

**SECTION 9
ETHICS AND CORPORATE GOVERNANCE**

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CHAPTER 9.1 - THE STANDARDS COMMITTEE

9.1.1 Composition and Membership

At the Annual Council meeting the Council will establish a Standards Committee which will be composed of:-

- a) six elected Members of Wokingham Borough Council. The composition of which will be subject to the rules of Political Balance and only one of those elected can be a Member of the Executive. The Leader of the Council is not entitled to be a Member of the Standards Committee. One of these Members will be elected as Chairman at Annual Council.
- b) three co-opted non voting Parish Members. Of the three Members, at least one Member should be a Member of a parish council and at least one should be a Member of a town council. The process for appointing town and parish council representatives shall be overseen by the Monitoring Officer and the Independent Person and any recommended appointment agreed by the Council.

9.1.2 Role of the Independent Person(s)

The Independent Person(s) is entitled to attend any meeting of the Standards Committee but cannot vote on any item.

9.1.3 Parish/Town Council Members

A Parish/Town Council Member should be present when matters relating to Parish/Town Councils or their Members are being considered.

9.1.4 Role and Function

The Standards Committee will have the following roles and functions:

- a) promoting and maintaining high standards of conduct by Councillors, co-opted members, including church and parent governor representatives;
- b) assisting the Councillors, co-opted members, including church and parent governor representatives, to observe the Members' Code of Conduct;
- c) advising the Council on the adoption or revision of its Members' Code of Conduct;
- d) monitoring the operation of the Members' Code of Conduct, the Officers' Code of Conduct and the Council's Whistleblowing policy and any other appropriate codes of conduct and procedures;
- e) advising, training or arranging to train Councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- f) the exercise of (a) to (e) above in relation to the Parish/Town Councils wholly or mainly in its area and the Members of those Parish/Town Councils;
- g) the presentation of an annual report by the Chairman of the Standards Committee to Council.

9.1.5 Ordinary Meetings of the Standards Committee

The Standards Committee shall meet four times per year on dates to be agreed by the Council. Additional meetings may be arranged by the Chairman in consultation with the Monitoring Officer.

9.1.6 Public and Member Questions

Public and Member questions may be asked at ordinary Standards Committee meetings in accordance with the procedures set out in Chapter 4.2.

9.1.7 Parish / Town Council Questions

Parish/Town Councillors may ask questions at ordinary Standards Committee meetings in accordance with the procedures set out in Chapter 4.2.

9.1.8 Quorum

The quorum of a meeting of the Standards Committee shall be three Borough Members.

9.1.9 Procedure at Ordinary Meetings

Ordinary meetings of the Standards Committee shall be conducted in accordance with the Council Rules of Procedure set out in Chapter 4.2.

9.1.10 Disturbance by Public

If a member of the public interrupts proceedings, the Chairman will warn the person concerned. If they continue to interrupt, the Chairman will order their removal from the meeting room.

If there is a general disturbance in any part of the meeting room open to the public, the Chairman may call for that part to be cleared.

9.1.11 Duration of Meeting

As set out in Chapter 4.2 unless the majority of members of the Committee present vote for the meeting to continue, any meeting of the Standards Committee that has not concluded by 10.30pm will adjourn immediately. If, once a Motion to continue has been proposed and seconded, the majority of members of the Committee present vote to continue, the meeting will continue for a further period not exceeding 30 minutes.

Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date the remaining business will be considered at the next ordinary meeting.

9.1.12 Process for Dealing with Misconduct Complaints

9.1.12.1

The Localism Act 2011 requires the Council to adopt arrangements for dealing with complaints of breaches of the Code of Conduct by either Borough Council Members, Town/Parish Council Members or co-opted members of any of these bodies and such complaints can only be dealt with in accordance with such arrangements.

9.1.12.2

The following is the process that will be followed for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the relevant Code of Conduct.

9.1.13 Process for Considering Code of Conduct Complaints

9.1.13.1 Receipt and Acknowledgment of the Complaint

Following receipt of a Councillor Code of Conduct complaint, the Monitoring Officer¹ will write to the complainant to acknowledge receipt of the complaint and provide them with a copy of this complaints process.

The complainant will be told that full details of their complaint, including the parts of the Code of Conduct which have allegedly been breached and their name, will be given to the Councillor they have complained about, (“the Subject Member”), subject to [Rule 9.1.13.5](#) (Anonymous complaints).

If the complaint relates to a Parish or Town Councillor, the Clerk to that Council will be informed. In the case of Subject Members who sit on more than one Council, the Monitoring Officer will seek clarification from the complainant if it is unclear which Council the Subject Member was acting for at the time of the alleged breach.

9.1.13.2 Response of the Subject Member

The Subject Member will be informed of the complaint as soon as possible, and be asked for their initial comments on the complaint. If the Monitoring Officer requires further clarification from the complainant in response to the comments made by the Subject Member, then these comments may be passed back to the complainant for further comment.

9.1.13.3 Response of the Town or Parish Clerk

If the complaint is about a Town or Parish Councillor, the Monitoring Officer shall seek the views of the Town/Parish Clerk about the complaint. Their view will be recorded in the Monitoring Officer’s summary and taken into account when a decision is made, under [Rule 9.1.13.4](#).

9.1.13.4 Initial Decision of the Monitoring Officer

The purpose of the initial assessment by the Monitoring Officer, in consultation with an Independent Person and Chairman of the Standards Committee, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.

Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or ‘tit for tat’? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?

Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?

Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that

¹¹ Reference to the Monitoring Officer in this document includes the Deputy Monitoring Officer

those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action.

Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

The Monitoring Officer shall write a summary of the complaint and then, subject to consultation with an Independent Person and the Chairman² of the Standards Committee, have delegated authority to decide to:

- a) take no action if there is clear evidence that there has been no breach of the Code of Conduct.
- b) Resolve the matter informally by asking the Subject Member to
 - i) take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - ii) make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
 - iii) attend training and/or
 - iv) correct an entry in the Members' Register of Interests or correct a declaration made; OR
- c) Require a formal investigation and a written investigation report by an Investigating Officer. The investigation report shall conclude whether there has been a breach of the Code of Conduct. Copies of the investigation report will be provided in confidence to the Independent Person, the Chair of the Standards Committee, and the Subject Member. OR
- d) Refer the complaint to the Standards Committee for a decision on whether options a), b) and c) above should be followed.

The decision by the Monitoring Officer will normally be taken within 10 working days of receipt of the complaint. Once a decision has been made by the Monitoring Officer the complainant, the Subject Member and the Town/Parish Clerk (if applicable) will be informed of the outcome as soon as possible.

9.1.13.5 Anonymous Complaints

Anonymous complaints will not usually be considered. However it is recognised that in some exceptional circumstances some individuals may feel unable to reveal their identity. In these situations, complainants wishing to remain anonymous should be aware that their concerns may carry less weight because the evidence may not be sufficient enough to allow a successful investigation and fair result. The Monitoring Officer is authorised, subject to consultation with the Independent Person and Chair of the Standards Committee, to accept or decline an anonymous complaint.

² Reference to the Chairman of the Standards Committee includes the Vice-Chairman of the Committee

9.1.14 Finding on Investigation

9.1.14.1 No Breach of Code of Conduct

Where a formal investigation concludes that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer shall have delegated authority to decide not to take any further action.

If the Monitoring Officer makes a decision not to take any further action, he or she will advise the complainant, the Subject Member and the Town/Parish Clerk if applicable.

A summary of all investigations will be provided to the Standards Committee for information. However, where there is a determination that there has been no breach of the Code of Conduct, no names will be disclosed.

9.1.14.2 Breach of Code of Conduct

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person and the Chairman of the Standards Committee, shall make a decision to:

- a) resolve the matter informally by asking the Subject Member to
 - i) take part in mediation with the complainant in order to settle the complaint, provided both the Subject Member and the complainant are willing to do so, and/or
 - ii) make a written apology to the complainant which is acceptable to the Monitoring Officer and Chairman of the Standards Committee, and/or
 - iii) attend training and/or
 - iv) correct an entry in a register or correct a declaration made;

Where there has been a determination by the Monitoring Officer to resolve the matter informally, the Subject Member's name will not be disclosed

OR

- b) refer the Investigating Officer's report to a Standards Committee Hearings Panel, constituted from members of the Standards Committee. The Hearings Panel will conduct a local hearing following the procedure in [Rule 9.1.15](#), and make a decision in accordance with [Rule 9.1.16.2](#).

The Hearings Panel will usually hear a complaint within two calendar months of the date that the Monitoring Officer received the final investigation report.

9.1.15 Procedure for Local Hearings

9.1.15.1 Appointment, Composition and Terms of Reference of the Hearings Panel

The Monitoring Officer is required to convene a Hearings Panel from the membership of the Standards Committee as necessary. The Hearings Panel will therefore not have a fixed membership.

The Hearings Panel shall comprise three to five voting members of the Standards Committee.

If the complaint relates to a Town or Parish Councillor then a co-opted Town or Parish Councillor of the Standards Committee will also be part of the Hearings Panel, but will not have voting rights.

An Independent Person will be asked to attend any Hearings Panel and give advice to it in respect of the complaint as required by S28(7) of the Localism Act 2011.

9.1.15.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Hearings Panel and the Subject Member.

Once the date for the Hearings Panel has been arranged the Subject Member will be notified and asked if they:

- a) wish to attend the hearing;
- b) wish to be represented at the hearing by a solicitor, barrister or any other person;
- c) wish to submit any written evidence or documentation to be considered by the Panel. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Panel;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Hearings Panel appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

The Hearings Panel will receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report.

The Hearings Panel will be held in private and this will be confirmed at the hearing.

9.1.15.3 Procedure for the Hearings Panel

The procedure for the Hearings Panel will be as follows:

- a) Confirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Hearings Panel will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.
- b) The Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.

- c) The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- e) The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Hearings Panel.
- g) Members of the Hearings Panel, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Hearings Panel.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The Subject Member will then be given the opportunity to sum up
- j) The Independent Person will then be invited to comment and outline their view in respect of the complaint.
- k) The Chairman of the Hearings Panel will check with the other members of the Panel whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Hearings Panel.
- l) If the Panel is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the Democratic Services Clerk and Monitoring Officer will remain.
- m) The Panel will then determine the complaint on the balance of probabilities. If the Panel determine that there has been a failure to follow the Code the Panel shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.

9.1.16 Finding of the Hearings Panel

9.1.16.1 Finding of Non Failure to follow the Code of Conduct

If the Hearings Panel determine that the Subject Member has not failed to follow the Code of Conduct in the manner set out in the Investigating Officer's report then the complaint will be dismissed.

The decision notice stating the Hearings Panel's findings, in relation to a non-failure to follow the Code of Conduct, will be provided to the Subject Member, the Investigating Officer, the Monitoring Officer, and the Independent Person on a confidential basis. It will not be published on the Council's website or otherwise disclosed.

9.1.16.2 Finding of Failure to follow the Code of Conduct

If the Hearings Panel determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committee(s) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- c) Recommend to the Leader of Council that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Member;
- e) Remove (or recommend to the relevant Town/Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access;
- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee or Sub-Committee meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under [Appendix A](#).

9.1.16.3 Publication of the Decision on Finding a Breach of the Code of Conduct

Within 3 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Hearings Panel. A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person. The decision notice will be available for public inspection, and published on the Borough Council's website.

If the complaint is directed at a Borough Councillor, the decision will be reported to the next convenient meeting of the Borough Council. At the Council meeting the report will be noted and there will be no discussion on the item. If the complaint is directed at a Town/Parish Councillor, the relevant Council will be requested to report the decision to its next Council Meeting.

The Subject Member has no right of appeal against a decision of the Monitoring Officer or the Hearings Panel.

CHAPTER 9.2 - CODE OF CONDUCT FOR COUNCILLORS

9.2.1 Introduction

This Code of Conduct applies to Councillors and Co-opted Members whenever they are acting as a Member or as a representative of the Council or when they claim to act or give the impression of acting as a representative of the Council.

It does not apply to when the Councillor or Co-opted Member is acting in a private capacity.

When carrying out their public role, Councillors and Co-opted Members should always have regard to the seven principles of public life. These are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Councillors and Co-opted Members should also read the Code of Conduct together with the Member/Officer Protocol and other sections of the Council's Constitution relating to ethical and financial probity.

Any person may make a complaint if a Councillor or Co-opted Member does not act in accordance with this Code. The Local Government and Social Care Ombudsmen may also regard a breach of the Code as incompatible with good administration, and may make a finding of maladministration by the Council in some circumstances. It is the Councillor and Co-opted Member's sole responsibility to comply with the Code.

A Members' Interest form is provided by the Monitoring Officer to register interests. It should be noted that the form will be published on the Council's website. When a Councillor or Co-opted Member declares an interest at a meeting of the Council, they should be aware that this will be noted in the Minutes of the Meeting, which is a public document, and also on the Member's page on the website.

If any Councillor or Co-opted Member is unsure about any part of the Code of Conduct, they are urged to seek advice from the Monitoring Officer or Deputy Monitoring Officer.

There are three areas to the Code of Conduct:

- a) Rules about registration of Disclosable Pecuniary Interests and Personal Interests with the Monitoring Officer, using the Members Interest Form [Rule 9.2.3](#)
- b) Rules about declaring interests in meetings where items on the agenda conflict with those interests ([Rules 9.2.4](#), [9.2.5](#) and [9.2.6](#))
- c) Rules about general behaviour ([Rule 9.2.8](#))

9.2.2 Interpretation

- a) "Co-opted Member" means a person who is a member of any committee or sub-committee of the Council or is a member of and represents the authority on any joint committee of the Council and who is entitled to vote on any question which falls to be decided at any committee or sub-committee.
- b) "Councillor" means a Member or Co-opted Member of this Council.
- c) "Meeting" means any meeting of:

- i) the Council;
 - ii) the Executive of the Council, including when making an Individual Executive Decision;
 - iii) any of the Council's or the Executive's committees, sub-committees, joint-committees, joint sub-committees, or area committees;
- d) "Member" includes a co-opted Member and an appointed Member of this Council

9.2.3 Registration of Disclosable Pecuniary Interests and Personal Interests

9.2.3.1

Within 28 days of this Code being adopted by the Council, OR the Councillor's election, OR the Co-opted Member's appointment (whichever is later) Councillors must register with the Monitoring Officer the interests which fall within the categories set out in Appendices A and B.

9.2.3.2

Upon the re-election of the Councillor or the re-appointment of the Co-opted Member, Councillors must within 28 days re-register with the Monitoring Officer any interests in Appendices A and B.

9.2.3.3

Councillors must register with the Monitoring Officer any change to interests or new interests in Appendices A and B within 28 days of becoming aware of the change.

9.2.3.4

Councillors need not register any interest which the Monitoring Officer agrees is a 'sensitive interest' A sensitive interest is one which, if made public, could lead to the Councillor or a person connected to a Councillor being subject to violence or intimidation.

