of the Planning Committee shall determine applications in accordance with the Unitary Development Plan unless material considerations indicate otherwise. The Brent Members Code of Conduct and the law relating to Brent Council members' personal and prejudicial interests must be complied with throughout the decision making process. Decisions should not be influenced by personal or prejudicial interests of Councillors or because of undue pressure exerted by applicants, agents or third parties. This Code sets out further rules applicable to the planning process in Brent.

### **Review of Code of Practice**

2. The Borough Solicitor is instructed to commission a report independent of the planning service annually on the operation of this Code of Practice. The report should address the extent of compliance with the Code by officers and members, contain an analysis of decisions being made against officers' recommendations and set out any appropriate recommendations for improvement. This report should be presented annually to the Standards Committee.

### **Accountability and Interests**

3. Members of the Council should not take part in any discussion of, or vote on, any item if they or their relative, friend or associate is the applicant, agent or objector for that matter.
4. If an approach is made to a member of the Planning Committee from an applicant or agent or other interested party in relation to a particular planning application or any matter which may give rise to a planning application, the member of the Planning Committee shall:
  - (i) inform the person making such an approach that such matters should be addressed to officers or to members who are not members of the Planning Committee;
  - (ii) disclose the fact and nature of such an approach at any meeting of the Planning Committee where the planning application or matter in question is considered; and

- (iii) record the approach in the register maintained by the Director of Environment and Culture under paragraph 12 below.
5. Members of the Council who have business or other interests which may bring them into contact with the Council's planning system on a regular basis should not be considered for membership of the Planning Committee.
  6. Members of the Council who are consistently unable to support the Council's planning policies should not be considered by their political group for membership of the Planning Committee.
  7. If the Chair decides to allow a non-member of the Committee to speak, the non-member shall state the reason for wishing to speak. Such a member shall disclose the fact he/she has been in contact with the applicant, agent or interested party if this be the case.
  8.
    - (a) When the circumstances of any member of the Council are such that they have a personal interest in any planning application or other matter, then the member if present, shall declare a personal interest at any meeting where the particular application or other matter is considered, and if the interest is also a prejudicial interest shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the application or other matter.
    - (b) If a member of the Council has a prejudicial interest in a planning application other matter, he/she shall not exercise his or her discretion to require the application or other matter to be referred from officers to the Planning Committee for consideration and nor shall he/she exercise his/her right to request a site visit.
    - (c) For the purposes of this Code, in determining whether a member of the Planning Committee has a prejudicial interest, the exceptions in paragraphs 10(2)(a), (b) and (c) of the Members Code of Conduct will not apply.
  9. For the avoidance of doubt, where a member of the Council is a Freemason or a member of a similar secret society and is aware that the applicant, agent or other interested party in relation to a particular planning application is also a Freemason or a member of the same secret society, the member shall treat this as a prejudicial interest for the purposes of paragraph 8 above.
  10. Where under the provisions of the Constitution two members of the Council ask for an application or other matter to be decided by Committee rather than by officers, their request shall state:
    - (i) the reason(s) why they feel the application or other matter should not be dealt with under delegated powers; and
    - (ii) whether or not they have been approached by any person concerning the application or other matter and if so, by whom.

This information shall then be included in the relevant Planning Committee report.

Unless the request and the necessary supporting information outlined above has been provided by both members at least one week prior to the relevant meeting then the matter proceed to be determined by officers in accordance with their delegated powers.

11. Save as provided by paragraph 8 (b) above, if any member of the Council wishes to request a site visit prior to a meeting of the Planning Committee at which the application in respect of the request is to be considered, they shall provide the following details at least one week before the date of the meeting at which the application is to be considered and a record shall be kept of those details:
- (i) their name;
  - (ii) the reason for the request; and
  - (iii) whether or not they have been approached concerning the application or other matter and if so, by whom.

If the details are not provided then the site visit shall not proceed. Alternatively, during any meeting of the Planning Committee, any member of the Planning Committee may request a site visit in respect of any application on the agenda of the meeting. The member must give the reason for the request.

12. The Director of Environment and Culture shall maintain a register of contact made by applicants, agents or interested parties with individual members of the Council on each and every planning application, in which members of the Planning Committee must record approaches referred to in paragraph 4 and other members of the Council may record such approaches if they feel it is appropriate.
13. If any officer of the Council who is involved in making recommendations or decisions on planning applications has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Director of Environment and Culture and take no part. The declaration of such interest shall also be recorded in the minutes of the meeting. This public register to be available for inspection at Planning Committee meetings.
14. No officer of the Council shall engage in any paid work for any town planning matter for which Brent is the Local Planning Authority other than on behalf of the Council.
15. In relation to all matters not addressed above, all such officers shall comply with the Royal Town Planning Institute Practice Advice Note No.5 relating to Consultancy by Current and Former Employees or any guidance replacing this.

**Site Visits by Members of the Planning Committee with Officers**

16. The purpose of a site visit is to gain information relating to the land or buildings which are the subject of the planning application or other matter to be considered by the Planning Committee. A site visit may also assist members of the Planning Committee in matters relating to the context of the application or other matter in relation to the characteristics of the surrounding area. Members attending the site visit should avoid expressing opinions on site visits to any person present.
17. Members of Planning Committee shall not enter any premises which are the subject of a planning application or other matter or known by them to be likely to become such in order to meet the agent, applicant or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances (for

instance where a member of the Planning Committee is unable to attend the site visit), any visit made shall be accompanied by a planning officer.

18. On site visits applicants or other interested parties shall only be permitted to point out to those members of the Planning Committee attending the site visit the features to look at either on the site or in the vicinity, which are relevant to the application or other matter. No discussion will take place on the merits of the application or other matter.
19. Whilst on site visits, members of Planning Committee shall keep together as a group and shall not engage individually in discussion with applicants or objectors.

#### **Membership and Jurisdiction of the Planning Committee**

20. When the membership of Planning Committee is determined, care shall be taken to ensure that for each Ward there is always at least one Councillor who is not a member of Planning Committee. This is so that there will always be a Councillor who is not a member of the Planning Committee with whom residents will be able to discuss planning matters.
21. Any briefings which may be held prior to the Planning Committee meetings shall be open to all members (and alternates) of the Planning Committee. These briefings can help to speed up decision making by giving officers notice of additional information members of the Planning Committee may require at the meeting.
22. All members of Planning Committee, and in particular the Chair, shall be informed from time to time about the relevant provisions concerning access to information contained in the Local Government Act 1972 and in the event of any dispute between members of the Planning Committee and officers as to the application of the 1985 Act, the advice of the Borough Solicitor or his or her representative shall be obtained forthwith.

