

## AGENDA

---

**Meeting:** Standards Committee  
**Place:** Alamein Suite - City Hall, Malthouse Lane, Salisbury, SP2 7TU  
**Date:** Wednesday 10 July 2013  
**Time:** 2.00 pm

---

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email [kieran.elliott@wiltshire.gov.uk](mailto:kieran.elliott@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

---

### Membership:

Cllr Desna Allen	Cllr Howard Marshall
Cllr Allison Bucknell	Cllr John Noeken (Vice Chairman)
Cllr Trevor Carbin	Cllr Paul Oatway QPM
Cllr Terry Chivers	Cllr Horace Prickett
Cllr Howard Greenman	Cllr Ian Tomes
Cllr Julian Johnson (Chairman)	Cllr Christopher Williams

---

### Substitutes:

Cllr Rosemary Brown	Cllr Chris Hurst
Cllr Chris Caswill	Cllr George Jeans
Cllr Ernie Clark	Cllr Simon Killane
Cllr Mary Douglas	Cllr Sheila Parker
Cllr Dennis Drewett	Cllr John Walsh
Cllr Russell Hawker	Cllr Roy White

---

### Non-Elected Non-Voting Members:

Mr Philip Gill MBE JP  
Mr Paul Neale  
Mr John Scragg  
Miss Pam Turner

---

## Part 1

Items to be considered when the meeting is open to the public

1 **Apologies for Absence**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 1 - 6*)

To confirm the minutes of the meeting held on 24 October 2012.

3 **Dispensation Sub-Committee Minutes** (*Pages 7 - 12*)

To receive and note the minutes of the Dispensation Sub-committees held on 24 January 2013

4 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

5 **Chairman's Announcements**

To receive any announcements through the Chair.

6 **Public Participation and Questions**

The Council welcomes contributions from members of the public.

### Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so **at least 10 minutes prior to the meeting**. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

### Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution. Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of the agenda **no later than 5pm on 03 July 2013**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

7 **Appointment of Focus Group on the Constitution** (*Pages 13 - 16*)

To appoint the membership of the Focus Group on the Constitution for the forthcoming year.

8 **Minutes and Recommendations of the Focus Group on the Constitution**  
(*Pages 17 - 72*)

a) To note minutes of the meeting of the Focus Group on the Constitution held on 12 March 2013 and consider the recommended changes to the following documents of the Constitution:

- I. Protocol 2 – Councillor/Officer Relations (Appendix A – Pages 21-30)
- II. Protocol 3 – Guidance to Members on Outside Bodies (Appendix B – Pages 31-54)
- III. Protocol 4 – Planning Code of Good Practice (Appendix C – Pages 55-68)
- IV. Protocol 12 – Code of Conduct (Appendix D – Pages 69-72)

b) To recommend Council to adopt the revised documents as agreed by the Committee

9 **Code of Conduct: Registration and Disclosure of Additional Interests**  
(*Pages 73 - 104*)

To consider the report from the Monitoring Officer.

Appendix A - Consultation letter to parish, town and city councils - December 2012 (Pages 79-82)

Appendix B - Summary table of results of consultation (Pages 83-84)

Appendix C - Comments received from consultees (Pages 85-92)

Appendix D - DCLG Guidance 'Openness and transparency on personal interests' A guide for councillors (pages 93-104)

10 **Status Report on Complaints** (*Pages 105 - 106*)

To note the report on complaints.

11 **Draft Annual Governance Statement 2012/13** (*Pages 107 - 136*)

To consider the report of the Monitoring Officer on the draft Annual Governance Statement.

12 **Forward Plan** (*Pages 137 - 138*)

13 **Urgent Items**

**Part II**

*Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed*

This page is intentionally left blank

## STANDARDS COMMITTEE

---

### **DRAFT MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 24 OCTOBER 2012 AT THE PRATCHETT ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.**

#### **Present:**

Cllr Allison Bucknell, Cllr Trevor Carbin (Substitute), Cllr Nigel Carter, Cllr Chris Caswill, Cllr Ernie Clark, Cllr Christopher Cochrane (Substitute), Cllr Peter Fuller (Vice Chairman), Cllr Julian Johnson (Chairman), Cllr Ian McLennan, Cllr Roy While and Cllr Christopher Williams

#### **Also Present:**

Cllr Francis Morland and Cllr Jonathan Seed

---

#### **13 Apologies for Absence**

Apologies were received from Cllrs Brian Dalton, Jon Hubbard and Carole Soden. Cllr Trevor Carbin substituted for Cllr Dalton and Cllr Cochrane for Cllr Soden.

#### **14 Minutes**

The minutes of the meeting held on 30 July 2012 were presented.

#### **RESOLVED:**

**To sign the minutes as a correct record.**

#### **15 Declarations of Interest**

There were no declarations of interest.

#### **16 Chairman's Announcements**

The Chairman announced that Item 11 would be brought forward as some members were due to go on a planning site visit.

17 **Public Participation and Questions**

There were no members of the public present

18 **Appointment of non-voting co-opted members.**

The Chairman introduced the persons selected for appointment as non-voting voting co-opted members of the Standards Committee

and it was

**RESOLVED**

**To confirm the appointment of the following as non-voting co-opted members:**

**Mr John Scragg**

**Miss Pam Turner**

**Mr Paul Neale**

**Mr Philip Gill MBE, JP**

19 **Implementation of New Standards Framework - Update**

The Head of Governance introduced the report and outlined the progress that had been made in implementing the new requirements in Wiltshire, particularly in respect of the Code of Conduct and the Register of Interests.

The Monitoring Officer then referred to paragraphs 21-24 of the report, which asked members to consider whether it was appropriate to require any additional pecuniary and non-pecuniary interests to be declared and registered under the Council's Code of Conduct in accordance with its discretion under section 28(3) Localism Act 2011, and whether councillors with disclosable pecuniary interests should be required by standing orders to withdraw from meetings. The Council had, at its meeting on 26 June 2012, asked the Standards Committee to look into this, in consultation with parish, town and city councils and to report back with proposals at the earliest opportunity.

The Monitoring Officer also referred to the notes of the meeting of the Member Support in the Locality Task Group where further clarification had been requested on the new rules, particularly in relation to 'dual-hatted' members and whether member allowances were a disclosable pecuniary interest. It was recommended that guidance on this would be of particular assistance to parish, town and city councillors and should reflect the environment in which they work.

Following discussion it was

**RESOLVED:**

To recommend the Council to adopt the following as an interim position, pending consultation with parish, town and city councils, and to report back to the Council at its meeting in February 2013 on the outcome of the consultation and any final recommendations for adoption by the Council.

*To amend Wiltshire Council's Code of Conduct to require Councillors to:*

*a. register details of any interest in the following:*

- any body of which the councillor is a member or in a position of general control or management and to which the councillor is appointed or nominated by the Council;*
- any body exercising functions of a public nature of which the councillor is a member or in a position of general control or management;*
- any body directed to charitable purposes of which the councillor is a member or in a position of general control or management;*
- any body 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;*

*b. declare the existence and nature of any such interest at any meeting of the Council where business relating to the interest is being conducted.*

*Having declared such interest Councillors may then speak and vote on the matter, unless the Councillor decides this would not be appropriate due to other special circumstances.*

20 **Procedure for dealing with Code of Conduct Complaints - Assessment Criteria**

The Head of Governance introduced the report and explained that 29 assessments had now been conducted and the criteria seemed to work very well. She recommended that the committee adopt the criteria and use them as a guideline for assessing and reviewing complaints.

The draft criteria set out at appendix 1 to the report reflected the comments of the Member Support in the Locality Task Group

Members requested some minor alterations to the assessment criteria:

Paragraph 1 last sentence to read: 'The Monitoring Officer will advise the complainant in such matters that they cannot proceed under local codes of conduct, but that the complainant should contact the relevant council in order to bring a complaint under the appropriate complaints procedure'.

Paragraph 2 – delete the first sentence.

### **RESOLVED**

**To approve the assessment criteria as set out in appendix 1 of the report, subject to the amendments detailed above.**

#### **21 Commission for Local Administration in England and Wales (Local Government Ombudsman) - Annual Report**

The Chairman presented the annual report of the Local Government Ombudsman

### **RESOLVED**

**To note the report**

#### **22 Status report on complaints**

The Head of Governance presented the report. It was noted that the majority of complaints were not going forward for investigation.

### **RESOLVED**

**To note the report**

#### **23 Minutes of a Hearing sub-committee**

The Chairman asked the Monitoring Officer to introduce this item. The Monitoring Officer explained the process that had been followed in hearing the complaint under the Code of Conduct, as summarised in the minutes, and the concerns which had been raised on behalf of Cllr Humphries about the fairness of the procedure, which had led him, on advice from his solicitor, to withdraw. The Monitoring Officer had since received detailed submissions from Cllr

Humphries' Solicitor setting out grounds for seeking a rehearing of the matter. These were being considered. The Monitoring Officer was, however, satisfied that the Sub-Committee had dealt with the matter fairly and lawfully in the circumstances.

The Monitoring Officer then responded to questions from members of the Committee arising from the minutes.

**RESOLVED**

**To receive and note the minutes.**

**24 Forward Plan**

The forward plan was presented. The result of the consultations with the town and parish council's (minute 19 refers) were added to the January meeting.

**RESOLVED**

**To receive and note the forward plan**

**25 Urgent Items**

There were no urgent items.

(Duration of meeting: 2.00 - 3.40 pm)

The Officer who has produced these minutes is Pam Denton, of Democratic Services, direct line 01225 718371, e-mail [pam.denton@wiltshire.gov.uk](mailto:pam.denton@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114/713115

This page is intentionally left blank

## **STANDARDS DISPENSATION SUB-COMMITTEE**

---

**DRAFT MINUTES OF THE STANDARDS DISPENSATION SUB-COMMITTEE  
MEETING HELD ON 24 JANUARY 2013 AT COMMITTEE ROOM A - COUNCIL  
OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.**

**Present:**

Cllr Allison Bucknell, Cllr Trevor Carbin and Cllr Peter Doyle

**Also Present:**

Cllr Christopher Newbury

---

**1 Election of Chairman**

**Resolved:**

**To elect Councillor Trevor Carbin as Chairman.**

**2 Declarations of Interest**

There were no declarations of interest. The Monitoring Officer explained that section 33(4) Localism Act 2011 enabled the members to determine these requests even though their own requests were included.

**3 Consideration of a dispensation request for Wiltshire Councillors for  
Business relating to Setting of Council Tax and Budget**

Ian Gibbons, Service Director of Law and Governance and Monitoring Officer introduced the report and explained that there was considerable interest in this issue at all levels of government with views being divided.

He noted the informal view of the Department of Communities and Local Government, that being a council tax payer for a property in which a councillor has a disclosable pecuniary interest does not give rise to a disclosable pecuniary interest in the setting of the council tax, precept or budget. This was subject to the caveat that the DCLG could not give legal advice.

The Monitoring Officer informed the Sub-Committee that it was apparent from enquiries he had made with the Association of Council Secretaries and

Solicitors (ACSeS) that the majority of monitoring officers were advising their councillors that a dispensation should be sought. Similar advice had been issued by the National Association of Local Councils (NALC). This in itself demonstrated that there was considerable uncertainty about the true interpretation of the statutory provisions.

A particular concern was that under the former standards regime Parliament had found it necessary to include a specific statutory exemption to enable councillors to take part in setting the council tax or precept. No equivalent provision had been carried through to the new legislation leaving the position open to question. With the new rules on the registration and disclosure of disclosable pecuniary interests backed by the criminal law it was appropriate, in the Monitoring officer's view, to advise that councillors should err on the side of caution and seek a dispensation for the avoidance of doubt. Ultimately it was a matter for councillors to decide themselves.

The Monitoring Officer referred to the list of requests received from councillors seeking a dispensation. He drew the Sub-Committee's attention to the applications made by Councillors Morland and Clark, which had been submitted in a different form, but amounted to the same request. It was suggested that the Sub-Committee, if minded to grant the requests, frame their decision to include any late applications received prior to the start of the relevant council tax and budget setting meetings.

The statutory grounds on which a dispensation could be made were explained as set out in the report.

Members were also advised that the legislation made it clear that the validity of any decision made in respect of the business concerned i.e the setting of the council tax was not affected by any failure to comply with the code of conduct (section 28(4) Localism Act 2011)

The Sub-Committee sought clarification on the content of the Risk Assessment and Legal Implications paragraphs of the report in the light of this advice. It was acknowledged and noted that the Risk Assessment section should have stated:

'Failure to determine these applications for dispensation could result in the council being unable to set the council tax or budget for 2013-14 and members who have not applied for a dispensation could potentially be at risk of prosecution.'

and the Legal Implications section should read:

'The Council is obliged to determine requests for dispensation in accordance with the Localism Act 2011.'

Having considered all relevant matters before them the Sub-Committee

**Resolved:**

- 1. To grant a dispensation in the terms sought to each of the councillors listed in Appendix 2 (as updated to the time of the Sub-Committee's meeting), for the duration of this council on the grounds set out at paragraph 7 a. and c. of the report, that:
  - a. without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that business; and**
  - c. granting the dispensation is in the interests of the people living in the authority's area.****
- 2. To grant a dispensation on the same grounds to Councillors Clark and Morland in the terms that they sought for the duration of this council.**
- 3. To grant a dispensation on the same grounds to any other councillor who submits a written request in the same terms to the Monitoring Officer before the meeting of the body concerned.**
- 4. To recommend that a request is sent to the DCLG asking for the law to be clarified for the avoidance of doubt.**

(Duration of meeting: 2.06 - 2.26 pm)

The Officer who has produced these minutes is Kirsty Butcher, of Democratic Services, direct line , e-mail

Press enquiries to Communications, direct line (01225) 713114/713115

This page is intentionally left blank

## STANDARDS DISPENSATION SUB-COMMITTEE

---

**DRAFT MINUTES OF THE STANDARDS DISPENSATION SUB-COMMITTEE  
MEETING HELD ON 24 JANUARY 2013 AT COMMITTEE ROOM A - COUNCIL  
OFFICES, MONKTON PARK, CHIPPENHAM SN15 1ER.**

**Present:**

Cllr Allison Bucknell, Cllr Trevor Carbin and Cllr Peter Doyle

**Also Present:**

Cllr Christopher Newbury and Cllr Judy Rooke

---

**1 Election of Chairman**

**Resolved:**

**To elect Councillor Trevor Carbin as Chairman.**

**2 Declarations of Interest**

There were no declarations of interest.

**3 Consideration of a dispensation request for Councillor Judy Rooke of  
Wiltshire Council**

Ian Gibbons, Service Director Law and Governance and Monitoring Officer introduced the report and highlighted that Councillor Rooke's dispensation request was to allow her to speak at any planning committee which considers any planning matter concerning the Rowden Lane Development, but not to vote.

Councillor Rooke clarified that the Rowden Lane Development had been controversial for a number of years and she felt strongly that she should be able to speak on behalf of the residents she represents.

The Sub-Committee questioned whether a dispensation would be needed for any exercise of the right to call-in of a planning application under the agreed arrangements, and it was explained that this was not needed.

**Resolved:**

**The Sub-Committee granted a dispensation to Councillor Rooke for the remaining period of this council to speak but not vote at any meeting of the council which considers any planning matter relating to the Rowden Lane Development on the ground that granting the dispensation is in the interests of people living in the authority's area.**

(Duration of meeting: 1.56 - 2.06 pm)

The Officer who has produced these minutes is Kirsty Butcher, of Democratic Services, direct line , e-mail

Press enquiries to Communications, direct line (01225) 713114/713115

**Wiltshire Council**

**Standards Committee**

**10 July 2013**

---

## **Appointment of Focus Group**

### **Purpose of Report**

1. To seek approval for the appointment of a Focus Group of the Committee.

### **Background**

2. The Committee has within its remit, the 'oversight of the constitution'. Additionally, the constitution itself requires that changes to the constitution are approved by full Council only after consideration of the proposal by the Standards Committee and the Monitoring Officer.
3. The Standards Committee had established a Focus Group on the Constitution (Focus Group) to carry out the detailed work required to review or consider changes to the constitution at its meeting on 30 July 2012 with the following membership:
  - a member from each political group on the Council nominated by Group Leaders;
  - a member of the Overview and Scrutiny Management Committee;
  - a member of the Audit Committee;
  - two co-opted non-voting members of the Standards Committee (one of which to be a town/parish representative);
  - the Chairman of the Standards Committee and
  - that appropriate Councillors and Officers be invited to attend as and when requested by the Focus Group or its Chairman to assist in its work.
4. The Focus Group has proven to be a very useful and constructive forum in which to carry out the detailed work required for onward recommendation to Council via the Standards Committee. Council had at its meeting in November 2010 resolved that the Focus Group remain in being to assist with ongoing review work on the constitution and specifically to review it in light of changes in legislation including the Localism legislation. The constitution will require further review as a result of emerging Regulations under the Localism Act 2011 and any other legislation.

### **Focus Group on the Constitution**

5. The Committee is therefore requested to appoint the membership of a Focus Group on the Constitution for the forthcoming year. Details of the Focus Group's previous terms of reference and membership are attached.

## **Proposal**

6. **To appoint the membership following Focus Group of the Standards Committee:**

(a) **Focus Group on the Constitution**

**Ian Gibbons**  
**Monitoring Officer, Service Director of Law & Governance**

---

Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504

---

**Unpublished documents relied upon in the production of this report:**

None

Appendix A – Terms of Reference of the Focus Group on the Constitution

**Focus Group on the Constitution**

**Terms Of Reference**

Terms of reference:

- the ongoing review work on the constitution as and when required;
- producing user friendly summaries of the relevant parts of the constitution for use by members of the public and members of the Council and
- specifically to review the constitution in light of any changes in the legislation including the Localism legislation
- To consider the views of (as appropriate):
  - elected and co-opted members of the Council
  - officers
  - decision making bodies of the Council
  - town, parish and city councils and
  - members of the public

ascertained through questionnaire responses and appropriate methods of communication and make appropriate recommendations

- To offer a councillor perspective on and accordingly to influence key issues within the constitution.
- To advise the Standards Committee of final recommendations on any changes to the constitution for report to Cabinet for consideration and onward recommendation to Council.