9.2.4 Declaration of Disclosable Pecuniary Interests at Meetings

9.2.4.1 Where a matter arises at a meeting which relates to an interest in Appendix A, Councillors must do the following:

9.2.4.2 They should declare their interest at the beginning of the meeting when asked to do so by the Chairman or Mayor, or if not then, they must do so before the matter is discussed. They must do so regardless of whether or not the interest is registered in their Members Interest form.

9.2.4.3 Where a matter arises at a meeting which is a sensitive interest as defined under [Rule 9.2.3.4](#) Councillors do not have to declare the exact nature of their interest but must follow the rules regarding non-participation, in Rules in [9.2.4.4](#) and [9.2.4.5](#)

9.2.4.4 When the item is introduced at the meeting, Councillors may continue to attend the meeting but only for the purpose of making representations, answering questions or giving evidence provided that the public are also allowed to attend the meeting for the same purpose.

9.2.4.5 They must then leave the room before the matter is discussed and voted upon.

9.2.5 Declaration of Personal Interests at Meetings

9.2.5.1

Where a matter arises at a meeting which relates to or affects an interest in [Appendix B](#) or a financial interest of the Councillor, a friend, relative or close associate (and it is not a Disclosable Pecuniary Interest listed in [Appendix A](#)), Councillors must do the following:

9.2.5.2

They should declare the interest at the beginning of the meeting when asked to do so by the Chairman or Mayor as a “Personal Interest” or if not then, they must do so before the matter is discussed or voted upon. They must do so regardless of whether or not the interest is registered in their Members Interest form.

9.2.5.3

Where a matter arises at a meeting which is a sensitive interest as defined under [Rule 9.2.3.4](#) Councillors do not have to declare the exact nature of their interest

9.2.5.4

They may however participate in the discussion and vote on the matter, subject to [Rule 9.2.6](#)

9.2.6 Declaration of Prejudicial Interests at Meetings

9.2.6.1

Where the matter affects the declared interest under [Rule 9.2.5.1](#) more than the majority of people in the area affected by the decision, and a reasonable member of the public would think the Councillor’s view of the public interest would be adversely affected, the Councillor must do the following:

9.2.6.2

They should declare this as a Prejudicial interest at the beginning of the meeting when asked to do so by the Chairman or Mayor, or if not then, they must do so before the matter is discussed.

9.2.6.3

Where a matter arises at a meeting which is a sensitive interest as defined under [Rule 9.2.3.4](#) Councillors do not have to declare the exact nature of their interest but must follow the rules regarding non-participation, in [Rules 9.2.6.4](#) and [9.2.6.5](#)

9.2.6.4

When the item is introduced at the meeting, Councillors may continue to attend the meeting but only for the purpose of making representations, answering questions or giving evidence provided that the public are also allowed to attend the meeting for the same purpose.

9.2.6.5

They must then leave the room before the matter is discussed or voted upon.

9.2.7 Dispensations

9.2.7.1

On a written request, the Monitoring Officer or Deputy Monitoring Officer may grant a Councillor a dispensation to participate in a discussion and/or vote on a matter at a meeting where they would otherwise not be allowed to if the Monitoring Officer or Deputy Monitoring Officer believes that the number of Councillors otherwise prohibited from taking part in the meeting would impede the transaction of the business; or it is in the interests of the inhabitants in the Council's area to allow the Councillor to take part or it is otherwise appropriate to grant a dispensation. The dispensation will last no longer than 4 years from the date of the dispensation.

9.2.8 Behaviour

9.2.8.1

Councillors must not behave such a way that a reasonable person would regard as disrespectful to others.

9.2.8.2

Councillors must not act in a way which a reasonable person would regard as bullying, or in any way which is intimidating to others. Supporting Guidance on Bullying and Intimidation can be found at [Appendix C](#).

9.2.8.3

Councillors must not seek to improperly confer an advantage or disadvantage on any person.

9.2.8.4

Councillors must only use the resources of the Council when undertaking Council business.

9.2.8.5

Councillors must not disclose information which is confidential or where disclosure is prohibited by law, unless he or she has the consent of the person authorised to give it, or he or she is required by law to do so.

9.2.8.6

Councillors must respect the impartiality of officers and not put undue pressure on them.

9.2.8.7

Councillors must not do anything which may cause their Council to breach any of the equality enactments (as defined in the Equality Act 2010).

9.2.8.8

Councillors must notify the Monitoring Officer of any gifts or hospitality worth more than an estimated value of £25 which the Councillor has received by virtue of his or her office or any gifts or hospitality worth more than an estimated value of £25 which they have been offered but which they subsequently declined.

DISCLOSABLE PECUNIARY INTERESTS

Interests defined by regulations made under s30(3) of the Localism Act 2011 and described in the table below.

(In the extracts from the Regulations below, 'M' means you and 'relevant person' means you and your partner). "Partner" means a spouse or civil partner of M, or a person with whom M is living as husband and wife or a person with whom M is living as if they were civil partners

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— a) under which goods or services are to be provided or works are to be executed; and b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge)— a) the landlord is the relevant authority; and b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and b) either— i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

These descriptions on Disclosable Pecuniary Interests above are subject to the following definitions;

The Act	means the Localism Act 2011
Body in which the relevant person has a beneficial interest	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
Director	includes a member of the committee of management of an industrial and provident society;
Land	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
M	means a member of a relevant authority;
Member	includes a co-opted member;
Relevant authority	means the authority of which M is a member;
Relevant period	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
Relevant person	means M or any other person referred to in section 30(3)(b) of the Act;
Securities	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

IMPORTANT NOTE:

Under s34 of the Localism Act 2011 it is a criminal offence if a Member or co-opted Member:

- a) fails to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election;
- b) fails to disclose a Disclosable Pecuniary Interest at a meeting of the Council if that interest is not included on the register;
- c) participates in any discussion or vote on a matter in which they have a Disclosable Pecuniary Interest;
- d) fails to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not included on the register that they have disclosed to a meeting;
- e) as an Executive Member discharging a function acting alone i.e. an Individual Executive Member Decision, and having a Disclosable Pecuniary Interest in such a matter, fails to notify the Monitoring Officer within 28 days of the interest;

- f) As an Executive Member discharging a function acting alone, i.e. an Individual Executive Member Decision, and having a Disclosable Pecuniary Interest in such a matter, participates in any steps, or further steps in relation to the matter.
- f) knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such an interest to a meeting.

APPENDIX B

REGISTERED PERSONAL INTERESTS

Councillors must register:

- i) any body of which the Councillor is in a position of general control or management and to which he/she is appointed or nominated by the Council;
- ii) any body
 - exercising functions of a public nature; or
 - directed to charitable purposes; or
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
 - of which the Councillor is a member or in a position of general control or management;

Guidance on Bullying and Intimidation ([Rule 9.2.8.2](#) Code of Conduct)

[Rule 9.2.8.2](#) of the Code of Conduct says: Councillors must not act in a way which a reasonable person would regard as bullying, or in any way which is intimidating to others. The following guidance is based on Standards for England Guidance, now archived after it was abolished by the Localism Act 2011, as well as guidance issued by ACAS¹.

It is important to remember that such behaviour will only be caught by the Code of Conduct if a Member is acting, or giving the impression they are acting, as a Member of the Authority, and not in his or her private capacity.

What is ‘bullying’ and ‘intimidation’?

Using ACAS guidance as a starting point, the Standards Committee has agreed a definition of bullying as ‘offensive, intimidating or malicious behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient’. A victim’s obvious vulnerability will be taken into account when assessing whether bullying has occurred.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a Member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

Bullying should be contrasted with the legitimate challenges which a Member can make in challenging policy or scrutinising performance. Contributing to debates in Council meetings about policy and asking officers to explain the rationale for their professional opinions are to be encouraged. All Members should feel free to challenge fellow Councillors and professional Officers as to why their views are held. However, Members need to be careful about criticism which becomes offensive in nature which will cross the line of what a reasonable person would find acceptable.

Criticism of Officers

The Council is under a legal obligation to ensure that officers work in a safe environment and the same rules about their interaction with the public apply equally to their work with Members. Anyone should feel free to express disagreement with officers, so long as it is done in an appropriate way. Officers should make decisions which are unbiased, and attempts to coerce them or persuade them to act in a particular way to a point where to do so would prejudice their professional integrity would not be acceptable.

Examples of intimidation and bullying from the archived Standards for England website:

Councillor W. was a Member of a town council in the East of England conducted a relentless campaign of destructive criticism against the clerk, councillors and the council. This campaign included making unsubstantiated and inappropriate complaints about the clerk in website postings, newsletters and numerous letters. The councillor’s behaviour placed a significant drain on both council resources and members’ time, caused staff great stress and ill health, and disrupted the normal running of the council.

Councillor S was a Member of a metropolitan authority in the North West of England. He verbally abused a woman who worked as a cleaner for the Council, after a minor traffic accident. Councillor S told her that he was going to report her to her employer and get her sacked. The tribunal decided that a reasonable person with knowledge of the circumstances would consider that the Councillor had bullied and threatened the cleaner.

Councillor P was a Member of a district council in the East Midlands. He was abusive and aggressive towards an officer, shouting at her and publicly threatened to sack another officer. He also improperly put pressure on staff involved in discussions with their trade union and in doing so compromised their impartiality. The tribunal found his behaviour had caused others unnecessary fear and ill health.

¹ Bullying and harassment at work: [A guide for managers, ACAS June 2014 and Archived content for Standards for England; guidance on 'Bullying and Intimidation' available upon request from the Borough Solicitor, or to download:](#)

CHAPTER 9.3 - MEMBER / OFFICER PROTOCOL

9.3.1 Preamble

The relationship between Members and Officers is important to the successful working of the Authority. This relationship within Wokingham Borough Council is characterised by mutual respect and trust. Members and Officers should feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. The purpose of this Protocol is to help Members and Officers to perform effectively by giving guidance in their respective roles and expectation of their respective roles and on their relationship with each other. This Protocol also gives guidance on what to do on the rare occasions when things go wrong and in its appendices, give supporting guidance in respect of specific subjects.

The Protocol must be read and operated in the context of any relevant legislation, the Member's Code of Conduct, Officer Code of Conduct and the Council's Whistleblowing Policy and Guidance. Nothing in this protocol overrides national legislation or these documents.

9.3.2 Roles of Members and Staff

The respective roles of Members and Officers can be summarised as follows:

Members and Officers are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Members are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the Council. Their job is to give advice to Members and the Council and to carry out the Council's work under the direction of Members through the Council, Executive and relevant committees.

Mutual respect between Members and Officers is essential to good local government and an important part of that is an understanding of these respective roles and responsibility.

9.3.3 Members' Responsibilities

Members have three main areas of responsibility: determining the strategic policy of the Council and giving it political leadership, representing the Council externally, and acting as advocates on behalf of their constituents. It is not the role of Members to involve themselves in the day to day operation of Council services.

9.3.4 The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members, Chairmen, Vice-Chairmen

The Mayor, Deputy Mayor, Members of the Executive and Deputy Executive Members have additional responsibilities. Because of those responsibilities, their relationships with employees may be different from and more complex than those of Members without those responsibilities and this is recognised in the expectations they are entitled to have.

9.3.5 Opposition Members

Members shall be given timely access to information that they require in their role as Members. As individual Members of the Council, all Members have the same rights and obligations in their relationships with employees and should be treated equally. This principle is particularly in the context of overview and scrutiny. However, where a political group forms an administration, either alone or in partnership with another group or groups, it is recognised that the relationship between Officers, particularly those at senior level in the organisation and the administration shall differ from that with opposition groups.

9.3.6 Officers

The role of Officers is to give advice and information to Members and to implement the policies determined by the Council.

Certain employees e.g. Head of Paid Services, Monitoring Officer, Chief Financial Officer (Section 151) and the Statutory Chief Officers have responsibilities in law over and above their obligations to the Council and its Members which they must be allowed to discharge.

9.3.7 Expectations

Members can expect from Officers:

- A commitment to the Council as a whole and not to any political group;
- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Timely response to enquiries and complaints;
- Professional advice not influenced by political views or preference, which does not compromise the political neutrality of employees;
- Regular, up to date information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions that they hold;
- Awareness and sensitivity to the political environment
- Respect, dignity and courtesy;
- Training and development in order that they can carry out their role effectively;
- Integrity, mutual support and appropriate confidentiality;
- That Officers shall not use their relationship with Members to advance their personal interests or to influence decisions improperly;
- That Officers shall at all times comply with the relevant Code of Conduct.

Officers can expect from Members:

- A working partnership;
- An understanding of and support for respective roles, workloads and pressures;
- Political leadership and direction;
- Respect, dignity and courtesy;
- Integrity, mutual support and appropriate confidentiality;
- Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of Officers in determining what are reasonable requests, having regard to power relationship between Members and employees and the potential vulnerability of Officers, particularly at junior levels;
- That Members shall not use their position or relationship with employees to advance their personal interests or those of others or to influence decisions improperly;
- That Members shall at all times comply with the relevant Code of Conduct.

9.3.8 If things go wrong

Procedure for Officers

From time to time the relationship between Members and Officers may break down or become strained. Whilst it shall always be preferable to resolve matters informally, through conciliation by an appropriate senior Manager or Member, Officers should raise any concerns with the Monitoring Officer who will consider how the complaint or allegation should be dealt with.

At a minor level, this may be no more than informally referring the matter to the Leader of the relevant party group. More serious complaints may involve alleged breaches of the Member Code of Conduct and the process for the consideration of Member Code of Conduct complaints is as set out in [Rule 9.1.12](#) .

Nothing in this process negates the right of Officers to make a Code of Conduct complaint to the Monitoring Officer if they wish.

Procedure for Members

In the event that a Member is dissatisfied with the conduct, behaviour or performance of an Officer, the matter should be raised with the appropriate manager or the relevant Director. Where the matter concerns a Director, it should be raised with the Chief Executive. Where the matter concerns, the Chief Executive it shall be raised with the Director Finance and Resources or with the Leader of the Council as appropriate.

Appendix 1**Supporting Guidance on Members' Access to Documents and Information**

1. This Guidance should be read in conjunction with the Access to Information Rules contained in Chapter 3.2 of the Council's Constitution.
2. Members may request Directors to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as Members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
 - a) it is in the public domain, and
 - b) it is not barred by the Data Protection Act from being given.
3. Every Member of the Executive, the Overview and Scrutiny Committees, and/or any other committee or sub-committee has a right to inspect documents about the business of that committee or sub-committee or the Executive.
4. A Member who is not a Member of a specific Overview and Scrutiny Committee, other committee or sub-committee, or the Executive has rights of access to reports which are set out in the Access to Information Procedure Rules set out in Chapter 3.2.
5. Disputes as to the validity of a Member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a Member's request.
6. A Member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
 - a) where to do so is likely to be in breach of the Data Protection Act, or
 - b) where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Members' code of conduct.
7. Information given to a Member must only be used for the purpose for which it was requested.
8. It is an accepted convention that a Member of one political group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another political group.
9. Members and Officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
10. When requested to do so, Officers will keep confidential from other Members advice requested by a Member.
11. Members and Officers must not prevent another person from gaining access to information to which that person is entitled by law.

