

**Title of Report : POWERS AND DUTIES OF THE STANDARDS
COMMITTEE AND CONSTITUTION REVIEW**

Report of: Monitoring Officer

To: Standards Committee

Date: Friday 6th January 2006

Item No: 5

Purpose of report: To seek the endorsement of the Committee in relation to changes to its powers and duties and the Whistleblowing Policy, and to seek views on changes to the Protocol on Member/Officer Relations and the Code of Practice for Councillors and Officers Engaged in the Determination of Planning Applications. This report attaches Policy, the Protocol and the Code. The Committee is responsible for the Policy and the Protocol. This report is recommending that the Committee becomes responsible for the Code.

Recommendation(s): The Standards Committee is recommended to: -

- (1) Endorse the proposed changes to its powers and duties and to the Whistleblowing Policy;
- (2) Consider whether it wishes to propose any changes to the Protocol on Member/Officer Relations and to the Code of Practice for Councillors and Officers Engaged in the Determination of Planning Applications.

Key decision: N/A

Portfolio Holder: N/A

Scrutiny Responsibility: N/A

Ward(s) affected: All

Report Approved by: Jeremy Thomas, Head of Legal and Democratic Services

Policy Framework:

Introduction

1. The Annexes to this report contain the following: -
 - Annex 1 - The Committee's powers and duties as set out in the current version of the Constitution
 - Annex 2 – Whistleblowing Policy
 - Annex 3 – Protocol on Member/Officer Relations
 - Annex 4 – Code of Practice for Councillors and Officers Engaged in the Determination of Planning Applications

This Committee is responsible for the Policy and the Protocol set out in Annexes 2 and 3. I am proposing that the Committee becomes responsible for the Code set out in Annex 4.

2. The contents of each of the annexes are contained in the Council's Constitution. The Constitution is currently undergoing its second major review. This report looks at each of the annexes and suggests changes or seeks suggestions to change them. Changes will be recommended to Council in the context of the review.

Powers and Duties

3. The Committee's powers and duties are recommended for change in three respects. First, by the inclusion of the words "To monitor the Council's handling of complaints and Ombudsman investigations". This will replace item 10. This wording reflects the Committee's desire to have an overseeing role on corporate complaints.

Second, I am proposing that the wording in item 8 is changed so that it reads "To consider matters of relevance referred to in the Audit Commission's Management Letter or other correspondence from the Audit Commission". The Executive Board has responsibility for receiving and considering reports from the District Auditor (including the Management Letter) and for taking appropriate action. We also now have an Audit and Governance Committee. However, I feel that there is advantage in this Committee being able to look at "matters of relevance" from a more independent perspective. The revised wording more accurately reflects the Committee's role on Audit Commission matters.

Third, I am proposing a new item that widens the Committee's responsibilities and gives it a role more generally on codes of practice and guidance that relate to members' conduct. The wording is "To advise on the adoption, revision and application of any codes of practice or guidance relating to the conduct of members". This would include the Planning Code set out in Annex 4.

Whistleblowing Policy

4. The Whistleblowing Policy is an internal document setting out the procedure that officers should use if they have concerns about any aspect of the Council's work. The procedure in the Policy was used, and accepted for use, by a member of the public recently. The acceptance of a complaint under the Policy highlighted that there was a lack of knowledge of the Policy among Council staff. I am proposing that the Policy be altered to include the following paragraph:-

"1.1 This Policy is for the use of Council officers only. Members of the public may make complaints through the Council's complaints procedure and to the Ombudsman".

This revised wording makes it clear that the Policy is one that applies to officers only. There is a need to give the Policy more publicity internally and we will do that via the monthly officer Team Brief publication.

Staff were recently invited to comment on the Policy but no comments were received. I have looked at the Policy and consider that paragraphs 6.2 – 6.5 should be recast so that that part of the Policy reads as follows:-

"6.2 A line manager may consider that he or she is unable to address an employee's concern. If this is the case the employee must be advised on how the matter will be progressed.

6.3 Concerns can be raised directly with a Director, the Chief Executive, or the Council's Monitoring Officer by an employee who does not wish to raise a concern with line management."

(Paragraphs 6.3 and 6.5 are deleted and their provisions not repeated in the revised wording. Paragraph 6.5 is inappropriate to include in this officer Policy).

Protocol on Member/Officer Relations

5. The Protocol on Member/Officer Relations is in need of review. Staff were recently invited to comment on the Protocol but no comments were received. The Committee is asked if it has any comments on the Protocol that might be incorporated into the review. I will be suggesting some adjustments for the Committee to consider.

Planning Code

6. The Planning Code is in need of some revision. I will be suggesting adjustments for the Committee to consider. The Committee is asked if it has any comments on the Protocol that might be incorporated into the review.