**Membership**

- (i) a member from each political group on the Council nominated by group leaders;

(previously: Cllrs Stuart Wheeler, Jon Hubbard, Christopher Newbury, Nigel Carter)

- (ii) a member of the Overview and Scrutiny Management Committee;  
  
(previously Cllr Jonathon Seed – no longer a member of the Management Committee)
- (iii) a member of the Audit Committee;  
  
(previously Cllr Peter Doyle )
- (iv) two co-opted non-voting members of the Standards Committee (one of which to be a town/parish representative);  
  
(Mr Paul Neale, Miss Pam Turner)
- (v) the Chairman of the Standards Committee, and
- (vi) that appropriate Councillors and Officers be invited to attend as and when requested by the Focus Group or its Chairman to assist it in its work.

## FOCUS GROUP ON THE REVIEW OF THE CONSTITUTION

---

**MINUTES OF THE FOCUS GROUP ON THE REVIEW OF THE CONSTITUTION  
MEETING HELD ON 12 MARCH 2013 AT THE PITMAN ROOM - CIVIC CENTRE,  
ST STEPHENS PLACE, TROWBRIDGE. BA14 8AH.**

**Present:**

Cllr Nigel Carter, Cllr Julian Johnson, Cllr Jonathon Seed and Cllr Stuart Wheeler

---

10 **Apologies**

Apologies were received from:

Councillors Peter Doyle, Jon Hubbard and Christopher Newbury  
Co-opted members Paul Neale and Pam Turner

11 **Minutes of the previous meeting**

The Solicitor to the Council reminded the Focus Group that the recommendations from the meeting held on 24 January 2013 would be considered by the new Standards Committee and then the new Council following the Local Council Elections in May 2013.

The minutes from the meeting held on 24 January 2013 were presented and it was,

**Resolved:**

That the minutes of the meeting held on 24 January 2013 be approved as a true and correct record.

12 **Declarations of Interest**

There were no declarations of interest.

13 **Draft Procedure - Protocol 2 - Appendix to Member/Officer Relations - Update**

The Focus Group considered the report of the Solicitor to the Council and Monitoring Officer about revisions to the Councillor Officer Relations Protocol to

reflect changes made at the last meeting of the Focus Group on 24 January 2013.

Members were reminded that the Councillor Officer Relations Protocol (Protocol 2 of the Constitution) had been amended to reflect changes in the codes of conduct for councillors and officers, the introduction of the council's behaviours framework, and to provide further clarification of the process for resolving situations where differences arose between councillors and officers. In addition the opportunity was taken to tidy up some of the provisions.

It was noted that this was a key document for the guidance and assistance of councillors and officers and the content would form part of the induction programme for new councillors following the election in May 2013.

Members attention was draw to the amendments made at the last meeting in particular paragraph 15 of the Protocol – How to Resolve Issues, which set out in more detail arrangements for dealing with differences that could arise between Officers and Councillors. The Focus Group looked again at the text of Protocol 2, and noted in particular:

- Paragraph 9.6 – the need for guidance on information legislation when sending sensitive emails in connection with Council business;
- Paragraph 15.3 – additional wording to be included in relation to timescales for registering a formal complaint;
- Paragraph 15.5 – to delete this paragraph;

**Resolved:**

**To recommend that the Standards Committee of the new Council consider the proposed amendments to the Councillor Officer Relations Protocol, as attached at Appendix A to these minutes, and recommend full Council adopt the changes agreed.**

14 **Protocol 3 - Guidance to Councillors on Outside Bodies**

The Focus Group considered the report of the Solicitor to the Council and Monitoring Officer about proposed changes to Protocol 3 - Guidance to Councillors on Outside Bodies, to reflect changes in the Members' Code of Conduct and the rules on predetermination arising from the Localism Act 2011.

Members noted that Protocol 3 set out the main issues which Councillors should consider when appointed by the Council to serve on outside bodies. It supplemented the advice included in paragraph 13 of the Councillor/Officer Relations Protocol, which formed part of the Council's Constitution.

The Focus Group considered the amendments detailed in the report and felt it would be helpful for the Protocol to include some guidance on dual-hatted members, in particular Wiltshire Councillors who are also Parish or Town Councillors or School Governors, and also some concise guidance on the law of bias.

**Resolved:**

**To recommend that the Standards Committee of the new Council consider the amendments to Protocol 3 – Guidance to Councillors on Outside Bodies, as highlighted in Appendix B attached to these minutes, and recommend full Council adopt the changes agreed.**

15 **Protocol 4 - Planning Code of Good Practice - Update**

The Focus Group considered the report of the Solicitor to the Council and Monitoring Officer on revisions to the Council's Planning Code of Good Practice in the light of the comments made at the last meeting on 24 January 2013.

The report explained that at its meeting on 15 May 2012 Council agreed amendments to the Planning Code of Good Practice to reflect the provisions of the Localism Act 2011 on the subject of predetermination, recognising that further amendments would be necessary to deal with changes in the new rules on interests, which came into effect with the new standards regime on 1 July 2012.

Members were reminded that at its last meeting the Focus Group considered revisions to The Planning Code of Good Practice reflecting the requirements of the Council's new Code of Conduct for Members and the new rules on registration and declaration of interests. The Monitoring Officer was asked to make further revisions in the light of the comments made by the Focus Group, ensuring that the Code was no more restrictive than the new standards regime required.

Members attention was drawn to the amendments made at the last meeting in particular paragraphs 1.2, 2.2, 3.1, new 5.1 and 7.1 of the Protocol. Comments were made on the above amendments and also on paragraph 9.7 in relation to decisions contrary to officer recommendations.

**Resolved:**

**To recommend that the Standards Committee of the new Council consider the proposed amendments to Protocol 3 - Council's Planning Code of Good Practice attached, as highlighted at Appendix C to these minutes, and recommend to full Council the changes agreed.**

16 **Code of Conduct - Registration of Additional Interests - Update**

The Focus Group considered the report of the Solicitor to the Council and Monitoring Officer about revisions to the draft Code of Conduct in the light of the comments made at the last meeting on 24 January 2013.

Members were reminded that at its last meeting the Focus Group considered revisions to the Code of Conduct, which included changes to the registration and declaration of interests and the deletion of appendices 3 – a list of the statutory disclosable pecuniary interests and 4 – other additional interests.

**Resolved:**

**To recommend that the Standards Committee consider the amendments to the Code of Conduct – Registration of Additional Interests, as highlighted at Appendix D to these minutes, and recommend to full council the changes agreed.**

17 **Forward Work Plan**

**Resolved:**

**To note the future Work Plan.**

18 **Date of next meeting**

**Resolved:**

**To agree future meetings of the Focus Group once the membership has been agreed by the new Council after May 2013.**

(Duration of meeting: 10.00 - 11.50 am)

The Officer who has produced these minutes is Stuart Figini, of Democratic & Members' Services, direct line 01225 718376, e-mail [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)

Press enquiries to Communications, direct line (01225) 713114/713115

# Appendix A

## Protocol 2

### Councillor / Officer Relations

Formatted: Font: Bold

Formatted: Font: Bold

#### 1. Introduction

Formatted: Font: Bold

##### Context

Formatted: Font: Bold

1.1 Mutual trust and respect between councillors and officers is at the heart of the council's governance arrangements. An effective partnership between councillors, and officers is a key element of a successful and high performing council.

##### Purpose of Protocol

Formatted: Font: Bold

1.2 The purpose of this protocol is to:

- ~~to~~ outline the essential elements of the relationship between councillors and officers;
- promote the highest standards of conduct;
- clarify roles and responsibilities;
- ensure consistency with the law, codes of conduct and the council's values and practices; and
- identify ways of dealing with concerns by ~~members~~ councillors or officers.

1.3 This protocol is for the guidance and assistance of councillors and officers. Any queries about its content or application should be referred to the monitoring officer.

Formatted: Indent: Left: 0 cm

#### 2. Principles

Formatted: Font: Bold

2.1 Councillors (including co-opted members) and officers shall observe this protocol at all times.

2.2 There shall be mutual courtesy and respect between councillors and officers with regard to their respective roles as set out below.

2.3 Councillors and officers shall each carry out their respective responsibilities in the best interests of the council, ~~and in accordance with the key values set out in appendix 1 [One Council One Culture – What will we be like?].~~

2.4 The roles and responsibilities of councillors and officers are distinct yet complementary. Councillors are accountable to the electorate for the performance of the council's statutory functions. Officers are accountable to the council as a whole. Their job is to give advice to ~~members-councillors~~ (individually and collectively) and to carry out the council's work under the direction of the council.

2.5 This protocol supports the council's codes of conduct for ~~councillors~~ members and officers. The council's 'Code of Conduct for Members of Wiltshire Council' ~~is set out in Part 13 of the constitution. adopts the statutory code and includes in its preamble the 10 general principles governing councillors' conduct.~~ The Human Resources 'Code of Conduct for Officers' ~~is set out in Part 16 of the constitution and~~ forms part of an officer's contract of employment. ~~Both Codes are set out in the constitution.~~

2.6 Breach of this protocol may result:

- in the case of a councillor / co-opted member, in a complaint to Wiltshire Council's Standards Committee under the members' Code of Conduct for Members;
- in disciplinary action in the case of an officer.

Formatted: Left, Indent: Left: 0.93 cm, Right: -0.04 cm, Line spacing: single

### 3. **The role of councillors**

Formatted: Font: Bold

3.1 Councillors have a number of specific roles, which are set out in detail in Part 12 of the constitution - Roles and Responsibilities of Councillors ~~the councillors' job description. A copy is included in the council's constitution.~~

Formatted: Indent: Left: 0.18 cm, Line spacing: single

3.2 Collectively, councillors are the ultimate policy-makers, determining the core values of the council and approving the council's policy framework, strategic plans and budget.

3.3 Councillors represent the community and its constituents, act as community leaders and as the link between them and the council. This includes performing a key role as a member of their local area board.

3.4 Some councillors will have additional roles specific to their position as members of the cCabinet, or overview and scrutiny or other committees of the council.

3.5 Some councillors may be appointed to represent the council on local, regional or national bodies- see further at section 13 below.

3.6 Councillors must respect the impartiality of officers.

3.7 Councillors must promote the highest standards of conduct and will have regard to the council's Behaviours Framework in carrying out their role.

3.8 Councillors act collectively as the employer of officers.

3.9 Councillors must seek the advice of the monitoring officer and the chief finance officer if they have any concerns about whether the council is acting outside its statutory powers, maladministration, financial impropriety and probity, or whether any decision is or is likely to be contrary to the budget and policy framework.

### 4. **The role of officers**

Formatted: Font: Bold

4.1 Officers are employed by the council. They are therefore accountable to the council as a whole - not to individual councillors. There will, however, need to be special relationships between individual councillors and individual officers and these are dealt with specifically under section 6 of this protocol.

4.2 Officers are responsible for giving professional advice to members and for implementing lawful decisions of the council.

4.3 Officers must act impartially at all times and must not allow their professional judgement and advice to be influenced by their own personal views.

4.4 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~~councillors, the media or other sections of the public.

4.5 Officers must act in accordance with the Officers' Human Resources Code of Conduct and the Council's Behaviours Framework.

### 5. **Relationship between councillors and officers - general**

Formatted: Font: Bold

5.1 The relationship between councillors and officers should be characterised by mutual trust and respect.

5.2 Close personal familiarity between individual members and officers can harm professional relationships and prove embarrassing to other councillors and officers. Situations should be avoided that could give rise to suspicion and any appearance of improper conduct, or the perception that a member-councillor and officer treat each other differently from others due to the nature of the personal relationship between them.

5.3 Councillors should not raise matters relating to the conduct or capability of officers either individually or collectively at meetings held in public or in the press. Officers have no means of responding to criticism like this in public. If councillors feel that they have not been treated with proper respect, courtesy or have any concern about the conduct

or capability of an officer they should raise the matter with the service director ~~of the department~~ concerned if they are unable to resolve it through direct discussion with the officer – see further at section 15 below.

5.4 Councillors will not publish any material which is derogatory of officers generally, or specific individuals, whether directly or through their agents or political groups.

5.5 What can councillors expect from officers?

- a commitment to the council as a whole and not to individual political groups;
- a working partnership;
- a timely response to enquiries and complaints – (see Appendix 1.2)
- objective, professional advice not influenced by political views or preference;
- integrity, support and confidentiality appropriate to the situation;
- being kept up to date on local issues;
- compliance with the Human Resources 'Officers' Code of Conduct.

5.6 What can officers expect from councillors?

- political leadership and direction;
- a working partnership;
- compliance with the 'Code of Conduct for Members';
- distance from day to day management of the council;
- no improper influence or pressure to gain special treatment for themselves or others;
- recognition of the duty to promote the health, safety and well-being of officers.

## 6. Relationship between councillors and officers - specific

Formatted: Font: Bold

6.1 Special relationships will exist between certain councillors and officers because of their specific roles. These relationships nevertheless remain subject to the obligations set down in this protocol.

6.2 Members of the cCabinet and the cCorporate Leadership Team will have a distinct and special relationship. In particular the relationship between the leader and the chief executive corporate directors will be key to the success and culture of the council.

6.3 Officers and councillors must ensure that appropriate consultations are undertaken before reports are prepared for decision, either by cabinet or by individual cabinet members under delegated powers.

6.4 Within overview and scrutiny there are two aspects of relationship between members-councillors and officers:

- the relationship between councillors and officers who support the overview and scrutiny function. Councillors lead the scrutiny function. Officers brief scrutiny members, but the decision to pursue any particular issue rests with councillors.
- officers who are asked to attend scrutiny committees or task groups as a witness or special adviser should be treated with respect. They may be expected to answer questions on the professional advice given to the Full cCouncil or cCabinet in relation to policies and decisions but must not be expected to give a political view. The arrangements for attendance of cabinet members and senior officers at overview and scrutiny meetings to give account are contained in the overview and scrutiny procedure rules within-in Part 8 of the constitution.

6.5 Officers may also be ~~called to give evidence~~ asked to speak at a meeting of an area board. Partner organisations such as the police, health and PCT, fire, are also likely to be ~~questioned on~~ asked about the provision of local services. In the spirit of partnership working it is important that both

officers and the representatives of partner organisations are treated with respect, and from a community perspective it is important that the relationship between ~~members~~councillors, officers and partners is seen to be constructive, with everybody working together and in the same direction.

Formatted: Indent: Left: 0 cm

## 7. **General support to councillors**

Formatted: Font: Bold

7.1 Appendix ~~two-1~~ summarises the support and facilities provided for councillors at Wiltshire Council and in their constituencies.

## 8. **Support to specific councillors**

Formatted: Font: Bold

8.1 To recognise the full-time nature of the role of leader and cabinet members, PA support will be provided, to include diary management and research support in connection with cabinet business.

8.2 PA support will also be provided to the chairman and vice-chairman of the council in recognition of their civic responsibilities.

## 9. **Support to political groups**

Formatted: Font: Bold

9.1 Political groups may request private and confidential briefings on matters of policy which are or may become the subject of discussions by the ~~f~~Full ~~f~~Council or ~~c~~Cabinet or any committee.

9.2 The request should be submitted to the ~~chief executive corporate director designated as the liaison officer for the political groups~~, who will discuss it with the appropriate officer. Attendance must be authorised by ~~the chief executive a corporate director~~. If authorised the leaders of all political groups should be notified and a similar briefing offered.

9.3 The briefing should not extend beyond providing information and advice.

9.4 For the avoidance of doubt group meetings cannot make decisions on behalf of the council and it is essential that they are not acted upon as such. Nor does such a briefing negate the need to ensure that all necessary advice and information is provided to the decision-making body when the matter is formally considered.

9.5 Requests for briefings may be declined where these are to take place in premises which are not owned or controlled by the council or where persons who are not members of the council will be present.

9.6 Accommodation for use by political groups will be provided together with reasonable photocopying, postage and ICT facilities. Such use must be in connection with council business.

## 10. **Members' access to information**

Formatted: Font: Bold

10.1 This part of the protocol should be read in conjunction with the access to information procedure rules in [Part 5 of](#) the constitution and any guidance issued by the monitoring officer.

10.2 Councillors are entitled to see copies of any agenda for meetings of the ~~c~~Cabinet, and of committees of which they are not appointed members. Councillors' rights to information are subject to legal rules and, if members have a legitimate interest in a matter in their role as a member of the council, officers should provide the relevant information (including confidential information) to them.

10.3 Councillors should seek advice from the monitoring officer in circumstances where they wish to inspect any document or have access to information about a matter:

- in which they may have an ~~n~~ ~~prejudicial~~ interest; or
- where to do so would be in breach of the Data Protection Act 1998;

10.4 If councillors are not receiving, or are having difficulty in obtaining, information which they feel they need or to which they are entitled to carry out their duties as ~~members-councillors~~ they should contact the monitoring officer for advice.

10.5 Information given to a ~~member-councillor~~ must only be used for the purpose for which it was requested. Councillors 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. A councillor must seek the advice of the monitoring officer before disclosing information given in confidence, ~~in order that the councillor can be advised on whether such disclosure would be:~~

~~• reasonable and in the public interest~~

~~• made in good faith~~

~~• in accordance with the reasonable requirements of the council.~~

10.6 Councillors will be informed of local issues in accordance with Protocol 1 of the constitution - the Briefing and Information for Local Members Protocol, ~~annexed to the constitution.~~

## 11. Media relations

11.1 Councillors are referred to the Wiltshire Council ~~Media Relations Protocol~~ ~~annexed to at Protocol 7 of~~ the constitution.