Supporting Guidance on Media Relations

1. All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
2. Press releases or statements made by Officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a political group.
3. Officers will keep relevant Members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
4. Before responding to enquiries from the media, Officers shall ensure they are authorised to do so.
5. Likewise, Officers will inform the Council's Communications Team of issues likely to be of media interest, since that section is often the media's first point of contact.
6. If a Member is contacted by, or contacts, the media on an issue, he/she should:
 - a) indicate in what capacity he/she is speaking (e.g. as ward Member, in a personal capacity, as an Executive Member, on behalf of the Council, or on behalf of a political group);
 - b) be sure of what he/she wants to say or not to say;
 - c) if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's Communications Team and/or relevant Director, except in relation to a statement which is party political in nature;
 - d) consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
 - e) never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
 - f) consider whether to consult other relevant Members; and
 - g) take particular care in what he/she says during the moratorium on publicity in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

Supporting Guidance on Correspondence

1. Correspondence between an individual Member and an Officer should not be copied to another Member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no “blind” copies.
2. Official letters written on behalf of the Council should normally be in the name of the relevant Officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive Member or the chairmen of the Overview and Scrutiny Committees.
3. The Mayor may initiate correspondence in his/her own name.
4. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a Member.
5. When writing in an individual capacity as a ward Member, a Member must make clear that fact.

Appendix 4**Supporting Guidance on Access to Premises and Use of Council Resources**

1. Officers have the right to enter Council land and premises to carry out their work. Some Officers have the legal power to enter property in the ownership of others.
2. Members have a right of access to Council land and premises to fulfil their duties.
3. When making visits as individual Members, Members should:
 - a) whenever practicable, notify and make advance arrangements with the appropriate manager or Officer in charge;
 - b) comply with health and safety, security and other workplace rules;
 - c) not interfere with the services or activities being provided at the time of the visit;
 - d) if outside his/her own ward, notify the ward Member(s) beforehand; and
 - e) take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.
4. The Council provides all Members with a number of services to assist them in discharging their roles as Members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.
5. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:
 - a) where facilities are provided in Members' homes at the Council's expense;
 - b) in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
 - c) regarding ICT security.
6. Members should not put pressure on staff to provide resources or support which Officers are not permitted to give. Examples are:
 - a) business which is solely to do with a political party;
 - b) work in connection with a ward or constituency party political meeting;
 - c) electioneering;
 - d) work associated with an event attended by a Member in a capacity other than as a Member of the Council;
 - e) private personal correspondence;
 - f) work in connection with another body or organisation where a Member's involvement is other than as a Member of the Council; and
 - g) support to a Member in his/her capacity as a councillor of another local authority.

Appendix 5**Supporting Guidance on Role and Responsibilities of Members****1 The Role of Members**

Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, Members may wish to seek the advice of senior colleagues, the relevant senior Officer(s), and/or the Monitoring Officer but the decision whether or not there is a conflict ultimately rests with the Member:

- a) collectively, Members are the ultimate policy-makers determining the core values of the Council and approving the Authority's policy framework, strategic plans and budget;
- b) Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies;
- c) every elected-Member represents the interests of, and is an advocate for their ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies;
- d) some Members have roles relating to their position as Members of the Executive, Overview and Scrutiny Committees, or other committees and sub-committees of the Council.
- e) members of the Executive can have individual delegated powers. They may determine matters within their portfolios but implementation of their decisions is the responsibility of Officers;
- f) Members serving on the Overview and Scrutiny Committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They also monitor local health service provision;
- g) Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding planning and licensing applications, which by law are excluded from the remit of the Executive.
- h) some Members may be appointed to represent the Council on local, regional or national bodies.

2 The Responsibilities of Members

As politicians, Members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as Members they have a duty always to act in the public interest.

3 Instructing Officers

Members are not authorised to instruct Officers other than:

- a) through the formal decision-making process;
- b) where staff have been specifically allocated to give support to a Member or group of Members; and
- c) in the case of political assistants.

4 Financial Transactions

Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.

5 Unlawful Actions

Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Section 151 (Finance) Officer.

6 Impartiality of Officers

Members must respect the impartiality of Officers and do nothing to compromise it, e.g. by insisting that an Officer change his/her professional advice.

7 Members Role in Appointments

Members have a role in:

- a) the appointment of the Chief Executive, and Directors
- b) determining human resources policies and conditions of employment;
- c) determining requests for early retirement and redundancy pay;
- d) involvement in the appointment of political assistants;
- e) hearing and determining appeals; and
- f) a consultative role with staff side and the Trade Unions.

Members shall not act outside these roles.

If participating in the appointment of Officers, Members should:

- a) remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply);
- b) never canvass support for a particular candidate;
- c) not take part where one of the candidates is a close friend or relative;
- d) not be influenced by personal preferences; and
- e) not favour a candidate by giving him/her information not available to the other candidates.

Supporting Guidance on Role and Responsibilities of Officers

1 The Role of Officers

Officers are responsible for giving advice to Members to enable them to fulfil their roles. In doing so, Officers will take into account all available relevant factors. Advice given by the Section 151 (Finance) Officer and Monitoring Officer in accordance with their Statutory functions must always be followed. All Officer reports for Members' attention, excluding reports relating to planning applications which are due to be discussed at the Planning Committee, should be circulated to the Section 151 Officer and Monitoring Officer for information and comment.

Under the direction and control of the Council (including, as appropriate, the Executive, committees and sub-committees), Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.

2 Responsibilities of Officers

Officers have a duty to implement decisions of the Council, the Executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's Constitution, and duly minuted.

- a) Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- b) Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the Authority as expressed in the Council's formal decisions.
- c) Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for Members, the media or other sections of the public.
- d) Officers have the right not to support Members in any role other than that of Member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on Officers' involvement in political activities.

3 The Relationship Between Members and Officers - General

The conduct of Members and Officers should be such as to instil mutual confidence and trust:

- a) the key elements are recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately;
- b) Members and Officers should not undermine respect for the other at Council Meetings, or at any other meeting they attend in their capacity as a Member or Council employee. A personal attack by a Member on an Officer, or on staff generally, at a formal or informal Member meeting will never be acceptable, nor will a personal attack by an Officer on a Member;
- c) Members should not raise matters relating to the conduct or capability of an individual Council Officer or Officers collectively at meetings held in public;

- d) informal and collaborative two-way contact between Members and Officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection;
- e) Members and Officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles;
- f) it is not enough to avoid actual impropriety. Members and Officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Member should not sit on a body or participate in any decision which directly affects the Officer on a personal basis;
- g) Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council;
- h) with the exception of political assistants, Officers work to the instructions of their senior Officers, not individual Members. It follows that, whilst such Officers will always seek to assist a Member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, Members should normally direct their requests and concerns to a Director, at least in the first instance;
- i) Officers will do their best to give timely responses to Members' enquiries. However, Officers should not have unreasonable requests placed on them. Their work priorities are set and managed by Directors. Members should avoid disrupting Officers' work by imposing their own priorities;
- j) Members wishing to see Officers in person should make appointments in accordance with any local service area protocol;
- k) Members and Officers will endeavour to give timely responses to each other's enquiries and requests;
- l) an Officer shall not discuss with a Member personal matters concerning him/herself or another individual employee. This does not prevent an Officer raising on a personal basis, and in his/her own time, a matter with his/her ward Member;
- m) Members and Officers should respect each other's free (i.e. non-Council) time.

4 The Council as Employer

Officers are employed by the Council as a whole.

5 Mayor and Officers

Officers will respect the position of Mayor and provide appropriate support.

6 Executive Members and Officers

Executive Members will take decisions in accordance with the Constitution and will not otherwise direct staff. Directors will be responsible for instructing staff to implement the Executive's decisions.

In addition to individual Members of the Executive, Directors (including the Section 151 Officer) and the Monitoring Officer have the right to submit papers to the Executive as a whole or to individual Executive Members for consideration.

Directors and Executive Members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including, without exception, the Monitoring Officer and Section 151 Officer, and will not direct Officers in the framing of recommendations.

Before any formal decisions with a financial implication are taken by the Executive, the Section 151 Officer and the Directors for the service(s) concerned must be consulted. This is to ensure that those Officers who are budget holders:

- a) are aware of the proposed decision;
- b) have the opportunity to offer advice; and
- c) are subsequently able properly to authorise the financial transactions needed to implement decisions.

7 Executive Individual Decisions

An individual Executive Member who is minded to write or commission a report or to make a decision about a matter within his/her portfolio must ensure that those other Members and Officers who need to know of the matter are so informed. There is a particular requirement to involve other Executive Members on cross-cutting issues.

Executive Members when making decisions (whether collectively or individually) must state the reasons for those decisions. The written record of the decisions must include the reasons.

8 Officer Delegated Powers

Officers taking decisions under their delegated powers must consult with the relevant Executive Member(s) in advance when the matter to which the decisions relate are likely to be sensitive or contentious, or have wider policy implications.

9 Officer Action

At some meetings, a resolution may be passed which authorises a named Officer to take action between meetings in consultation with the chairman/Executive Member. In these circumstances it is the Officer, not the Member, who takes the action and is responsible for it. A Member has no legal power to take decisions, neither should he/she apply inappropriate pressure on the Officer.

10 Political Groups and Officers (excluding Political Assistants)

The Chief Executive and Directors may properly be asked to contribute to deliberations of matters concerning Council business by political groups:

- a) Officers will not normally be expected to attend a meeting of a political group where some of those attending are not Members of the Council, particularly where there is a likelihood that matters of a confidential or political nature will be considered;
- b) Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of a wholly political nature, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed;
- c) political group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an Officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so;
- d) where Officers provide factual information and advice to a political group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council;

- e) it must not be assumed that an Officer is supportive of a particular policy or view considered at a political group meeting simply because he/she has attended or provided information to the meeting;
- f) Officers will respect the confidentiality of any political group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other Members. This shall not prevent the Chief Executive or a Director providing feedback to other Directors on a need-to-know basis;
- g) in their dealings with political groups, Officers must treat each group in a fair and even-handed manner;
- h) Members must not do anything which compromises or is likely to compromise Officers' impartiality;
- i) during discussions at political group meetings, Members should have regard to the Code of Conduct requiring them to treat others with respect, and to the provisions of this protocol regarding the need for mutual respect between Members and Officers to be maintained at all times. The Clerk to the meeting shall report any comments or behaviour he/she considers to be contrary to these provisions to the Chief Executive and Monitoring Officer;
- j) an Officer accepting an invitation to the meeting of one political group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each;
- k) an Officer who is not a Director shall not be invited to attend a party group meeting, but a Director may nominate another Officer to attend on his/her behalf;
- l) an Officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a political group meeting;
- m) no Member will refer in public or at meetings of the Council to advice or information given by Officers to a political group meeting, and no Officer will refer in public reports to matters discussed by a political group meeting;
- n) any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Monitoring Officer or Chief Executive, and the relevant party group leader.

11 Political Assistants

These Officers have been appointed by the Council exclusively to provide support to each of the party groups. Their function is to assist the interests and work of the group to which they have been assigned. This is in contrast to all other staff whose duty is to serve the Council as a whole:

- a) political Assistants will be treated in accordance with and expected to observe all codes, policies and practices relating to the Council's staff. This includes the courtesy and consideration which the Council expects its Officers to show to one another;
- b) except for their immediate secretarial and clerical support, the assistants will have no line management responsibility or power of direction over other staff;
- c) political Assistants are not authorised to comment publicly on behalf of the Council as a whole, or to commit the Council to any particular course of action, but can comment on behalf of the party group to which they have been assigned;
- d) the level of access to Council documents and information shall be that enjoyed by Members.

12 Ward Issues and Officers

To enable them to carry out their ward role effectively, Members need to be fully informed about matters affecting their ward. Directors must ensure that all relevant staff are aware of the requirement to keep local Members informed, thus allowing Members to contribute to the decision-making process and develop their representative role.

This requirement is particularly important:

- a) during the formative stages of policy development, where practicable;
- b) in relation to significant or sensitive operational matters;
- c) whenever any form of public consultation exercise is undertaken; and
- d) during an overview and scrutiny investigation.

Issues may affect a single ward. Where they have a wider impact, a number of Local Ward Members will need to be kept informed.

Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the wards affected should be invited to attend the meeting as a matter of course.

If a local Member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the relevant Officer. Provided the meeting has not been arranged on a party political basis:

- a) an Officer may attend but is not obliged to do so, and
- b) the meeting may be held in Council-owned premises.

No such meetings should be arranged or held during the moratorium on publicity during the approximate six week period between the notice of election and the election itself.

Whilst support for Members' ward work is legitimate, care should be taken if staff are asked to accompany Members to ward surgeries. In such circumstances:

- a) the surgeries must be open to the general public; and
- b) Officers should not be requested to accompany Members to surgeries held in the offices or premises of political parties.

Officers must never be asked to attend ward or constituency political party meetings.

It is acknowledged that some Council staff (e.g. those providing dedicated support to Executive Members) may receive and handle messages for Members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.

In seeking to deal with constituents' queries or concerns, Members should not seek to jump the queue but should respect the Council's procedures and in particular locally agreed levels of service. Officers have many pressures on their time. They may not be able to carry out the work required by Members in the requested timescale, and may need to seek direction from their managers.

Under no circumstances should Members seek to use their positions to further their own personal interests as recipients of Council services.

CHAPTER 9.4 – CORPORATE ANTI-FRAUD AND ANTI-CORRUPTION POLICY

9.4.1 Introduction

Wokingham Borough Council (The Council) aims to deliver high quality services and provide value for money by being fully accountable, honest and open in everything that it does.

Fraud and corruption undermine these aims by diverting resources from legitimate activities, damaging public confidence in the Council and adversely affecting staff morale.

To achieve its strategic priorities, the Council seeks to ensure that measures are taken to prevent, detect and investigate fraudulent or corrupt acts. The aim of this policy is to reduce losses from fraud and corruption to an absolute minimum.

The Council has a zero tolerance policy regarding fraud and corruption. It has adopted the following approach.

“In administering its responsibilities the Council is opposed to fraud and corruption whether it is attempted on or from within the Council and is committed to preventing, deterring, detecting and investigating fraud and corruption.”

This policy is particularly relevant to:

- a) elected Members;
- b) employees;
- c) contractors;
- d) consultants;
- e) suppliers;
- f) service users;
- g) customers (including the public); and
- h) partner organisations.

9.4.2 Defining Fraud

The Council defines “fraud” as an intentional distortion of financial statements or other records by persons internal or external to the organisation which is carried out to conceal the misappropriation of assets or otherwise for financial gain. This may involve, but is not limited to:

- a) falsification or alteration of accounting records or other documents;
- b) misappropriation of assets or theft;
- c) suppression or omission of the effects of transactions from accounting records of other documents;

- d) recording transactions which have no substance; and
- e) wilful misrepresentation of transactions or of the Council's state of affairs.