Name and contact details of author:-

William Reed Democratic Services Manager Town Hall Oxford OX1 4YS Tel: 01865 252230 e-mail: wreed@oxford.gov.uk

Background papers: None

POWERS AND DUTIES OF THE STANDARDS COMMITTEE

Standards Committee

1. To promote the maintenance of high standards of conduct within the Authority.
2. To advise the Authority on the adoption or revision of the Members' Code of Conduct and to monitor its operation.
3. To advise, train and arrange to train members and co-opted members on all aspects of the Members' Code of Conduct.
4. To consider the recommendations of case tribunals under Section 80 of the Local Government Act 2000.
5. To consider the reports of the Monitoring Officer on any matter referred by an ethical standards officer.
6. To grant dispensations to councillors and co-opted members from requirements concerning interests in the Members' Code of Conduct.
7. To exercise the above functions for Parish Councils in the District and the members of those Councils.
8. To consider matters referred to in the District Auditor's management letter or other correspondence from the District Auditor which require investigation.
9. To oversee the Authority's "whistleblowing" policy.
10. To oversee Ombudsman investigations.
11. To monitor the Register of Members' Interests.
12. To maintain and apply the Protocol on Member/Officer Relations in Part 6 of the Constitution.

WHISTLEBLOWING POLICY

1. INTRODUCTION

- 1.1 The Nolan Committee's 1997 report into standards of conduct in local government recommended that every local authority should introduce a procedure for "whistleblowing" that would enable any individual to raise concerns about conduct.
- 1.2 The Government accepted the need for an established whistleblowing procedure and the *Public Interest Disclosure Act 1998*, was introduced to protect whistleblowers who were dismissed or suffered detriment as a result of their action.

2. DEFINITIONS USED IN THIS POLICY

- 2.1 The term "*whistleblowing*" in this policy refers to the disclosure of information by employees or others in respect of illegal acts, malpractice or wrongdoing.
- 2.2 The term "*in good faith*" means honesty in the conduct of any concerns raised.
- 2.3 The term "*responsible officer*" refers to the officer investigating any concern raised.
- 2.4 This policy covers any illegal acts, malpractice or wrongdoing by any person. This could include:
 - any employee of Oxford City Council;
 - any councillor or co-opted member of Oxford City Council;
 - any person acting in a representative role for Oxford City Council
 - any contractor, partner, consultant or supplier of service to Oxford City Council.
- 2.5 The "Authority" means the Oxford City Council.

3. POLICY STATEMENT

- 3.1 Oxford City Council is committed to the highest possible standards of openness, integrity and accountability. In line with that commitment it expects employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that as a result of voicing concerns certain cases will need to proceed on a confidential basis.
- 3.2 This policy is intended to encourage and enable individuals to raise serious concerns with the Council rather than overlooking a problem or "blowing the whistle" outside the Council.

4. AIMS AND SCOPE OF THE POLICY

4.1 This policy aims to:

- **encourage** any individual to raise concerns about possible malpractice
- **provide** avenues for concerns to be raised, giving feedback on any action taken
- **ensure** that a response is given to any concern and provide advice on how to proceed if this response is not satisfactory
- **assure** any individual that they will be protected from reprisals or victimisation for acts of whistleblowing made in good faith.

4.2 The Authority has a number of different policies and procedures in place which relate to standards of behaviour at work. These include Discipline, Grievance, Diversity and Recruitment and Selection. Employees are encouraged to use the provisions of these procedures where appropriate. There may be times, however, when the matter is not about personal employment matters and needs to be handled in a different way. Examples may be:

- a criminal offence
- suspected fraud and/or corruption
- damage to the environment
- the unauthorised use of public funds
- breach of Council Financial Procedure Rules
- breach of legislation

4.3 This list is not exhaustive and any serious concerns that individuals have about conduct of officers, members or others acting on behalf of the Council can be reported under the Whistleblowing Policy.

5. **SAFEGUARDS**

5.1 An individual should have nothing to fear from reporting a concern since he or she will be merely doing their duty to the Authority and to the community. However, it is acknowledged that the decision to raise a concern can be difficult and safeguards must be put in place.

Harassment or Victimisation

5.2 The Authority will not tolerate harassment or victimisation and will take action to protect a whistleblower when they raise a concern in good faith. Harassment or victimisation of a whistleblower will be treated as a serious disciplinary offence which will be dealt with through the Council's Disciplinary Procedure.

Confidentiality

5.3 All concerns raised will be treated in confidence and every effort will be made to protect an individual's identity where this is requested. However, the investigation process may reveal the source of the information and the individual may be required to come forward as a witness.

Anonymous Allegations

- 5.4 This policy encourages individual's to put their names to allegations.
- 5.5 Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Authority. In exercising this discretion, the factors to be taken into account would include:
- the seriousness of the issued raised;
 - the credibility of the concern; and
 - the likelihood of confirming the allegation from attributable sources.