## 12. Use of council resources

12.1 Councillors and officers must comply with the council's policies and requirements concerning the use of its resources, including in particular its ~~ICT Acceptable Usage Policy~~ ~~E-mail, Internet and Computer Use Policy~~.

12.2 Councillors must not use the council's resources improperly for political purposes (including party political purposes) and shall have regard to the local authority code of recommended practice on publicity annexed to the Media Relations Protocol. Councillors should seek advice from the monitoring officer where clarification is necessary.

## 13. Representation on external organisations

13.1 Councillors are referred to Protocol 3 – Guidance to Councillors on Outside Bodies.

13.2 A councillor appointed to represent the council on an external organisation shall take care to establish the legal status of the appointment and the potential liabilities that may be involved before confirming acceptance. Councillors should seek the advice of the monitoring officer if they have any concerns or are unclear about the nature of such appointments.

13.2 Councillors appointed to represent the council on external organisations shall establish relevant council policy on issues arising in those bodies and shall act in accordance with that policy when engaged in discussions and decision-making.

13.3 Where a councillor member acts as a representative of the council on another ~~relevant authority he or she must comply with the other authority's code of conduct.~~ ~~When acting as a representative of the council on another~~ body, the councillor must comply with the council's Code of Conduct for Members, ~~unless it conflicts with lawful obligations of the other body.~~

Formatted: Indent: Left: 0.96 cm, Right: 0.13 cm, Space Before: 0.1 pt, Line spacing: Exactly 12.7 pt

Formatted: Indent: Left: 0.21 cm, Line spacing: single

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Tab stops: 11.32 cm, Left

Formatted: Font: Bold

## 14. Access to premises

14.1 If councillors wish to visit council establishments, other than ~~Bythesea Road and the main~~ area hub offices, they should contact the relevant director or head of the establishment in advance to make the necessary arrangements.

## 15. How to resolve issues

15.1 Councillors and officers are encouraged to work together and seek to resolve any differences informally, by talking to each other about any concerns at the earliest opportunity.

15.2 If a councillor feels that they have not been treated with proper respect, courtesy or they have any concern about the conduct or capability of an officer, or that an officer has acted in breach of this protocol, they may raise the matter with the individual's service director. If the matter cannot be resolved informally, any such referral will be processed in accordance with the council's employment procedures and policies. The councillor and the officer will be kept informed of progress with the complaint and the action to be taken. An individual councillor does not have the power to discipline any officer.

15.3 If an officer feels that a councillor has acted in breach of this protocol, they should raise the matter with their service director. The service director should discuss the matter informally with the councillor. If the matter is not resolved the officer may refer the issue to the monitoring officer and the corporate director designated as the liaison officer for political groups for consideration and discussion with the appropriate group leader. The officer and councillor will be kept informed throughout.

15.4 In relation to the process in paragraph 15.3 above regard should be had to paragraph 3.1 of the council's arrangements for dealing with complaints under the code of conduct, which requires any complaint to be made within 20 working days of the date on which the complainant became aware of the matter giving rise to the complaint.

15.4 The use of mediation may be considered at any stage as a means of resolving the matter informally.

15.5 If the matter cannot be resolved informally the officer may bring a complaint against the councillor under the Members' Code of Conduct.

Formatted: Font: Bold

Formatted: Indent: Left: 0.21 cm, Hanging: 0.75 cm, Right: 0.36 cm, Line spacing: single

Formatted: Font: (Default) Arial

Formatted: Font: (Default) Arial, Bold

Formatted: Indent: First line: 0.21 cm

Formatted: Font: Bold

Formatted: Indent: Left: 0.21 cm

Formatted: Indent: First line: 0.21 cm

Formatted: Line spacing: single, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Comment [I1]: The Focus Group recommends that this paragraph is deleted.

Formatted: Font: (Default) TT107Ao00, 12 pt

## ~~15. Further advice and complaints~~

~~15.1 Any particular cases of difficulty or uncertainty arising under this protocol should be raised with the monitoring officer who will advise how to proceed.~~

~~15.2 Where a councillor or officer considers that there has been a breach of this protocol a complaint may be made to the monitoring officer who will determine how the complaint should be handled.~~

Formatted: Indent: Left: 0 cm

This page is intentionally left blank

## Appendix B

### PROTOCOL 3

#### GUIDANCE TO COUNCILLORS APPOINTED TO OUTSIDE BODIES

##### Introduction

1. This guidance sets out the main issues which councillors should consider when appointed by the Council to serve on outside bodies. It supplements the advice included in paragraph 13 of the Councillor / Officer Relations Protocol, which forms part of the Council's Constitution.
2. In the context of this guidance 'outside bodies' include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. Councillors may be involved as a director, trustee, governor or member (with or without voting powers).
3. Councillors who are involved in the management of outside bodies have responsibilities to that body that must be acted upon. Their role, responsibilities and potential liabilities will depend upon the legal nature of the organisation and the capacity in which they have been appointed. Failure to act in a proper manner may give rise to personal liability or liability for the Council.
4. With the increasing emphasis on partnership working, councillors, as community leaders, have an important role to fulfil in supporting and advising outside bodies. However, this can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. Councillors always need to be clear about their roles and alert to potential conflicts of interest in order to ensure transparency and public confidence in local democracy.
5. This guidance seeks to help councillors discharge their responsibilities on outside bodies clearly and effectively. It covers, primarily, the position of councillors appointed by the Council to serve on outside bodies, though much of the advice applies equally to councillors who are involved with outside bodies in a private capacity. In those situations, however, the Council's insurances will not apply.
6. This guidance is general and councillors should contact the Monitoring Officer for further advice if they have any particular issues of concern.
7. The responsibilities of officers in relation to outside bodies is dealt with separately in the Code of Conduct for Officers.
8. The remainder of this guidance includes the following:
  - issues to consider before appointment;
  - application of the Code of Conduct for Councillors;
  - legal status of outside bodies, capacity of appointment, duties and liabilities;
  - insurance and indemnity.

##### Issues to consider before appointment

9. Before accepting an appointment to an outside body councillors should check:

Protocol 3  
1<sup>st</sup> December 2010

1

- the legal status of the organisation e.g. company, trust, charity, unincorporated association;
  - the capacity in which the councillor is to be appointed e.g. director, trustee, member with voting rights or member with observer status;
  - the purpose of the organisation and how this relates to the Council's functions and objectives;
  - the relationship between the Council and the body and the likelihood and extent of any conflicts of interest;
  - the requirements of the organisation's governing instrument (eg constitution; trust deed; memorandum and articles of association), both as a member and generally;
  - the financial status of the organisation;
  - the governance and decision making arrangements, including the management of risk;
  - any code of conduct for members;
  - potential liabilities;
  - the extent of any insurance cover for members.
10. Having checked the above matters, councillors should consider carefully whether they should be appointed to participate formally in the management of the external organisation e.g. as a director, trustee or voting member, or whether their role as a representative of the Council may be more effectively discharged as a non-voting member with observer status only. Bearing in mind the potential liabilities that may be incurred through formal involvement in an organisation councillors are generally advised to seek appointment as members with observer status only, unless there are exceptional reasons for more formal participation.
11. Councillors are encouraged to seek advice from the Monitoring Officer where any of the above issues are unclear.

#### Application of the Code of Conduct for Members

12. The Council's Code of Conduct for Members in Part 13 of the Constitution places specific obligations on ~~councillors~~ councillors when acting in that capacity in relation to their dealings with outside organisations, ~~including the registration and declaration of interests.~~ The relevant provisions and guidance are covered in Appendix A. This includes guidance from Standards for England on the position of dual hatted members under the Code of Conduct. Further guidance on the Code of Conduct may be obtained from the Standards for England web site at <http://www.standardsforengland.gov.uk> The Code will, in particular, apply where a councillor is acting as a representative of the Council on an outside body.
13. Apart from the general duty to promote and support high standards of conduct the following duties of the Code are particularly relevant in this context:
- act solely in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;
  - avoid placing yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
  - make all choices, such as making public appointments, awarding contracts or

Formatted: List Paragraph, Bulleted +  
Level: 1 + Aligned at: 0.81 cm +  
Indent at: 1.45 cm

recommending individuals for rewards or benefits, on merit;

- declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and take steps to resolve any conflicts in a way that protects the public interest.
- comply with the statutory requirements on the registration and declaration of interests.

[Final position on registration and declaration of any additional interests - to be determined by Council]

14. Councillors who have a disclosable pecuniary interest in any business at a meeting of the Council e.g. award of a contract, must not participate in any discussion of the matter or vote on it unless a dispensation has been obtained. Failure to comply with these requirements without reasonable excuse may result in prosecution.

15. Dual-hatted councillors, in particular, need to be mindful of potential conflicts of interest and always act in an open and transparent manner in carrying out their respective roles. For example, where a councillor is at a council meeting considering an application for a grant or a community asset transfer request from a parish council or other public body of which they are a member they should declare the existence and nature of their interest. Having done so, they may, generally, take part in the discussion of that item and vote, unless there are particular reasons why this would not be appropriate. It is also advisable as a matter of transparency to include details of the interest in their register of interests.

16. The same principle will generally apply where councillors are appointed to serve as school governors, but it is always necessary to have regard to the nature and extent of any conflict of interest in deciding whether to participate or vote. Where the governing body is considering a matter which is likely to have a material effect on the councillor or a member of their family it would be advisable to declare an interest and take no further part in the proceedings.

17. Councillors appointed to serve on outside bodies should be mindful of their legal obligations regarding disclosure of confidential information and in case of doubt should seek advice from the Monitoring Officer.

#### Predetermination and Bias

18.13. Aside from the Code of Conduct, under the common law councillors must be careful to avoid any pre-determination or bias in their decision making. Guidance from Standards for England on this issue is included at Appendix B.

Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

19. The Localism Act 2011 has clarified the rules on predetermination. It makes it clear that a councillor is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A councillor is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.

20. The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if

**Formatted:** Indent: Left: 0 cm, First line: 0 cm

**Formatted:** Font: (Default) Arial, 10.5 pt, Underline, Font color: Blue

**Formatted:** Right: 0.24 cm, Space Before: 0 pt, Line spacing: Multiple 1.02 li

**Formatted:** Normal, No bullets or numbering

**Formatted:** Font: (Default) Arial, 10.5 pt

**Formatted:** Font: (Default) Arial, 10.5 pt

**Formatted:** Font: (Default) Arial, 10.5 pt

**Formatted:** Font: (Default) Arial

**Formatted:** Font: (Default) Arial

**Formatted:** Font: (Default) Arial

**Formatted:** Font: (Default) Arial

**Formatted:** Left, Indent: Left: 0 cm, First line: 0 cm, Right: 0 cm, Space After: 10 pt, Line spacing: Multiple 1.15 li, Widow/Orphan control

**Formatted:** Font: (Default) Arial

persuaded that they should.

Formatted: Font: (Default) Arial

21. Councillors need to be aware that decisions may be challenged and set aside on the grounds of bias. Under the common law bias involves some element of partiality or personal interest in the outcome of a case, as a result of a close connection with the parties, or the subject matter of the dispute, or because of a tendency towards a particular shared point of view.

Formatted: Font: (Default) Arial

22. The relevant test for bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased.

23. The risk of a successful challenge on these grounds may be overcome by proper observance of the requirements of the code of conduct and particularly the provisions set out in paragraph 13 above.

Formatted: Font: 11 pt

#### Legal status, capacity, duties and liabilities

14. 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 various types of outside body is summarised in the appendices to this note as follows:

Appendix [AC](#) - Director of Limited Liability Company

Appendix [BD](#) - Trustee of Trust or Charitable Trust

Appendix [CE](#) - Member of Unincorporated Association

Appendix [DF](#) - Member of Steering Group, Joint Committee or Partnership Body

15. The key point to note is that where councillors are carrying out 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.

#### Liability, Insurance and Indemnity

16. Councillors can incur personal civil and criminal liability from formal participation in outside bodies.
17. Under section 265, Public Health Act 1875 (as applied by Section 39, Local Government (Miscellaneous Provisions) Act 1976), Councillors enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence.
18. 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.
20. Wiltshire Council has a wide 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 duties in connection with the business of Wiltshire Council. Those afforded the protection are;
- elected Members of the Council or co-opted members of any Committee or Sub-Committee.
  - members of committees, schemes or associations formed to assist in the activities of the Council.
21. A summary of those policies which incorporate these two extensions are listed below as follows;

Type	Employers Liability
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 50 million any one event
Cover	This policy provides an indemnity in respect of legal liability to pay damages and claimants costs and expenses in respect of death of or bodily injury to or disease or illness contracted by any members or employees and arising out of and in the course of their official duties or employment in the business and caused during the period of insurance. Cover includes defence costs incurred with Insurer's written consent.

Type	Officials Indemnity
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 5 million
Cover	<p>This policy provides indemnity in respect of legal liability for damages and claimant's costs and expenses for financial loss arising out of: negligent acts, accidental errors or omissions by members or employees arising out of their duties on Wiltshire Council business. This includes activities of employees and members approved by the Council in connection with outside organisations where the Council is legally entitled to approve such activities and indemnify employees and members in respect of them.</p> <p>Cover includes legal costs and expenses incurred with Insurer's written consent.</p>

Type	Libel and Slander
Insurer	Zurich Municipal
Policy Number	QLA-11U010-0043
Sum Insured	£ 5 million
Cover	<p>This policy provides indemnity in respect of legal liability for damages in respect of: libels appearing in normal business publications by members or employees; slanders by members or employees in the course of their official duties. These must be notified to the Insurers during the period of insurance and occurring during the period of insurance. Cover includes defence costs incurred with the Insurer's written consent.</p>

22. As a 'belts and braces' measure it is proposed to extend the existing officers' indemnity to cover members and co-opted members as follows:

The council will, subject to the exceptions set out below, indemnify its members and former members against claims made against them (including costs awarded and reasonable costs incurred) and will not itself make claims against them for any loss or damage (other than

claims falling within the cover provided to its members under any policy of insurance taken out by the Council or any motor vehicle insurance policy taken out by the members) occasioned by any neglect, act, error or omission committed by them in pursuit of their duties as they may from time to time undertake in the course of their duties with the Council whilst acting within the scope of their authority which shall include when they are acting for other persons or other bodies with the Council's consent.

Exceptions:

The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- (a) fraud, dishonesty or a criminal offence on the part of the member;
- (b) any neglect, error or omission by the member otherwise than in the course of their duties;
- (c) liability in respect of losses certified by the Audit Commission as caused by wilful misconduct.

The indemnity will not apply if any member, without the written authority of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity, or where there is evidence that the member had acted with reckless disregard for the consequences.

#### Further Advice

23. Further assistance on the issues covered in this guidance may be obtained from the Council's Monitoring Officer.

## 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. (Paragraph 2 (5) 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 paragraph 4 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 – paragraph 6 (a) of the Code. 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. Paragraph 13 of the Code requires councillors to register any personal interests which fall within the categories set out in paragraph 8 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; (paragraph 8(1)(a)(i))~~
  - ~~• any body –
    - ~~a – exercising functions of a public nature;~~
    - ~~b – directed to charitable purposes;~~
    - ~~c – 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 – (paragraph 8(1)(a)(ii)).~~~~

#### ~~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 registrable 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. (paragraph 8(1)(b) 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. (paragraph 9(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 and when 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. (paragraph 9(2) of the Code).~~

#### ~~Prejudicial Interest~~

- ~~10. A councillor will also have a prejudicial interest in any business of the Council being 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. (paragraph 10(1))~~
- ~~11. A prejudicial interest will only arise, however, where none of the exemptions in paragraph 10(2)(c) 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 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 it or vote. They must not seek to influence the decision improperly in any way. (paragraph 12 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?~~

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

~~When should a dual-hatted member declare an interest?~~

~~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 paragraph 9(2) 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.~~

~~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.~~

~~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 paragraph 10(2)(c) 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~~

~~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 district 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~~

- ~~• 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. Further information on this is set out in Appendix B.~~

#### ~~Dual-hatted member scenarios~~

~~Standards for England have developed some scenarios covering dual-hatted member issues based on real queries that they have received and the advice they have given. These may be accessed using the following link:~~

~~<http://www.standardsforengland.gov.uk/Resources/ResourceLibrary/Trainingmaterials/Dual-hattedmembers-scenarios/>~~

## APPENDIX B

### ~~Predisposition, Predetermination or Bias, and the Code — Guidance from Standards for England~~

~~Both predetermination and bias have proved to be difficult and controversial issues for many councillors and monitoring officers. Although they are judge-made, common law issues, and not part of the Code of Conduct, Standards for England is publishing this up-dated guide to help clarify the issues.~~

~~We originally published a paper on this issue in August 2007. It was based on advice from leading treasury counsel Philip Sales QC, which can also be [found on our website](#).~~

~~This new version of the paper aims to clarify the issues involved. It includes examples of where councillors are predisposed, and so can take part in a debate and vote, and where they are predetermined and their participation in a decision would risk it being ruled as invalid.~~

~~This area of law is constantly developing which is why the paper has been revised. However, members should refer to their monitoring officers for the most up-to-date position.~~

#### ~~What is predisposition?~~

~~It is not a problem for councillors to be predisposed to a particular view. That predisposition can be strong and can be publicly voiced. They may even have been elected specifically because of their views on this particular issue. It might be in favour of or against a particular point of view, for example an application for planning permission.~~