9.4.2.1

Furthermore, the Fraud Act 2006 has defined fraud in law for the first time, defining it in three classes:

- a) fraud by false representation;
- b) fraud by failing to disclose information; and
- c) fraud by abuse of position.

9.4.3 Defining Corruption

The Council defines corruption as the offering, giving, soliciting or accepting of any inducement or reward which would influence the actions taken by the Council, its Members or Officers. Areas where corrupt practices may occur include, but are not limited to:

- a) tendering and awarding of contracts;
- b) pecuniary interests of Members and Officers;
- c) the award of permissions, planning consents and licenses; and
- d) the disposal of assets.

9.4.4 Framework for Prevention and Detection

It is a management responsibility to maintain the internal control system and to ensure that the Council's resources are properly applied in the manner and on the activities intended. This includes responsibility for the prevention and detection of fraud and other illegal acts.

9.4.5 Key Principles and Culture

The Council will not tolerate fraud and corruption in the administration of its responsibilities whether from inside or outside of the authority. The Council is committed to creating a culture of opposition to fraud and corruption. The Council is determined that the authority meets the expectations of the Committee on Standards of Public Life and is committed to the ten general principles which govern standards of conduct in local government, namely:

- a) selflessness;
- b) honesty and integrity;
- c) objectivity;
- d) accountability;
- e) openness;
- f) personal judgement;

- g) respect for others;
- h) duty to uphold the law;
- i) stewardship; and
- j) leadership.

9.4.5.1

The Council expects Members (elected and co-opted) and employees (including agency staff, consultants and contractors) to lead by example in ensuring effective opposition to fraud and corruption. This includes ensuring adherence to legislation, local rules and regulations, National and Local Codes of Conduct and that all procedures and practices are beyond reproach.

9.4.6 Raising Concerns

Employees at all levels should be alert to the possibility of fraud and corruption. They are expected, and positively encouraged to raise any concerns relating to fraud and corruption which they become aware of. These can be raised in any way that the employee prefers, including with their line manager, through a Director, with the Shared Audit and Investigation Service or through the [Council's Whistleblowing Policy](#). Whichever route is chosen, the employee can be assured that concerns raised in good faith will be fully investigated and, wherever possible, those raising concerns will be dealt with in confidence.

When management receive concerns from employees or others regarding potential fraud or corruption, they should immediately contact the Assistant Director, Governance (and Monitoring Officer) with details of the concerns. The Assistant Director, Governance will make preliminary enquiries and in consultation with the Section 151 Officer will determine whether there are grounds for an investigation.

Councillors, service users, suppliers, partner organisations and members of the public are encouraged to report any concerns. These concerns about fraud and corruption should be reported either directly to the Assistant Director, Governance or via the [Council's Whistleblowing Policy](#).

If employees feel that they are unable to use internal routes then they can contact the council's external auditors, Ernst and Young:

Ernst and Young

Helen Thompson, Wessex House, 19 Threefield Lane, Southampton, SO14 3QB,

Email hthompson2@uk.ey.com

Tel 07974 007332

Although the Council encourages its staff to report concerns acting in good faith, any maliciously motivated and unfounded allegations may be dealt with through the Council's disciplinary code.

9.4.7 Corporate Governance

The main corporate policies and procedures which formulate the Council's framework for minimising risk and the prevention of fraud and corruption include:

- a) Anti-Fraud and Anti-Corruption Policy;
- b) Internal Audit Charter;
- c) Contract and Procurement Regulations;
- d) Financial Regulations;
- e) Human Resources Policy and Guidance for Discipline;
- f) Human Resources Policy for Conduct and Personal Behaviour;
- g) Human Resources Policy for Recruitment and Retention;
- h) Member's Code of Conduct;
- i) Money Laundering Policy;
- j) Officer's Code of Conduct;
- k) Prosecution and Sanction Policy;
- l) Risk Management Strategy;
- m) Scheme of Delegation;
- n) Whistleblowing Policy; and
- o) Anti-Bribery Policy

9.4.8 Corporate Responsibility

Assistant Directors must ensure that all employees in their service are familiar with the corporate policies and procedures listed in [Rule 9.4.7](#), in addition to any other relevant rules and regulations specific to their service. Failure to adhere to these policies and procedures could result in the instigation of disciplinary procedures.

9.4.9 Recruitment

The Council recognises that one of the most important issues relating to the prevention of fraud and corruption is the effective recruitment of staff and therefore takes pre-employment screening seriously.

Employee recruitment is required to be in accordance with procedures laid down by the Lead Specialist HR. As part of these procedures, particular reference is made to:

- a) verifying the identity of the applicant;
- b) obtaining satisfactory references prior to appointment;

- c) verifying the applicant is able to legitimately work in the UK;
- d) verifying and retaining copies of certificates for stated qualifications; and
- e) undertaking Disclosure Barring Service checks where appropriate.

These practices apply to all permanent appointments including those where employees have entered the organisation as an agency worker or consultant in the first instance.

9.4.10 System of Internal Control

The risk of fraud and corruption can be minimised by good financial management, sound internal control systems, effective management supervision, and by raising public, member and employee awareness of fraud.

9.4.10.1

Internal control is the whole system of controls, financial and otherwise, established to provide reasonable assurance of:

- a) proper aims and objectives;
- b) efficient and effective operations;
- c) reliable management information and reporting;
- d) legitimate expenditure;
- e) compliance with laws and regulations;
- f) performance management; and
- g) security of assets and income.

9.4.10.2

Weaknesses in the design and operation of administrative and financial internal control systems may increase the risk of fraud. Systems should contain efficient, effective, and well documented internal controls that cover the following:

- a) adequate segregation of duties;
- b) proper authorisation and approval procedures;
- c) adequate physical security over assets; and
- d) reliable monitoring and reporting arrangements.

9.4.10.3

It is management's responsibility to install adequate internal controls and rectify weaknesses if they occur. To help management discharge this responsibility, systems may be subject to review by both Internal and External Audit. Auditors are responsible for reporting to management on significant weaknesses in the control environment, including deficiencies in the operation of internal controls and highlighting exposure to the risk of fraud.

High risk audit concerns are promptly followed up to ensure issues highlighted are appropriately actioned.

Management should instigate occasional deterrent compliance checks on the operation of internal controls within their service and are encouraged to seek advice from the Shared Audit and Investigation Service on what checks should be carried out. This work should be used to inform the Annual Governance Statement.

9.4.11 Risk Management

Major fraud risks relating to services should be included within local Risk Registers and subject to regular review to ensure that appropriate controls are in place to mitigate those risks.

9.4.12 Role of Statutory Officers

The Council has a statutory responsibility, under Section 151 of the Local Government Act 1972, to ensure the proper administration of its financial affairs and also to nominate one of its Officers to take responsibility for those affairs. The Council's nominated Section 151 Officer is the Deputy Chief Executive and Director of Corporate Services

9.4.12.1

The Council's Monitoring Officer (Assistant Director, Governance) is responsible under Section 5 of the Local Government and Housing Act 1989 to guard against, inter alia, illegality, impropriety and maladministration in the Council's affairs.

9.4.13 Effective Action

Responsibility for investigating suspected fraud and corruption against the Council rests with the Shared Audit and Investigation Service. This is to ensure that the investigation is performed only by properly trained officers in accordance with the appropriate legislation as appropriate:

- a) Bribery Act 2010
- b) Criminal Procedures and Investigations Act (CPIA) 1996;
- c) Data Protection Act 1998;
- d) Fraud Act 2006;
- e) Freedom of Information Act 2000;
- f) Human Rights Act 1998;
- g) Local Government Finance Act 2012;
- h) Police and Criminal Evidence Act (PACE) 1984;
- i) Criminal Finances Act 2017;
- j) Regulation of Investigatory Powers Act (RIPA) 2000;
- k) The Council Tax (Administration and Enforcement) Regulations 1992.
- l) Investigatory Powers Act 2016

9.4.14 Procedure

All referrals will initially be risk assessed and material instances of fraud or irregularity in the Council will be referred to the Shared Audit and Investigation Service.

The Shared Audit and Investigation Service will ensure the following objectives are met:

- a) investigations are undertaken fairly, objectively and in accordance with relevant laws and regulations, so as to avoid jeopardising the outcome on legal and procedural technicalities;
- b) to protect the evidence;
- c) to prove or disprove the original suspicions of fraud;
- d) if proven, to support the findings by producing effective evidence;
- e) to present evidence in an appropriate format accepted by the Crown Prosecution Service or the appropriate disciplining service;
- f) to apply appropriate sanctions and redress against those individuals and organisations that seek to defraud.

9.4.15 Completion

Once an investigation is completed the Shared Audit and Investigation Service may have responsibilities in relation to:

- a) recommending improvements to systems;
- b) attendance at disciplinary hearings and tribunals;
- c) attendance at Court as a witness; and
- d) reporting to the Audit Committee.

Conclusions will be based on fact allowing management to take forward any required disciplinary and / or criminal proceedings as they determine appropriate.

9.4.16 Disciplinary

The Council has in place disciplinary procedures which must be followed whenever staff are suspected of committing a fraudulent or corrupt act. The disciplinary procedures are set out in the Disciplinary Policy and Guidance. The Chief Executive has overall responsibility for ensuring that the disciplinary procedure is managed effectively. Line managers, under the overall direction of an Assistant Director are responsible for day to day management and ensuring compliance with the Disciplinary Policy and Guidance.

9.4.17 Reporting and Publicity

Incidents of fraud and corruption are reported through the following mechanisms:

- a) Corporate Leadership Team;
- b) Audit Committee; and
- c) External Auditors (currently Ernst and Young).

Where evidence of fraud and corruption is found, appropriate sanctions will be sought in line with the Council's Prosecution and Sanctions Policy. The details of any proven act of fraud or corruption, including action taken by the Council will be publicised to employees, Members and the public. This is aimed at deterring further attempts of fraud or corruption by demonstrating the seriousness with which the Council views such cases. In agreement with the Section 151 Officer, Monitoring Officer, the Council will report criminal activity to the Police at the appropriate stage.

9.4.18 Council Tax Investigations

The Investigations Team within the Shared Audit and Investigation Service is also responsible for undertaking investigations within the Council Tax Reductions Scheme. This involves:

- a) investigating suspected fraud by false statement and/or failure to declare changes in circumstances or other method. ;
- b) making random checks on claimants; and
- c) maximising recovery of overpayments.

Where evidence of fraud and corruption is found, appropriate sanctions will be sought in line with the Council's Prosecution and Sanctions Policy. Successful prosecutions will be publicised to help deter further fraud.

9.4.19 Working with Others

Arrangements are in place and continue to develop and encourage the exchange of information between the Council and other agencies on national and local fraud and corruption activity. This includes participation in the National Fraud Initiative which matches data across a wide range of public service organisations in order to detect fraud or erroneous payments.

9.4.20 Money Laundering

Money laundering is the process of moving illegally generated funds through a cycle of transformation in order to create the end appearance of legitimately earned funds.

The Proceeds of Crime Act 2002 details the three principal money laundering offences as:

- a) assisting another to retain the benefit of crime;
- b) acquisition, possession or use of criminal proceeds; and
- c) concealing or transferring proceeds to avoid prosecution.

In addition there are related offences for failing to report where a person has knowledge, suspicion or reasonable grounds for knowledge or suspicion that money laundering has taken place, as well as for tipping off a person that a disclosure has taken place.

Council Officers and Members who suspect money laundering activities should report their concern to the Council's nominated Money Laundering Reporting Officer (MLRO), the Section 151 Officer (Deputy Chief Executive and Director of Corporate Services). Further details are contained in Chapter 9.7 [Anti-Money Laundering Policy](#).

9.4.21 Conclusion and Review

The Council has in place a clear framework of systems and procedures to deter and investigate fraud and corruption. It will ensure that these arrangements are fair and are monitored and updated to keep pace with future developments in preventative, deterrent and detection techniques regarding fraudulent or corrupt activity.

To this end, the Council maintains a continuous review of these arrangements through, in particular the Audit Committee, the Section 151 Officer (Deputy Chief Executive and Director of Corporate Services), Shared Audit and Investigation Service, External Audit and the Monitoring Officer (Assistant Director, Governance).

CHAPTER 9.5 – WHISTLEBLOWING POLICY AND GUIDANCE

9.5.1 Introduction

The Council is committed to delivering high quality services to its customers and expects high standards from its employees and contractors. In order to maintain those high standards a culture of openness and accountability is vitally important. The aims of this policy are:

- a) to encourage you to raise concerns about malpractice within the organisation without fear of reprisal;
- b) to reassure you that your concerns will be taken seriously; and
- c) to provide information about how to raise your concerns and explain how the council will respond.

This policy applies to all Council employees, former employees, agency staff and contractors engaged by the Council.

9.5.2 What is Whistleblowing?

In practical terms, whistleblowing occurs when a concern is raised about danger or illegality that affects others, e.g. clients, members of the public or the Council itself. As the person “blowing the whistle” you would not usually be directly affected by the danger or illegality. Consequently you would rarely have a personal interest in the outcome of any investigation into your concerns. This is different from a complaint or grievance. If you make a complaint or lodge a grievance, you are saying that you personally have been poorly treated. This poor treatment could involve a breach of your individual employment rights or bullying and you are entitled to seek redress for yourself. A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. As a result of this employees will generally be precluded from being able to “blow the whistle” about breaches of his or her employment contract. Although an employee making such a complaint can still use the Council’s grievance policy.

Examples of whistleblowing concerns are:

- a) fraud in, on or by the Council;
- b) offering, taking or soliciting bribes;
- c) unauthorised use of public funds;
- d) financial maladministration;
- e) the physical, emotional or sexual abuse of clients;
- f) failure to comply with legal obligations;
- g) endangering of an individual’s health and safety;
- h) damage to the environment;
- i) a criminal offence;

- j) failure to follow financial and contract procedure rules;
- k) showing undue favour to a contractor or a job applicant;
- l) misreporting performance data; or
- m) neglect of people in care.

This Policy does not replace the Council's complaints or grievance procedures.

9.5.3 Who should I contact?

Having considered this Policy, an employee of the Council, or any other person covered by the Public Interest Disclosure Act (PIDA) 1998, who has serious concerns about any aspect of the Council's work, should in the first instance inform one of the following methods:

a) Inform Line Manager

In many cases, raising concerns with the immediate line manager is the most appropriate route for an employee. The line manager should inform the Assistant Director, Governance of the disclosure and an appropriate course of action will be agreed. If this is not a suitable option (for example because the issue may implicate the manager or if the concern has been raised but remains unaddressed) the concern should be raised using one of the other methods.

b) Dedicated Whistleblowing Communication Channels

The Shared Audit and Investigation Service have established a dedicated 24 hour answerphone hotline for receiving disclosures.