Untrue Allegations

- 5.6 If an individual makes an allegation in good faith, but it is not confirmed by the investigation an employee will suffer no detrimental treatment as a result of raising a concern. If, however, allegations are deliberately false or malicious this will be treated as a disciplinary offence which will be dealt with through the Authority's Disciplinary Procedure.

6. WHISTLEBLOWING PROCEDURE

Reporting a Concern

- 6.1 If any employee has a legitimate concern this should be raised with the responsible officer. Normally this would be their supervisor or their supervisor's line manager. This course of action depends on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice.
- 6.2 A line manager may consider that he or she is unable to address an employee's concern. If this is the case the employee must be advised on how the matter will be progressed. The options for the line manager are to refer the complaint to the Chief Executive, to a senior Officer in the Department, not the Director, nominated to deal with whistleblowing concerns, or any appointed Scrutiny Officer. One of these options must be chosen in consultation with the employee.
- 6.3 Where the line manager passes on responsibility for the complaint, the Chief Executive, the senior officer in the Department concerned, or the Scrutiny Officer will become the responsible officer.
- 6.4 Concerns can be raised directly with a Director, the Chief Executive, or the Council's Monitoring Officer by:
- a) an employee who does not wish to raise a concern with line management and
 - b) any other person
- 6.5 Concerns about officers can be raised with the Leader of any political group by any councillor. The Leader concerned must ensure that the procedure detailed in this document is followed.
- 6.6 If there is concern about fraud or corruption of any sort this can be addressed to any of the officers listed under 6.4 or, alternatively, to the Internal Audit Business Manager.

- 6.7 Individuals are encouraged to raise concerns in writing and should include:
- the background and history of the concern (giving relevant dates)
 - the reason why the individual is particularly concerned about the situation.
- 6.8 Those who do not feel able to put their concern in writing, can be interviewed by the responsible officer. The responsible officer will write a brief summary of the interview which will be agreed by both parties.
- 6.9 Although individuals are not expected to prove the truth of an allegation, they will need to demonstrate that there are sufficient grounds for concern.
- 6.10 Employees may invite their Trade Union or professional association to raise a matter on their behalf.
- 6.11 However the concern is reported it should be made clear that it is being raised in accordance with the provisions of the Whistleblowing Policy. This will have the effect of ensuring that the agreed procedures are followed and help to avoid misunderstanding.

How the Authority will Respond to Concerns

- 6.12 The action taken by the Authority will depend on the nature of the concern. The matters raised may for example:
- be investigated by management, internal audit or through the disciplinary process
 - be referred to the Police
 - be referred to the District Auditor
 - form the subject of an independent inquiry.
- 6.13 In order to protect individuals and the Authority, initial enquiries will be made by the responsible officer to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Authority will have in mind is the public interest. Concerns or allegations which fall within the scope of existing procedures, for example, racial discrimination will normally be referred for consideration under those procedures.
- 6.14 Some concerns may be resolved by agreed action without the need for an investigation.
- 6.15 Within ten working days, the responsible officer will write to the individual who has raised the concern:
- acknowledging that the concern has been received;
 - indicating how the matter will be progressed;
 - giving an estimate of how long it will take to provide a final response;
 - telling them whether any initial enquiries have been made; and
 - telling them whether further investigations will take place, and if not, why not.
- 6.16 The amount of contact between the responsible officer and the individual will depend on the nature of the matters raised, the potential difficulties involved

and the clarity of the information provided. If necessary, further information will be sought from the individual.

- 6.17 When any meeting is arranged an individual can, if they so wish, be accompanied by a Trade Union or professional association representative or a friend.
- 6.18 The Authority will take steps to minimise any difficulties which an individual may experience as a result of raising a concern. For instance, if employees are required to give evidence in criminal or disciplinary proceedings, the Council will advise them about the procedure.
- 6.19 If the concern raised is very serious or complex, an inquiry may be held.
- 6.20 The Authority accepts that anyone raising a concern needs to be assured that the matter has been properly addressed. Subject to legal constraints, the Authority will report to the whistleblower within 10 working days of the conclusion an investigation.

7. TAKING A COMPLAINT FURTHER

7.1 This policy is intended to provide an avenue to raise concerns within the Authority. If after seeking advice an individual feels it is right to take the matter outside of this process the following are possible contact points:

- the local Council member (if you live in the area of the Council)
- the District Auditor
- the Health and Safety Executive
- a government department
- a solicitor
- the Police
- a Member of Parliament

This list is not intended to be exhaustive.

7.2 If an individual does take the matter outside the Council, they need to ensure that they do not disclose confidential information. This can be checked with the Monitoring Officer who will also advise on ways to proceed.