~~However, the councillor must be open to the possibility that, however unlikely, they will hear arguments during the debate about the issue that will change their mind about how they intend to vote. As long as they are willing to keep an open mind about the issue they are entitled to take part in any vote on it.~~

#### ~~What is predetermination or bias?~~

~~Predetermination is where a councillor's mind is closed to the merits of any arguments which differ from their own about a particular issue on which they are making a decision, such as an application for planning permission. The councillor makes a decision on the issue without taking them all into account.~~

~~If councillors are involved in making a decision they should avoid giving the appearance that they have conclusively decided how they will vote at the meeting, such that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.~~

~~Rarely will membership of an organisation on its own, such as a national charity, amount to apparent bias. This is unless the organisation has a particular vested interest in the outcome~~

~~of a specific decision that a councillor is involved in making, or the decision is quasi-judicial in nature.~~

#### ~~Making the decision~~

~~There is an important difference between those councillors who are involved in making a decision and those councillors who are seeking to influence it. This is because councillors who are not involved with making a decision are generally free to speak about how they want that decision to go.~~

~~When considering whether there is an appearance of predetermination or bias, councillors who are responsible for making the decision should apply the following test: would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?~~

~~However, when applying this test, they should remember that it is legitimate for a councillor to be predisposed towards a particular outcome as long as they are prepared to consider all the arguments and points made about the specific issue under consideration.~~

~~Also the importance of appearances is generally more limited when the context of the decision-making is not judicial or similar to judicial. Planning decisions are not similar to judicial decisions, they are administrative. Therefore councillors can appear strongly predisposed for or against a particular planning decision.~~

#### ~~How can predetermination or bias arise?~~

~~The following are some of the potential situations in which predetermination or bias could arise.~~

#### ~~Connection with someone affected by a decision~~

~~This sort of bias particularly concerns administrative decision-making, where the authority must take a decision which involves balancing the interests of people with opposing views. It is based on the belief that the decision-making body cannot make an unbiased decision, or a decision which objectively looks impartial, if a councillor serving on it is closely connected with one of the parties involved.~~

#### ~~15. Example:~~

- ~~a. A district councillor also belongs to a parish council that has complained about the conduct of an officer of the district council. As a result of the complaint the officer has been disciplined. The officer has appealed to a councillor panel and the councillor seeks to sit on the panel hearing the appeal. The councillor should not participate.~~

~~Contrast this with:~~

~~b. The complaint about the officer described above is made by the local office of a national charity of which the councillor is an ordinary member and has no involvement with the local office. The councillor should be able to participate in this situation because the matter is not concerned with the promotion of the interests of the charity.~~

#### ~~Improper involvement of someone with an interest in the outcome~~

~~This sort of bias involves someone who has, or appears to have, inappropriate influence in the decision being made by someone else. It is inappropriate because they have a vested interest in the decision.~~

#### ~~Example:~~

~~A local authority receives an application to modify the Definitive Map of public rights of way.~~

~~A panel of councillors is given delegated authority to make the statutory modification Order. They have a private meeting with local representatives of a footpath organisation before deciding whether the Order should be made. However, they do not give the same opportunity to people with opposing interests.~~

#### ~~Prior involvement~~

~~This sort of bias arises because someone is being asked to make a decision about an issue which they have previously been involved with. This may be a problem if the second decision is a formal appeal from the first decision, so that someone is hearing an appeal from their own decision. However, if it is just a case of the person in question being required to reconsider a matter in the light of new evidence or representations, it is unlikely to be unlawful for them to participate.~~

#### ~~Example:~~

~~A councillor of a local highway authority, who is also a member of a parish council that has been consulted about a road closure, could take part in the discussion at both councils. The important thing is that the councillor must be prepared to reconsider the matter at county level in the light of the information and evidence presented there.~~

#### ~~Commenting before a decision is made~~

~~Once a lobby group or advisory body has commented on a matter or application, it is likely that a councillor involved with that body will still be able to take part in making a decision about it. But this is as long as they do not give the appearance of being bound only by the views of that body. If the councillor makes comments which make it clear that they have already made up their mind, they may not take part in the decision.~~

~~If the councillor is merely seeking to lobby a public meeting at which the decision is taking place, but will not themselves be involved in making the decision, then they are not prevented by the principles of predetermination or bias from doing so. Unlike private~~

lobbying, there is no particular reason why the fact that councillors can address a public meeting in the same way as the public should lead to successful legal challenges.

#### Example 1:

A council appoints a barrister to hold a public inquiry into an application to register a village green. The barrister produces a report where he recommends that the application is rejected. A councillor attends a meeting in one of the affected wards and says publicly: "speaking for myself I am inclined to go along with the barrister's recommendation". He later participates in the council's decision to accept the barrister's recommendation. At the meeting the supporters of the application are given an opportunity to argue that the recommendation should not be accepted.

This is unlikely to give rise to a successful claim of predetermination or bias. The statement made by the councillor only suggests a predisposition to follow the recommendation of the barrister's report, and not that he has closed his mind to all possibilities. The subsequent conduct of the meeting, where supporters of the application could try and persuade councillors to disagree with the recommendation, would confirm this.

#### Example 2:

A developer has entered into negotiations to acquire some surplus local authority land for an incinerator. Planning permission for the incinerator has already been granted. Following local elections there is a change in the composition and political control of the council. After pressure from new councillors who have campaigned against the incinerator and a full debate, the council's executive decides to end the negotiations. This is on the grounds that the land is needed for housing and employment uses.

The council's decision is unlikely to be found to be biased, so long as the eventual decision was taken on proper grounds and after a full consideration of all the relevant issues.

#### Predetermination or Bias, and the Code

There is a difference between breaching the Code and being predetermined or biased. It is perfectly possible to act within the Code and still cause a decision you were involved in to be bad for predetermination or bias.

#### Example:

Under the Code, a councillor may take part in considering whether or not to grant a planning application which is recommended for refusal by planning officers and made by a colleague with whom they do not share a "close association". Nevertheless, because the councillor is the Chair of the planning committee, uses his casting vote to decide in favour of his colleague, and regularly shares a car with that colleague when coming to council meetings, this gives rise to an appearance of bias.

## Conclusion

When making administrative decisions like whether or not to grant planning permission, councillors are entitled to have and express their own views. However, this is as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.

## Relationship to the Code of Conduct

The First tier Tribunal (Local Government Standards in England) in case reference 0352 has also looked at the relationship between the Code and predetermination and gave an indication that where such issues arise there is a potential paragraph 5 Code breach. The outcome is likely to depend on the individual circumstances of a case and any other Code issues and breaches. This is because a councillor who renders the decision of a council unlawful due to predetermination could reasonably be regarded as bringing that authority or his office into disrepute.

An important issue for members is that by and large predetermination will not amount to a personal or prejudicial interest. Therefore there is no specific requirement to declare an interest and leave the room under paragraphs 8 to 10 of the Code. Members may however find themselves the subject of a complaint under paragraph 5 on disrepute. This paragraph of the Code has no provision for declaring interests or leaving meetings.

For more information on the issue of predetermination or bias, councillors should talk to their monitoring officers or their political group.

Published on December 2009.

## APPENDIX

### AC

#### Councillors appointed as Directors of Limited Liability 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. In the case of a limited liability company the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £ 1.
2. Companies limited by shares are those which have a share capital e.g., 1000 shares of £ 1 each. Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Liability in the event of a winding-up is limited to the amount unpaid on the shares held.
3. 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 eg £ 1. This is most common in the public and voluntary sector, particularly where charitable status is sought.

##### Directors' Duties

4. The role of a councillor who has been appointed as a director will depend upon the company's Memorandum and 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 Memorandum and Articles of Association in order to fulfil their responsibilities properly.
5. Directors will need to be aware of the requirements of the "Combined Code on Corporate Governance" to the extent that this has been adopted by the company, including general management of the company, rules on directors' remuneration, internal financial and operational controls and risk management.
6. Directors, as agents of the company, must:
  - act in good faith in what they believe to be in the best interests of the company as a whole (not the Council).
  - act with reasonable care, diligence and skill;
  - exercise their powers reasonably and for the purpose for which they are given;
  - keep an open mind when making decisions on company business; in particular a councillor director must exercise independent judgment and not simply follow

Council policy when voting on company matters;

- avoid placing themselves in a position where their private interests or their position as a councillor conflict with their duties to the company;
- be aware of the company's financial position through attendance at board meetings and reading the accounts, agendas and minutes; it is not sufficient to assume that the other directors are doing a good job.

7. 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.
8. The above duties apply to non-executive directors as well as executive directors.
9. 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

10. 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.
11. 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.
12. 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 Memorandum 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

13. Councillors appointed as directors should find out if 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 insist upon this. It will be necessary to ensure that the company has the resources to maintain payment of the insurance premiums.

14. 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>

## APPENDIX

### BD

#### Appointment of a Trustee to a Trust or Charity

##### Legal Status

1. Trustees will be appointed under a Trust Deed. The role and responsibilities of a trustee will depend, therefore, upon the provisions of the trust deed and/or scheme (collectively referred to as its “governing documents”) and the general law relating to trusts and charities.
2. It is quite common for companies to be set up as trusts with charitable objects. In this case the trustees will also be directors of the company and will have the obligations set out in Appendix C above as well as the obligations set out in this section. Councillors involved with charitable companies should ensure that they understand the capacity in which they have been appointed.

##### Duties

3. The role of a trustee is generally to fulfil the objects of the trust and apply the income and, if appropriate, the capital of the trust in accordance with the provisions of its governing documents.
4. Trustees are subject to various duties, including the duty to:
  - act for the benefit of the charity and its beneficiaries;
  - preserve the capital of the charity (unless the trust deed gives the trustees the right to spend the capital or the charity is small and the trustees have resolved to spend the capital under the Charities Act 1993);
  - make sure income is spent only on the things authorised in the governing documents;
  - invest the capital only in authorised investments, having first taken professional advice;
  - produce annual accounts;
  - act with reasonable care and skill in administering the trust; and
  - to act unanimously (unless the trust deed allows majority decisions).
  - comply with the Charities Acts and other legislation affecting the charity.

5. The Charity Commission's website - [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) - contains useful guidance, in particular Publication CC3 - "Responsibilities of Charity Trustees" which outlines the basic principles that should guide trustees when administering their charity:

- the income and property of the charity must be applied for the purposes set out in the governing document and for no other purposes;
- the trustees must act reasonably and prudently in all matters relating to the charity and must always bear in mind the interests of the charity. They should not let their personal views or prejudice affect their conduct as trustees;
- trustees should exercise the same degree of care in dealing with the administration of their charity as a prudent businessman would exercise in managing his or her own affairs or those of somebody else for whom he or she was responsible; and
- where trustees are required to make a decision which affects a personal interest of one of their members that person should not be present at any discussion or vote on the matter.

#### Liability

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

7. 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 properly incurred by them, provided this is authorised by the trustees in accordance with the trust deed.

#### Insurance and Indemnity

8. An indemnity can be given from the trust fund provided the trustee has acted properly and within their powers. Trustees may take out 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.

## APPENDIX

### CE

## 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, as set out Appendix D.

### 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.

APPENDIX

DF

SteeringGroups, JointCommitteesandPartnershipBodies,includingCommunity  
AreaPartnerships

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, 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.

## Appendix C

### Protocol 4

#### The Planning Code of Good Practice for Members of Wiltshire Council

##### 1. Why a 'Code of Good Practice' is required

- 1.1. As a local councillor you will inevitably be involved in planning matters; as a councillor representing your division's constituents; as a councillor responsible for overseeing the planning framework for Wiltshire, or as a councillor responsible for deciding planning applications at an area or strategic planning committee. You will have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for the community, both now and in the future.
- 1.2. The key purpose of planning is to manage development in the public interest. However, concerns are sometimes expressed about the probity of councillors meeting developers, applicants and interest groups and then taking decisions on an impartial basis. The aim of this code of good practice is to ensure that in the planning process in Wiltshire there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. Your role as a member of the council is to make planning decisions openly, impartially, with **legally**-sound judgement and for justifiable reasons. This Code of Good Practice has been prepared to help **and guide** you in this task.

##### 2. When the Code of Good Practice applies

- 2.1. This code applies to councillors at all times when involving themselves in the planning process. This includes not just the taking part in the planning committee meetings of the council, but on less formal occasions, such as meetings with officers, the public, parish/town/city councils and pre-application and consultation meetings. It applies equally to planning enforcement matters or site-specific policy issues as it does to planning applications.
- 2.2. If you have any doubts about the application of this Code **or Wiltshire Council's Code of Conduct for Members** to your own circumstances, **and in particular where you may have a disclosable pecuniary interest in any planning matter**, you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.
- 2.3. This code is based upon the 'Model Members Planning Code' adopted by the Association of Council Secretaries and Solicitors in 2003 (updated in 2007). The Model Code was produced following consultation with the Standards for England, the Local Government Ombudsman and the Audit Commission but has been updated to take account of the clarification of the predetermination rules **and the new standards regime introduced by ~~contained in~~** the Localism Act 2011.

##### 3. Relationship to **Wiltshire Council's the 'Members' Code of Conduct'**

- 3.1. The Members' Code of Conduct must be complied with at all times **when you are acting in your capacity as a member or co-opted member**. This Planning Code of Good Practice seeks to explain and supplement the Members' Code of Conduct for the purposes of planning. It provides helpful guidance for members. However, you

Protocol 4

~~March 2013-15-~~  
~~May 2012~~

1

are advised that if you do not abide by this Code of Good Practice, you may put the council at risk of proceedings on the legality ~~or maladministration~~ of the related decision or a complaint of maladministration to the Local Government Ombudsman, and yourself at risk of ~~either being named in a report made to the Standards Committee or council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee under the Members' Code of Conduct.~~

3.2. In the event of a conflict between this Planning Code of Good Practice and the Members' Code of Conduct the latter will prevail.

Formatted: Indent: Left: 0 cm

#### 4. Development proposals and interests under the Members' Code of Conduct

4.1. It is a fundamental point of principle that those who have a significant interest in the outcome of a planning decision should not take part in the decision making process, for example, Members may wish to make their own planning proposals, such as extending their own property. Members should disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other members. Such interests should be declared at the start of the meeting.

4.2. The requirements for the registration and declaration of interests are set out in Wiltshire Council's Members' Code of Conduct and in the underlying legislation contained in the Localism Act 2011, and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. You should be aware that failure to comply with the requirements relating to disclosable pecuniary interests without reasonable excuse could result in prosecution.

4.3 If you have a disclosable pecuniary interest in any planning matter you must not participate in any discussion of the matter or vote on it at the meeting of the Committee unless you have obtained a dispensation from the Standards Dispensation Sub-Committee. In addition you should:

Where your interest is personal and prejudicial:

- ~~Notify the Monitoring Officer in writing or by e-mail of your interest, if at all possible no later than the submission of the proposal;~~
- Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee (although you may participate as and to the same extent as a member of the public); - at any meeting, you must ensure that you leave the room whilst the meeting considers it;
- Ask another elected member to represent division views;<sup>1</sup>
- ~~Do not~~ participate in the processing of the application or the making of any decision on the matter by the Council;
- ~~Do not~~ seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor.

Formatted: Left

~~Your proposal will not be dealt with by officers under delegated powers if a valid planning objection to it is received. Where this happens it will be reported to a committee for a decision.~~

Formatted: Indent: Left: 0 cm, First line: 1.27 cm

- ~~At the meeting of the committee you may speak on the application, but only to the extent permitted for members of the public (not as a local member) in accordance with paragraph 9.6 below. You must then leave the room.~~

Formatted: Indent: Left: 1.68 cm, Hanging: 0.5 cm, Right: 0.73 cm, Space Before: 4.7 pt, Line spacing: single

## 5. Bias and Predetermination

### 5.1 A planning decision may be challenged and ruled unlawful on the ground of bias.

The test is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the member was biased. In particular, under the Council's Code of Conduct for Members, bias would occur if you place yourself under a financial or other obligation to third parties that might seek to influence you in the performance of your official duties.

### 5. Fettering discretion in the planning process

5.24. The integrity of and public support for the planning process relies on members of planning committees making decisions that are open, transparent and above board. To participate in decision-making on planning matters, it is essential that you do not have a closed mind and that you make your final decision only when you have seen and heard all the evidence and arguments presented, including the Officer's report and representations on both sides.

The Localism Act has helpfully clarified the rules on predetermination. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

The Act makes it clear that a member is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take

<sup>1</sup> It is perfectly acceptable for councillors to nominate a substitute(s) to undertake their planning responsibilities, including application 'call in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death, the Chairman will nominate a stand in.

Formatted: Font: 12 pt, Bold

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 5 + Alignment: Left + Aligned at: 1.27 cm + Indent at: 1.9 cm

Formatted: Font: Not Bold

Formatted: Normal, Indent: Left: 0.63 cm, No bullets or numbering

Formatted: Font: (Default) Arial

Formatted: Font: Arial, 11 pt, Not Bold

Formatted: Font: (Default) Arial

Formatted: Right: 0.73 cm, Space Before: 4.7 pt, Line spacing: single

before the issue is decided. A member is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.

Formatted: Right: 0.46 cm, Space Before: 3.5 pt, Line spacing: Multiple 1.15 li

The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

5.32 Where I am a member of a parish, town or city council, can I still attend the parish/town/city council meetings where planning matters are discussed and still be a member of a Wiltshire Council planning committee?

You can still take part in debates on planning proposals at parish/town/city council meetings, provided that:

- ~~The proposal does not substantially affect the well being or financial standing of the city/town/parish council;~~
- You must make it clear to them that any views you express are based on the limited information before you only and that you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee;
- You make it clear that you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that parish, as and when it comes before the Committee and you hear all of the relevant information;
- When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, if you intend to speak or vote you should disclose the personal your interest regarding your membership or role at the town/city or parish council.