Hot line number - 0118 974 6550;

Email:- confidential.whistleblowing@wokingham.gov.uk

By Post - Confidential Whistleblowing, Shared Audit and Investigations Service, Shute End, Wokingham, RG40 1BN;

In person at Shute End by asking for Shared Audit and Investigations Service at reception.

c) Shared Audit and Investigation Service and Assistant Director, Governance

The Shared Audit and Investigation Service can offer confidential independent advice on the use of the Whistleblowing Policy. If you suspect an employee, a member of the public or contractor (in their business dealings with the Council) of fraud or corruption you can contact the Shared Audit and Investigation Service who will discuss your concerns with you in complete confidence. If you are in receipt of any allegation involving possible corruption, fraud or malpractice you should notify the Assistant Director, Governance immediately on 07747 777298.

d) Director Children's Services and Director Adult Services

If you wish to raise a concern involving vulnerable children, you can contact the Director of Children's Services on 0118 974 6205 to seek guidance on how to proceed. If you wish to raise a concern involving vulnerable adults, you can contact the Director of Adult Services on 0118 974 6414 to seek guidance on how to proceed.

e) Schools

You should refer to the whistleblowing arrangements for the individual school. If it is not suitable for the school's Governing Body to deal with, the concern should be raised with the Director Children's Services (contact details shown in d)).

9.5.3.1

Advice and guidance on how matters of concern may be pursued can be obtained from: the Monitoring Officer (Assistant Director, Governance).

9.5.4 Legal Protection

The Public Interest Disclosure Act (PIDA) 1998 – sets out a framework of protection against victimisation or dismissal for workers who blow the whistle ("disclosure") on criminal behaviour and other specified forms of malpractice.

9.5.4.1

It applies to making a 'protected' disclosure in respect of specific types of malpractice, which are:

- a) that a criminal offence has been committed, is being committed or is likely to be committed;
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) that the health or safety of any individual has been, is being or is likely to be endangered;
- e) that the environment has been, is being or is likely to be damaged; or
- f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

9.5.4.2

The Act covers internal disclosures to the Wokingham Borough Council as the employer, disclosures to prescribed 'persons' such as regulatory bodies (e.g. for health and safety issues, the Health and Safety Executive), and wider disclosures, for example to the police and the media.

9.5.5 Raising Concerns Outside the Council

In certain circumstances it may be appropriate to raise concerns outside the Council to the appropriate 'prescribed regulator'. This should only be done where any disclosure of information that is made in the public interest and where you believe the information is true, i.e. more than just suspicion. You are advised to discuss your concerns with a legal advisor, trade union or Public Concern at Work before reporting them outside the Council. Examples of prescribed regulators are set out below:

- a) The Council's external auditors (Ernst and Young);
- b) Information Commissioner;
- c) Environment Agency;
- d) Health and Safety Executive;
- e) Commissioner of the Inland Revenue;
- f) Ofsted;
- g) General Social Care Council;
- h) Care Quality Commission;
- i) The Commission for Social Care Inspection; and
- j) National Care Standards Commission.

9.5.5.1

As a last resort you may choose to raise your concern outside the Council to someone other than a prescribed regulator, e.g. to the police or your MP. You should only do this if, in addition to the conditions above, they meet one of three preconditions. Provided the disclosure is reasonable in all the circumstances and is not made for personal gain, the preconditions are that you:

- a) reasonably believed that you would be victimised if you raised the matter internally within the Council; or
- b) reasonably believed that the matter would be 'covered up' and there is no prescribed regulator; or
- c) have already raised the matter internally or with a prescribed regulator.

9.5.5.2

It should be noted that wider disclosures (i.e. to the media) can only be protected where there is a justifiable cause for going wider and where the particular disclosure is reasonable. The Council therefore encourages concerns to be raised initially using one of the methods described in [Rule 9.5.3](#).

9.5.6 Making a Protected Disclosure

This policy is intended to allow the internal investigation and resolution of any concerns raised. In accordance with the PIDA 1998, to make a 'protected' disclosure the whistleblower has to meet certain conditions:

- a) A qualifying disclosure means any disclosure of information that, in the reasonable belief of the worker is made in the public interest. Therefore, while the employer can seek a declaration from the whistleblower that he or she is not knowingly making false allegations, disciplinary action is likely to be appropriate only where there is clear evidence that the reporting worker has misused the whistleblowing policy.

- b) Disclosure to a regulatory body will be protected where, in addition, the whistleblower honestly and reasonably believes that the information they provide and any allegation contained in it are substantially true.
- c) Disclosure to other external bodies will be protected if, in addition, making it is in all respects reasonable. 'In all respects reasonable' means, in effect
 - i) the disclosure is not made for personal gain;
 - ii) the whistleblower reasonably believed that they would be victimised if they raised the matter internally;
 - iii) there is no relevant regulatory body;
 - iv) the whistleblower reasonably believed that evidence was likely to be concealed or destroyed;
 - v) the concern has already been raised with the employer and/or relevant regulatory body; and
 - vi) the concern is of an 'exceptionally serious' nature – which in a local government setting could include, say, the alleged abuse of children or vulnerable adults in an authority's care.

9.5.6.1

This may be done orally or in writing. If you are writing, remember to give details of how you can be contacted. Anonymous disclosures present difficulties for effective investigation. Your identity will be kept strictly confidential if you so request, unless disclosure is required by law. However the Council recognises that despite the dual safeguards of confidentiality and legal protection from recrimination that individuals may still feel unable to reveal their identity. In these situations individuals can report their concerns anonymously, but should be aware that these concerns carry less weight with the investigation teams and the disclosure may not be sufficiently detailed to provide a successful investigation.

9.5.6.2

Allegations that are malicious, or allegations made for personal gain, may result in action against the person making them. If an allegation is made in the public interest, but is not confirmed by an investigation, no action will be taken against the person who raised the concern.

9.5.6.3

It is preferable that a whistleblowing concern be raised as soon as there is reasonable suspicion. Employees are not expected to investigate the matter themselves or prove that their concern is well-founded.

9.5.6.4

Anyone who has made a protected disclosure will not suffer any detriment as a result of raising their concern unless it is later proved that they knew they were providing false information. In addition, whistleblowers are protected from suffering a detriment, bullying or harassment from another worker.

Examples of detriment includes (but is not limited to)

- a) failure to promote, if linked to the disclosure;
- b) denial of training;
- c) closer monitoring;
- d) ostracism;
- e) blocking access to resources;
- f) unrequested re-assignment or re-location;
- g) demotion;
- h) suspension;
- i) disciplinary sanction;
- j) bullying or harassment;
- k) victimisation;
- l) dismissal;
- m) failure to provide an appropriate reference; or
- n) failing to investigate a subsequent concern.

9.5.7 How will the Council respond?

The action taken by the Council will depend on the nature of the concern. The matters raised may:

- a) be investigated internally;
- b) be referred to the Police;
- c) be referred to the external auditors (Ernst and Young);
- d) form the subject of an independent inquiry; or
- e) be considered a service issue and referred to the service to respond by any combination of the above.

9.5.7.1

In all cases, where a concern is raised, the contacted officer shall notify the Monitoring Officer (Assistant Director, Governance) and the Section 151 Officer (Deputy Chief Executive and Director Corporate Services). These officers will assess the nature of the concern to decide the appropriate response. Some concerns may be resolved by agreed action without the need for investigation. Any investigation will be overseen by the Assistant Director, Governance.

9.5.7.2

Feedback on the outcome of the concern will be given to the person raising the concern. This feedback may be limited due to legal obligations of confidentiality (i.e. if disciplinary action is taken against a Council employee). The person raising a concern should normally be told:

- a) how and by whom a concern will be handled;
- b) an estimate of how long an investigation will take;
- c) the outcome of the investigation (where appropriate);
- d) that if they believe they are suffering detriment as a result of raising the concern that they should report it;
- e) that he or she is entitled to independent advice.

9.5.8 What if I am Dissatisfied with the Council's Response?

This policy is intended to provide you with an avenue to raise concerns within the Council. However, if at the end of the process an employee of the Council, or any other person covered by the Act, is not satisfied with how a disclosure has been dealt with and wishes to pursue matters by means of a wider disclosure, the following points of contact are available to you:

- a) the Chairman of the Council's Audit Committee
- b) your local Member (if you live in the area of the borough);
- c) the Council's external auditors (Ernst and Young);
- d) relevant professional bodies or regulatory organisations;
- e) relevant inspection body;
- f) your solicitor; or
- g) the Police.

9.5.8.1

If you do decide to take the matter outside of the Council, you need to ensure that you do not disclose confidential information and that you are 'protected' in accordance with the PIDA 1998 ([Rule 9.5.5](#)). If you wish to raise a concern outside of the Council, you may raise it with an external body from the list of prescribed persons and bodies detailed in the 'Department for Business Innovation & Skills [Blowing the Whistle to a Prescribed Person](#) document

9.5.9 Further Information and Advice

Independent advice on 'whistleblowing' can also be obtained from:

Public Concern at Work

3rd Floor, Bank Chambers, 6 - 10 Borough High Street, London, SE1 9QQ

Email: whistle@pcaw.org.uk

Tel General enquiries: 020 3117 2520

Tel Whistleblowing Advice Line: 020 7404 6609

Ernst and Young

Helen Thompson

Wessex House

19 Threefield Lane,

Southampton, SO14 3QB,

Email hthompson2@uk.ey.com

Tel 07974 007332

Professional Body or Trade Union

If you are a member of a professional body or trade union they should be able to advise you on Whistleblowing..

CHAPTER 9.6 - ANTI-BRIBERY POLICY

9.6.1 Policy Statement: Anti-Bribery

Bribery is a criminal offence. We do not, and will not, pay bribes or offer improper inducements to anyone for any purpose, nor do we or will we, accept bribes or improper inducements.

9.6.1.1

To use a third party as a conduit to channel bribes to others is a criminal offence. We do not, and will not, engage indirectly in or otherwise encourage bribery.

9.6.1.2

We are committed to the prevention, deterrence and detection of bribery. We have zero-tolerance towards bribery. We aim to maintain anti-bribery compliance “business as usual”, rather than as a one-off exercise.

9.6.2 Objective of this Policy

This policy provides a coherent and consistent framework to enable Wokingham Borough Council employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach.

We require that all personnel including those permanently employed, temporary agency staff and contractors:

- a) act honestly and with integrity at all times and to safeguard the Council’s resources for which they are responsible; and
- b) comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

9.6.3 Scope of this Policy

This policy applies to all of the Council’s activities. For partners, joint ventures and suppliers, we will seek to promote the adoption of policies consistent with the principles set out in this policy.

9.6.3.1

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels, in every service.

9.6.3.2

This policy covers all personnel, including all levels and grades, those permanently employed, temporary agency staff, contractors, non-executives, agents, Members (including independent members), volunteers and consultants.

9.6.4 Commitment

Wokingham Borough Council commits to:

- a) setting out a clear anti-bribery policy and keeping it up to date;
- b) making all employees aware of their responsibilities to adhere strictly to this policy at all times;
- c) training all employees so that they can recognise and avoid the use of bribery by themselves and others;
- d) encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- e) rigorously investigating instances of alleged bribery and assisting police and other appropriate authorities in any resultant prosecution;
- f) taking firm and vigorous action against any individual(s) involved in bribery;
- g) provide information to all employees to report breaches and suspected breaches of this policy;
- h) include appropriate clauses in contacts to prevent bribery.

9.6.5 The Bribery Act

The Council defines bribery as 'an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage'.

9.6.5.1

There are four key offences under the Act:

- a) bribery of another person (section 1);
- b) accepting a bribe (section 2);
- c) bribing a foreign official (section 6); and
- d) failing to prevent bribery (section 7).

9.6.5.2

The [Bribery Act 2010](#) makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2). Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business. There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

9.6.5.3

The guidance states that a “commercial organisation” is any body formed in the United Kingdom and “.it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” Therefore, we are a “commercial organisation”.

9.6.6 Adequate Procedures

Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case-by-case basis. Adequate procedures need to be applied proportionately, based on the level of risk of bribery in the organisation. It is for individual organisations to determine proportionate procedures in the recommended areas of six principals. These principles are not prescriptive. They are intended to be flexible and outcome focussed, allowing for the different circumstances of organisations. Small organisations will, for example, face different challenges to those faced by large multi-national enterprises. The detail of how organisations apply these principles will vary, but the outcome should always be robust and effective anti-bribery procedures.

9.6.7 Proportionate Procedures

An organisation’s procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the organisation’s activities. They are also clear, practical, accessible, effectively implemented and enforced.

9.6.8 Top Level Commitment

The Chief Executive, Directors and Members are committed to preventing bribery by persons associated with it. Bribery is never acceptable.

9.6.9 Risk Assessment

The Council will assess the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage.

9.6.10 Due Diligence

The Council applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.

9.6.11 Communication (including training)

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

9.6.12 Monitoring and Review

The Council monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary. Wokingham Borough Council is committed to proportional implementation of these principles.

9.6.13 Penalties

An individual guilty of an offence under sections 1, 2 or 6 is liable:

- a) on conviction in a magistrates court, to imprisonment for a maximum term of 12 months (six months in Northern Ireland), or to a fine not exceeding £5,000, or to both;
- b) on conviction in a crown court, to imprisonment for a maximum term of ten years, or to an unlimited fine, or both.

Organisations are liable for these fines and if guilty of an offence under section 7 are liable to an unlimited fine.

9.6.14 Bribery is not tolerated

It is unacceptable to:

- a) give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- b) give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to "facilitate" or expedite a routine procedure;
- c) accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- d) accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- e) retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this policy;
- f) engage in activity in breach of this policy.

9.6.15 Facilitation Payments

Facilitation payments are unofficial payments made to public officials in order to secure or expedite actions. Facilitation payments are not tolerated and are illegal.

9.6.16 Gifts and Hospitality

The Council's Gifts and hospitality policy is included in the Code of Conduct - Employees must ensure:

- a) when acting in an official capacity they must not give the impression that their conduct both inside and outside work with any person or organisation is influenced by the receipt of gifts, rewards and hospitality or any other such consideration;
- b) they think about the circumstances in which offers are made and are aware that they may be regarded as owing a favour in return;
- c) they have permission from their line managers before accepting such offers and are aware that the offers may have to be returned or refused;

- d) that when gifts or hospitality have to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council; and
- e) all offers whether or not accepted must be recorded in the Gifts and Hospitality register.

9.6.16.1

How an employee should react to an offer depends on the type of offer, the relationship between the parties involved and the circumstances in which the gift or hospitality is offered:

- a) employees must not be seen to be acting in their own personal interests and need to be careful that their behaviour cannot be misinterpreted;
- b) when receiving authorised gifts/hospitality, employees should be particularly sensitive as to its timing in relation to decisions which the Council may be taking affecting those providing the hospitality;
- c) an offer of a bribe or commission made by contractors, their agents or by a member of the public must be reported to the line manager and the Assistant Director, Governance. Hospitality from contractors should also be avoided where employees / team are singled out for example Christmas lunch etc, this may be perceived as preferential treatment; and
- d) employees must not accept significant personal gifts from the contractors and outside suppliers, although the Council may wish to allow employees to keep insignificant items of token value such as pens, diaries, etc not exceeding the value of £25. The most common form of gift is the offer of wine and chocolates etc. In general these are shared out among colleagues and provided the offers are reasonable, for example a single bottle of wine, they may be accepted. It is important that all offers are recorded in the Gifts/Hospitality Register including those that are offered and not accepted. Directors should remind their staff of the process to be followed with regards to gifts and hospitality.