8. THE MONITORING OFFICER

8.1 The Council's Monitoring Officer reporting to the Standards Committee has overall responsibility for the maintenance and operation of this policy. The Monitoring Officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report all concerns raised to the Standards Committee.

PROTOCOL ON MEMBER/OFFICER RELATIONS

1 INTRODUCTION

- 1.01 The purpose of this protocol is to guide councillors and officers of the City Council in their relations with one another.
- 1.02 Given the variety and complexity of such relations, this Protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues that most commonly arise. It is hoped, however, that the approach that it adopts to these issues will serve as a guide to dealing with other issues.
- 1.03 This Protocol is to a large extent no more than a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.04 This Protocol also seeks to reflect the principles underlying the respective rules of conduct which apply to councillors and officers. The purpose of the rules and this protocol is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct.
- 1.05 Both councillors and employees are servants of the public and they are indispensable to one another. But their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Employees are responsible to the Council. Their job is to give advice to Councillors and the Council, and to carry out the Authority's work under the direction and control of the Council, the Executive Board and the various Committees.

2 RESPECT AND COURTESY

- 2.01 For the effective conduct of the Authority's business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between councillors and officers. This too plays a very important part in the Authority's reputation and how it is seen in public. It is very important that both councillors and officers remember their respective obligations to enhance the Authority's reputation and to do what they can to avoid criticism of other councillors, or other officers, in public places.

Undue Pressure

- 2.02 It is important that in any dealings between councillors and officers neither should seek to take unfair advantage of their position.
- 2.03 In their dealings with both Directors and staff (especially junior employees), councillors need to be aware that it is easy for officers to be overawed and feel at a disadvantage. Such feelings can be intensified where members hold official and/or political office.

- 2.04 A councillor should not apply undue pressure on an officer either to do anything that he or she is not empowered to do, or to undertake work outside normal duties or outside normal hours. Particular care needs to be taken in connection with the use of the Authority's property and services.
- 2.05 Similarly, an officer must neither seek to use influence on an individual councillor to make a decision in his or her personal favour, nor raise personal matters to do with their job, nor make claims or allegations about other officers. The Authority has formal procedures for consultation, grievance, and discipline. The one exception to this rule is the right of staff to report possible wrong doing under the Council's "whistleblowing" procedure.
- 2.06 Councillors should recognise that officers' workloads frequently require extended periods of concentration or involve tight deadlines. Councillors should respect officers' working time and should, where possible, arrange appointments for consultations and avoid frequent unscheduled interruptions.

Familiarity

- 2.07 Close personal familiarity between individual councillors and employees can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.
- 2.08 Such familiarity could also cause embarrassment to other councillors and/or other employees and even give rise to suspicions of favouritism.
- 2.09 As a result close personal familiarity should be avoided.

Criticism of Officers by Councillors

- 2.10 Councillors have the right to criticise reports or the actions taken by officers but they should always:
- avoid personal attacks on officers
 - ensure that criticism is constructive and well-founded and is likely to lead to improved performance in future, rather than solely to apportion blame.

Redress

- 2.11 If a councillor considers that he or she has not been treated with proper respect or courtesy, he or she may raise it with the employee's line manager or Director without delay if it is not possible to resolve it through direct discussion. If the issue still remains unresolved appropriate disciplinary action may be taken against an employee by the Director in accordance with the Authority's normal procedures.
- 2.12 If an employee feels the same way about a councillor, and a direct discussion is impractical or fails to resolve the matter, he or she should raise the matter with the line manager or Director without delay. In such circumstances, the Director will take such action as is appropriate either by approaching the individual councillor and/or Party group Leader. The Director will tell the Chief

Executive if the Party Group Leader becomes involved, or in any other case where that is appropriate. Feedback should be given to the employee on the outcome.

3 PROVISION OF INFORMATION/ADVICE

- 3.01 Any Councillor is entitled to apply to the Chief Executive, or to any other Director, for information and/or advice required in connection with his/her work as a councillor. Provided that the information sought does not involve the divulging of exempt information it is the duty of the Director approached to give that information and/or advice within the limits of his/her Department's resources and to the best of his/her ability. Councillors for their part will seek to act reasonably in the number and content of the applications they make.
- 3.02 If any councillor asks for specific information on the work of a particular Directorate, and it appears possible or likely that at a subsequent meeting issues will be raised or questions asked on the basis of the information provided, the appropriate member of the Executive Board shall be advised of the information sought and given.
- 3.03 An Executive Board member or the Chair of the Council or of any Committee (including an Area Committee) is entitled to apply to the Chief Executive and/or to the appropriate Director(s) for additional background information on, or for advice on possible alternative courses of action in respect of, any particular problem or policy of concern.
- 3.04 The Leader of each minority Party Group, recognised as such by the Council, is entitled for his/her own purposes as a Leader, to apply to the Chief Executive and/or to the appropriate Director(s) for general background information on, or for further information in respect of an item of business coming before the then next meeting of the Executive Board, Area Committee or another Committee of the Council. The appropriate Chair or Executive member shall be advised of any new/additional information which has been supplied by the Director.
- 3.05 Technical/procedural information may be supplied, in confidence, to any Group Leader, to enable a budget to be presented by that Group which is in a legally correct form.
- 3.06 Subject to the provisions of the Data Protection Act 1998, information requested by a councillor to address a constituency issue may be supplied to that councillor in confidence.
- 3.07 Any councillor may apply to the Chief Executive and/or to the appropriate Director for advice, in confidence, on information supplied by that councillor to the officer.