## 6. Contact with applicants, developers and objectors

6.1. As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy production. Councillors can involve themselves in discussions with developers and others about planning matters provided you keep to the following guidelines:

- Where developers organise a public exhibition or display of their proposals, it is acceptable to visit to examine the proposals and ask questions of the developers to ensure that you are fully informed of the nature of the proposals. You may feed in your own and your local community's concerns and issues and engage in discussion. However, irrespective of any position adopted in advance of a planning meeting you must have and be seen to have an open mind at the point of decision-making and base your decision on the information available at that time.
- Pre-application meetings with developers or prospective applicants may be a positive way of engaging the developer to seek to ensure that community needs are met. However, if approached, you should refer any requests for such a meeting to an officer of the Development Service. The officer(s) will then

organise the meeting and ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action and that the meeting is properly recorded.

- Refer those who approach you for planning, procedural or technical advice to officers;
- Advise those looking for policy guidance to examine the policies in adopted local plans and the Local Development Framework;
- Avoid meeting developers alone or putting yourself in a position where you appear to favour a person, company or group.

## 7. Lobbying and councillors

7.1. Lobbying is recognised as a normal and proper part of the political process. However, it is important for members to protect their impartiality and integrity in planning matters. You will not breach this Code of Good Practice by listening to or

receiving viewpoints from residents or other interested parties provided that you make it clear that your final position will be determined at the end of the planning process when you are aware of all of the material considerations. Councillor's attention is drawn to the following advice: -

- ~~Avoid accepting gifts or hospitality from~~ Do not place yourself under a financial or other obligation to any person involved or affected by a planning proposal. ~~If a degree of hospitality is entirely unavoidable, ensure that its acceptance is declared as soon as possible and enter it into the register of interests where its value exceeds £25 (twenty five pounds) in writing within 28 days of accepting such hospitality;~~
- Pass a copy of any lobbying correspondence that you receive to the relevant Development Control Area Team Manager or the case officer at the earliest opportunity;
- Do not pressurise or lobby officers for a particular recommendation;
- Promptly refer to the Development Control Area Team Manager any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise;
- Inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow the matter up.
- Political Groups should never dictate how Members should vote on a planning issue and members should not excessively lobby fellow councillors regarding concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

7.2. Can I remain a member of an amenity society when it makes representations on planning matters?

There are many general interest groups who concentrate on issues beyond particular planning proposals. These include bodies such as the National Trust; CPRE; Wiltshire Archaeology and Natural History Society; Ramblers Association; local civic societies. It is acceptable to be members of these societies, provided that an ~~personal~~ interest is declared when that organisation has made representations on a particular proposal and you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal.

However, if you become a member of or lead or represent an organisation whose

Formatted: Right: 0.11 cm, Space Before: 0.1 pt, Line spacing: Exactly 12.7 pt

| primary

| Protocol 4  
| March 2013-15-  
| May 2012

7

purpose is to lobby to promote or oppose planning proposals, you will have to ensure that you still have an open mind and will again have regard to all material considerations at the time any decision is made.

Formatted: Indent: Left: 0 cm

## 8. The role of officers

8.1. Officers and members work together to deliver the outcomes that seek to deliver the right development at the right place at the right time, whilst protecting the built and natural environment. It is therefore essential that there is mutual trust and understanding between officers and members. Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:

- Impartial and professional advice;
- Committee reports that include a clear and accurate analysis of the issues in the context of the relevant development plan and other material considerations; the substance of the representations and views of those who have been consulted and a clear recommendation of action.

Officers will process and determine applications in accordance with the council's code of Conduct for Officers and the Royal Town Planning Institute's Code of Professional Conduct.

## 9. Decision making

9.1. ~~Planning decisions are made within the context of a national, regional and local planning framework and Inspectorate decisions.~~ By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise. The National Planning Policy Framework is a material planning consideration.

9.2. As a member, you can request that the relevant planning committee considers a planning application in your division and not be dealt with under delegated powers (although there are a few exceptions, such as tree applications, set out in the Scheme of Delegation). To call-in an application, you need to do this in writing, (an electronic proforma is available for electronic submission), and send it to the relevant area team manager or case officer handling the application. Requests must be received within 21 days of the circulation of the weekly list (but there are some exceptions set out in detail in the Scheme of Delegation to Officers – Part 3B of the Constitution). The proforma must record planning reasons why the committee should deal with the application. (It would be helpful if councillors would contact the case officer prior to call-in to discuss the planning issues involved and whether a call-in is necessary.) Following receipt of a request, officers will confirm the action to be taken and keep the member informed when they are ready to make a recommendation.

9.3. While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the Chairman of the committee. Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.

9.4. Councillors should arrive at meeting with an open mind and make a decision only after due consideration of all the information reasonably required to make that decision including any matters reported at the meeting. If you feel that there is

insufficient information before you, you should request that further information. If necessary, defer or, if the grounds are adequate, refuse the proposal.

- 9.5. Site Visits – Councillors will be expected to be familiar with the site and the issues surrounding the decision when they arrive at a committee meeting. It is acceptable to visit the site and, if necessary, surrounding properties that may be affected by the proposal, as an individual councillor before the meeting, although councillors should not enter onto a site without the consent of the owner. On no account should councillors express a view on the merits of the application to anyone, including the applicant, owner or any third party. With regard to the Strategic Committee, for major and controversial applications arrangements will exceptionally be made for organised site visits where these are considered necessary.

The committee reports and officer presentations should provide ample information for councillors to determine applications. Very exceptionally, councillors at a committee may feel that a site visit is appropriate to assess the implications of the development. In these cases, reasons for the site visit will be provided and consideration of the application should be deferred pending the visit. (The site visit will be arranged by officers and although the owner's permission will be required, there should be no dialogue with members of the public or applicant/owner during the visit.) The application will then be re-listed on the following agenda.

- 9.6. Public Speaking at Meetings - The council has an established procedure in respect of public participation at planning meetings. This should be complied with. In particular, it is not permissible during meetings for members of the public to communicate with councillors debating the proposal either orally or in writing, as this may give the appearance of bias.

Consultees and members of the public who wish to speak at a planning meeting, either in favour of or against an application will be asked to register with Democratic Services. Notification can be given in advance of the meeting, but not before the agenda has been published, by contacting the Democratic Services Officer identified on the agenda. However it should be noted that the Democratic Services Officer must receive registrations in person at least ten minutes prior to the meeting; registration will take place on a first come first served basis and if someone fails to register in person the opportunity to speak will be offered to someone else if appropriate. If a large number of speakers wish to speak on an application, Democratic Services will advise them to coordinate their speakers.

Town/parish/city councils will have an individual four minute representation slot should they wish to speak. Only one representative per council should speak and it is important that the spokesperson expresses the formal views of their council, and not their own individual thoughts. If an application is near the boundary with an adjacent parish, each affected council will have a four minute slot. Any additional time will be at the committee chairman's discretion.

There will be a maximum of three members of the public permitted to speak in objection to an application and three members of the public permitted to speak in support of an application. Where a committee member with a ~~prejudicial-disclosable pecuniary~~ interest wants to ~~speak-participate in their private capacity~~ as a member of the public (as they are entitled to do) they will need to secure one of the 'public slots'.

Each speaker will be allotted 3 minutes to address the committee and an audible 30 second warning may sometimes be given before the end of the three minutes.

In the case of particularly controversial or large scale applications the chairman of the committee will have discretion over these timings and will be able to allow more

speakers. It is imperative, however, in the interests of natural justice that any increase in time allowance is applied equally between those speaking for and against.

#### 9.7. Decisions Contrary to Officer Recommendation

There will be occasions when councillors wish to make a decision that conflicts with the planning officer's recommendation. In these circumstances, members proposing, seconding or supporting such a decision must clearly identify and understand the planning reasons leading to this decision and must give the planning officer an opportunity to explain the implications of it. The reasons for the decision must be given prior to the vote and be recorded. If an application is to be approved, councillors should set out any particular conditions they would like imposed which will be in addition to the 'standard' conditions for that type of development which will be added by officers. An opportunity must be given to the planning officer to comment on conditions suggested by members and if necessary, the application should be deferred to the next available meeting to enable proper consideration to be given to the wording needed to achieve members' objectives or members may delegate to the officers the imposition of suitable conditions.

Reasons for refusal against officer advice must be planning related, clear and convincing. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge or appeal.

Where councillors think they could have concerns about any given recommendation at committee, officers will be happy to discuss the application beforehand to explore the options which may be open to the Members.

In cases where councillors have overturned a recommendation and the applicant lodges an appeal with the Planning Inspectorate which will be dealt with by way of hearing or public inquiry, Members should be prepared to defend that decision. This defence should be made in person or, at the Member's discretion in writing. Where Members attend and give evidence as part of the council's 'official team,' e.g., they are supported by counsel (as opposed to turning up to speak on an individual basis,) a Rule 6 statement will be required which usually has to be submitted nine weeks before the appeal hearing/inquiry. (Members may of course also be called upon to support the council's case on appeal where the decision has been made in line with the officer recommendation.)

## 10. Training

Planning is a complex area, but one that generates a great deal of interest amongst local residents and is at the heart of much of the activity of the council. Great care needs to be taken over procedural matters and to ensure that consideration of applications takes place in a clear and open manner and that decisions are based on sound planning principles. For these reasons, it is mandatory for all elected councillors of Wiltshire Council to have training in planning matters prior to sitting on a planning committee. All elected councillors will be able to attend this training and it will be arranged immediately after each election. For those elected at by-elections, similar training will be made available.

## 11. The order of events at committee meetings

Meetings will normally commence at 6 p.m. and the applications will be determined in the order in which they appear in the agenda unless the chairman has valid reasons for changing the order. Officer will try and ensure that applications which are likely to attract large numbers of the public appear early in the agendas. If the order is changed, this will be announced at the start of each meeting. The usual procedure will be:

- a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
- b) Committee Members will then ask the officer to clarify any points/ask technical questions.
- c) Members of the public who wish to make representations opposing the application will then be invited to do so. (up to 3 minutes each)
- d) Members of the public/applicant/agent (in this order) who wish to make representations in support of the application will then be invited to do so.
- e) Consultees who wish to make representations will be invited to do so. (up to 3 minutes each)
- f) The town/city or parish council representative, if present, will then be invited to make representations. (up to 4 minutes each)
- g) The division member will be invited to make representations<sup>2</sup>.
- h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.
- i) The chairman will then normally ask if anyone is prepared to move the officer recommendation or propose an alternative motion. Once a motion has been seconded it will be open to the councillors to debate it and ask further questions of officers if required and determine the issue. The rules of debate as detailed in Part 4 of the Constitution will apply.

---

<sup>2</sup> Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to participate in any debate at the chairman's discretion.

## Wiltshire Council Planning Site Visit Protocol

### 1. Arranging the visit

When members have decided in committee that they would like to visit a site, they will be asked to agree a time and date at the end of the meeting. If this is not possible, a schedule for the visit will be agreed between the chairman and officers. This will identify the timetable for the meeting, invited attendees and what matters will be viewed on site.

Democratic services will then notify the applicant or their agent of the time and date of the site visit and seek authority for councillors and officers to visit the site. Where the application site is on private land, the applicant or agent will be requested to be in attendance only to facilitate access.

All members of the relevant development regulatory committee will be invited to attend the site visit as will the local division member should he or she not be on the committee. Where a proposal would have a significant impact on an adjoining division, the adjoining division member will similarly be invited to attend.

On occasion, officers of other services such as highways or archaeology may be invited (by the area development manager) to attend a site visit to clarify factual matters.

Councillors are reminded that they have no right of entry to private land except by permission of the owner and that they and officers should not enter a private site until all are present and an officer has made contact with the landowner/operator/applicant.

In the unlikely event that the landowner will not give permission to enter a private site, the site will have to be viewed from public highway.

### 2. Conduct of the visit

The purpose of the site visit is to enable councillors to familiarise themselves with the site and its surroundings and in order to understand the issues more clearly when considering the application at committee.

While it may be necessary for an applicant or his agent to be present on the site (e.g. to provide access or for safety reasons), discussions with the applicant or their agent or any third party should be avoided and they will be advised that lobbying of councillors is unacceptable. Presentations by applicants will not be permissible.

At the request of the chairman, the planning officer will describe the proposal to councillors and will display appropriate plans or drawings of the proposal. (It is expected that councillors will already be familiar with the planning officer's report) The planning officer will indicate matters of fact in relation to the proposal and surrounding land which councillors should take into account.

Questions by councillors should be addressed to the planning officer and be of a factual nature, for example, distances to adjoining or objectors' properties or the landscape features to be retained. If it is necessary to seek information from the applicant or agent on site this will be done by an officer.

At no time during the site visit should councillors debate or comment on the planning merits or otherwise of a proposal.

The role of the local division member will be limited to drawing attention to features of the site that he/she considers relevant to the committee's understanding of the site, its surroundings and the proposal. The local member will not be permitted to make representations on the merits or otherwise of the application.

### 3. General

- Councillors should avoid being separated; it is essential that they should not allow themselves to be lobbied or enter into a debate about the application.
- Councillors should ensure that they have seen all aspects of the site suggested by the accompanying officer or the chairman during the visit.
- Councillors will not make any decision at the site visit and individual members should keep an open mind about the merits or otherwise of the proposal to which the site visit relates.
- The application will usually be the first item on the agenda of the following Planning Committee meeting where the decision will be made.

### 4. Record of the visit

A record of the visit will be retained on the planning application file. The record will include the timetable for the meeting, attendees and what matters were viewed on site.

#### Notes:

- Officers will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.
- Where appropriate, protective clothing e.g. visibility jackets, hard hats will be provided for councillors on arrival at the site. Councillors should, however, be aware of the need to wear appropriate footwear.
- In the interests of sustainability and highway safety, it is recommended that car-sharing opportunities be used where practical to minimise travelling and parking.

This page is intentionally left blank

## Appendix D

### DRAFT

## Wiltshire Council

### Code of Conduct

You are a member or co-opted member of [ ] Council and hence you shall have regard to the following principles - **selflessness, integrity, objectivity, accountability, openness, honesty and leadership.**

You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the following requirements, by leadership and example.

Accordingly, when acting in your capacity as a member or co-opted member:

1. You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
2. You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
3. When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
4. You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
5. You must be as open as possible about your decisions and actions and the decisions and actions of your authority, and should be prepared to give reasons for those decisions and actions.
6. You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties, and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out below.
7. You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local

Authority Code of Publicity made under the Local Government Act 1986.

Members of Wiltshire Council will have regard to the Roles and Responsibilities of Wiltshire Councillors according to Appendix 1 and Wiltshire Council Behaviours Framework at Appendix 2.

### Registering and declaring pecuniary and non-pecuniary interests

8. You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living as a husband or wife, or as if you were civil partners.
9. In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interests which your authority has decided should be included in the register.
10. If an interest has not been entered onto the authority's register you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a sensitive interest.
11. Following any disclosure of an interest which is not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
12. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

[Subject to further consideration by Council]

13. You must, therefore, declare the existence and nature of the interests set out below at any meeting of the authority where business relating to the interest is being conducted. Having declared such interest you may speak and vote on the matter unless you decide that this would not be appropriate due to other special circumstances:

- any body of which the councillor is a member or in a position of general control or management and to which the councillor is appointed or nominated by the Council;
- any body exercising functions of a public nature of which the councillor is a member or in a position of general control or management;

Formatted: Font: 11 pt

Formatted: Font: 11 pt, Font color: Black

Formatted: Font: 11 pt

- any body directed to charitable purposes of which the councillor is a member or in a position of general control or management;
- any body 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;

[ Appendix 1 - Roles and Responsibilities of Wiltshire Councillors ]

[ Appendix 2 – Wiltshire Council's Behaviours Framework ]

This page is intentionally left blank

## Wiltshire Council

### Standards Committee

10 July 2013

---

#### **Code of Conduct - Registration and Disclosure of Additional Interests**

##### **Purpose**

1. To ask the Standards Committee to consider whether the Council's Code of Conduct should be amended to require the declaration and registration of any additional pecuniary and non-pecuniary interests over and above the statutory disclosable pecuniary interests, having regard to the outcome of a consultation with parish, town and city councils on this subject.

##### **Background**

2. At its meeting on 26 June 2012 the Council adopted a Code of Conduct which complies with the statutory requirements, but the Council also resolved to ask the Standards Committee to develop proposals, in consultation with parish, town and city councils, on any additional pecuniary and non-pecuniary interests that should be declared and registered under the Code of Conduct, on the question of withdrawal from meetings, and to bring these back to Council for consideration at the earliest opportunity.
3. At its meeting on 13 November 2012 Council adopted the following recommendation made by the Standards Committee at its meeting on 24 October 2012.

*To adopt the following as an interim position, pending consultation with parish, town and city councils, and to report back to the Council at its meeting in February 2013 on the outcome of the consultation and any final recommendations for adoption by the Council.*

*To amend Wiltshire Council's Code of Conduct to require Councillors to:*

*a. register details of any interest in the following:*

- *any body of which the councillor is a member or in a position of general control or management and to which the councillor is appointed or nominated by the Council;*
- *any body exercising functions of a public nature of which the councillor is a member or in a position of general control or management;*
- *any body directed to charitable purposes of which the councillor is a member or in a position of general control or management;*
- *any body 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;*

- b. *declare the existence and nature of any such interest at any meeting of the Council where business relating to the interest is being conducted.*

*Having declared such interest Councillors may then speak and vote on the matter, unless the Councillor decides this would not be appropriate due to other special circumstances.*

4. A draft code of conduct reflecting this position was considered by the Constitution Focus Group at its meeting on 24 January 2013. It was resolved:
- (1) To ask the Solicitor to the Council and Monitoring Officer to make the proposed amendments to the code of conduct in relation to the registration and declaration of additional interests without the inclusion of appendices 3 (which listed the statutory disclosable pecuniary interests) and 4 (which set out the other additional interests to be registered) and include the appendices as part of a separate guidance document.
  - (2) To ask the Standards Committee to consider the amended code of conduct along with the result of the consultation with parish, town and city councils on additional interests with any recommendations from the Standards Committee being considered by Council.
5. The Focus Group was clear that any final decision on proposed changes to the code of conduct should be reserved to the new Council. This approach was supported by Group Leaders.
6. Parish, town and city councils have been consulted on the proposed changes to the code of conduct and their responses are summarised below.