#### **Meetings of the Planning Committee**

23. No material revision to any planning application which might lead to a change in the recommendation of officers shall be considered at Planning Committee unless it has been submitted at least fourteen clear days before the relevant Planning Committee meeting, and has been the subject of a full appraisal by officers.
24. If the Planning Committee wishes to grant planning permission contrary to officers' recommendations the application shall be deferred to the next meeting of the Committee for further consideration. Following a resolution of "minded to grant contrary to the officers' recommendation", the Chair shall put to the meeting for approval a statement of why the officers recommendation for refusal should be overturned, which, when approved, shall then be formally recorded in the minutes. When a planning application has been deferred, following a resolution of "minded to grant contrary to the officers' recommendation", then at the subsequent meeting the responsible officer shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for granting permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting permission, and a summary of the planning reasons for that decision shall be given, which reasons shall then be formally recorded in the minutes of the meeting.
25. When the Planning Committee vote to refuse an application contrary to the recommendation of officers, the Chair shall put to the meeting for approval a statement of the planning reasons for refusal of the application, which if approved shall be entered into the minutes of that meeting. Where the reason for refusal

proposed by the Chair is not approved by the meeting, or where in the Chair's view it is not then possible to formulate planning reasons for refusal, the application shall be deferred for further consideration at the next meeting of the Committee. At the next meeting of the Committee the application shall be accompanied by a further written report from officers, in which the officers shall advise on possible planning reasons for refusal and the evidence that would be available to substantiate those reasons. If the Committee is still of the same view then it shall again consider its reasons for refusing permission which shall be recorded in the minutes of the meeting.

26. Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their deliberations. Members of the Planning Committee shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors. Members of the Planning Committee should not make up their mind before hearing and considering all relevant information at the meeting and should not declare in advance of the meeting, how they intend to vote on a particular application or other matter.
27. Members of the Planning Committee should not speak to members of the public (including applicants and agents) during a meeting of the Planning Committee or immediately prior to or after the meeting concerned, other than where permitted by this Code or Standing Orders.
28. When questioning members of the public or the applicant who have spoken at a meeting of the Committee, members of the Planning Committee shall ensure that their questions relate only to planning matters relevant to the particular application.
29. The minutes of the Planning Committee shall record the names of those voting in favour, against or abstaining:
  - (i) on any resolution of "Minded to grant or minded to refuse contrary to Officers Recommendation";
  - (ii) on any approval or refusal of an application referred to a subsequent meeting following such a resolution.
30. A member of the Planning Committee shall not vote in relation to any planning matter unless he or she has been present in the meeting of the Planning Committee throughout the consideration of that particular matter as required by Standing Orders . Any dispute as to whether the member of the Planning Committee in question should be permitted to vote shall be decided by the Chair having taken appropriate advice from legal or other officers present.
31. Unless all members of the Planning Committee indicate that they intend to vote in accordance with the officers' recommendation on a particular item, the responsible officer shall be allowed time, at the beginning of the consideration of each application, to summarise his or her advice. If after discussion it appears that any member of the Planning Committee is minded to vote contrary to the officers' recommendation, the officer shall be allowed a further opportunity to respond to new points which have been raised, and to address the implications of a contrary decision.

### **Member and Officer Relations**

32. Any criticism by members of Planning Committee of officers in relation to the handling of any planning matter shall be made in writing to the Director of

Environment and Culture and not to the officer concerned. No such criticism shall be raised in public.

33. If any officer feels or suspects that pressure is being exerted upon him or her by any member of the Council in relation to any particular planning matter, he or she shall forthwith notify the matter in writing to the Director of Environment and Culture.
34. Members of Planning Committee shall not attempt in any way to influence the terms of the officers' report or recommendation upon any planning matter.

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# LICENSING CODE OF PRACTICE

## **Purpose of this Code**

The Licensing Code of Practice has been adopted by Brent Council to regulate the performance of its licensing function. Its major objectives are to guide members and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. The Alcohol and Entertainment Licensing Sub-Committees exercise functions under the Licensing Act 2003 (the sale by retail of alcohol, the supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment), and the General Purposes Licensing Sub-Committee exercises the Council's licensing functions under all other legislation. Except where otherwise stated, references in this Code are to both committees and the expression "Licensing Committee" should be interpreted accordingly. The Licensing Code of Practice is in addition to the Brent Members Code of Conduct adopted under the provisions of the Local Government Act 2000. The provisions of this code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a consistent and open manner and that members making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved. This Code also draws members attention to the different status of the Licensing Committees from normal Council committees by their quasi-judicial nature and the requirement to strictly follow the rules of natural justice.

## **The Code**

On the Licensing Committees, Members are exercising quasi-judicial functions and as a consequence have a duty to follow the Rules of Natural Justice and accordingly the following provisions apply:

### **1. General provisions as to conduct**

- 1.1 No one should decide a case where they are not impartial or seen to be impartial.
- 1.2 Accordingly, when the circumstances of any elected member are such that they have a personal interest in any licensing application, then the member, if present, shall declare a personal interest at any meeting where the particular application is considered, and if the interest is also a prejudicial interest shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the application.
- 1.3 Additionally, Members should not determine a particular application when they are actually biased in favour or against the application or it might appear to a fair and informed observer that there was real possibility of bias.
- 1.4 Members of the Licensing Committees should not determine any application if the member, his/her relative, friend or associate is the applicant or agent for that matter or an objector.
- 1.5 Members who have business or other interests which may bring them into contact with the Council's licensing system on a regular basis should not be considered for membership of the Licensing Committees.

- 1.6 If an approach is received by a member of a Licensing Committee from an applicant, objector, their agents or an interested party in relation to a particular licensing application or any matter which may give rise to a licence application, the member shall:
- (a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected members who are not members of the Licensing Committees;
  - (b) forthwith notify in writing to the Director of Health, Safety and Licensing the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned;
  - (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.
- 1.7 Any elected member who is not a member of the General Purposes Licensing Sub-Committee but who is a member for the Ward in which the premises are located (or a member of an adjoining Ward which is affected by the application) shall be entitled to address a meeting of the General Purposes Licensing Sub-Committee on the subject of a particular licence application. However he/she shall disclose whether he/she has been in contact with the applicant, objectors their agents or an interested party. (This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees)
- 1.8 No amendment to any licence application shall be considered at the Licensing Committees unless it can be taken into account without causing prejudice to objectors or persons who might otherwise have objected.