4 POLITICAL ACTIVITY

- 4.01 Senior employees, except those who are not politically restricted, cannot be councillors or Members of Parliament, nor can they "speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party".

- 4.02 Employees are employed by the Authority as a whole. They serve the City Council and are responsible to the Chief Executive and their respective Directors and not to individual members of the Council whatever office they might hold.
- 4.03 It is important though, for there to be regular contact between the Chief Executive, Directors, senior employees and the Leaders of Political Groups on matters affecting the Authority and between Directors, other senior employees, and Executive members on matters affecting their respective portfolios.

Support Services to Councillors and Party Groups

- 4.04 The only basis on which the Authority can lawfully provide support services (eg. stationery, typing, printing, photocopying, transport, etc) to councillors is to assist them in discharging their role as councillors of the City Council. Such support services must therefore only be used on City Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

Correspondence

- 4.05 When a letter or e-mail is copied to anyone apart from the addressee councillor, it should always have a list of those receiving copies at the head of the letter or e-mail.
- 4.06 Official letters on behalf of the Council will normally be issued in the name of the appropriate officer rather than that of a Councillor. It may be appropriate in certain circumstances (eg. representations to a Government Minister) for a letter to appear in the name of the Leader or a Chair or other councillor, but this should be the exception rather than the norm. Where the Leader or a Chair or other councillor issues a letter in these circumstances, he or she will arrange for copies to be sent to other members of the Executive Board or committee as the case may be. Letters which, for example, create obligations or give instructions on behalf of the Council must never be sent out in the name of a councillor.

Officer Advice to Political Groups

- 4.06 It is common practice for Party Groups to give preliminary consideration to matters of Council business. Officers may properly be called upon to provide information and advice in connection with such deliberations by Groups.
- 4.07 Information and advice will be available to all Groups on the same basis. Officers may be invited, but cannot be compelled, to address Group meetings.
- 4.08 Officer input in these circumstances will be limited to providing information and advice about matters of Council business. Group meetings, whilst they may form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Authority. Conclusions reached at these meetings will not therefore rank as Authority decisions and will not be interpreted as such by officers.

5 COUNCILLORS' BRIEFING, AGENDAS AND REPORTS

- 5.01 Briefings on agendas will be given by Directors or their nominees to the Leader, Deputy Leader and to the Chairs and Vice-Chairs of Area Committees or other Committees.
- 5.02 The agenda for the Executive Board, Overview and Scrutiny and Area Committee meetings will be drawn up in consultation with the Leader or Chair of the Committee. This should normally be done no later than 2 weeks before the date of the meeting.
- 5.03 Formal requests to Directors for a report to be prepared on a particular issue may only come from the Leader, the Executive Board, a member of the Executive Board responsible for that topic, an Area Committee or the Chair of an Area Committee.

6 PRESS RELEASES AND PUBLICITY

- 6.01 All publicity activities carried out by the Media Office will be in accordance with the Code of Recommended Practice on Local Authority Publicity.
- 6.02 News releases issued by the Authority will not contain quotes from councillors other than, where appropriate, from the Leader or Executive Board portfolio holder or the Chair of any Area or other committee, or the Mayor, Deputy Lord Mayor and Sheriff, acting in a civic capacity. News releases may quote appropriate officers, where these quotations are purely factual or consistent with Council policy.
- 6.03 Where a news release is issued after an Executive Board, Area Committee or other committee meeting any comments must relate to matters discussed at that meeting. Advance news releases which contain matters due to be discussed, should be limited to factual information only.
- 6.04 The Media office will be guided by the Leader, Executive Board member or Committee Chair on whether a news release should be issued before or after a meeting. The Media Office will give advice as to whether this is appropriate.
- 6.05 All news releases about decisions will contain the name and telephone number of the Leader, Executive Board member or Committee chair or an appropriate officer.
- 6.06 Where news conferences or media events are arranged, a representative of all those political groups recognised by the Council will be invited to attend. When photo-calls involving councillors are arranged, representatives of all party groups will be invited. The Media Office will liaise with the Leader, Executive Board member or Committee Chair when setting up photo-calls or media events involving councillors.
- 6.07 All news releases issued by Group Leaders, Chair, Group Spokespersons or individual Councillors should state clearly that the release has been issued by that person not on behalf of the Council.