9.6.16.2

No one working for, employed by, or providing services on behalf of the Council is to make, or encourage another to make any personal gain out of its activities in any way. Any person becoming aware of a personal gain being made at the expense of the Council, contractors or the public should follow the Whistleblowing procedures on the [Council's website](#).

9.6.16.3

Employees may only accept offers of hospitality if there is a genuine need to impart information or represent the Council in the community. Offers to attend purely social or sporting functions may only be accepted when these are part of the life of the community or where the authority should be seen to be represented. All hospitality must be properly authorised and recorded in the Gifts/Hospitality Register.

9.6.16.4

Employees may accept hospitality when attending relevant conferences and courses where it is clear the hospitality is corporate rather than personal, where consent is given in advance and where it is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees must ensure that their service meets the cost of such visits to avoid putting at risk the integrity of subsequent purchasing decisions.

9.6.16.5

The acceptance of gifts and hospitality may be a subject of criticism placing the Council in a position that it has to defend such action. Consequently, it is essential that all offers and details of gifts and hospitality be recorded in the Gifts & Hospitality Register which will be held by the Director or nominated Manager.

9.6.17 Public Contracts and Failure to Prevent Bribery

Under the Public Contracts Regulations 2015 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a corruption offence. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This organisation has the discretion to exclude organisations convicted of this offence.

9.6.18 Staff Responsibilities

The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for the Council or under its control. All staff are required to avoid activity that breaches this policy.

Staff must:

- a) ensure that they read, understand and comply with this policy; and
- b) raise concerns as soon as possible if you believe or suspect that a conflict with this policy has occurred, or may occur in the future.

As well as the possibility of civil and criminal prosecution, staff that breach this policy will face disciplinary action, which could result in dismissal for gross misconduct.

9.6.19 Raising a Concern

The Council is committed to ensuring that we all have a safe, reliable, and confidential way of reporting any suspicious activity. We want each and every member of staff to know how they can raise concerns. We all have a responsibility to help detect, prevent and report instances of bribery. If you have a concern regarding a suspected instance of bribery or corruption, please speak up – your information and assistance will help. The sooner you act, the sooner it can be resolved.

9.6.19.1

There are multiple channels to help you raise concerns – these are explained in [Chapter 9.5 the Whistleblowing Policy](#). Staff who refuse to accept or offer a bribe, or those who raise concerns or report wrongdoing can understandably be worried about the repercussions. We aim to encourage openness and will support anyone who raises a genuine concern in good faith under this policy, even if they turn out to be mistaken.

9.6.19.2

We are committed to ensuring nobody suffers detrimental treatment through refusing to take part in bribery or corruption, or because of reporting a concern in good faith. If you have any questions about these procedures, please contact Andrew Moulton, Assistant Director Governance.

9.6.20 Other Relevant WBC Policies

[Anti-Fraud and Anti-Corruption policy, Chapter 9.4](#)

[Anti-Money Laundering policy, Chapter 9.7](#)

[Code of Conduct and Finance, Chapter 9.2](#)

[Whistleblowing policy, Chapter 9.5](#)

[Procurement and Contract Rules and Procedures \(Section 13\)](#)

CHAPTER 9.7 - ANTI-MONEY LAUNDERING POLICY

9.7.1 Introduction

Money laundering legislation requires local authorities to establish internal procedures to prevent the use of their services for money laundering. Money laundering legislation in the UK is primarily governed by the following legislation:

- a) the Terrorism Act 2000;
- b) the Anti-Terrorist Crime & Security Act 2001;
- c) the Proceeds of Crime Act 2002;
- d) Serious Organised Crime and Police Act 2005;
- e) the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017; and
- f) Anti Money Laundering Act 2018

9.7.2 Scope of the Policy

This Policy applies to all employees and contractors of the Council. The Policy sets out the procedures that must be followed to enable the Council to comply with its legal obligations.

9.7.2.1

Staff should report any suspicions to the appointed Money Laundering Reporting Officer (MLRO) (see section 5.0) and it is for the MLRO to consider if the circumstances warrant the completion of a 'suspicious activity report' (SAR), which is sent to the National Crime Agency.

Failure by a member of staff to comply with the procedures set out in this Policy may lead to disciplinary action being taken against them in accordance with the Council's Disciplinary procedures.

9.7.3 What is Money Laundering?

The legislation is not limited to major organised crimes, but covers proceeds of all crimes, however small. The primary money laundering offences and thus prohibited acts under the legislation are:

- a) concealing, disguising, converting, transferring criminal property or removing it from the UK (section 327 of the 2002 Act); or
- b) entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 328 of the 2002 Act); or
- c) acquiring, using or possessing criminal property (section 329 of the 2002 Act); or

- d) becoming concerned in an arrangement facilitating concealment, removal from the jurisdiction, transfer to nominees or any other retention or control of terrorist property (section 18 of the Terrorism Act 2000); or
- e) failing to disclose suspected money laundering.

9.7.3.1

The defence to these offences is to make an 'authorised disclosure' to an approved person. Approved persons are Customs Officers, Police Officers and the Council's MLRO ([Rule 9.7.6.](#)).

9.7.4 Suspicious Activity

Some indications of suspicious activity are:

- a) any unusually large cash payment;
- b) any overpayment or duplicate payment in cash where the refund is requested by cheque; or
- c) if a 'third party' is involved in any transaction (e.g. someone paying cash to settle someone else's bill.)

9.7.4.1

The Council should be alert to large amounts of "Cash" accepted as a payment, which would normally arouse suspicion.

9.7.4.2

Officers involved in Treasury Management and cashiering activities are the most likely to encounter attempts to launder money but all staff should be alert to the possibilities.

9.7.4.3

All organisations and each individual is required by law to try to prevent and to report any attempts to 'launder' money (i.e. to use the proceeds of crime in apparently legitimate business transactions).

9.7.4.4

Potentially any member of staff could be caught by the money laundering provisions if they suspect money laundering and either become involved with it in some way and/or do nothing about it.

9.7.5 The Council's Obligations

Organisations conducting "relevant business" must:

- a) appoint a MLRO to receive disclosures from employees of money laundering activity (their own or anyone else's);
- b) implement a procedure to enable the reporting of suspicions of money laundering;
- c) maintain client identification procedures in certain circumstances; and
- d) maintain record keeping procedures.

9.7.6 The Money Laundering Reporting Officer (MLRO)

If you have any suspicions, you must contact the MLRO. The Council's nominated MLRO is the Section 151 Officer (Deputy Chief Executive and Director of Corporate Services), Email Graham.Ebers@wokingham.gov.uk or Tel 0118 974 6557.

9.7.7 Disclosure Procedure

Reporting to the MLRO: Where you know or suspect that money laundering activity is taking/has taken place, or become concerned that your involvement in a matter may amount to a prohibited act under the legislation, you must disclose this as soon as practicable to the MLRO. The disclosure should be within "hours" of the information coming to your attention, not weeks or months later. Should you not do so, you may be liable to prosecution.

9.7.7.1

Once you have reported the matter to the MLRO you must follow any directions they may give you. You must NOT make any further enquiries into the matter yourself.

9.7.7.2

Similarly, at no time and under no circumstances should you voice any suspicions to the person(s) whom you suspect of money laundering, without the specific consent of the MLRO; otherwise you may commit a criminal offence of "tipping off". Do not, therefore, make any reference on a client file to a report having been made to the MLRO – should the client exercise their right to see the file, then such a note will obviously tip them off to the report having been made and may render you liable to prosecution. The MLRO will keep the appropriate records in a confidential manner.

9.7.7.3

On receipt of the disclosure the MLRO will:

- a) consider the report and make such further enquiries as are necessary to form a view on whether a person is engaged in money laundering;
- b) consider all other relevant information in making this judgement;
- c) ensure that nothing is done which could alert the person or business concerned that a report and an investigation could ensue;
- d) make a report to National Crime Agency, if appropriate, making full notes of the reasons for doing so;
- e) co-operate with any enquiries made by the proper authorities; and
- f) maintain all records of disclosures and reports for at least five years.

9.7.8 Client Identification Procedure

Each unit of the Council conducting relevant business where a business relationship is to be established and an account is to be opened or a one-off transaction or series of linked transactions amounting to 15,000 Euros (approximately £10,000) or more must maintain procedures which:

- a) require satisfactory evidence of the identity of both internal and external clients at the outset of the matter;
- b) require that if satisfactory evidence of identity is not obtained at the outset of the matter then the business relationship or one off transaction(s) cannot precede any further;
- c) recognise the greater potential for money laundering when the client is not present; and
- d) require that where a client appears to act for another that reasonable measures are taken to establish the identity of that person.

Staff involved in Treasury Management should ensure that all dealings are carried out in accordance with the Treasury Management Strategy and Treasury Management Policies which ensure that transactions are only undertaken with approved counterparties.

9.7.9 Record Keeping Procedures

Each unit of the Council conducting relevant business must maintain records for at least five years of:

- a) client identification evidence obtained; and
- b) details of all relevant business transactions carried out for clients

The precise nature of the records is not prescribed by law, however, they must be capable of providing an audit trail.

9.7.10 Further Information and Advice

For any further information or guidance, please contact the MLRO:

Graham Ebers

Tel 0118 974 6557 or

Email Graham.Ebers@wokingham.gov.uk

CHAPTER 9.8 - PROSECUTION AND SANCTION POLICY

9.8.1 Introduction

Wokingham Borough Council (The Council) will prosecute any person who commits a criminal offence against the systems, processes and functions of the Council and/or assaults or threatens any member or employee of the Council, if there is sufficient evidence and if, in the opinion of the Council, it is in the public interest to do so.

9.8.1.1

When deciding if it is in the public interest, all officers authorised to decide whether to prosecute on behalf of the Council will be guided by the Code for Crown Prosecutors. Whenever it is appropriate, the Council will consider offering other sanctions as an alternative to prosecution.

9.8.1.2

The Council will consider each case on its own merits before deciding whether or not to prosecute. If it is the case that the Council has suffered a material/financial loss, it may take separate action to stop further payments/ recover money, irrespective of whether it decides to take criminal proceedings, and where steps to prevent further losses or recover losses already incurred are not available or desirable in the course of any criminal proceedings.

9.8.2 Alternatives to Prosecution - Cautions

In the issuing of Cautions the Council will be guided by the relevant statutory Guidance, currently the Ministry of Justice – Simple Caution for Adult Offender guidance.

9.8.3 Alternatives to Prosecution - Statutory Sanctions

The Council may consider a Statutory Sanction, whether a monetary penalty or otherwise, as an alternative to prosecution for an offence where the imposition or offer of such a sanction for the specified offence or offences is prescribed by law.

9.8.4 Code for Crown Prosecutors – The Evidential Test

When making a decision on whether to prosecute, the Council will first consider whether there is sufficient evidence:

- a) is there sufficient evidence of the commission of an offence to provide a realistic prospect of conviction? And
- b) is the evidence reliable and able to be used in court?

9.8.5 Code for Crown Prosecutors – The Public Interest Test

Once the Evidential Test has been satisfied, the Council will then consider whether the Public Interest Test is satisfied. The Public Interest Test will be assessed following the guidance in the “Code for Crown Prosecutors” to ensure that any prosecution is in the public interest.

9.8.6 Other Sanctions or Penalties

Where a person engages in conduct which is not criminal, but is otherwise prohibited by legal statute or regulation applicable to the functions of the Council, or fails in their legal obligation to the Council, the Council may consider the imposition or offer of a sanction or monetary penalty where to impose a monetary penalty or sanction for the given circumstances is prescribed by law..

CHAPTER 9.9 – ACQUISITION OF COMMUNICATIONS DATA AND USE OF COVERT SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES POLICY (Regulation of Investigatory Powers Act 2000)

9.9.1 Introduction

Officers and employees of (and contractors working on behalf of) Wokingham Borough Council may, in the course of their investigatory, regulatory and enforcement duties, need to make observations of persons in a covert manner, to use a Covert Human Intelligence Source or to acquire Communications Data. These techniques may be needed whether the subject of the investigation is a member of the public, the owner of a business or a Council employee.

By its very nature, this sort of action is potentially intrusive and so it is extremely important that there is a very strict control on what is appropriate and that, where such action is needed, it is properly regulated in order to comply with Legislation and to protect the individual's rights of privacy.

Privacy is a right, but in any democratic society, it is not an absolute right. The right to a private and family life, as set out in the European Convention on Human Rights, must be balanced with the right of other citizens to live safely and freely, which is the most basic function that every citizen looks to the state to perform.

Drawing on the principles set out in the Regulation of Investigatory Powers Act 2000 and the Data Protection Act 1998, this policy sets out the Council's approach to Covert Surveillance, the use of Covert Human Intelligence Sources and the acquisition of Communications Data.

The policy also sets out Members' oversight of this area, adopts a set of procedures and appoints appropriate officers to ensure that these areas are properly controlled and regulated.

9.9.2 Policy

It is the policy of Wokingham Borough Council (the Council) that all Covert Surveillance, the use of Covert Human Intelligence Sources (informants) and the acquisition of Communications Data by those working for or on behalf of this Council (investigators) will be carried out in accordance with this policy and the associated procedure (the RIPA Procedure). Any member, officer or employee who deliberately or recklessly breaches this policy will normally be considered to have committed an act of gross misconduct and will be dealt with accordingly.

9.9.2.1

In so far as the Regulation of Investigatory Powers Act (RIPA) allows, Covert Surveillance and the use of Covert Human Intelligence Sources (informants) will always be subject to the RIPA application process. (This does NOT affect monitoring activities where the actions undertaken do not amount to covert surveillance.) Where officers wish to undertake covert surveillance or use informants but where RIPA is not available, a similar process of considering the proportionality and necessity of any such activities must be carried out before the activities are undertaken and approval gained from a RIPA authorising officer.

9.9.2.2

When acquiring Communications Data officers are instructed to use the RIPA process, as amended by the Investigatory Powers Act 2016, unless they are doing so with the consent of the data subject. Communications data may only be obtained using RIPA powers for the purposes of investigating a criminal offence.

9.9.3 Appointments

The Council appoints the Chief Executive as the Senior Authorising Officer (SAO) and Senior Responsible Officer (SRO) for all purposes under RIPA.

The Council appoints the Assistant Director, Governance as the RIPA Monitoring Officer (RMO) to monitor the use of covert techniques within this Council (whether using the RIPA or non-RIPA processes) and reports to members on the activities the policy covers. They are also directed to ensure that appropriate training is made available to Authorising Officers (AOs) and applicants when it is required.

The Council directs that only those appointed by this policy as AOs may authorise covert surveillance, the use of informants or the acquisition of communications data.

9.9.3.1

The Council appoints Directors and Assistant Directors to meet the training criteria. In addition, there are identified officers trained as AOs, subject to a maximum number of six (including the SAO). The Council instructs the RMO to maintain a list of all those currently authorised as part of the RIPA Procedures.