### **Main Considerations**

7. A copy of the consultation letter that was sent to parish, town and city councils in December 2012 is attached at Appendix A. Council clerks were advised subsequently that the consultation period had been extended in view of the decision to defer making a decision on the matter until after the May elections.
8. The Council received 97 responses from among the 253 parish, town and city councils in Wiltshire. In summary, from the information received:
- a. 61 councils have adopted Wiltshire Council's Code of Conduct.
- Of these:
- 17 councils indicated that they are in favour of including the additional specified interests within their adopted Codes. 3 of these stated that their members already declare such interests on a voluntary basis.
  - 38 Councils indicated they are not in favour of including the additional specified interests. 1 of these stated that their members do this voluntarily anyway.

- b. 18 councils have adopted the National Association of Local Councils (NALC) Code of Conduct. It should be noted that the NALC Code of Conduct already requires councillors to declare and register additional interests of a similar nature to those proposed in the consultation and it imposes restrictions on participating and voting where such interests relate to matters being considered. There was a strong suggestion that some council's who have adopted the NALC Code were not fully aware of the restrictions and obligations contained within it.
  - c. 4 council's have adopted the DCLG draft illustrative text code of conduct, which is essentially the same as Wiltshire Council's Code..
  - d. 4 councils have adopted some other form of code.
  - e. 10 councils did not state which Code had been adopted.
9. A summary table of the results is included as Appendix B.
10. Comments received as part of the consultation are included at Appendix C. The Committee will wish to have careful regard to these comments, bearing in mind particularly that a significant majority of these councils (and, it is understood, of all councils in Wiltshire) have adopted Wiltshire Council's existing Code of Conduct.
12. The proposed amendments help to provide clarity in setting out the type of interests that should be declared and registered over and above the statutory disclosable pecuniary interests and serve to promote the interests of openness and transparency. The proposals do not seek to restrict or inhibit councillors in fulfilling their democratic role and responsibilities and provide that, having declared such interests, councillors may speak and vote on the matter, unless they decide that this would not be appropriate due to their own particular circumstances.
13. It should be noted that if these changes are adopted a failure to comply with the requirement to register or declare such an interest would amount to a breach of the code of conduct. However, unlike breach of the requirements relating to disclosable pecuniary interests, it would not amount to a breach of the criminal law.
14. It should be borne in mind that the Code already includes an obligation, over and above the requirements in relation to disclosable pecuniary interests, to declare any private interests, both pecuniary and non-pecuniary, that relate to a councillor's public duties, and to take steps to resolve any conflicts arising in a way that protects the public interest .... see paragraph 6 of the Code. The proposed changes do not seek to limit this obligation in any way.
15. It is evident that many councillors, as a matter of good practice, already register additional interests of the kind proposed in their register of interests and routinely declare these when relevant business is being considered. An alternative approach may, therefore, be to promote and encourage this practice on a voluntary basis through appropriate guidance, training and support instead of making it a specific requirement of the Code. The position

could then be kept under review to determine whether firmer arrangements were necessary.

16. There would seem to be no compelling case for a general requirement in standing orders for councillors with a disclosable pecuniary interest, or indeed any other interest, to withdraw from a meeting when relevant business is being considered. Councillors may, however, conclude that this would be appropriate in particular circumstances.
17. Mention is made in one of the responses received on whether it would be appropriate for the Code to be more specific about the level of any gifts and hospitality which should have to be declared. Under the former Code of Conduct gifts and hospitality with a value exceeding £ 25 had to be registered and declared. The current NALC Code requires registration and declaration of any gifts or hospitality worth more than an estimated value of £ 50 which the member has received by virtue of his or her office.
18. Wiltshire Council's Code provides (at paragraph 2) ' You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.' This may be considered to cover the issue sufficiently without the need to include any particular amount. The Committee's views on this issue are also sought.
19. If the Committee is minded to agree the proposed changes to the existing code the proposed wording is set out in Appendix D to the Minutes of the Constitution Focus Group under item no. 8 above.
20. The DCLG has issued revised guidance in March 2013 on 'Openness and transparency on personal interests'. This provides a useful summary of the requirements. A copy is attached at appendix D to this report.

### **Financial Implications**

21. Adoption of the proposed changes could result in more complaints falling to be dealt with under the code of conduct and potentially more costs, although these are unlikely to be significant given that these would be processed within existing resources.

### **Legal Implications and Risks**

22. The Council has a power under the Localism Act 2011 to include a requirement for registration and disclosure of such additional pecuniary and non-pecuniary interests as it considers appropriate, but is under no duty to make such provision.
23. There may be a risk of damaging local democracy if a significant proportion of councillors were to decide to leave office on the grounds that the requirements on disclosure and registration of interests are unduly onerous and disproportionate. This is considered to be a relatively low risk given the nature of the proposals involved and should be balanced against the public interest in openness and transparency.

## **Environmental Implications**

23. None.

## **Proposal**

24. The Standards Committee is, therefore, asked to consider the proposed changes to the Code of Conduct, having regard to the responses from the parish, town and city councils, and recommend Council to proceed as the Committee considers appropriate.

## **Ian Gibbons**

### **Solicitor to the Council and Monitoring Officer**

Report author: Ian Gibbons

---

Unpublished reports relied upon in the production of this report: None

Appendix A - Consultation letter to parish, town and city councils - December 2012

Appendix B - Summary table of results of consultation

Appendix C - Comments received from consultees

Appendix D - DCLG Guidance 'Openness and transparency on personal interests' A guide for councillors

This page is intentionally left blank

# APPENDIX A

## Letter to Wiltshire Parish, Town and City Clerks

Dear Colleagues,

### Localism Act 2011 - New Standards Regime

The new standards regime has now been operating since July 2012. As you all know, there was very little time between the passing of the primary and secondary legislation and the deadline for implementation on 1 July 2012, which meant that there was insufficient opportunity to consult fully with parish, town and city councils about the practical implications of the legislation.

We undertook to engage in some further consultation with you after the new arrangements had been in place for a few months. Clearly, the code of conduct that your council has adopted is a local decision and we do not propose to consult on the contents of the voluntary elements of your local code. However, Wiltshire Council retains the statutory responsibility for assessing and, if necessary, investigating complaints that members have breached their council's code of conduct. It would therefore be helpful for us to know what code your council has adopted and, if it is not one of the two that have been adopted by most of the councils in Wiltshire Council's area, to have a copy of the code that your council has adopted. Would you therefore please indicate, by ticking the appropriate box, whether you have adopted:

- The NALC model code
- Wiltshire Council's code
- Another code (if so, please send us a copy)

We would like to canvas your views on the interests that councillors should be required to register. Again, beyond the statutory disclosable pecuniary interests that all members are now required to register, any additional interests are a local matter and Wiltshire Council does not seek to impose any additional interests for registration. However, we have received a range of representations from town and parish councils in the months since the new regime came into force.

Some councils have taken the firm view that their members should not be required to register any interests beyond those set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. These interests are set out in the on-line register of interests form for councillors to complete. Other councils have expressed the wish to add to this statutory list of interests and have included additional interests in their local codes of

conduct, as they are entitled to do under section 28(2) of the Localism Act 2011. Failure to declare or register these additional interests would not attract criminal sanctions in the same way as a failure to register a disclosable pecuniary interest would do, but may represent a breach of the council's local code of conduct. In order to capture these additional interests on the register we have included a box for additional local interests for members to complete on the on-line registration form.

At its last meeting Wiltshire Council decided, as an interim position pending consultation with parish, town and city councils, to adopt a limited number of additional interests for Wiltshire Councillors to register. These are set out below. I would be grateful if you would indicate your council's view on whether any of these additional interests would be interests that your council would wish to include in its own local code. Please tick any interest(s) that your council would wish to include in its local code:

- any body of which the councillor is a member or in a position of general control or management and to which the councillor is appointed or nominated by the Council;
- any body exercising functions of a public nature of which the councillor is a member or in a position of general control or management;
- any body directed to charitable purposes of which the councillor is a member or in a position of general control or management;
- any body 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;

Wiltshire Council further resolved, as its interim position, that where a Wiltshire Council member holds any of the additional interests listed above, they should declare the existence and nature of any such interest at any meeting of the Council where business relating to the interest is being conducted. However, having declared such an interest Councillors may then speak and vote on the matter, unless the Councillor decides this would not be appropriate due to other special circumstances. Essentially, this approach was felt to be one that is strong on transparency, but which still allows for participation in the democratic process where the nature of the interest is not so strong as to give rise to a conflict between that interest and the Councillor's ability to judge and act in the public interest.

If your council would wish to add any other interest(s) that do not appear on the list, please let us know by contacting Roger Wiltshire at the above address, or by e-mail to [roger.wiltshire@wiltshire.gov.uk](mailto:roger.wiltshire@wiltshire.gov.uk)

We appreciate that many local councils will not meet in December. The deadline for responses to this consultation is therefore 31<sup>st</sup> January 2013. This will give us time to collate your views and prepare a report for the Standards Committee to make recommendations for consideration by Wiltshire Council on 28 February 2012. Any consequential changes to Wiltshire Council's code of conduct may then be made in time for the election of new members in May 2013.

Whilst writing I wish to draw your attention to the attached revision of the guidance we issued to clerks on dispensations in November 2012. This seeks to reflect some helpful feedback we have received on the content. The overall substance of the advice has not changed, but we have sought to make a clearer distinction between those parts which are statutory and those which are guidance and suggested good practice. I hope this is of some assistance.

This has been a very challenging year for us all with many issues to work through and changes to implement. On behalf of the Governance Team I would like to thank you for your support and co-operation throughout this year, which has been greatly appreciated.

May I take this opportunity to wish you a peaceful Christmas and a fulfilling New Year.

With best wishes.

Ian Gibbons

Solicitor and Monitoring Officer

Wiltshire Council

This page is intentionally left blank

## APPENDIX B

Number of responses received				Code of Conduct adopted					Agree proposed amendments to the Wiltshire Council Code of Conduct	
City	Town	Parish	Total	Wiltshire Council	NALC	DCLG	Other Code	Code not identified	Yes	No
1	13	83	97	61	18	4	4	10	17	38

Note:

1. The figures in the 'Agree proposed amendments' columns do not include the responses from the councils who have adopted the NALC or DCLG Code of Conduct. The NALC Code of Conduct already includes the 'other' interests as set out in the proposed amendment to the Wiltshire Council Code.
2. 20 council's who responded either did not respond or made 'no comment' regarding adopting the proposed amendments to the Wiltshire Code.

This page is intentionally left blank

## Appendix C

### Consultation - Comments Received

#### 1. In support of the proposed amendment to the Code of Conduct to include additional interests

- *Declaring such interests increases transparency (and indeed ..... Councillors do do so at present, albeit informally).*
- I think the additional registrations are a good idea considering that many councillors will be involved with local voluntary organisations that might receive assistance from parish councils and those relationships should be transparent. The guidelines on whether or not a councillor subsequently speaks or votes seem sensible to me.
- *You might like to know that as best practice they declare what was the old personal interest, membership of local voluntary groups, etc. and it is recorded as a non-pecuniary interest.*
- As trustees of village assets, i.e. village hall, recreation fields, etc those trustees who are members of the parish council, feel that these interests should also be disclosed.
- *All councillors have declared the charity of which they are trustees in their register of interests.*
- Finally, members do believe that, particularly at Parish and Town Level, some specific guidelines on the acceptance of gifts might be helpful. To this end it was suggested that the Town Council might wish to promote the declaration of gift set at a level of £50 as identified in the NALC Code. However, members felt that whilst they understood the reason for inflating the previous limit, it was the previous limit of £25 that they would wish to promote. In a small community members can be exposed to risk even if they share a drink with someone who is having an extension built and then find themselves open to unfair criticism. Setting a clear limit helps to protect members in small communities where this could potentially occur. It is not a big point but members ask that Wiltshire Council gives some thought to its inclusion for Parish and Town Councils.

## 2. Size of the Parish Council

- *There has to be some recognition that small parishes need to be dealt with differently. What constitutes small, that is fairly simple to achieve and could be dependent on the number on the electoral roll or size of precept.*
- Members agreed that, as this is a very small parish council, there is no need to modify the existing rules.
- *.....a PC whose precept in 2012 was £600 I find all this bureaucracy tiresome in the extreme.*
- They (the councillors) felt very strongly that this might be useful for larger town or parish councils perhaps but they will not be adopting these additional requirements.

## 3. Dual-hatting

- *Councillors believe that the current provisions in relation to the participation of “dual-hatted” members of both Wiltshire Council and the Town Council are overly restrictive and tend to act against the public interest. In order to ensure effective input into the democratic process at local level, it is felt strongly that members of both Wiltshire Council and the Town Council should not be excluded from participation and voting on Area Board or Wiltshire Council Committee issues that may relate to the Town Council.*

## 4. Against proposed amendments

- *that sufficient information was already disclosed and that they (the councillors) all act in a reasonable and sensible manner in declaring any non pecuniary interests on an Agenda item which may arise.*
- It is unfortunate and unnecessary that Wiltshire Council expects Parish or Town Councillors to declare membership of political parties. To date, party politics have not intruded on our parish council business, although they have regularly led to some difficulties at Town Councils.

Over strict interpretation of the rules is felt to be impractical, as all councillors have an interest in something or other.

Declarations of interest, forms part of every meeting agenda and that really should suffice, especially at parish council level.

- *My suggestion for this consultation and for much of the other stuff is simply this, "Do nothing" simply give it a rest, give us a rest, stop coming up with 'new stuff' and let us all just reflect on how seriously bad things are right now in the UK.*
- I have enough difficulty getting my councillors to complete the basic on-line compulsory declaration of interests and we have not adopted our own local code so any registration beyond the statutory pecuniary interest requirements would not be incorporated by my Parish Council; however, I would like to believe that, as a small Parish Council, we are strong on transparency
- *It is hard enough to get local people to give their time to be a parish councillor without drowning them in unnecessary administration.*
- .....takes the broad view that members should not be required to register any interests beyond those set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.....
- *The problem with the current rules are that they make running a Parish Council impossible. We cannot set a precept unless we grant ourselves dispensation, and no one knows if that is actually legal. We are not supposed to favour friends or relatives in our deliberations, but in a small parish practically everyone is a friend or relative of someone on the Council.*

*The whole process needs turning on its head, it shouldn't be about what you cannot do or have you filled in this form correctly or declared that interest correctly. Parish Councillors are volunteers, they receive no expenses and they give freely of their time in order to benefit the community in which they live, and if we are to encourage people to put themselves forward to be Councillors, that is the principle we need them to sign up to, and all the ridiculous red tape surrounding the position is an insult to the integrity of 99% of those councillors who dispense their responsibilities as best they can and no protection at all against those few who may seek to abuse their position, we have elections to do that!*

*I'm not sure if this is relevant to your consultation, but with elections on the horizon it should be.*

- As well as the more onerous level of work put on Parish Councillors required by localisation, an over the top register of interest will put people off this voluntary work and then there will be real difficulties getting inclusion of the political process at the grass roots.

- *The Parish Council feels very strongly that it would be unwise to consider extending the Code of Conduct, until such times that the existing code has had time to bed-in. The inclusion of such proposals at such an early stage gives the distinct impression that moves are being made to go back to the previous flawed system.*
- Generally, I'm in favour of declaring Statutory interests **only**, especially at Parish Council level - in a small community, we should be well-known enough that people would easily spot if we were abusing our authority. It's notable, though, that even this minimum level is apparently causing confusion - I note that some of the submissions to the Wiltshire Declarations website do not even show home addresses, which is a basic requirement.

Of the 4 additional Interests suggested by Wiltshire, I have a problem with the concept of 'being a member'. Would membership of (say) the National Trust exclude you from discussing planning applications on listed buildings, or membership of (say) the Automobile Association exclude you from discussing traffic policy? That's way too draconian, as well as being imprecise and therefore open to differing interpretations. It is, of course, a different matter if you have a direct management role in such an organisation ....."

- First, you wished to know which code had been adopted by .....Parish Council. It has adopted the NALC model code, and completed such matters as the Register of Councillor's Interests successfully on line.

Second, I must stress that ..... is a small Parish, with limited resources and relatively straightforward affairs. Our comments have to be viewed against that background. However, our Parish is not untypical of many similar small Parishes facing similar challenges. Our concerns are essentially and by definition parochial, but they are shared across the piece by many.

Third, it is quite hard to convey the strong sense of irritation that theses recent changes have caused at local level. Notwithstanding the simplification of the paraphernalia of Boards at various levels, which has generally been well received, the new procedures for the declaration of interests are widely perceived to be intrusive and bureaucratic. Volunteers in small communities feel a strong sense of affront that their integrity is challenged, whilst at the same time regarding on line registration as yet another irritating small task to add to many others when a perfectly good system already exists. The removal of the previous overall dispensation for Parish Councillors to deal with the setting of the Parish Precept has drawn particular opprobrium and even ridicule. In short, volunteers regard this as yet another instance of process trumping the practical demands of integrity at working level. Whilst this may

not be news which people want to hear, it is a real enough perception at this level.