## **2. Site visits**

- 2.1 If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committees. A site visit may also assist members in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Members should avoid expressing opinions during site visits to any person present.
- 2.2 During site visits, members of the Licensing Committees shall not engage individually in discussion with applicants or objectors.
- 2.3 On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Members features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.
- 2.4 A Member of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record kept of:
- (i) their reason for the request; and
  - (ii) whether or not they have been approached concerning the application and if so, by whom



and unless the member provides these at least one week prior to the relevant meeting, the site visit will not proceed.

- 2.5 Members of Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances (for instance where a member is unable to attend a site visit that has been arranged), any visit made shall be accompanied by a licensing officer.

### **3. Involvement of officers**

- 3.1 Members of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 3.2 Any criticism by Members of the Licensing Committees or an officer in relation to the handing of any licence application shall be made in writing to the Director of Health Safety and Licensing and *not to the Officer handling the application*. No such criticism shall be raised in public.
- 3.3 If any officer feels or suspects that pressure is being exerted upon him/her by any member of the Council in relation to any particular application, he or she shall forthwith notify the matter in writing to the Director of Health, Safety and Licensing.
- 3.4 If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Director of Health, Safety and Licensing and take no part. This public register to be available for inspection at Licensing Committee meetings.
- 3.5 No officer of the Council shall engage in any paid work for any licensing matter for which Brent is the Licensing Authority other than on behalf of the Council.

### **4. Conduct of meetings**

- 4.1 Members of the Licensing Committees shall refrain from personal abuse and party-political considerations shall play no part in the committee's deliberations. Members shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors. Members should not make up their minds before hearing and considering all relevant information at the meeting and should not declare in advance of the meeting how they intend to vote on a particular application.
- 4.2 The Director of Health, Safety and Licensing shall maintain a register of contact made by applicants, licensees, objectors, agents or interested parties with individual members of the Council on each and every licence application.
- 4.3 Members of the Licensing Committees should not speak to members of the public (including applicants and agents) during a meeting of the Licensing Committee or immediately prior to or after the meeting concerned other than in accordance with this Code or Standing Orders.

- 4.4 When questioning witnesses at a meeting of a Licensing Committee, members shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 4.5 The Licensing Committee should hear both sides of the case. This means that the Committee must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity *in advance of the hearing* to prepare their case in answer to the objectors.

It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence several times.

Hearsay evidence, whilst admissible, must be treated with great reservation by members, who must make an assessment of its weight and credibility.

- 4.6 When new matters are raised as objections by any person at a hearing of the General Purposes Licensing Sub-Committee, the Committee is not obliged to hear them. However, if members feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees, as new objections cannot be raised at the hearing)

## 5 **Licensing Sub-Committee Procedures**

### *Alcohol and Licensing Sub-Committee*

(A) The following procedure should be followed at meetings of the Alcohol and Entertainment Licensing Sub-Committees.

A.1 The Chair will ask the parties to the hearing to identify themselves and confirm whether they are represented or not.

A.2 The sub-committee will consider any requests that have been made by any party for another person to speak at the hearing.

A.3 The Chair will explain the procedure to be followed at the hearing.

A.4 Where there are a number of parties bringing representations either in support or objection to the granting of the licence application officers will attempt before the hearing to agree a limit in the number of people who will address the sub-committee.

A.5 If any party has indicated that they will not attend or failed to indicate whether or not they will attend and is absent, the Sub-Committee may hold the hearing in that party's absence or decide to adjourn.

A.6 A Licensing Officer will give details of the application and of the number and type of representations received as set out in the papers circulated.

A.7 Persons who have made representations will be allowed to address the sub-committee for up to 5 minutes each (unless the Chair permits a longer period). They should not repeat what is already set out in their representations or notice. In their address they should provide clarification on any points previously requested by the Council. Petitions will be treated as representations provided

they meet the requirements for relevant representations set out in the Licensing Act 2003.

A.8 The order in which persons making representations shall be called to speak is as follows;

- i. Statutory Parties including the Police, Environmental Health, Fire Authority, Child Protection Unit or other bodies as appropriate
- ii. Interested parties making representations in objection to the licence application
- iii. Interested parties making representations in support of the licence application

A.9 The members of the sub-committee may ask questions of the person making representations after their address.

A.10 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.11 Where a person making relevant representations has requested that another person be permitted to speak and the sub-committee have allowed this under 2 above, they will be entitled to speak for up to 5 minutes (unless the chair permits a longer period) after questioning of the objector who made the request.

A.12 The members of the sub-committee may ask questions of such other person after they have spoken.

A.13 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.14 The same procedure as set out in 2.7 to 2.11 above is followed in respect of the applicant.

A.15 The members of the sub-committee may ask further questions of any party or other person allowed to appear at this stage.

A.16 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.

A.17 The sub-committee will consider its decision in private save that the licensing officer, legal adviser and committee clerk will be entitled to remain.

A.18 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.

A.19 Documentary evidence will only be considered by the Sub-Committee if this has been provided to the Council and the other party (or parties) prior to the hearing, or with the consent of other parties, at the hearing.

*(B) General Purposes Licensing Sub-Committee*

The following procedure should be followed at meetings of the General Purposes Licensing Sub-Committee.

B.1 The Chair outlines details of the application

B.2 The Chair invites identification of persons at the meeting:

- the applicant;
- those attending to object or give evidence; and
- those Officers and Members forming the Committee.

B.3 The Chair outlines the procedure of the hearing to those present

B.4 The Objectors state their case:

- The individual objectors (or their representatives) will be invited to state their case;
- The applicant (or their representative) will be invited to question the objectors or their witnesses; and
- Members of the Committee may ask questions of the objectors through the Chair.

B.5 Non-Members of the Committee (if any present) will address the Committee

- Non-members who are entitled to address the Committee (see 1.6 above) and wish to, will be invited to do so.
- The applicant (or their representative) will be invited to question the non-members who have spoken.
- The objectors (or their representative) will be invited to question such non-members.
- Members of the Committee may ask questions of such non-members through the Chair.

B.6 The Technical Officers Report

- Where appropriate, technical officers advising the Committee will make their observations.
- The applicant and objectors will be invited to ask questions of the technical officers.
- Members of the Committee may ask questions of the technical officers through the Chair.

B.7 The Applicants State Their Case

- The applicant is invited to state their case.
- The objectors (or their representative) will be invited to question the applicant.

- Members of the Committee may ask questions of the applicant through the Chair.

#### B.8 Summing Up

- The objectors will be permitted to “Sum Up”.
- The applicant will be permitted to “Sum Up”.

