



## Advice Note 20: Annual Conduct Letter

*This Monitoring Officer Advice Note constitutes the Annual Conduct Letter and informs members of their obligations under the Brent Member Code of Conduct and other key issues regarding ethics and probity and the decision making process.*

### **Codes of Conduct**

All members of the Council are required to abide by terms of the Brent Member Code of Conduct. The Council also has its own Planning Code of Practice and Licensing Code of Practice and a Code on publicity and on member/officer relations. Members are required to familiarise themselves with these codes as a breach could result in their suspension from office and, in some cases, disqualification.

### **Declaration of Acceptance of Office and Undertaking**

Members are required to sign a Declaration of Acceptance of Office which includes an undertaking to abide by the Brent Member Code of Conduct. You have been invited to attend a reception this coming Wednesday when you will be able to sign the Declaration and the Undertaking. You are not permitted to take up office as a councillor until you have signed the Declaration and will cease to be a member if you fail to sign the undertaking within 2 months of being required to do so.

### **Register of Member Interests**

You must disclose to me, within 28 days, any financial or other interests you have. The types of interest which you are required to register are listed in the Brent Code and you must read and consider the list carefully. Broadly, the types of interest include financial or business interests (as listed in paragraph 14 of the Code) or membership or positions of control or management of organisations (as listed in paragraph 15 of the Code) such as public bodies, companies, political parties, charities, trade unions, professional associations, etc. You must disclose any such interest by sending to me a form which will be provided to you by the Democratic Services Manager. I will retain these in the Register of Member Interests which you must update as and when a new interest arises or an old one ceases to exist or changes. You must update the register within 28 days of the change taking place.

### **Declaring gifts and hospitality**

You must also take care to declare any gifts or hospitality received by you in your role as a councillor which are valued over £25. Again, the Democratic Services Manager will provide you with some forms to use for this purpose. I will then retain the completed forms with the Register of Member Interests.

## **General Obligations**

As a councillor, you must never let your personal interests influence your decision in any matter which you are asked to decide. Nor should you seek to use your position to persuade other people to do something in connection with any matter in which you have an interest. You should never do anything which you could not justify to the public and you should avoid not just impropriety but the appearance of impropriety. You must declare personal interests and must declare and not vote on prejudicial interests. This is discussed in more detail below. Under the Code there are a number of general obligations which are set out here briefly for ease of reference although members are advised to read the full text of the codes as soon as possible. The general obligations are:-

1. to promote equality and not discriminate unlawfully and to treat others with respect;
2. to maintain confidentiality and not prevent others from gaining access to information which they are entitled to see;
3. not to conduct yourself in a manner which is likely to bring your office or the Council into disrepute;
4. not to use your position improperly nor to confer a personal advantage or disadvantage on yourself or someone else;
5. not to use the Council's resources for political purposes; and
6. to have regard to relevant advice received from the Director of Finance and myself and give reasons for your decisions;

If you become aware of a breach of the code by any other councillor then you are required to make a written allegation to the Standards Board for England (see below).

## **Personal and Prejudicial Interests**

A member with a personal interest in a matter who attends a meeting at which the matter is to be considered must disclose that interest to the meeting. Where that personal interest amounts to a 'prejudicial' interest then the member must, in addition to disclosing the interest, not vote on the matter and must withdraw from the room or chamber in which the meeting is taking place. You should seek early legal advice in any case in which you have doubt and should do so prior to the meeting in question so that officers have sufficient time to consider the issues properly.

A member must regard himself as having a personal interest in any matter which relates to any of his financial or business interests (as listed in paragraph 14 of the codes) or if it relates to any organisation of which he is a member or holds a position of control or management (as listed in paragraph 15 of the Code) such as public bodies, companies, charities, trade unions, professional associations, etc. 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 area the well being or financial position of the member or one of their relatives or friends, their business, their employer or a company in which they have a substantial shareholding. Once again, this is a summary only and you must read the full text of the code to be absolutely sure.

A personal interest is also a prejudicial interest 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 would be likely to prejudice the member's judgement of the public interest. In these cases, the member must declare and not vote on the matter and must withdraw from the meeting room.

A table providing a summary of the rules can be found at the end of this briefing note.