This is unfortunate, for it is already difficult to find volunteers in a position to serve as Parish Councillors, and it is putting good people off from becoming councillors. This is especially damaging in the year running up to local elections. Equally important, this general concern distracts attention from where genuine amendment would be helpful: for instance, to restore the overall dispensation for Parish Councillors to debate and decide their Precept annually.

Fourth, there can be little doubt at all that the manner of the introduction of the change at national level has not been especially helpful, particularly in the light of a number of high profile stories in the media generally. In this Parish Council we have managed the problem: it has been helpful that, in our case, all Councillors are on line.

Fifth, you asked for our views on the inclusion of additional interests to be declared. At the risk of sounding negative, whilst we would not object to their inclusion, neither are we convinced of the reason for doing so at this point since the existing registration would expose them, whilst, at Parish level, such interests would usually be known anyway. We do not intend to add them to our adopted Code at present.

Finally, against this background, we note your comments regarding amendments prior to the elections in May 2013. Common sense indicates that if the new system is broadly right then it would be timely to avoid tinkering immediately prior to the, by now unfamiliar, process of Parish Council Elections. Give it time to settle down!

We discussed this issue at our December 2012 Parish Council Meeting attended by our local County Councillor. I am providing her with a copy of this letter accordingly.

## **Localism Act 2011 – New Standards Regime**

Following receipt of your letter dated 14 December 2012, members of .....Council have now had the opportunity to discuss comments they would like to put forward on this consultation exercise in respect of the new Code of Conduct.

Allowing town and parish councils to opt in to either the Standard Code of Conduct that their principal authority has written, or one that has come from the National Association of Local Councils, or they write their own, added confusion about the interpretation of the code whilst trying to operate and put a new code into practice. It is accepted this was not anything to do with Wiltshire Council but for a small..... council like ourselves, we wish to operate within a framework that is understood by all especially the general public.

..... Council adopted Wiltshire Council's Code wanting to make their process as simple as possible and follow the same procedures as its principal authority. Registering members' interests has been fairly simple and these have been uploaded to your website. Not all members have completed their registration directly with our office and if this has been done directly with you, I am not aware. Feedback at the initial workshops indicated that a link would be given to ourselves so that we could link this with our own websites. So far this has not taken place. Is this planned for a later date? We are not yet displaying our register of interests on our web site.

Members were not happy that they had to register their spouse or partner's interests and equally the spouses and partners themselves were upset that this information was being made public. They were not the elected member and did not see why their details had to be published.

Members have still not understood the requirement or not for declarations at meetings and although pecuniary interests may have been registered members are still asking for interests to be declared in council minutes.

With the recent setting of the Council's budget, the workability of the Code has caused issues regarding the necessity of a dispensation which almost made it unworkable for elected members. We believe that elected members are expected to create a budget and request a precept from their principal authority on an annual basis. It seemed almost ludicrous that members, through the new legislation, now held a pecuniary interest because of where they lived had to declare an interest on agenda items in relation to budget setting and therefore render them unable to discuss and agree a budget. The majority of elected members are going to live in the town where they are a councillor and so are likely to need a dispensation for this item.

A whole exercise of agreeing a dispensation process and then getting each Member to sign a further piece of paper to say that they could be allowed dispensation to discuss the budget did not make sense. If you replicate this across all of the town and parish councils throughout the county and country a whole industry has arisen due to the amendment in the new legislation.

Overall ..... Council wish to operate within a Code of Practice that is easily understood by its own members as well as the general public and will continue to follow the advice of its principal authority. I would appreciate an update on the situation regarding a web link for the register of interests if possible

This page is intentionally left blank



Department for  
Communities and  
Local Government

APPENDIX D

# Openness and transparency on personal interests

A guide for councillors

March 2013  
Department for Communities and Local Government

© Crown copyright, 2013

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

March 2013

ISBN: 978-1-4098-3604-9

# The Guide

This guide on personal interests gives basic practical information about how to be open and transparent about your personal interests. It is designed to help councillors, including parish councillors, now that new standards arrangements have been introduced by the Localism Act 2011<sup>1</sup>.

## Why are there new rules?

Parliament has abolished the Standards Board regime and all the rules under it. It has done this because that centrally-imposed, bureaucratic regime had become a vehicle for petty, malicious and politically-motivated complaints against councillors. Rather than creating a culture of trust and openness between councillors and those they represent, it was damaging, without justification, the public's confidence in local democratic governance.

The new standards arrangements that Parliament has put in place mean that it is largely for councils themselves to decide their own local rules. It is essential that there is confidence that councillors everywhere are putting the public interest first and are not benefiting their own financial affairs from being a councillor. Accordingly, within the new standards arrangements there are national rules about councillors' interests.<sup>2</sup>

Such rules, in one form or another, have existed for decades. The new rules are similar to the rules that were in place prior to the Standards Board regime. Those rules, originating in the Local Government Act 1972 and the Local Government and Housing Act 1989, involved local authority members registering their pecuniary interests in a publicly available register, and disclosing their interests and withdrawing from meetings in certain circumstances. Failure to comply with those rules was in certain circumstances a criminal offence, as is failure to comply in certain circumstances with the new rules.

## Does this affect me?

Yes, if you are an elected, co-opted, or appointed member of:

- a district, unitary, metropolitan, county or London borough council
- a parish or town council
- a fire and rescue authority
- a transport or other joint authority
- a combined authority or an economic prosperity board
- the London Fire and Emergency Planning Authority

---

<sup>1</sup> The Guide should not be taken as providing any definitive interpretation of the statutory requirements; those wishing to address such issues should seek their own legal advice.

<sup>2</sup> The national rules are in Chapter 7 of the Localism Act 2011 and in the secondary legislation made under the Act, particularly in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (S.I. 2012/1464).

- the Broads Authority
- a National Park authority
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

## How will there be openness and transparency about my personal interests?

The national rules require your council or authority to adopt a code of conduct for its members and to have a register of members' interests.

The national rules require your council's code of conduct to comply with the Seven Principles of Public Life, and to set out how, in conformity with the rules, you will have to disclose and register your pecuniary and your other interests. Within these rules it is for your council to decide what its code of conduct says. An illustrative text for such a code is available on the Department's web site.<sup>3</sup>

Your council's or authority's monitoring officer (or in the case of a parish council the monitoring officer of the district or borough council) must establish and maintain your council's register of members' interests. Within the requirements of the national rules it is for your council or authority to determine what is to be entered in its register of members' interests.

## What personal interests should be entered in my council's or authority's register of members' interests?

Disclosable pecuniary interests, and any other of your personal interests which your council or authority, in particular through its code of conduct, has determined should be registered.

Any other of your personal interests which you have asked the monitoring officer, who is responsible for your council's or authority's register of members' interests, to enter in the register.

## What must I do about registering my personal interests?

Under your council's code of conduct you must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity – that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships.**'<sup>4</sup>

<sup>3</sup> <https://www.gov.uk/government/publications/illustrative-text-for-local-code-of-conduct--2>

<sup>4</sup> <http://www.public-standards.gov.uk/about-us/what-we-do/the-seven-principles/>

Your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council's or authority's register of members' interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.

All sitting councillors need to register their declarable interests. Any suggestion that you should tell the monitoring officer about your pecuniary interests only in the immediate aftermath of your being elected is wholly incompatible with this duty, with which you must comply.

If you have a disclosable pecuniary interest which is not recorded in the register and which relates to any business that is or will be considered at a meeting where you are present, you must disclose<sup>5</sup> this to the meeting and tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must tell the monitoring officer within 28 days of disclosing the interest. For this purpose a meeting includes any meeting of your council or authority, of its executive or any committee of the executive, and of any committee, sub-committee, joint committee or joint sub-committee of your authority.

If you have a disclosable pecuniary interest which is not shown in the register and relates to any business on which you are acting alone, you must, within 28 days of becoming aware of this, tell the monitoring officer about it, if you have not already done so, so that it can be added to the register. You must also stop dealing with the matter as soon as you become aware of having a disclosable pecuniary interest relating to the business.

When you are first elected, co-opted, or appointed a member to your council or authority, you must, within 28 days of becoming a member, tell the monitoring officer who is responsible for your council's or authority's register of members' interests about your disclosable pecuniary interests. If you are re-elected, re-co-opted, or reappointed a member, you need to tell the monitoring officer about only those disclosable pecuniary interests that are not already recorded in the register.

## What are pecuniary interests?

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property).

---

<sup>5</sup> If the interest is a sensitive interest you should disclose merely the fact that you have such a disclosable pecuniary interest, rather than the interest. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

## Do I have any disclosable pecuniary interests?

You have a disclosable pecuniary interest if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see annex). Interests or your spouse or civil partner, following the approach of the rules under the 1972 and 1989 Acts, are included to ensure that the public can have confidence that councillors are putting the public interest first and not benefiting the financial affairs of themselves or their spouse or civil partner from which the councillor would stand to gain. For this purpose your spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

## Does my spouse's or civil partner's name need to appear on the register of interests?

No. For the purposes of the register, an interest of your spouse or civil partner, which is listed in the national rules, is **your** disclosable pecuniary interest. Whilst the detailed format of the register of members' interests is for your council to decide, there is no requirement to differentiate your disclosable pecuniary interests between those which relate to you personally and those that relate to your spouse or civil partner.

## Does my signature need to be published online? Won't this put me at risk of identity theft?

There is no legal requirement for the personal signatures of councillors to be published online.

## Who can see the register of members' interests?

Except for parish councils, a council's or authority's register of members' interests must be available for inspection in the local area, and must be published on the council's or authority's website.

For parish councils, the monitoring officer who is responsible for the council's register of members' interests must arrange for the parish council's register of members' interests to be available for inspection in the district or borough, and must be published on the district or borough council's website.

Where the parish council has its own website, its register of members' interests must also be published on that website.

This is in line with the Government's policies of transparency and accountability, ensuring that the public have ready access to publicly available information.

## Is there any scope for withholding information on the published register?

Copies of the register of members' interests which are available for inspection or published must not include details of a member's sensitive interest, other than stating that the member has an interest the details of which are withheld. A sensitive interest is one which the member and the monitoring officer, who is responsible for the register of members' interests, consider that disclosure of its details could lead to the member, or a person connected to the member, being subject to violence or intimidation.

## When is information about my interests removed from my council's register of members' interests?

If you cease to have an interest, that interest can be removed from the register. If you cease to be a member of the authority, all of your interests can be removed from the register.

## What does having a disclosable pecuniary interest stop me doing?

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not:

- participate in any discussion of the business at the meeting, or if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business, or
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

In certain circumstances you can request a dispensation from these prohibitions.

## Where these prohibitions apply, do I also have to leave the room?

Where your council's or authority's standing orders require this, you must leave the room. Even where there are no such standing orders, you must leave the room if you consider your continued presence is incompatible with your council's code of conduct or the Seven Principles of Public Life.

## Do I need a dispensation to take part in the business of setting council tax or a precept?

Any payment of, or liability to pay, council tax does not create a disclosable pecuniary interest as defined in the national rules; hence being a council tax payer does not mean that you need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support.

If you are a homeowner or tenant in the area of your council you will have registered, in accordance with the national rules, that beneficial interest in land. However, this disclosable pecuniary interest is not a disclosable pecuniary interest in the matter of setting the council tax or precept since decisions on the council tax or precept do not materially affect your interest in the land. For example, it does not materially affect the value of your home, your prospects of selling that home, or how you might use or enjoy that land.

Accordingly, you will not need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax support, which is in any event a decision affecting the generality of the public in the area of your council, rather than you as an individual.

## When and how can I apply for a dispensation?

The rules allow your council or authority in certain circumstances to grant a dispensation to permit a member to take part in the business of the authority even if the member has a disclosable pecuniary interest relating to that business. These circumstances are where the council or authority considers that:

- without the dispensation so great a proportion of the council or authority would be prohibited from participating in that business as to impede the council's or authority's transaction of that business,
- without the dispensation the representation of different political groups dealing with that business would be so upset as to alter the likely outcome of any vote,
- the granting of the dispensation is in the interests of people living in the council's or authority's area,
- without the dispensation each member of the council's executive would be prohibited from participating in the business, or
- it is otherwise appropriate to grant a dispensation.

If you would like your council or authority to grant you a dispensation, you must make a written request to the officer responsible for handling such requests in the case of your council or authority.

## What happens if I don't follow the rules on disclosable pecuniary interests?

It is a criminal offence if, without a reasonable excuse, you fail to tell the monitoring officer about your disclosable pecuniary interests, either for inclusion on the register if you are a newly elected, co-opted or appointed member, or to update the register if you are re-elected or re-appointed, or when you become aware of a disclosable pecuniary interest which is not recorded in the register but which relates to any matter;

- that will be or is being considered at a meeting where you are present, or
- on which you are acting alone.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of your authority where that business involves a disclosable pecuniary interest. It is also a criminal offence to continue working on a matter which can be discharged by a single member and in which you have a disclosable pecuniary interest.

If you are found guilty of such a criminal offence, you can be fined up to £5,000 and disqualified from holding office as a councillor for up to five years.

## Where can I look at the national rules on pecuniary interests?

The national rules about pecuniary interests are set out in Chapter 7 of the Localism Act 2011, which is available on the internet here:

<http://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

and in the secondary legislation made under the Act, in particular The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 which can be found here:

<http://www.legislation.gov.uk/uksi/2012/1464/contents/made>

# Annex A

## Description of Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your **disclosable pecuniary interests** under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

- Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.
- Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992. The relevant period is the 12 months ending on the day when you tell the monitoring officer about your disclosable pecuniary interests following your election or re-election, or when you became aware you had a disclosable pecuniary interest relating to a matter on which you were acting alone.
- Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority –
  - under which goods or services are to be provided or works are to be executed; and
  - which has not been fully discharged.
- Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.
- Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.
- Any tenancy where (to your knowledge) –
  - the landlord is your council or authority; and
  - the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

- Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where –
  - (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
  - (b) either –
    - the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - 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 you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

This page is intentionally left blank

**Code of Conduct Complaints - Status Report**

**Complaints received and progressed under new arrangements**

2012	Cases received	Cases open (cumulative)	Assessed investigation	Assessed no further action	Assessed alternative resolution/complaint withdrawn	Pending assessment	Cases closed
May	3	3	0	3	0	0	0
June	5	8	1	4	0	0	0
July	5	13	0	5	0	0	0
August	3	16	0	3	0	0	0
September	0	10	0	0	0	0	6
October	4	13	0	4	0	0	1
November	3	9	0	3	0	0	7
December	2	11	0	2	0	0	0
<b>2013</b>							
January	5	13	0	4	1*	0	3
February	1	12	0	1	0	0	2
March	1	4	0	1	0	0	9
April	2	6	0	1	1**	0	0
May	2	5	0	1	1***	0	3
June	0	4	0	0	0	0	1
<b>Totals</b>	36	n/a	1	32	3	0	32

Appeals received
0
0
0
0
3 (not upheld)
1 (not upheld)
0
0
4 (not upheld)
1 (not upheld)
0
1 (not upheld)
1 (pending)
0
11

\*request by complainant for anonymity refused – complaint withdrawn  
 \*\* clarification not supplied within time limit  
 \*\*\*withdrawn following informal resolution prior to assessment

## Investigations open at 1 July 2013 - being dealt with under new arrangements

Case reference	Date of Assessment hearing	Progress	Estimated date of final report
WC 03/12	23/02/12	Determination Sub-Committee pending – date to be confirmed	N/A

## Complaints referred for investigation since 1 July 2012

Case reference	Date of Assessment	Progress	Estimated date of final report
WC 14/12	05/09/12	IO's findings of no breach accepted - review requested by complainant. Review Sub-Committee 14/05/2013 – appeal not upheld	N/A

**Wiltshire Council**

**Standards Committee**

**10 July 2013**

**Cabinet**

**23 July 2013**

---

**Subject: Draft Annual Governance Statement 2012-13**

**Cabinet member: Councillor Dick Tonge**  
**Finance, performance, risk, procurement and welfare reform**

**Key decision: No**

---

## **Executive Summary**

1. The Council is required, as part of its annual review of the effectiveness of its governance arrangements, to produce an Annual Governance Statement (AGS) for 2012-13. This will form part of the Annual Statement of Accounts for 2012-13.
2. Section C of the AGS describes the Council's governance framework for the relevant period. The final version will need to reflect the position up to the date of approval and signature in September 2013.
3. Section D provides a review of the effectiveness of the Council's governance framework.
4. The Council's internal auditors, SWAP (South West Audit Partnership) have given an overall audit opinion of reasonable assurance on the adequacy and effective operation of the Council's control environment in 2012-13. This is supported by the finding of the Council's external auditors, KPMG, that the Council's organisational control environment is effective overall.
5. The following have been identified as significant governance issues at this stage:
  - Safeguarding Children and Young People
  - Managing significant reductions in Government funding and changes in legislation
  - Information security
6. Details of these issues are set out at paragraph 83 in Section E of the draft AGS.

**Proposal**

Cabinet and the Standards Committee are, therefore, asked:

- a. to consider the draft AGS as set out in Appendix 1 and make any amendments or observations on the content as they deem appropriate;
- b. to note that the draft AGS will be revised in the light of any comments by Cabinet, the Standards Committee, and ongoing work by the Governance Assurance Group before final consideration by the Audit Committee on 4 September 2013 and publication by 30 September 2013.

**Reason for Proposal**

To prepare the AGS 2012-13 for publication in accordance with the requirements of the Audit and Accounts Regulations 2011.

**Ian Gibbons**  
**Solicitor to the Council and Monitoring Officer**

**Draft Annual Governance Statement 2012-13**

**Purpose of the report**

1. To ask Cabinet and the Standards Committee to consider a draft Annual Governance Statement for 2012-13 for comment before final approval is sought from the Audit Committee on 4 September 2013.