### 6. **Making the decision**

- 6.1 The decision whether or not to grant a licensing application is a decision for the members of the Licensing Committee only. [*The assessment of the weight and credibility of evidence is for Committee members alone to decide.*]
- 6.2 Members shall retire to decide the matter in closed session. The Legal Officer, Licensing Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer and Licensing Officer will only provide advice on legal issues relating to the application.
- 6.3 In accordance with regulations, members of the Alcohol and Entertainment Licensing Sub-Committees should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
  - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 6.4 The Licensing Committee will return to open session to announce its decision, and will confirm its decision in writing with reasons within 5 working days (in respect of the Alcohol and Licensing Sub-Committee) and 7 days (in respect of the General Purposes Licensing Committee). The written notice will set out the rights of appeal against a decision.
- 6.5 Members own knowledge of the circumstances surrounding an application is valid, provided that they are put to the applicant for a response. In reaching their decision members must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and members have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 6.6 Members considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy.
- 6.7 Members should be aware that an unreasonable decision taking into account the above criteria, is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and may have to pay costs.

### 7. **Appeals**

- 7.1 The Licensing Committee’s decision is not a final one. In respect of decisions of the General Purposes Licensing Sub-Committee, the applicant has the right to

appeal to the Magistrates Court, subsequently to the Crown Court (or in certain instances directly to the Crown Court), and beyond.

- 7.2 In respect of decisions of the Alcohol and Entertainment Licensing Sub-Committees, all parties (the Applicant(s), interested parties and responsible authorities) have the right of appeal to the Magistrates' Court. The Magistrates' decision is however final.
- 7.3 An appeal must be lodged with the Justices' Chief Executive for the Magistrates' Court within 21 days beginning on the day on which the appellant was notified by the Licensing Authority of the decision to be appealed against.
- 7.4 On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence.
- 7.5 Members who consider basing the grant or refusal of a licence on their *personal knowledge* should be prepared to testify to the relevant facts in any appeal proceedings.
- 7.6 Taking this factor into account along with the real risk of costs against the Council, members must be wary of relying on any matters which could not readily be proved in evidence. In short, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

**DEPARTMENT OF THE ENVIRONMENT, TRANSPORT AND THE REGIONS**

**CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY**

**CODE OF RECOMMENDED PRACTICE**

**Subject matter**

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972, sections 69, 88 and 90 of the Local Government (Scotland) Act 1973 and sections 15 and 16 of the Local Government and Planning (Scotland) Act 1982; but there are several others.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, section 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
  - (i) the publicity should be relevant to the functions of the authority.
  - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

**Costs**

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.
6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.
8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.

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10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
    - (i) whether the publicity is statutorily required or is discretionary.
    - (ii) where it is statutorily required, the purpose to be served by the publicity.
    - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

### **Content and Style**

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.
15. In some cases promotional publicity may be appropriate – for example about the local authority's sports and leisure facilities or about tourist attractions.
16. Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council, is unavoidable, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although councils should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards.
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.



19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns, which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

### **Dissemination**

20. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs; to allow local people to have a real and informed say about issues that affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
22. Where material is distributed on matters closely affecting vulnerable sections of the community – for example, the elderly – particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.
23. Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites are able to reach far wider audiences than publicity available on application to the council. Councils should give particular consideration to the use of electronic and other new media communication systems. However, councils should ensure that they do not rely solely on such mechanisms and that they do not exclude those without access or easy access to such systems.
24. Such publicity should be targeted as appropriate for its purposes, taking particular care with material touching on politically controversial issues.
25. There is no paragraph 25.
26. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, or facilitating consultation and can provide a means for local people to participate in debate on decisions the council is to take. The advantage of using websites and other information technology for consultations should also be considered. Inevitably such publications will touch on controversial issues and where they do they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11-19 of the Code.
27. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and making use of electronic communication systems.

**Advertising**

28. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities on promoting the social, economic and environmental well-being of the area.
29. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.
30. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
31. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
32. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
33. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation.  
  
Such support should be given openly through the normal grant arrangements.  
  
However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

**Recruitment Advertising**

36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority staffs are expected to serve the authority as a whole, whatever its composition from time to time.
37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
38. Advertisements for staff should not be placed in party political publications.

## Individual Councillors

39. Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example, member of the Executive or Chair of Overview and Scrutiny Committee), and their responsibilities. Publicity may also include information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.
40. Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to her/his position and responsibilities within the Council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

## Elections, referendums and petitions

41. The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election.
42. The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (which apply under the Local Government Act 2000 to county councils, district councils and London borough councils) prohibit an authority from incurring any expenditure to:
  - Publish material which appears designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor;
  - Assist anyone else in publishing such material; or
  - Influence or assist others to influence local people in deciding whether or not to sign a petition.

Publicity in these circumstances should, therefore, be restricted to the publication of factual details which are presented fairly about the petition proposition and to explaining the council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

43. County councils, district councils and London borough councils should ensure that any publicity about a referendum under Part II of the Local Government Act

2000 (the 2000 Act) either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are sent to the Secretary of State and ending with the date of the referendum. The publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group. Local authorities must conform with any specific restrictions on publicity activities which are required by Regulations under section 45 of the 2000 Act.

#### **Assistance to others for publicity**

44. The principles set out above apply to decisions on publicity issued by local authorities.

They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

- (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;
  - (b) make the observance of that guidance a condition of the grant or other assistance;
  - (c) undertake monitoring to ensure that the guidance is observed.
45. It is appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000) but (subject to this) any such facility should be made available on a fair and equal basis.

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## LOCAL CODE OF CORPORATE GOVERNANCE

### 1. Introduction

1.1 This document is based on the guidance issued by the Chartered Institute of Public Finance and Accountancy ('CIPFA') and the Society of Local Authority Chief Executives ('SOLACE'). It sets out the Council's approach to Corporate Governance, which has been defined as:

*"The way the Council directs and controls its functions and relates to its community."*

1.2 In order to have good corporate governance we must demonstrate strength in the following principles, as defined by CIPFA/SOLACE:

- **Openness and inclusivity** – to ensure that stakeholders have confidence in the decision making and management processes of the authority, by conducting genuine consultation, providing access to full, accurate and clear information.
- **Integrity** – to have high standards of propriety and probity within our processes and high personal standards of professionalism of members and officers.
- **Accountability** – to make members and officers responsible for their decisions and actions, including stewardship of public funds and all aspects of performance.
- **Leadership** – to provide a vision for the community and leading by example.