The Council directs the SAO to appoint such persons as he may from time to time see fit to be Single Points of Contact (SPOC) (or to make such other arrangements as he deems appropriate) for the purposes of acquiring communications data by the use of RIPA.

9.9.3.2

In order for the Council's RIPA authorisations to take effect, they must be approved by a Magistrate. The chief legal officer is instructed to authorise all those who may need to apply to a Magistrate to appear for that purpose for the Council. The RMO is directed to maintain a list, as part of the RIPA Procedures, of all those so authorised.

9.9.4 Oversight and Reporting

The RMO shall report to elected Members on the use of RIPA regulated activity by officers of the Council every six months. Such a report shall be presented to the Members (or to such a sub-committee as the full council shall deem appropriate to constitute for oversight purposes) by the RMO and the SRO. The report must not contain any information that identifies specific persons or operations but must be clear about the nature of the operations carried out and the product obtained.

Alongside this report, the RMO and SRO will report details of 'Non-RIPA' surveillance in precisely the same fashion.

9.9.4.1

Elected Members shall have oversight of the Council's policy and shall review that policy annually should it be deemed by the RMO that significant changes have been made. At that review (or following any six-monthly report) elected Members shall make such amendments as they deem necessary to the Council's policy, and may give such directions as they deem necessary to the RMO and SRO in order to ensure that the Council's policy is followed.

Elected Members shall not interfere in individual authorisations. Their function is to, with reference to the reports, satisfy themselves that the Council's policy is robust and that it is being followed by all officers involved in this area. Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations

9.9.5 RIPA Procedures

The RMO is instructed to create a set of procedures that provide instruction and guidance for the use of surveillance and informants, and the acquisition of communications data. They are further instructed to maintain and update the RIPA Procedures, ensuring that they continue to be both lawful and examples of best practice.

The reference to 'maintain and update' in this section includes the duty to remove AOs from the list if they cease to be employed in a relevant role or if they no longer satisfy the requirements to be an AO, and the right to add names to that list so long as

- a) they satisfy the policy and regulatory requirements and
- b) at no time does the number of AOs exceed six.

If a change is required, in the opinion of the RMO, in order to comply with this part, they are authorised to make that change without prior approval from any person.

The RMO must report any changes made under this section to Members when they undertake their annual oversight of the Policy, as set out above.

All managers are required to ensure that their staff understand that covert investigation techniques may only be used in accordance with this policy and the associated procedures.

9.9.6 Training

In accordance with this Code of Practice, AOs must receive full training in the use of their powers. They must be assessed at the end of the training, to ensure competence, and must undertake refresher training at least every two years. Training will be arranged by the RMO. Designated AOs who do not meet the required standard, or who exceed the training intervals, are prohibited from authorising applications until they have met the requirements of this paragraph. AOs must have an awareness of appropriate investigative techniques, Data Protection and Human Rights Legislation.

Those officers who actually carry out surveillance work must be adequately trained prior to any surveillance being undertaken. A corporate training programme will be developed to ensure that AOs and staff undertaking relevant investigations are fully aware of the legislative framework.

Senior management who have no direct involvement with covert investigation will undertake a briefing at least biannually, to ensure that they have a good understanding of the activities that might fall into the definition of covert investigation techniques.

9.9.7 Exceptions, Notes and Complaints

CCTV cameras operated by this Council are not covered by this policy, unless they are used in a way that constitutes covert surveillance; only under those circumstances must the provisions of this policy and the RIPA Procedures be followed.

Interception of communications, if it is done as part of normal business practice, does NOT fall into the definition of acquisition of communications data. (This includes, but is not limited to opening of post for distribution, logging of telephone calls, for the purpose of cost allocation, reimbursement, benchmarking, etc.; logging E Mails and internet access for the purpose of private reimbursement.)

9.9.7.1

If any person wishes to make a complaint about anything to which this policy applies is invited to use the Council's Complaints Procedure. Any complaint received will be treated as serious and investigated in line with this Council's policy on complaints. Regardless of this, the detail of an operation, or indeed its existence, must never be admitted to as part of a complaint. This does not mean it will not be investigated, just that the result of any investigation would be entirely confidential and not disclosed to the complainant.

9.9.8 Adoption and Amendment of the Policy

This version of the Policy was agreed prior to its adoption being recommended to Council via the Constitution Review Group on 7 February 2018 after which it came into immediate effect. It replaces all previous policies on these subjects

CHAPTER 9.10 - COUNCILLOR REPRESENTATION ON OUTSIDE BODIES PROTOCOL

9.10.1 Introduction

Service on outside bodies has always been an established part of a Councillor's role. A Councillor appointed to an external body will be able to use their knowledge and skills both as Councillor, and as a representative of their communities, to assist the organisation to which they are appointed, as well as the Council.

9.10.1.1

The Council is increasingly working in partnership with outside organisations as part of a move to a commissioning based organisation set out in the Transformation Blueprint. This means that it is important that everyone is clear about the role of the Councillors appointed to these bodies. Questions of accountability and governance are likely to arise particularly as funding may be channelled through the Council to these outside bodies.

9.10.1.2

Councillors are appointed by the Council to serve on a range of outside bodies. In the context of this protocol, an 'outside body' covers organisations such as trusts, companies, industrial and provident societies, voluntary bodies, charities, community associations, joint venture vehicles, public private partnerships and companies, including Local Authority Trading Companies.

9.10.1.3

Membership of an outside body brings into play different considerations to those which relate to Council membership. As members of outside bodies, elected Councillors will have different duties, obligations and liabilities depending upon the type of organisation involved. Councillors' roles on these outside bodies may appear to conflict, sometimes with each other, and sometimes with their position as a Wokingham Borough Councillor.

9.10.1.4

This guidance sets out the main issues which Councillors should consider when appointed by the Council to serve on outside bodies, though much of the advice applies equally to Councillors who are involved in outside bodies in a private capacity. It may be read as a separate stand alone document or together with the document 'Appendices to the Protocol for Councillor Representation on Outside Bodies'.

9.10.1.5

Depending on the legal nature of the body and the role fulfilled by the Councillor they may attract personal responsibility for decisions and actions of the body.

9.10.1.6

The remainder of this guidance includes the following general information:

- a) issues to consider before beginning an appointment;
- b) application of the Code of Conduct for Councillors;
- c) legal status of outside bodies, capacity of appointment, duties and liabilities;
- d) insurance and indemnity;

- e) more detailed separate appendices relating to the main type of outside bodies to which Councillors may be appointed.

9.10.2 Issues to Consider before Appointment

Before beginning an appointment to an outside body, Councillors should consult information available about the outside body and satisfy themselves that they have a reasonable understanding of the following:

- a) the legal status of the organisation e.g. company, trust, charity, unincorporated association;
- b) the capacity in which the Councillor is to be appointed e.g. director, trustee, member
- c) with voting rights or member with observer status;
- d) the purpose of the organisation and how this relates to the Council's functions and objectives;
- e) the relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
- f) the requirements of the organisation's governing instrument (e.g. constitution, trust deed, memorandum and articles of association), both as a Councillor and generally;
- g) the financial status of the organisation;
- h) the governance and decision making arrangements, including the management of risk;
- i) any code of conduct for members of the outside body;
- j) potential liabilities;
- k) the extent of any insurance cover for members of the outside body;

9.10.2.1

Each outside body will usually have a connection with an aspect of the Council's activities and it may be there are Officers who would be able to provide useful background information on the outside body to the Councillor. Councillors unsure of the appropriate Officer can seek the assistance of Democratic Services;

9.10.2.2

If having begun an appointment on an outside body a Councillor considers that the Council should not continue to participate formally in the management of the external organisation e.g. as a director, trustee or voting member and that their role as a representative of the Council may be more effectively discharged as a non-voting member with observer status only, they should seek the advice of the Monitoring Officer.

9.10.3 General Principles

There are some general principles which can be applied across all outside bodies whatever their legal or organisational model. These include:

- a) Acting according to the rules, constitution and framework set by the outside body;
- b) Making independent and personal judgements in line with their duty of care to the outside body;
- c) Reporting back, at least annually as set out in Paragraph 7;
- d) Behaving ethically and following as far as applicable the National Code of Conduct of Local Government Conduct or any local voluntary Code of Conduct for Councillors that may be agreed by the Council;
- e) Taking an active and informed role in the outside body's affairs.

It does not mean:

- a) exclusively representing the views of their own political party;
- b) avoiding taking part in the outside body's discussions and decisions;
- c) looking at things simply from the Council's perspective;
- d) not being an active participant at meetings

9.10.4 Application of the Code of Conduct for Councillors

The Council's current [Code of Conduct for Councillors](#) places specific obligations on Councillors in relation to their dealings with outside organisations, including the registration and declaration of interests. The relevant provisions are set out in detail within Appendix A of the supporting document 'Appendices to the Protocol for Councillor Representation on Outside Bodies', which includes guidance from Standards for England on the position of dual-hatted members under the Code of Conduct.

9.10.4.1

The Government is currently legislating through the Localism Bill to abolish the current Code of the Code of Conduct regime, including the requirement that Councils adopt a nationally prescribed Code of Conduct and to clarify the legal position with regard to predisposition and bias. However, the Localism Bill includes continued provision for the obligation on individual Councillors to register and declare personal interests. Councillors appointed to outside bodies should be mindful of any duties placed upon them as a result of the provisions of the Localism Bill as enacted and any voluntary Code of Conduct, should one be adopted by the Council in the future. Democratic Services or the Monitoring Officer can provide advice on this.

9.10.5 Legal Status, Capacity and Liabilities

The specific responsibilities of Councillors will depend upon the legal status of the outside body and the capacity in which they have been appointed. The position of Councillors in relation to the various types of outside body is set out in more detail within the document '*Appendices to the Protocol for Councillor Representation on Outside Bodies*' as follows:

- a) Appendix B – Director of a Company
- b) Appendix C – Trustee of a Trust or Charitable Trust
- c) Appendix D – Member of Unincorporated Association
- d) Appendix E – Membership of Steering Groups, Joint Committees or Partnership Bodies

A fundamental point that Councillors should be aware of is that in undertaking their duties as a trustee, director, or management committee member, they may take account of the wishes of the Council, but their primary duty is to act in the best interests of the organisation to which they have been appointed.

9.10.6 Liability, Insurance and Indemnity

Councillors can incur personal, civil and criminal liability from formal participation in outside bodies.

9.10.6.1

Under Section 265 of the Public Health Act 1875, (as applied by Section 39, Local Government (Miscellaneous) Act 1976), Councillors enjoy statutory immunity from civil liability where they act within the powers of the Council, in good faith and without negligence.

9.10.6.2

However, this immunity does not apply where they act beyond the powers of the council or act in bad faith (i.e. with dishonest or malicious intent) or negligently, and it does not protect them from criminal liability, for example for fraud or for corporate killing where they exercise managerial responsibilities.

9.10.6.3

The Council has adopted the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004 and agreed to provide indemnity on specific grounds to Councillors and officers including the provision of appropriate insurance cover.

9.10.6.4

Wokingham Borough Council has also made appropriate insurance provision to protect its assets and liabilities. Within these provisions the Council has extended its cover to protect its elected and co-opted members when carrying out appointed duties in connection with the business of Wokingham Borough Council. It is important to note that this provision is limited to Councillors appointed to 'not for profit' entities and would not cover Councillors appointed as directors of 'for profit' limited companies including local authority trading companies. The expectation would be that such companies would make their own indemnity and insurance provision.

9.10.6.5

Councillors wishing to clarify specific issues around liability, indemnity and insurance related to their appointment should in the first instance approach the outside bodies to which they are to be appointed.

9.10.7 Expenses, Remuneration and Benefits

As a general rule Councillors should not benefit personally from their appointment to outside bodies or be out of pocket as a result of their service to the community.

9.10.7.1

Where a Councillor has been appointed to an outside body by the Council, they may claim travel and subsistence expenses as an 'approved' duty set out within the Wokingham Borough Council Members' Allowances Scheme, unless the outside body has its own provision for the payment of expenses.

9.10.7.2

Reasonable hospitality, e.g. lunch after a board meeting and minor promotional gifts may be accepted. As set out in the [Councillors' Code of Conduct](#), anything worth over £25.00 that has been given to the Councillor must be declared on the Councillor's Register of Gifts and Hospitality within 28 days of receipt. Other more substantial gifts should not be accepted.

9.10.7.3

In the case of Councillors sitting on the boards of local authority trading companies, local authority law restricts the level of remuneration that they can receive from the company. The amount of remuneration that a Councillor can receive from a company cannot exceed that received for comparable duties undertaken through the Council's Member Allowances Scheme.

9.10.7.4

Free access to an outside body's facilities should only be accepted where it is necessary to discharge the Councillor's duties and responsibilities as an appointed representative and should be declared in the Councillor Register of Interests.

9.10.8 Representatives Reporting Back

Councillors are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. While the law now makes this a requirement for involvement in outside companies, it is also logical and best practice that the requirement to report back should apply to involvement in all outside bodies.

Accordingly, Councillors are requested to lodge their annual report using the attached feedback form with Democratic Services by 1 May each year. The reports will then be circulated with the Annual Council Agenda.

9.10.9 Further Advice

Councillors should contact the Monitoring Officer or Democratic Services for further advice if they have any particular issues of concern regarding Code of Conduct and outside bodies. Councillors wishing to raise matters relating to insurance or indemnity should contact the Insurance Manager.

WOKINGHAM BOROUGH COUNCIL**APPOINTMENT TO OUTSIDE BODIES ANNUAL FEEDBACK FORM****MUNICIPAL YEAR: 20 - 20**

Name of Organisation	
Name of Member	
Capacity appointed, e.g. trustee, director, observer etc	
Number of meetings called to attend	
Number of Meetings attended	
Reasons for not attending, if appropriate	
Please give a brief synopsis of the key areas covered by the Outside Body during the past Municipal Year.	
What background /briefing information did you receive from the organisation on its constitution, aims, objectives etc and was it sufficient to enable you to carry out your appointed role?	

Appendix A**Code of Conduct for Members Relevant Provisions and Guidance**

- 1 Where a Councillor is acting as a representative of the Council on any other body (other than a relevant authority) they must comply with the *Council's Code of Conduct except where it conflicts with any lawful obligations to which that body may be subject, ([Rule 9.2.1](#))*, of the Council's Code of Conduct for Members).
- 2 Councillors appointed to serve on outside bodies must be mindful of their duties regarding disclosure of confidential information under [Rule 9.2.8.5](#) of the Code of Conduct.
- 3 Councillors must not use or attempt to use their position as a Councillor improperly to confer on or secure for themselves or any other person, an advantage or disadvantage – ([Rule 9.2.8.3](#)). In particular they must not use their position as a Councillor improperly to secure benefits or advantages for the outside body to which they have been appointed.
- 4 [Rule 9.2.3.1](#) of the Code requires Councillors to register any personal interests which fall within the categories set out in Appendix B of the Code of Conduct. Registration is by written notification to the Monitoring Officer within 28 days of taking up office, or within 28 days of becoming aware of any new interest or change of interest.
- 5 The categories of interest which are most relevant in this context are:
 - any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority: [Appendix B i\) ii\)](#)
 - any body -
 - exercising functions of a public nature;
 - directed to charitable purposes;
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
 - of which the Councillor is a member or in a position of general control or management.