7 INVOLVEMENT OF WARD COUNCILLORS

- 7.01 Whenever a public meeting is organised by the Authority to consider a local issue, all the councillors representing the Ward or Wards affected should as a matter or course be invited to attend the meeting, the maximum possible notice being given. Similarly whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Councillors should be consulted at the outset of the exercise.
- 7.02 Ward Councillors should be notified in advance about any issues likely to affect them. This would increase press releases relating to a particular Ward or significant matters likely to affect a Ward.

8 THE COUNCIL AS AN EMPLOYER

- 8.01 In making employment decisions, the key principles to follow are:
- when making public appointments or recommending people for rewards or benefits, members should make choices on merit;
 - members have a duty to declare any private interest and to protect the public interest;
 - members should be open about and are accountable for the decisions they make in the role of employer. However, some employment matters should be dealt with in confidence.
- 8.02 The Council values diversity and is committed to equality of opportunity in employment. Members should be guided by this in all their relationships with employees, avoiding decisions or conduct which may discriminate.
- 8.03 Members taking part in recruitment should judge candidates on merit. Members must not seek to influence appointments made by appointment panels to which they do not belong, or otherwise seek support for any candidate, or give any particular candidate information not available to others, or participate in recruitment where friends, relatives, partners or members of their household are candidates.
- 8.04 Members related to job applicants should disclose the relationship.
- 8.05 Members may be involved in disciplinary issues at the Disciplinary and Grading Appeals Committee. Employees have the right to be disciplined in accordance with the Council's procedures, which stress impartiality and objectivity. Members may report apparent misconduct by employees to an appropriate manager but thereafter they must not seek to influence:
- any disciplinary matter dealt with by managers
 - any disciplinary matter heard by a committee to which they do not belong
- 8.06 Decisions must be based on the facts of the case. Political or personal considerations must not be allowed to influence the decision.
- 8.07 All the principles in this Section apply equally to member involvement in employee grievances.

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS ENGAGED IN THE DETERMINATION OF PLANNING APPLICATIONS

INTRODUCTION

1. This Code of Practice applies to both councillors and officers. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

THE NEED FOR GUIDANCE

2. Planning is not an exact science. Rather, it relies on informed judgement within a firm policy context. It is also contentious because its decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers. It affects land values. All this is heightened by the openness of the system and the legal nature of development plans and decision notices.
3. It is important therefore that the process is characterised by open and transparent decision making. With any application which has been refused or approved in the face of opposition, the decision may well be the subject of detailed scrutiny. Any question of a procedural defect, impropriety or misconduct, whether warranted or not, may lead to an application for judicial review or a complaint to the Local Government Ombudsman of maladministration. Even if not taking such action, the aggrieved party may attempt to convince others that the decision was flawed. As a result, the planning process must not only be fair, it must be seen to be fair.

STATUS OF THE GUIDANCE

4. The recommendations in this code are based upon the Authority's recently adopted Code of Conduct based on the Government's Model Code of Conduct for members, the findings of inquiries at Brent, North Cornwall, Warwick and Bassetlaw Councils, advice from the Local Government Association, the Audit Commission, the Ombudsman and the National Planning Forum together with the Royal Town Planning Institute's Code of Professional Conduct.

The terms in this Code of Good Practice apply to the operation of Area Committees and to full council when making a planning decision.

THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

5. Councillors and officers have different, but complementary roles. Both service the public but councillors are responsible to the electorate, while officers are responsible to the Authority as a whole. As a general rule,

instructions will usually be given to officers through a Council, Executive Board or committee decision.

6. Both councillors and officers are guided by codes of conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. The Code of Conduct supplemented by guidance from the Standards Board provides standards and guidance for members. Employees will in due course be subject to a statutory Employees' Code of Conduct.
7. The Code of Conduct addresses in general terms a range of aspects of a member's conduct in carrying out official duties. It relates to the whole range of those duties, and is not function specific. The Authority's Code of Conduct sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Authority business, including the need to register and declare interests but also appropriate relationships with other members, staff and public.

This Code of Good Practice in Planning Matters is both supportive of the thrust of the Code of Conduct and the sources of expanded guidance in particular areas of planning.