### 2. The Five Elements of the Council's business

2.1 The Council provides many different services and undertakes many different functions. There are five fundamental elements which underpin all of these services and functions. These have been defined by CIPFA/SOLACE as:

- **Community Focus** – working for and with the community, promoting wellbeing of the Borough.
- **Service Delivery** – in delivering our services we seek continuous improvement and the translation of policies into action in an effective and efficient manner.
- **Structures and Processes** – having effective political and managerial structures and processes to govern decision making.
- **Risk Management and Internal Control** – establishing and maintaining a strategy, framework and processes for managing the risk.
- **Standards of Conduct** – establishing high standards of integrity, accountability and openness amongst all our members, staff and agents and in all our dealings.

3. The Council will ensure that the principles of openness, inclusivity, integrity, accountability and strong leadership will be present in all five elements of our business.
4. The Council has produced a framework by which it can assess its compliance with recognised good corporate governance arrangements. This framework sets out the criteria for good corporate governance under each of the five elements detailed above. It shows how the Council is complying with the requirements and what it intends to do to where compliance has not yet been achieved.

## **PROTOCOL FOR MEMBER/OFFICER RELATIONS**

### **1. INTRODUCTION**

- 1.1 The purpose of this Protocol is to guide members and officers of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped, however, that the approach which it adopts to these issues will serve as a guide to dealing with other issues that may arise.
- 1.3 This protocol is to a large extent no more than a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.4 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and officers (once in force). The shared object of these codes is to enhance and maintain the integrity (real and perceived) of local government and as such demand very high standards of personal conduct.

### **2. RELATIONS BETWEEN MEMBERS AND OFFICERS**

- 2.1 Members and officers should at all times treat each other with respect and courtesy. It is essential for the operation of the Council that there is a close working relationship, built on mutual respect, between members and officers.
- 2.2 It is clearly important that there should be a close working relationship between the Chair of a committee or sub-committee or the Executive Members and the Chief Officer and other senior officers. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officer's ability to deal impartially with other members and other party groups or with Council business generally.
- 2.3 Officers are not obliged to attend members' surgeries and it is recommended that they do not.
- 2.4 Whilst the Leader of the Executive or Chair of a committee (or sub-committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Chief Officer will be under a duty to submit a report on a particular matter. Similarly, a Chief Officer will always be fully responsible for the contents of any reports submitted in his/her name. Any issues arising between the Leader or a Chair and a Chief Officer in this area should be referred to the Chief Executive for resolution.

### **3. OFFICER ADVICE TO PARTY GROUPS**

- 3.1 It is common practice for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Officers may properly be called upon to support and contribute to such deliberations by party groups.
- 3.2 The support provided by officers can take many forms, ranging from a briefing meeting with the Leader of the Executive or a committee chair to a presentation

to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

- 3.3 Certain points must however be clearly understood by members and officers alike. In particular:
- (a) officer support in these circumstances must not extend beyond providing information and advice in relation to matters of *Council* business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of *party* business are to be discussed;
  - (b) party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and
  - (c) similarly, where officers provide information and advice to party group meetings in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the Council or the Executive or a relevant committee or sub-committee thereof, when the matter in question is considered.
- 3.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Brent Members Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a members only meeting.
- 3.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group. Similarly, members should not disclose confidential or exempt information to other persons, including other members and non-members who may not be entitled to receive that information.
- 3.6 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

#### **4 SUPPORT SERVICES TO MEMBERS AND PARTY GROUPS**

- 4.1 The only basis upon which the Council can lawfully provide support services (e.g. stationery, typing, printing, photocopying, transport, etc) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.
- 4.2 Members should not seek, and officers should not provide, support or assistance for any other purpose, including political purposes.



## **5 CORRESPONDENCE**

- 5.1 It should not normally be necessary for an officer to copy correspondence between an individual member and the officer to any other member. Where, exceptionally, it is necessary to copy the correspondence to another member, this should be made clear to the author of the original correspondence.
- 5.2 Official letters on behalf of the Council should be sent out under the name of the appropriate officer rather than a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear under the name of a member, but this should be the exception rather than the norm. This would normally be in the name of the Leader or other Executive member.
- 5.3 Members should not write letters which create obligations or give instructions on behalf of the Council.
- 5.4 Members should not coerce officers to send particular correspondence or to write or refrain from writing a particular statement.
- 5.5 The Council's logo may be used on correspondence from members but only where the correspondence relates to Council business. Guidance on letterheads and the use of the Council's logo will be issued from time to time and members should comply with that guidance. Members should also be familiar with the Code of Practice on Local Authority Publicity (see below) which may be relevant.

## **6 INVOLVEMENT OF WARD COUNCILLORS**

- 6.1 Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the ward members should be notified at the outset of the exercise.

## **7 PRESS RELEASES AND PUBLICITY**

- 7.1 Press releases issued by the Council's Director of Communications may contain quotes from the appropriate Chair of committees or the Executive Members. Press releases will be confined to factual information and an explanation of agreed Council policy. Where the press make a request for political comments this will be referred to the relevant party spokesperson(s).
- 7.2 The Members of the Executive, relevant chairs and vice-chairs and group spokesperson(s) will be sent copies of Council press releases when they are published. Where Council press releases relate solely to a specific ward issue the ward members will also receive a copy of the press release when it is issued.
- 7.3 Any press release issued by the Council under the above arrangements will comply with the Local Government Act 1986 and the Code of Practice on Local Authority Publicity, and in particular:
- must have the principal purpose of explaining or commenting upon Council policy;
  - must be factually correct; and

- must not include materials the main effect of which is party political (i.e. designed to affect public support for a political party).

7.4 Special care in relation to press releases and publicity should be taken during the pre-election period. Members and officers should pay particular attention to any guidance issued on this point by the Monitoring Officer, Chief Executive or other relevant officer(s).

7.5 Members of the Council may respond to requests for press, radio and television interviews, but these will be given in a personal capacity and will be the personal responsibility of the member concerned. Where a formal Council view is requested this will be referred by the Director of Communications to the appropriate committee Chair or the Leader of the Executive.

7.6 The recognised channel for press approaches to the Council is through the Director of Communications. At his/her discretion, officers may deal with any request for information or questions asked by the press, television or radio, and may accept invitations to broadcast or appear on television in order to give the facts of a situation or explain the Council's practices. The Leader of the Executive or relevant chair will be informed as soon as practicable.

7.7 When press conferences or media events setting out agreed Council policy are arranged, the relevant chair, vice-chair, Leader of the Executive and other members of the Executive will be invited to attend.

7.8 Members should not coerce officers into issuing publicity or organising events which would, or might, contravene the rules on political publicity.

## **8. VISITS**

8.1 Any arrangements for visiting relevant Council establishments shall be available to relevant party spokesperson(s) on an equal basis.