Personal interest

- 6 A Councillor will have a personal interest in any business of the Council which relates to or is likely to affect any of their registerable interests. They will, therefore, have a personal interest in any business of the Council which relates to or is likely to affect an outside body to which they have been appointed by the Council.
- 7 They may also have a personal interest where a decision in relation to the business under consideration might reasonably be regarded as affecting their well-being or financial position, or the well-being or financial position of a relevant person to a greater extent than the majority of council tax payers in the electoral division affected by the decision. A 'relevant person' includes a body which falls within the categories of interest described in paragraph 5 above. ([Appendix B i\) ii\)](#) of the Code).

- 8 Where a Councillor has a personal interest in any business of the Council and attends a meeting of the Council at which the business is considered, they must disclose the existence and nature of their interest to the meeting when the matter begins to be considered or when the interest becomes apparent, ([Rule 9.2.5.1](#) of the Code). For example, if the Councillor is attending a council debate on education policy and is also a council appointed governor, they would only need to declare an interest if they decided to speak during the debate.
- 9 In the case of a personal interest in any business which relates to or is likely to affect any body to which the Councillor has been appointed, or a body exercising functions of a public nature, the Councillor only needs to disclose the existence and nature of their interest when they address the meeting on that business, ([Rule 9.2.5.1 of](#) the Code).

Prejudicial Interest

- 10 Considered where the personal 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 their judgment of the public interest, ([Rule 9.2.6.1](#) of the Code).
- 11 A prejudicial interest will only arise, however, where none of the exemptions in [Rule 9.2.7.1](#) of the Code apply, and the business being considered:
 - affects the Councillor's financial position or the financial position of a person or body included in their register of interests e.g. a body to which they have been appointed by the Council;
 - relates to the determination of a regulatory matter affecting them or any such person or body.
- 12 A Councillor who is considering an application for a grant or a planning application by a body to which they have been appointed by the Council will, therefore, have a prejudicial interest in that matter. This will apply equally to a Councillor who is a member of one of the other bodies mentioned in paragraph 5 above.
- 13 Where a Councillor has a prejudicial interest they may make representations on the matter to the same extent as a member of the public, answer questions or give evidence, if required, but they must then leave the meeting and not take any further part in the item or vote. They must not seek to influence the decision improperly in any way, ([Rule 9.2.4.4.](#) of the Code).
- 14 A Councillor who participates in decision making on business in which they have a prejudicial interest may invalidate the decision.

Standards for England Guidance on Dual-hatted Members and the Code of Conduct

What is a dual-hatted member?

- 15 Dual-hatted members are members who serve on two or more relevant authorities; for instance, a member who is both a Borough and parish council member.

When should a dual-hatted member declare an interest?

- 16 If a dual-hatted member is taking part in a council meeting and an issue is under discussion which affects that member's other authority, then provided that they do not have a prejudicial interest, [under Rule 9.2.6](#) of the Code of Conduct the dual-hatted member only needs to declare a personal interest if they intend to speak on the matter involving the other authority. If the member does speak on the matter then they must declare a personal interest, but they are still able to vote.
- 17 Members must consider carefully, however, if the nature of the matter under discussion means that their membership of another authority may also give rise to a prejudicial interest.
- 18 For dual-hatted members who would not otherwise have a prejudicial interest for any other reason, a prejudicial interest will arise as a result of membership of the other authority if all of the following conditions are met:
- the matter affects the other authority's financial position or is about a licensing or regulatory matter applied for by the other authority;
 - the matter does not fall within one of the exempt categories of decisions under [Rule 9.2.7.1](#) of the Code;
 - a reasonable member of the public with knowledge of the relevant facts would believe that the member's ability to judge the public interest would be impaired.
- 19 Standards for England takes the view that where a regulatory application, including a matter of consent or approval, is made by a body on a member's register of interests, or a matter is discussed that would impact upon the financial interests of a body on a member's register of interests, then a prejudicial interest will arise. For example if a parish council planning application was being considered at a borough council meeting, a member of the planning committee who is also a parish council member would need to declare a personal and prejudicial interest when that matter is considered, leave the chamber and not vote.

Predetermination and dual-hatted members

- 20 A dual-hatted member does not automatically have an interest in an item just by virtue of having considered the issue at the meeting of a different authority. If the issue does not meet the normal criteria for needing to declare a personal interest, then an interest does not need to be declared. However, the issue of predetermination or bias may need to be considered where members sit on different bodies determining matters.

Councillors appointed as Directors of Limited Companies

Legal Status

- 1 Upon incorporation a company becomes a separate legal entity, which can hold property in its own right, enter into contracts and sue and be sued in its own name.
- 2 Limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
- 3 Wokingham Borough Council has since 2010 established a number of Local Authority Trading Companies, (LATCs). It is possible for LATCs to take different structural models, but to date, the model chosen by the Council is a company limited by shares whereby the Council is the sole shareholder. As profits are distributed on the basis of the number of shares held, the Council receives 100% of any profits generated as the sole shareholder. Liability in the event of winding-up is as with any company limited by shares is limited to the amount unpaid on the shares held.
- 4 Companies limited by guarantee do not have shares. Instead, each member agrees that in the event of the company being wound up they will agree to pay an agreed amount e.g. £1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

Directors' Duties

- 5 Whatever the exact form of a company's structure, the role of a Councillor who has been appointed as a director will depend upon the company's Articles of Association (its constitution). A company's constitution will vest most of its powers in the board of directors and the board will exercise these either directly or through managers appointed by the board. Directors must understand the requirements of the Articles of Association in order to fulfil their responsibilities properly.
- 6 Directors should be aware of the best practice requirements of the '*UK Corporate Governance Code*' to the extent that this has been adopted by the company, including general management of the company, internal financial and operational controls and risk management.

Comment: I have deleted reference to Directors remuneration as this is principally reserved as the Shareholder function in the articles

- 7 Directors, as agents of the company, must:
 - act within their powers and make sure the company follows its constitution as set out in the Articles of Association;
 - act in good faith to promote the success of the company for the benefit of its members. Directors must also have taken into consideration employees, suppliers, customers, the environment and the community;
 - carry out their duties with reasonable care and skill. Higher standards may be expected from executive directors who are responsible for an area in which they have a specialist or professional qualification;
 - exercise independent judgement;
 - avoid situations where there are conflicts of interest. Directors must not take bribes, and must disclose any personal interests to the company. Directors must

not divert business opportunities to themselves that ought to be available to the whole company;

- make a declaration of interest where appropriate. Directors may not be allowed to vote on matters if there is a conflict of interest;
- not benefit from a third party by reason of being a director, or by doing or not doing something;
- not act with intent to defraud creditors or for any other fraudulent purpose;
- not engage in wrongful trading, that is, allowing the company to carry on trading when you know (or ought to know) that it is insolvent. This can lead to personal liability;
- to carry out the statutory obligations imposed by the Companies Act 2006 and other legislation.

- 8 Some directors may be given special responsibilities under the company's constitution, for instance a managing director or finance director. Those with special roles will be expected to have the personal and technical skills to perform the duties associated with that role, which may be onerous.
- 9 The above duties apply to non-executive directors as well as executive directors.
- 10 There are other statutory requirements which may be relevant depending on the company's business. Directors will need to be familiar with these. For example, if the company is an investment vehicle which engages in fundraising activity, financial services legislation will apply.

Observer status

- 11 The position of observer has no specific legal status in company or local authority law. Any person appointed as an observer should ensure that their role is clearly defined and avoid involvement in the management of the Company. If an observer acts beyond their remit and exercises real influence over the company's affairs and decision making the observer may be deemed to be a shadow director, with all the duties of an ordinary director.
- 12 Observers and others, such as professional advisors, may attend board meetings. Generally the minutes of the meetings will note the names of observers and the fact that they are "in attendance". Persons "in attendance" have no specific legal status and in itself the phrase does not indicate any particular level of participation in the company's affairs. The extent of the participation of a Councillor described in board minutes as "in attendance" is a question of fact. They should, however, take care to avoid involvement in the management of the company so as to avoid being treated as a shadow director.
- 13 A director (or shadow director) may incur personal liability if they are in breach of the above duties.

This may arise where:

- the company is found, in the course of winding up, to have been trading for fraudulent purposes. If a director has acted dishonestly this is also a criminal offence;
- following liquidation, a director is found liable for wrongful trading, i.e. allowing the Company to continue to trade at a time when the director knew or ought

reasonably to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation;

- the company commits a breach of the criminal law, for example, health and safety legislation;
- a director acts negligently or in breach of their duty to the company (including the duty to maintain confidential any confidential information relating to the company that comes into their possession);
- a director knowingly causes the company to act beyond the activities authorised by its Articles of Association;
- there is a breach of trust, such as the misappropriation of company funds or property;
- a director uses their powers improperly or makes a personal profit from their position as director;
- there is a failure to comply with the requirements of companies legislation, such as the making of returns to the Registrar of Companies.

Insurance

14 The Council will endeavour to ensure that appropriate insurance is in place. However Councillors appointed as directors should check on appointment that the company maintains appropriate insurance cover against directors' liability. If this is not in place this should be requested, but this is a matter entirely for the board and the Council cannot normally insist upon this. It will be necessary to ensure that the company has the resources to maintain payment of the insurance premiums.

15 Further guidance on the responsibilities of company directors is available on the websites of the Institute of Directors and Companies House:

<https://www.iod.com/Home>

<http://www.companieshouse.gov.uk>

Councillors Appointed as Trustees to a Trust or Charity

- 1 To be a charity, an organisation must operate for charitable purpose as defined by the Charities Act 2006. These are
 - the prevention or relief of poverty;
 - the advancement of education;
 - the advancement of religion;
 - the advancement of health or saving lives;
 - the advancement of citizenship or community development;
 - the advancement of the arts, culture, heritage or science;
 - the advancement of amateur sport;
 - the advancement of human rights, conflict resolution or the promotion of religious or racial harmony or equality and diversity;
 - the advancement of environmental protection or improvement;
 - the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
 - the advancement of animal welfare;
 - the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;
 - any other purposes currently recognised as charitable and any new charitable purposes which are similar to another charitable purpose.

Trustees and their responsibilities

- 2 Charity trustees are the people who serve on the governing body of a charity. They may be known as trustees, directors, board members, governors or committee members. The principles and main duties are the same in all cases.
- 3 Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the benefit of the public for which it has been set up.
- 4 **Compliance - Trustees must:**
 - Ensure that the charity complies with charity law, and with the requirements of the Charity Commission as regulator; in particular ensure that the charity prepares reports on what it has achieved and Annual Returns and accounts as required by law;
 - Ensure that the charity does not breach any of the requirements or rules set out in its governing document and that it remains true to the charitable purpose and objects set out there;
 - Comply with the requirements of other legislation and other regulators (if any) which govern the activities of the charity;
 - Act with integrity, and avoid any personal conflicts of interest or misuse of charity funds or assets.
- 5 **Duty of prudence - Trustees must:**
 - Ensure that the charity is and will remain solvent;
 - Use charitable funds and assets reasonably, and only in furtherance of the charity's objects;

- Avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk;
- Take special care when investing the funds of the charity, or borrowing funds for the charity to use.

6 Duty of care - Trustees must:

- Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient;
- Consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

7 Liability

Trustees are jointly and severally liable to the charity for breaches of trust. They may incur personal liability for losses incurred if they:

- act outside of the scope of the trust deed;
- fall below the required standard of care;
- make a personal profit from the trust assets.

8 Trustees will incur personal liabilities under contracts they enter into in the name of the charity. They are, however, entitled to be reimbursed from the charity's funds for all liabilities and expenses in accordance with the trust deed.

9 Insurance and Indemnity

An indemnity can be given from the charity provided the trustee has acted properly and within their powers. Trustees may take out personal insurance to protect themselves against personal liability except criminal liability. Payment of the premiums must be authorised by the trust deed if they are to be met from charitable funds.

Appointment of Councillors to Committees of Management or Unincorporated Associations

Legal Status

- 1 Most societies, clubs and similar organisations (other than companies, industrial societies and trusts), are unincorporated associations. This is an informal organisation, which may arise where several people join together, with the intention of creating legal relations, to carry out a mutual purpose otherwise than for profit.
- 2 There is no statutory definition of an unincorporated association but it has been described by the court as “an association of persons bound together by identifiable rules and having an identifiable membership”. Unlike a company it does not have a separate legal status distinct from its members.
- 3 The rules of an unincorporated association are found in its constitution, which sets out the roles and responsibilities of its members.

Duties

- 4 An unincorporated association will typically have an executive or management committee with its powers and composition defined by the constitution. Key decisions will usually be made by the members at general meetings. The day to day administration of an association is usually undertaken by the officers and members of the executive or management committee.
- 5 Broadly executive or management committee members must act within the constitution and must take reasonable care in exercising their powers.
- 6 Where an unincorporated association is a registered charity the members of the executive or management committee may also be charity trustees. As such, their role and responsibilities will be determined not only by the association’s constitution but also by the general law relating to trusts and charities.

Observer Status

- 7 The Council may appoint a Councillor to the executive or management committee of an unincorporated association as an observer. A Councillor acting as an observer should avoid exceeding this role by becoming directly involved in the management of the association as they may be deemed to be an ordinary member for the purposes of determining liability.

Liabilities

- 8 Members of the management committee are generally liable, jointly and severally, for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are insufficient funds the members are personally liable for the shortfall.
- 9 Particular care should also be taken when entering into contracts on behalf of the association. If the individual lacks the authority to do so, they may find themselves personally liable for the performance of the contract.

Insurance

- 10 Insurance may be available, but payment of the premiums must be authorised by the constitution if they are to be met from the association's funds.

**Appointment of Councillors to Steering Groups,
Joint Committees and Partnership Bodies**

- 1 The responsibilities of a Councillor who is appointed as a member of any of these bodies will be determined by the terms of reference, constitution or partnership agreement under which they are established and governed;
- 2 It is necessary to ensure that the Councillor's role on the body is clear, in accordance with the Council's adopted *Partnership Protocol* and, in particular, whether they are acting as a delegate or representative of the Council to further the interests of the Council, or whether they are expected to exercise independent judgment in the best interests of the body concerned;
- 3 Liability will depend on the nature and functions of the body and the constitution or agreement under which it is established. Insurance may be available to cover certain liability.

ⁱ Bullying and harassment at work: A guide for managers, ACAS June 2014 and Archived content for Standards for England; guidance on 'Bullying and Intimidation' available upon request from the Borough Solicitor, or to download:
<http://webarchive.nationalarchives.gov.uk/20090505163356/http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/Factsheets/filedownload.16138.en.pdf>

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