8. The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are strongly held by those involved. While councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
9. Whilst councillors may be strongly influenced by the views of others, and of their political group in particular, it is their responsibility alone to decide what view to take on any question which councillors have to decide. The Local Government Ombudsman has concluded that the use of whipped votes at group meetings, or reliance on party political loyalty, to compel a councillor to vote on a planning application in a particular way will amount to maladministration. The Court of Appeal has given judicial endorsement to this approach. Votes in Committee and Council on planning applications are a matter of individual conscience based on planning judgement and should not be influenced or controlled by whipped votes.
10. Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 imposes restrictions on their outside activities. The Authority has identified which of their officers are subject to these restrictions. This list is reviewed regularly. Staff paid on salary grade SO1 and above must also seek permission from their manager to carry out any private work.
11. Officers and members may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable the recipient should ensure it is of the minimal level and declare its receipt as soon as possible. The Code of Conduct requires any member receiving any gift or hospitality over £25 to notify the Monitoring Officer within 28 days of its receipt. The Monitoring Officer will maintain a register of such gifts which is open to public inspection. For officers, each Department maintains a hospitality book.

DECLARATION AND REGISTRATION OF INTERESTS

12. The Local Government Act 2000 and the Code of Conduct require members to register and declare their interests and the consequences for the member's participation in consideration of an issue, in the light of those interests. Ultimate responsibilities for fulfilling the requirements rests individually with each Councillor. The register is maintained by the Monitoring Officer and is available for public inspection. Any changes must be notified within 28 days of a member becoming aware of such changes.
13. A personal interest in a matter arises if a member anticipates that a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself a relative or a friend, or
- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
 - any of the bodies with which the member is associated, and which he or she will have registered in the register of interests.

Where a member considers that he or she has such a personal interest in a matter, he or she must always declare it, but it does not then necessarily follow that the personal interest debars the member from participation in the discussion. If the member remains for the discussion the full nature of the interest must be declared.

14. The Code provides that a personal interest becomes a prejudicial one if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the members' judgement of the public interest.

If a member has a prejudicial interest, he or she should not participate in a discussion on the matter and must withdraw from the room and must not seek to influence a decision in the matter. In the case of a prejudicial interest, the member need not declare the nature of the interest, merely that it exists.

15. The Code will include some exceptions to this. If the matter under discussion relates to:
- another authority of which the councillor is a member;
 - another public authority in which he or she has a position of general management or control;
 - a body to which he or she has been appointed or nominated as a representative of the authority;
 - housing or education matters where the councillor is a tenant or has children at schools in the Authority's area

then in these circumstances, the interest should not be regarded as prejudicial. In practice, therefore, the member would need to declare the interest, but may participate.

16. The emphasis is on consideration of the status of the interest in each case by the councillor personally. Included in that judgement is a consideration of the perception of the public acting reasonably and with knowledge of the facts.

Translated into a councillor's involvement in planning issues, the two stage test of personal and prejudicial interests will require each councillor to abstain from involvement in any issue the outcome of which might advantage or disadvantage the personal interests of the councillor, his or her family, friends or employer.

17. In a planning context the exceptions made in the Code of Conduct to the definition of prejudicial interest relating to membership of outside bodies will require the exercise of particular judgement on the part of councillors. The Code will operate only where the member has scrupulously avoided forming a fixed view on the issue in advance.
18. Given the significance of judgements by members on declarations of interest generally and particularly in a planning context, at least once a year the Authority will expect members to attend training seminars. Advice on the declaration of interests is always available to members from the Monitoring Officer and the Chief Executive.
19. Advice on the need for employees to declare an interest is contained in the Staff handbook.

DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT

20. Applications to their own Authority by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety.
21. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving councillors and officers should never act as agents for people pursuing a planning matter with their Authority.
22. Should serving councillors submit their own proposals to the Authority on which they serve, they should play no part in its processing.
23. The Monitoring Officer should be informed of such proposals. The officers' report on that matter should be able to state that the Monitoring Officer can confirm that the matter has been processed in the normal way. An officer submitting an application will have an interest in that application. He or she must also declare an interest if present at the meeting at which the application is discussed.
24. Applications submitted by councillors or officers will always be determined by an Area Committee and not under the Strategic Director's delegated powers.
25. Proposals for the Authority's own development should be treated in the same way as those of private developers, in accordance with Government Circular advice, particularly in relation to officers' advice. Planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Authority if the development is permitted. It is important that the Authority is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

LOBBYING OF AND BY COUNCILLORS

26. Lobbying, which can be defined as an approach to a councillor by an applicant, developer, objector or other third party, is considered an important part of the political process. The Nolan Report recognised the two roles that councillors perform in the planning process, namely, the representation of public opinion and the determination of applications.
27. However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality of a councillor being called into question. When being lobbied, all councillors should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the application before they have considered all representations and the planning content. Councillors should not lobby other councillors to act for them, or act as an agent for other councillors, or put pressure on officers for a particular recommendation.
28. In such situations, they should restrict themselves to giving procedural advice including recommending that those who are doing the lobbying should write to the Planning Business Manager so that their views can be included in the officer's report to the Committee. A councillor should not give a firm indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair, prejudicial and may amount to maladministration.
29. When attending public meetings councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals or submitted planning applications.
30. Correspondence received by councillors should be passed to the Planning Business Manager without delay to ensure that all material considerations are available to those members or officers responsible for determining the application. A response by a councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
31. Taking account of the need to take decisions impartially, councillors must weigh up all the material considerations reported at each committee meeting.
32. If planning applications are considered by a succession of committees or meetings each consideration will require the councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
33. Whilst councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committee when all available information is to hand and has been considered.