## **9. DIRECTIONS TO STAFF**

9.1 Members, other than Executive Members, should not issue any instruction to officers to do or to refrain from doing anything. This shall not prevent committee chairs from requesting officers to make arrangements or provide documents in respect of meetings of which they are chair.

9.2 Members should not make statements to staff whether verbally or in writing which could be construed as amounting to a suspension, dismissal or disciplinary action nor do anything which could amount to constructive dismissal.

## **10. CODE OF CONDUCT AND CODES OF PRACTICE**

10.1 Members must adhere to the Brent Members Code of Conduct, the Planning Code of Practice and the Licensing Code of Practice at all times and the 10 general principles of conduct namely:

- Selflessness;
- Honesty and Integrity;
- Objectivity;
- Accountability;
- Openness;
- Personal Judgement;
- Respect for Others;

- Duty to Uphold the Law;
- Stewardship; and
- Leadership.

## PROTOCOL ON MEMBERS' RIGHTS OF ACCESS TO INFORMATION

### 1. INTRODUCTION

- 1.1 The purpose of this protocol is:
- (a) to set out the rights of access to Council information that members of the Council have; and
  - (b) to provide guidance to members and officers on the approach to be adopted in the exercise of these rights in respect of availability of Executive and Committee Reports and to information held by the Council generally.
- 1.2 This protocol does not deal with the rights of access of the public and the press which are set out in the Access to Information Rules.

### 2. GENERAL PRINCIPLES

- 2.1 Members are free to approach Council staff of appropriate seniority to provide them with such information, explanation and advice as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a department's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the Service Area or Corporate Director or another senior officer of the department concerned.
- 2.2 Members should not try to use their position to coerce officers into releasing to them information which they are not entitled to see. Any issues should be taken up with the relevant Service Area or Corporate Director.
- 2.3 Any difficulty as to whether a member is entitled to particular information should be referred by the relevant member or officer for advice from the Borough Solicitor. The final decision in a disputed case is a matter for the relevant Council committee or sub-committee or in the case of executive functions, the Executive or its committee(s).
- 2.4 The effect of the rules contained in statute and regulations is that all councillors are entitled to see all reports to the Executive and Committees in advance, together with documents relating to the matters contained in the report, except those falling into the exempt categories marked as "restricted" in the table at the end of the Access to Information Rules in Part 6 of the Constitution ("the Table"). The restriction on access under category 3 only applies in so far as the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.<sup>1</sup> Members of an Overview and Scrutiny Committee may be able to see those excluded reports after the decision has been taken if the report concerns a matter in their work programme or is

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<sup>1</sup> This change is made to reflect the changes made in legislation in respect of access to information by members. Effectively the only exempt reports members are entitled to see are those which are only exempt under category 6 (because they reveal that the Council proposes to give or make a notice or orders) or under category 3 (because they reveal financial or business information) - unless in the case of a category 3 report it relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract.

called in to be considered by them. This is the position set out in the Access to Information Rules in the Constitution.

- 2.5 Reports containing confidential information as defined in the legislation (i.e. information stated by the government to be confidential or which is covered by a prohibition on disclosure in legislation or which is covered by a court order) cannot be made public and the public must be excluded from any part of a meeting during which such a report is discussed. There is no discretion in respect of this category of information.
- 2.6 The decision as to whether a report due to be considered by the Executive or its Highways Committee or the Council or one of its committees contains exempt information as set out in the legislation and whether or not it should be generally circulated is made by the "proper officer". The proper officer in Brent is the Democratic Services Manager. The proper officer will be exercising a discretion in deciding whether to circulate exempt papers other than to members of the relevant body and that discretion must be exercised reasonably. The Democratic Services Manager will take advice from the Borough Solicitor.
- 2.7 There is no statutory right for councillors to attend meetings of bodies of which they are not a member while confidential or exempt reports are being considered.
- 2.8 It is a matter for the body which is meeting (i.e. the Executive or its Highways Committee or a Council committee) whether other councillors are allowed, as a matter of discretion, to remain at an otherwise open meeting while exempt matters are discussed. The Executive or the committee will be exercising discretion in deciding whether to allow any councillors who are not members of the body to remain and that discretion must be exercised reasonably.
- 2.9 Members have further rights of access beyond those specifically given in statute in certain circumstances. These additional rights are described as "common law rights". A member is entitled to see documents which are reasonably necessary to enable him or her to carry out his or her duties **as a Councillor**. This is generally described as the "need to know" principle.
- 2.10 There is no simple definition of this. Various court cases have given indications of how the common law right should be interpreted. There is no right to a "roving commission" to satisfy curiosity and the right will not arise if there is some form of ulterior or indirect motive (such as to assist someone in litigation against the council) which underlies the wish for access. Ulterior or indirect motive would cover any case where the "real" reason the Councillor wants access is not to do with carrying out his or her role **as a Councillor** (e.g. where the reason is to do with the members position as a party member, as a resident or as a member of any association.) Extra care will need to be taken in considering the application of this right in cases where there is litigation underway or contemplated connected to the information sought. However, the fact that the information is potentially embarrassing for the Executive or Council as a whole is not in itself a reason to deny access to information to which a Councillor is otherwise entitled. A member of a committee will normally be entitled to access to papers concerning matters for which the committee is responsible.
- 2.11 Reports which members are not entitled to see as of right may be made available to them and this Protocol explains the circumstances when this may happen.

### **3. APPLYING A PRINCIPLE OF OPENNESS IN THE WRITING OF REPORTS**

- 3.1 Reports to Committees and the Executive should only be marked exempt when this cannot reasonably be avoided in order to protect the interests of the Council and/or third parties in accordance with the statutory rules on exempt reports. Report writers should bear in mind the qualifications in respect of the categories of exempt information as marked in [Table](#) and should also bear in mind that information which has been exempt at one stage may not remain so. For example, information which if disclosed at an early stage might have prejudiced the Council in negotiations for a contract may at a later stage not be capable of having that effect. The information would then no longer be exempt.
- 3.2 It is sometimes possible for reports to be written in such a way that exempt information is separated out from the main body of the report to be included in a separate exempt sheet. Sometimes information in reports could be made anonymous without the effectiveness of the report being reduced. This is one way of ensuring that as many reports, and as much information, are made accessible as possible. There will still inevitably be a number of reports which are marked exempt.
- 3.3 Officers who write reports should strive to avoid entire reports being below the line (exempt) by omitting exempt information where possible and appropriate and in other cases trying to separate out the exempt information on to separate sheets.
- 3.4 Where a report is split in this way, the chair at the meeting at which it is considered will need to be careful to ensure that members are aware that there is additional information in an exempt section of the report. Guidance on how to handle reports split in this way is contained in section 6.4 of this Protocol.