## **Exceptions**

There are a number of exceptions to the rules on prejudicial interests. The Brent Code say that you may regard yourself as not having a prejudicial interest in a matter if it relates to:-

- another relevant authority or public body or a body to which you have been nominated by the Council
- housing functions, and you are a Council tenant, provided you are not in more than two months arrears
- school meals, transport or travelling expenses, unless it relates particularly to your child's school
- sick pay, and you are in receipt of sick pay from a relevant authority
- members allowances.

Again, this is a summary only and you need to read the Code and take appropriate advice.

## **Dispensations**

The Standards Committee (see more below) may grant dispensations to individual members from time to time but only in special limited circumstances. The Committee may grant a dispensation for up to four years where:-

- a transaction of business would, on each occasion on which the dispensation would apply, otherwise be impeded by the mandatory provisions of the code because
  - a number of members of the authority that were prohibited from participating in the business of the authority exceeds 50% of those members that were entitled or required so to participate, or
  - the authority is not able to comply with the duty under Section 15 (4) of the Local Government and Housing Act 1989 to allocate seats in accordance with political balance.
- the member has submitted to the Standards Committee a written request for dispensation, explaining it is desirable: and
- the Standards Committee has concluded that having regard to the above two points, and all of the other circumstances of the case, it is appropriate to grant the dispensation.

The existence, duration and nature of any dispensation must be recorded in writing and the record kept with the Register of Interests.

## **Standards Committee**

The Standards Committee is a committee of the council responsible for overseeing the conduct of members and ensuring high standards of probity. The committee is comprised of five members. Three members are elected councillors and two are independent members, as defined in Section 53 of the Local Government Act 2000 and the Relevant Authorities (Standards Committee) Regulations 2001. The councillor members will not be the Mayor, Deputy Mayor or the Leader and no more than one member of the Executive may be a member of the committee. Its terms of reference include assisting members of the authority and co-

opted members to observe the Brent Members' Code of Conduct, the Planning Code of Practice, the Licensing Code of Practice and any other code of conduct or practice which is adopted and hearing referrals concerning allegations of misconduct against individual members. The Committee may censure a Member who is in breach of the Member Code of Conduct or suspend or partially suspend him or her for a limited period.

### **Standards Board**

The Standards Board is a national body set up under the Local Government Act 2000 to investigate complaints about breaches of the Member's Code of Conduct. The Board, through its investigating officers, has the ability to investigate allegations of a breach of the Code of Conduct and has wide powers to call for witnesses and disclosure of documents and may refer matters to me, as Monitoring Officer, to investigate. The Adjudication Panel considers reports by investigating officers and the panel has the power to suspend and even disqualify members who are found to be in breach of the Code. This is a far-reaching power and members must be aware of the risk of suspension if they act in breach of the Code. The Board will have regard for the need to promote and maintain high standards of conduct by Members and co-opted Members of relevant authorities in England. It also has power to issue guidance to local authorities. There has recently been a review of the ethical framework and the role of the Standards Board and local Standards Committees. There will be changes to the regime and to the role of our Standards Committee and members will be kept informed of any developments in this area.

### **Investigations and Sanctions**

If the Standards Board determines that a matter which has been referred to it needs investigating it must refer it to one of its Ethical Standards Officers, who will then carry out an investigation. After the investigation, the Ethical Standards Officer may make one of the following decisions:

- The decision to take no further action because there is no evidence of failing to comply with the code.
- No action is needed.
- Referral to the Monitoring Officer of the Local Authority concerned.
- Referral to the Adjudication Panel.

If the matter is referred to me as Monitoring Officer, I would be required to conduct an investigation and make a report to the Council's Standards Committee which will then hear the allegation and, if the allegation is proved, impose a sanction as described above. If the matter is referred to the Adjudication Panel, the Panel can decide whether or not the member has failed to comply with the Code of Conduct and can then decide whether or not to suspend the member or disqualify them from being a member.

### **Involvement with outside bodies**

Councillors often get involved with outside bodies, either independently or by being nominated to the body by the Council. Councillors must be careful to ensure that they register any such interests and that they avoid conflicts of interest and do not take part in decisions which may affect the body concerned, unless they fall within one of the exemptions listed above. If a councillor is a director of a company then they must, by law, always act in the best interests of that company and this may lead to a conflict of interest at various times. Appointments to outside bodies are made by Full Council.

## Relevant and irrelevant considerations

In considering any matter submitted to you for consideration, you should only ever take relevant considerations into account and should ignore irrelevant considerations. To do otherwise would be a breach of the Code and could render the decision open to challenge through the courts. This is particularly important in the area of planning, licensing and procurement. The law is clear about what is and is not a relevant consideration for the purposes of determining planning and licensing matters and similarly in relation to the award of contracts. Legal advisers will generally be present at committee and will be able to give advice on such issues. Failure to follow that advice could mean you are in breach of the Code and could expose the Council to legal challenge.