PRE-APPLICATION DISCUSSIONS

34. Discussion between a potential applicant and with representatives of the Authority prior to the submission of an application can be of considerable benefit to both parties. However, it would be easy for such discussions to

become or be seen (especially by objectors) to become part of a lobbying process on the part of the applicant.

35. In order to avoid such problems, pre-application discussions should take place within clear guidelines.
- It should always be made clear at the outset that the discussions will not bind the Authority;
 - Advice should be consistent and based upon the Development Plan and material considerations. All officers taking part in such discussions should make it clear whether or not they are the decision maker;
 - A written note should be made of the meeting. Councillors would be entitled to see this note. At least one officer should attend potentially contentious meetings and a follow-up letter would usually be sent;
 - Care must be taken to ensure that advice is not partial (nor seen to be) otherwise a subsequent report could appear to be partisan;
 - To maintain impartiality and its appearance, it is preferable that councillors do not take part in such discussions. Should there, however, be occasions when councillors are involved they should always be advised by appropriate professional officers (which must always include a senior planning officer) and be authorised, on a case by case basis, by the Area Committee or the Strategic Development Control Committee;
 - The involvement of councillors should be recorded in the committee report.

POST-APPLICATION DISCUSSIONS

36. A councillor should not approach an applicant for planning permission with a view to securing changes to an application or achieving planning gain. Such an approach would inevitably give rise to allegations of partiality or bias. Any contact with applicants should normally be conducted with and through officers and should always be reported to the Area Committee or the Strategic Development Control Committee.

SITE VISITS

37. The Code of Conduct applies whenever a Councillor is conducting official business including site visits.

A formal site visit will often be helpful if the impact of the proposed development is difficult to visualise from plans and supporting information including photographs, or there is good reason why the comments of the applicant and objectors cannot be adequately expressed in writing. A site visit can cause delay and additional work. They should only be used when the expected benefit is substantial. This could apply when:

- the proposal represents a significant departure from the Development Plan;
 - the proposal raises wider policy issues;
 - there is considerable local concern about a proposal
38. Site visits are intended solely for the purpose of acquiring information about the nature of a planning application. They should not be used as an opportunity for applicants, agents or objectors to seek to influence the views of councillors.
39. During formal site visits, councillors, along with the accompanying officers, should carry out the inspection in one group. The Chair should ensure that applicants, agents or objectors do not impose themselves on the group or individual members of the group. Councillors should refrain from making comments on the merits or otherwise of the application to any interested party who may be present.
40. Similar principles should apply to informal site visits conducted by individual members or groups of members.

OFFICER REPORTS TO COMMITTEE

41. To avoid criticisms of inadequate consideration of issues, of inconsistency or of poor reasoning, regard needs to be had to the following points when preparing reports.
- Reports should be accurate and cover all relevant points including the main thrust of objections;
 - Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations;
 - Reports should have a written recommendation. Oral reporting should be extremely rare and carefully minuted;
 - Reports should contain a technical appraisal which clearly justifies the recommendation;
 - If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.

DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN

42. If a committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the Committee's reasons should be made and a copy placed on the application file. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. The officer should be given an opportunity to explain the implications of the contrary decision.

43. If on consideration of an Area Committee's decision or the Strategic Development Control Committee's decision to refuse an application the Planning Business Manager considers that it may be difficult to sustain the Council's case on appeal, he or she will report back to the Area Committee or the Strategic Development Control Committee on the open agenda, setting out the strengths and weaknesses in the Council's position. This procedure will also apply if an Area Committee or the Strategic Development Control Committee makes a decision to grant permission which is contrary to Local Plan policy or proposes unworkable planning conditions.
44. If the Area Committee or the Strategic Development Control Committee confirms its decision to refuse an application, it should also consider how best to represent the Council's case, including the funding of the appeal and the opportunity for councillors to give evidence.
45. If the report of the Planning Business Manager recommends approval of a departure from the Development Plan, the full justification for this recommended departure shall be included in the report.

REGULAR REVIEW OF DECISIONS

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

COMPLAINTS AND RECORD KEEPING

47. Whatever procedures a local authority operates, it is likely that complaints will be made. The Council has a complaints procedure.
48. So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. These principles apply equally to enforcement and development plan matters. Monitoring should be undertaken regularly.
49. The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the managers in the Planning Policy and Development Control Units.