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#### 4. ACCESS TO REPORTS

- 4.1 The Democratic Services Manager intends to apply a presumption of openness when exercising his discretion concerning giving members access to exempt reports that they do not have a positive right to see. The following sections set out the normal practice that will be followed in respect of automatic despatch of reports to members and in respect of responding to requests from members for reports.
- 4.2 All reports will of course be despatched to all members of the relevant committee or other body.
- 4.3 Subject to section 5 below, all reports (normally including exempt reports) will be sent to Leaders of Party Groups and to the Chair of [Overview and Scrutiny](#). The Democratic Services Manager would of course retain discretion not to despatch copies automatically in appropriate cases, for example if a report concerned a matter in which the member had a personal interest or concerned a person known to the member.
- 4.4 Subject to section 5 below, specific reports (normally including exempt reports) will be despatched to any councillor on request.
- 4.5 In some cases it may be appropriate for a member requesting access to a report to be given an opportunity to see the report without a copy being supplied for the member making the request to take away.
- 4.6 Members automatically sent exempt reports, or receiving them after making a request, would not be entitled to share the reports with other members of their party group but could alert them to the advisability of requesting a copy of the report/calling the report in. Other members could request a copy direct from the

Democratic Services Manager. Such a request would then be dealt with in accordance with the principles set out in this section 4 and in section 5 below.

- 4.7 The Democratic Services Manager reserves the right not to provide exempt information to any councillor not entitled to it as of right if he believes the information is wanted for an improper purpose.

**5. PARTICULARLY SENSITIVE CATEGORIES OF INFORMATION**

- 5.1 Reports containing some categories of exempt information are less appropriate for automatic circulation or distribution on request to members not directly concerned in them through their role on the Executive or a committee than others.

- 5.2 It would not normally be appropriate for reports covered by categories 1, 2 and 5 in the Table, to be made generally available. These categories cover information about particular individuals or which enables individuals to be identified. Reports containing information falling into these exempt categories will only be provided to (or in some case made available to) councillors who are not members of the relevant body if they are able to positively demonstrate to the Democratic Services Manager (if necessary on the advice of the Borough Solicitor) that they have a need to have a copy of or see the report in order properly to carry out their duties as a Councillor.

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- 5.3 Reports containing information falling into category 3 to which members are not automatically entitled (terms proposed in the course of negotiations for a contract)<sup>2</sup> may also be particularly sensitive. These reports will normally be provided as a matter of course to the Chair of Overview and Scrutiny and to the Leaders of each political group, and be made available or copied to other members on their specific request. However, where the report is particularly sensitive this will not happen. This may be the case for example where negotiations are on going in relation to price or price sensitive aspects of the contract.

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- 5.4 Officers relying on category 3 on the basis that a report contains information about terms proposed in the course of negotiations for a contract will be expected either to prepare a report which separates the exempt from the non exempt information so the latter can be freely circulated, or to produce, on request, an expanded summary of the report for councillors who are not members of the decision making body and are not provided with a copy of the report but who want to know more about the matter than is contained in the brief "Summary" section within the report.

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- 5.5 Separating out exempt information into a separate appendix, where possible, in order that the main body of the report can be publicly available is good practice in all cases and not just where category 3 (in respect of information about terms proposed in the course of negotiations for a contract) is relied on. Where a report is split in this way, when the open part of the report is considered at the Council, committee or Executive meeting the chair of the meeting shall draw to the meeting's attention that the report is a split report and that further information appears in the exempt papers. If any member of the body considering the report indicates that they wish to comment on or question the report in a manner likely to involve discussion of the exempt information, the body shall consider whether discussion of the item should be postponed until a part of the meeting from which it is expected the public will be excluded.

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<sup>2</sup> This reflects the provisions in the legislation that reports concerning terms proposed in the course of negotiations for a contract are not automatically available to members.

5.6 Information falling into categories 8-10 (Standards Committee reports) may also be particularly sensitive. The Democratic Services Manager will seek the advice of the Borough Solicitor on any request by a member who is not a member of the Standards Committee for a report covered by these exemptions before providing a copy of, or allowing access to, the report.

**6. ESTABLISHING A NEED TO KNOW**

6.1 It is not possible to include in this Protocol hard and fast rules as to the application of the “need to know” principle as it will inevitably depend very much on the specific circumstances. Where this principle applies members will be entitled to access to reports as of right even if access would not otherwise be given under the earlier sections of this protocol. However, the following general principles can be identified.

6.2 The Chair of Overview and Scrutiny is likely to have a greater need (but no absolute right) to have access to exempt reports specifically concerning those issues for which that committee is responsible, principally matters forming part of the work programme of the committee and matters which have been recently considered by the Executive.

6.3 Party Leaders are likely to have a greater need (but no absolute right) to have access to exempt reports than ordinary councillors with no special role.

6.4 Ward Members may have a particular need to know about matters affecting their ward. This does not mean they are entitled to access all information the Council has concerning matters affecting their ward. For example, if the information is confidential and could not in any event be passed on by the Ward member to constituents, a clear need to know for reasons that did not involve sharing the information with constituents would need to be established.

6.5 A Councillor will generally have a need to know information a constituent had asked the councillor to obtain on their behalf if the constituent would themselves be entitled to that information.

**7. ACCESS TO OTHER FORMS OF INFORMATION**

7.1 All Service Area and Corporate Directors should ensure that relevant information within their areas of responsibility is supplied to particular members according to their legitimate individual needs and requests. This may be by way of committee reports, letters or any other appropriate means. In fulfilling this obligation, such directors should have particular regard to the information needs of members as local representatives, including:

- information on all significant matters which particularly affect the member's ward
- information on local matters in which the member may have expressed a specific interest, even though they do not directly concern the ward he/she represents
- where relevant, information at two stages: when a decision is being considered and when it is being implemented.

7.2 If a director considers that meeting a request for information would involve an unreasonable commitment of resources, the member making the request shall be

**Deleted:** Category 15 in the Appendix (identity of a protected informant) is not a category of information which only members on the decision making body are entitled to see. It should be noted however, that this information may still be withheld where another exempt category which does limit access to members on the decision making body also applies, for example; if Category 14 (prevention or investigation of a crime) applies as will often be the case. In any event, members are asked to bear in mind the sensitivity of this information when considering whether to seek access to it and should also consider their obligations under the Members of Code of Conduct.¶

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so advised. If that member persists in requesting the information then the director may refer the matter initially to the Leader of the Executive or the appropriate committee of sub-committee chair (or in the absence of the Leader or chair the Deputy Leader or Vice Chair) and then on to the Executive or the appropriate committee or sub-committee if necessary.