## Lobbying

You should take great care when being lobbied by members of the public that you do not form a premature view of the matter in question nor give the impression to members of the public that you have done so. To do so could be a breach of the principles of natural justice and possibly the Human Rights Act as well as rendering the decision challengeable by way of judicial review. You should never allow yourself to be lobbied in any way in relation to a contract and, in relation to planning and licensing, there are rules set out in the relevant codes of practice about recording any approaches that are made to you by any person.

## Duty of Trust and Confidence

Members owe a duty of trust and confidence to the Council and to others in respect of whom you may obtain information from time to time. This is reflected in the Code. You should not disclose or use confidential information for the personal advantage of yourself or anyone known to you or to the disadvantage or discredit of the Council or anyone else. This includes any political advantage or disadvantage. Nor should you seek to pressurise officers into disclosing information to you that you are not entitled to see. Although you may feel that an individual or the public at large should know about particular facts it is not for an individual councillor to use that reason as an excuse for disclosing confidential information. A breach of trust and confidence which is contrary to the Code can be reported to the Standards Board for investigation. In addition, members could be held personally liable for any loss which the Council or any other person suffers as a result of the breach.

## Planning and Licensing

The Planning Control Code of Practice and Licensing Code of Practice set out how members must deal with those matters. There has always been a special need for caution in relation to planning and other similar matters such as licensing. There have been a number of high profile cases involving senior members and officers from local authorities where inappropriate and even corrupt practice was detected. In order to avoid any conflict or the appearance or possibility of a conflict of interest members must be fully familiar with the planning and licensing codes and must adhere to the rules strictly at all times.

Members may find that applicants will approach them from time to time to discuss their planning applications. The code of practice states that if an approach is made to a member of the Planning Committee by an applicant or agent or other interested party (which would include an objector) in relation to a particular planning application or any matter which may give rise to a planning application, then the member shall inform the person making the approach that this should be addressed to officers or members who are not members of the Planning Committee and the approach should be disclosed at any relevant meeting of the Planning Committee itself and recorded in a register maintained by the Director of Environment and Culture.

Members who are not on the Planning Committee should themselves exercise care in respect of approaches made to them. In particular, it would be wholly inappropriate for them to privately discuss applications for commercial development with applicants or their agents or representatives or to seek to influence any other members or officers who may be involved in the process. In cases of domestic applications, it is possible that a home owner/occupier may try to gain support or assistance from their ward member. He or she would be advised to avoid any discussion other than the initial consultation and to refer all enquiries to officers.

### **Political publicity**

Members should be familiar with the rules on political publicity and the Code of Practice which gives guidance on the application of the rules. The Council, and that includes the staff in the political group offices, is not permitted to issue political publicity. Members who in some way breach this rule may also find themselves in breach of the member code of Conduct and will leave themselves open to sanctions.

### **Respect for officers and members of the public**

Members and officers should always treat each other with respect. Members should not make personal comments to an officer or a member of the public nor make threats or unfounded accusations. The rules are set out in the Protocol for Members/officer relations.

### **Use of Council facilities and resources**

You should always make sure that any facilities (such as transport, stationery, secretarial services, photocopying, etc.) provided by the Council for your use in connection with your duties as a councillor are used strictly for those duties and for no other purpose. You should not use Council facilities or resources for your own personal use or for political purposes. Things like photocopying and franking must be paid for and you should seek advice on this before you use facilities.

### **Further advice**

Please do not hesitate to contact me should you wish to discuss anything I have raised here or if you would like advice on specific issues

### **Summary of dealing with member interests**

1. Register - all interests listed in paragraphs 14 and 15 of the Code
2. Declare - all personal interests i.e. those interests required to be registered under paragraphs 14 and 15 and any interest 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 area the well being or financial position of the member or one of their relatives or friends, their business, their employer or a company in which they have a substantial shareholding
3. Withdraw – if the personal interest is also a prejudicial interest i.e. one which members of the public acting reasonably would consider to be so significant as to prejudice the member's judgement of the public interest. Do not vote on it or take part in the discussion
4. Amend register – if the interest changes

**Terry Osborne**  
**10<sup>th</sup> May 2006**