- 7.3 Officers should not release to members or non-members any information which they are aware is exempt or confidential and which that person is not entitled to receive.
- 7.4 Positive briefings (i.e. those which originate from officers otherwise than in response to a request or enquiry) will generally only be given to members of the Executive or chairs or vice-chairs of committees or sub-committees although officers are not prevented from giving briefing to other members if they feel that is appropriate.
- 7.5 'Fishing expeditions' will not be responded to and the reasons for a member's request for information will be sought.
- 7.6 Ward members have a legitimate role as advocates for their constituents as a group and as individuals. Ward members seeking information about individual constituents will need to demonstrate that they have the agreement of their constituent to the disclosure by the Council of the information. This will usually be by way of written confirmation, especially in the case of sensitive personal information. Ward members cannot use their role as a Councillor to obtain for constituents information to which the constituents themselves would not be entitled.
- 7.7 All requests for information will be dealt with in accordance with the established legal principles governing members' rights to information.
- 7.8 More detailed advice about access to specific documents can be obtained from the Borough Solicitor.

## **8. FREEDOM OF INFORMATION ACT**

8.1 Councillors have the same rights to access to information under the FOIA as anyone else. The special rights of access members have, as described above, may overlap with rights under the FOIA or may allow Councillors access to information (or documents) that would not be available to them under the FOIA. For example, it is not necessary to say why information is wanted if it is requested under the FOIA but it would be necessary to state this if a Councillor was relying on their need to know as a Councillor. It may be that information that is not available to a Councillor under the FOIA (because it is covered by an exemption) may be available to them on the basis of their special rights as a Councillor. So, in some respect the FOIA rights are wider than Councillor's other rights and in some respects they are narrower.<sup>3</sup>

## **9. GUIDANCE ON POTENTIAL PENALTIES AND CLAIMS IF LOSS IS CAUSED BY DISCLOSURE OF PERSONAL OR COMMERCIAL SENSITIVE INFORMATION**

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<sup>3</sup> This amendment is made because the Protocol had not previously been updated to reflect the implementation of the general right of access under the Freedom of Information Act.

- 9.1 Much of the information kept by the Council relates to individual clients and officers and members are expected to be discreet in their handling of such information which is disclosed to them.
- 9.2 One element of this will be obligations to individuals or organisations about whom a report contains information which is confidential to respect that confidentiality. Wrongful disclosure of information which results in some form of damage to a person or business to which the obligation is owed could be actionable against the Council. Information is often provided by people to the Council for a particular purpose and to disclose or use it for another purpose can lead to a Data Protection Act breach. Clearly the Council itself could be damaged by information wrongly disclosed. Wrongful disclosure by a Councillor would be a matter to be dealt with under the Members Code of Conduct and could result in a complaint to the Standards Board about the member concerned.
- 9.3 The Code provides that:
- “3. A member must not -
- (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he or she is required by law to do so;”
- “5. A member –
- (a) must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage. ”
- 9.4 A breach of the Code can lead to suspension or disqualification of the member concerned.

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**Deleted:** Table of Exempt Categories and the Qualifications to the Categories¶

¶  
The following is a list of the categories of information which are specified as "exempt" in legislation. The effect of this is that reports containing information falling into one or more of these categories are exempt from the usual requirement to give access to the press and public. Councillors however are entitled to access to such reports, except where indicated in column 3.¶

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Category of Exempt Information ... [1]

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<sup>4</sup> The table of exempt information previously here has been deleted and a cross reference to the table in the Access to Information Rules substituted at relevant places in the Protocol to avoid the table having to appear twice in the Constitution.

## Table of Exempt Categories and the Qualifications to the Categories

The following is a list of the categories of information which are specified as “exempt” in legislation. The effect of this is that reports containing information falling into one or more of these categories are exempt from the usual requirement to give access to the press and public. Councillors however are entitled to access to such reports, except where indicated in column 3.

Category of Exempt Information	Qualification	Availability
1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.	This information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated.	Restricted
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, a magistrates' court committee or probation committee.	This information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated.	Restricted
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.	This information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated.	Restricted
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.	This information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated.	Restricted
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.	This information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles	Restricted

	indicated.	
6. Information relating to the adoption, care, fostering or education of any particular child.	Child means a person under 18 and anyone who is 18 and is still registered as a school pupil, or is the subject of a care order, within the meaning of section 31 Children Act 1989.	Restricted
7. Information relating to the financial or business affairs of any particular person (other than the authority).	Information within paragraph 7 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act. To be exempt the information must relate to a particular third person who must be identifiable.	
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.	Information within paragraph 8 is only exempt if, and for so long as, disclosure of the amount involved would be likely to give an advantage to a person entering into or seeking to enter into a contract with the authority in respect of the advantage would arise as against the authority or as against other such persons.	
9. Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.	Information within paragraph 9 is only exempt if, and for so long as, disclosure to the public of the terms would prejudice the authority in those or any other negotiations concerning that property or those goods or services. (The disposal of property includes granting an interest in or right over it).	Restricted
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.	For the purposes of this paragraph "tender" includes a DLO/DSO written bid.	
11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.	Information within paragraph 11 is only exempt if and for so long as its disclosure to the public would prejudice the Council in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph	Restricted

	<p>“Labour relations matters” are as specified in paragraphs (a) to (g) of section 29(1) of the Trade Unions and Labour Relations Act 1974 or any dispute about any such matter, i.e. matters which may be the subject of a trade dispute.</p>	
<p>12. Any instructions to counsel and any opinion of counsel (whether or not in connection any proceedings), and any advice received, information obtained or action to be taken in connection with:</p> <p>(a) any legal proceedings by or against the authority; or</p> <p>(b) the determination of any matter affecting the authority; (whether in either case, proceedings have been commenced or are in contemplation).</p>		Restricted
<p>13. Information which, if disclosed to the public, would reveal that the authority proposes– (a)to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or(b)to make an order or direction under any enactment.</p>	<p>Information within paragraph 13 is exempt only if and so long as disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made.</p>	
<p>14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>		Restricted
<p>15.The identity of a protected informant.</p>	<p>A “protected informant” means a person giving the authority information which tends to show that</p> <p>(a) a criminal offence;</p> <p>(b) a breach of statutory duty;</p> <p>(c) a breach of planning control; or</p> <p>(d) a nuisance, has been, or is being, or is about to be committed.</p>	