**Background**

2. The Council is required, as part of its annual review of the effectiveness of its governance arrangements, to produce an Annual Governance Statement (AGS) for 2012-13. This will be signed by the Leader of the Council and the Corporate Directors after final approval by the Audit Committee on 4 September 2013. The AGS will form part of the Annual Statement of Accounts for 2012-13.
3. Based on advice from the Chartered Institute of Public Finance and Accountancy (CIPFA), the AGS should include:
  - an acknowledgement of responsibility for ensuring there is a sound system of governance, incorporating the system of internal control;
  - an indication of the level of assurance that the systems and processes that comprise the Council's governance arrangements can provide;
  - a brief description of the key elements of the governance framework, including reference to group activities where those activities are significant;
  - a brief description of the process that has been applied in maintaining and reviewing the effectiveness of the governance arrangements;
  - an outline of the actions taken, or proposed, to deal with significant governance issues, including an agreed action plan.
4. The AGS for Wiltshire Council should demonstrate how the Council is meeting the six principles of good governance adopted in its Code of Corporate Governance. These principles are:
  - focusing on the purpose of the Council and on outcomes for the community and creating and implementing a vision for the

local area;

- councillors and officers working together to achieve a common purpose with clearly defined functions and roles;
  - promoting values for the council and demonstrating the values of good governance through upholding high standards of conduct and behaviour;
  - taking informed, risk-based and transparent decisions which are subject to effective scrutiny and managing risk;
  - developing the capacity and capability of councillors and officers to be effective;
  - engaging with local people and other stakeholders to ensure robust accountability.
5. The AGS is primarily retrospective. It reports on the assurance framework and measures in place for the financial year 2012-13, but must take account of any significant issues of governance up to the date of publication in September 2013. The AGS should outline the actions taken or proposed to address any significant governance issues identified.
  6. The AGS is drafted by members of the Governance Assurance Group, which comprises senior officers who have lead roles in corporate governance and a member representative from the Audit Committee.
  7. The evidence for the AGS comes from a variety of sources, including assurance statements from service directors, relevant lead officers within the organisation, internal and external auditors and inspection agencies.

#### **Draft AGS - Content**

8. A copy of the latest draft AGS is attached at Appendix 1.
9. The draft has been amended as shown tracked to reflect the comments of the Audit Committee on 18 June 2013. An extract of the Audit Committee's minutes is attached at Appendix 2.
10. The draft reflects the elements described in paragraph 3 of this report and has regard to revised guidance from CIPFA. The draft is based on work undertaken to date and will be revised in the light of further work by the Governance Assurance Group and any observations of the Cabinet, the Standards Committee and the Council's external auditors, KPMG.
11. Section C of the AGS describes the Council's governance framework for the relevant period. The final version will need to reflect the position up to the date of approval and signature in September 2013.

12. Section D provides a review of the effectiveness of the Council's governance framework. This section has been structured to reflect the key governance principles set out in the Council's Code of Corporate Governance.
13. The levels of assurance obtained from the range of audits completed during the year has led the Council's internal auditors, SWAP (South west Audit Partnership), to the overall audit opinion that for 2012-13 it is able to give reasonable assurance on the adequacy and effective operation of the Council's overall control environment. KPMG's interim audit report 2012-13 supports this in its finding that the Council's organisational control environment is effective overall.
14. The Governance Assurance Group has obtained assurance statements from directors in relation to their services. These are being reviewed and any issues which impact upon the Council's governance arrangements will be covered in the AGS.
15. Section E of the draft AGS requires the Council to identify any significant internal control issues affecting the Council during the relevant period.
16. CIPFA guidance suggests that an internal control issue is to be regarded as significant if:
  - the issue has seriously prejudiced or prevented achievement of a principal objective;
  - the issue has resulted in a need to seek additional funding to allow it to be resolved, or has resulted in significant diversion of resources from another aspect of the business;
  - the issue has led to a material impact on the accounts;
  - the audit committee, or equivalent, has advised that it should be considered significant for this purpose;
  - the Head of Internal Audit has reported on it as significant, for this purpose, in the annual opinion on the internal control environment;
  - the issue, or its impact, has attracted significant public interest or has seriously damaged the reputation of the organisation;
  - the issue has resulted in formal action being taken by the Chief Financial Officer and/or the Monitoring Officer.
17. The following have been identified as significant governance issues at this stage:
  - Safeguarding Children and Young People

- Managing significant reductions in Government funding and changes in legislation
- Information security

18. Details of these issues are set out at paragraph 83 of the draft AGS.

19. The Assurance Group will continue to review the various sources of assurance and any variation or further significant governance issues that are identified will be reported to the meeting of Audit Committee in September for final consideration and approval.

20. KPMG will be consulted on the draft AGS and their comments will be taken into account in the presentation of the final version to the Audit Committee.

### **Financial implications**

21. There are no financial implications arising directly from the issues covered in this report.

### **Risk Assessment**

22. The production of the AGS is a statutory requirement. Ongoing review of the effectiveness of the Council's governance arrangements is an important part of the Council's risk management strategy.

### **Environmental Impact**

23. There is no environmental impact regarding the proposals in this report.

### **Equality and Diversity Impact**

24. There are no equality and diversity issues arising from this report.

### **Reasons for the Proposal**

25. To prepare the AGS 2012-13 for publication in accordance with the requirements of the Audit and Accounts Regulations.

### **Proposal**

26. Cabinet and the Standards Committee are, therefore, asked:

- a. to consider the draft AGS as set out in Appendix 1 and make any amendments or observations on the content;

- b. to note that the draft AGS will be revised in the light of any comments by Cabinet, the Standards Committee, and ongoing work by the Governance Assurance Group before final consideration by the Audit Committee on 4 September 2013 and publication by 30 September 2013.

**Ian Gibbons**  
**Solicitor to the Council and Monitoring Officer**

Report Author: Ian Gibbons

---

**Unpublished documents relied upon in the production of this report:**

None.

Appendices:

Appendix 1 - draft Annual Governance Statement 2012-13

Appendix 2 - extract from draft minutes of Audit Committee 20 June 2012

This page is intentionally left blank

DRAFT

# Annual Governance Statement

2012-13



# Contents

Page(s)

## Section A

Scope of Responsibility

## Section B

The Purpose of the Governance Framework

## Section C

The Governance Framework

Purpose and Planning

Policy and Decision-Making Framework

Wiltshire Pension Fund

Regulation of Business

Management of Resources, Performance and Risk

Internal Audit

External Audit and Inspections

Directors' Assurance Statements

Monitoring Officer

## Section D

Review of Effectiveness

Focus on the purpose of the authority and on outcomes for the community, creating and implementing a vision for the local area

Engaging with local people and other stakeholders to ensure robust public accountability

Ensuring that councillors and officers work together to achieve a common purpose with clearly defined functions and roles

Promoting high standards of conduct and behaviour, and establishing and articulating the authority's values to members, staff, the public and other stakeholders

Taking informed, risk based and transparent decisions which are subject to effective scrutiny

Developing the capacity of councillors and officers to be effective in their roles

## Section E

Significant Governance Issues

## A. Scope of Responsibility

1. Wiltshire Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively. The Council also has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
2. In discharging this overall responsibility, the Council is also responsible for putting in place proper arrangements for the governance of its affairs, including the management of risk, and facilitating the effective exercise of its functions.

## B. The Purpose of the Governance Framework

3. The governance framework comprises the systems and processes, and culture and values, by which the Council is directed and controlled and the activities through which the Council accounts to, engages with and leads the community. It enables the Council to monitor the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate, cost effective services.
4. The assurance framework and the system of internal control are significant parts of that framework. They are designed to manage risk to a reasonable level. They cannot eliminate all risk of failure to achieve policies, aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness. The assurance framework and the system of internal control are based on an ongoing process that is designed to:
  - identify and prioritise the risks to the achievement of the Council's policies, aims and objectives;
  - evaluate the likelihood of those risks being realised;
  - assess the impact of the risks if they are realised;
  - manage the risks efficiently, effectively and economically.
5. The assurance framework also provides a mechanism for monitoring and implementing a system of continuous governance improvement.
6. The governance framework has been in place at the Council for the year ended 31 March 2013 and up to the date of approval of the Statement of Accounts for 2012/13.

## C. The Governance Framework

7. The Council's governance framework comprises a broad range of strategic and operational controls, which work together to ensure the sound operation of the Council. The key elements are summarised below.
8. Documents referred to are available from the Council or may be viewed on the Council's website ([www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)).
9. The review of the Council's governance arrangements, through the Annual Governance Statement, has taken account of best practice identified in the CIPFA/Solace guidance Delivering Good Governance in Local Government, Addendum 2012.

### Purpose and Planning

10. The Council's vision and goals are set out in its 4 year Business Plan, which was adopted by the Council on 22 February 2011. The Council's vision is to create stronger and more resilient communities and in support of this it has the following goals:
  - provide high quality, low cost customer focused services;
  - ensure local, open and honest decision making;
  - working with our partners to support Wiltshire's communities.
11. The Business Plan is supported by a Financial Plan, which demonstrates how it will be funded. The management of the Council's strategic risks helps achieve the Council's objectives.

### Policy and Decision-Making Framework

12. The Council's Constitution provides the framework within which the Council operates. It sets out how decisions are made and the procedures which must be followed to ensure that these are efficient, effective, transparent and accountable.
13. The Constitution defines the role and responsibilities of the key bodies in the decision-making process - the Council, Cabinet, and Committees, including the Strategic Planning Committee, Area Planning Committees, Licensing Committee, Overview and Scrutiny Committees, Standards Committee, Audit Committee, Staffing Policy Committee, Officer Appointments Committee and Area Boards.
14. The council has established a Health and Well-being Board in accordance with requirements under the Health and Social Care Act 2012. The Board is a committee of the council with a strategic leadership role in promoting integrated working between the council and the NHS, and in relation to public health services. It is the key partnership and focal point for strategic decision making about the health and well-being needs of the local community.

15. The council has also established the Wiltshire Police and Crime Panel to review and scrutinise decisions of the Police and Crime Commissioner. The Panel is a joint committee with Swindon Borough Council.
16. The Constitution is reviewed regularly by the Monitoring Officer and the Standards Committee through its Constitution Focus Group to ensure that it reflects changes in the law and remains fit for purpose.
17. The Leader and Cabinet are responsible for discharging the executive functions of the Council, within the budget and policy framework set by the Council, and some of this is delegated to Area Boards.
18. The Council publishes a Forward Work Plan once a month giving details of all matters anticipated to be considered by the Cabinet over the following 4 months, including items which constitute a key decision<sup>1</sup>
19. Schemes of Delegation are in place for Cabinet Committees, Cabinet Members and Officers to facilitate efficient decision-making. The Leader has established two Cabinet Committees - the Cabinet Capital Assets Committee and the Cabinet Business Relief Committee.
20. The Council has established 18 area committees known as Area Boards. Each area board exercises local decision making under powers delegated by the Leader.
21. The Council's overview and scrutiny arrangements consist of a management committee and 3 select committees covering Children's Services, Environment, and Health. These committees establish standing and ad hoc task groups to undertake detailed reviews. Rapid scrutiny exercises also provide opportunities where there are time constraints. Scrutiny member representatives can also be appointed to boards of major projects.
22. These arrangements serve to hold the Cabinet, its Committees, individual Cabinet Members and officers to public account for their executive policies, decisions and actions.
23. The Standards Committee is responsible for:
  - promoting and maintaining high standards of conduct by Members and Officers across the Council;
  - determination of complaints under the Members' Code of Conduct;
  - oversight of the Constitution, overview of corporate complaints handling and Ombudsman investigations, and the whistle blowing policy.

---

<sup>1</sup> 'Key decisions' are defined in Paragraph 9 of Part 1 of the Constitution. They include any decision that would result in the closure of an amenity or total withdrawal of a service; any restriction of service greater than 5%; any action incurring expenditure or producing savings greater than 20% of a budget service area; any decision involving expenditure of £ 500,000 or more, (subject to certain exceptions), any proposal to change the policy framework; any proposal that would have a significant effect on communities in an area comprising two or more electoral divisions.

24. The Localism Act 2011 introduced a new standards regime, which came into effect on 1 July 2012. As part of this the council published a new code of conduct for members and established arrangements for dealing with complaints under the code for Wiltshire unitary and parish councillors, including the appointment of 3 independent persons in accordance with the new statutory requirements.

25. The Audit Committee is responsible for:

- monitoring and reviewing the Council's arrangements for corporate governance, risk management and internal control;
- reviewing the Council's financial management arrangements and approving the annual Statement of Accounts;
- focusing audit resources
- monitoring the effectiveness of the internal and external audit functions;
- monitoring the implementation of agreed management actions arising from audit reports.

#### Wiltshire Pension Fund

26. The Wiltshire Pension Fund is overseen by the Wiltshire Pension Fund Committee. This Committee has its delegated power from the full Council, rather than the Executive (Cabinet), so as to avoid any conflict of interest (e.g. in relation to the setting of employer contributions).

27. This Committee is responsible for all aspects of the fund, including:

- the maintenance of the fund;
- preparation and maintenance of policy, including funding and investment policy;
- management and investment of the fund;
- appointment and review of investment managers;
- monitoring of the audit process.

28. The Wiltshire Pension Fund Committee exercises its responsibilities in relation to investment management when it sets investment policy and appoints/monitors external investment managers.

#### Regulation of Business

29. The Constitution contains detailed rules and procedures which regulate the conduct of the Council's business. These include:

- Council Rules of Procedure
- Budget and Policy Framework Procedure
- Financial Regulations and Procedure Rules
- Procurement and Contract Rules

- Members' Code of Conduct
- Officers' Code of Conduct
- Corporate Complaints Procedure

30. In April 2012 the Council completed a programme of work which resulted in the successful transfer and integration of the Public Health function in Wiltshire. A robust governance framework for Public Health was agreed and transferred.

31. The statutory officers - the Head of Paid Service (Service Director, HR and Organisational Development), the Monitoring Officer (Solicitor to the Council) and the Chief Finance Officer have a key role in monitoring and ensuring compliance with the Council's regulatory framework and the law. The statutory officers are supported in this role by the Council's HR, legal and democratic services, finance, governance and procurement teams, and also by the internal audit service.

[This will be reviewed after full council in July when council will consider cabinet's recommendation to designate the corporate directors as head of paid service on a rotational basis].

32. Internal Audit services in Wiltshire are provided through a partnership with South West Audit Partnership.

33. The following bodies have an important role in ensuring compliance:

- Audit Committee
- Overview and Scrutiny Committees and Task Groups
- Standards Committee
- Internal Audit (this function was provided in-house until 1 November 2011 after which it has been provided externally by SWAP)
- External Audit and Inspection Agencies.

34. The Council has established a Governance Assurance Group whose membership is composed of senior officers with lead responsibility for key areas of governance and assurance, together with an elected member who is the vice-chair of the Audit Committee. Other officers and members attend by invitation to provide the Group with information about issues on which it is seeking assurance. Officers can also bring any concerns about the Council's governance arrangements forward to the Group for consideration.

35. The Governance Assurance Group meets monthly and has a forward work plan. It is responsible for gathering evidence for and drafting the Annual Governance Statement. It identifies any potential significant governance issues throughout the year, and seeks assurance on the effectiveness of measures to address these. It has a key role in promoting and supporting sound governance across the organisation and reports as required to the Corporate Leadership Team.<sup>2</sup>

---

<sup>2</sup> The Corporate Leadership Team comprises the three Corporate Directors, supported by the Chief Finance Officer / Section 151 Officer, Solicitor to the Council / Monitoring Officer, Service Director HR and Organisational Development and the Director of Communications

## Management of Resources, Performance and Risk

### Financial management

36. Financial management and reporting is facilitated by:

- Regular reports to Cabinet on the Council's Revenue Budget and Capital Programme;
- Regular review by the Corporate Leadership Team;
- Regular consideration of these reports by the Budget and Performance Task Group;
- Budget monitoring by Service Managers;
- Compliance with the Council's Budgetary and Policy Framework, Financial Regulations and Financial Procedure Rules;
- Compliance with external requirements, standards and guidance;
- Publication of Statement of Accounts;
- Overseeing role of the Audit Committee.

37. The Council's financial management arrangements are consistent with the governance requirements of the CIPFA Statement on the Role of the Chief Financial Officer in Local Government, issued in 2010.

### Performance and Risk Management Reporting

38. The Council's Business Plan sets out how the Council will:

- Protect our most vulnerable citizens by investing in their services;
- Invest in the future of Wiltshire by enhancing key service areas;
- Keep the council tax low;
- Make savings to cover the cut in government funding and projected investments.

39. The Business Plan is supported by the Risk Management Strategy. This is reviewed annually to ensure that risk management arrangements remain effective.

40. The Corporate Leadership Team receive quarterly reports detailing the risks that impact upon the strategic objectives of the Council. The Audit Committee receives reports every six months on the effectiveness of the risk management processes within the Council and its partnerships. Exception reports are submitted as and when required.

41. Risks are identified and monitored by service areas. Risks that are deemed significant are referred to the Corporate Risk Management Group (CRMG) for challenge and review. Reports are issued on the significant risks through the Council's reporting arrangements. Training on Risk Management is delivered to Members annually, including the development of specific training for staff involved in risk management arrangements as a result of their work.

42. The risks associated with major projects are managed through project management arrangements with regular reporting to the relevant boards and member bodies.
43. The Council's Business Continuity Policy provides a framework to maintain and develop business continuity arrangements at both corporate and service levels. It sets out the responsibilities of different management levels and groups as part of this process.

#### Internal Audit

44. The main role of Internal Audit is to provide an independent and objective opinion on the Council's control environment.
45. Internal Audit has the following additional responsibilities:
  - providing support to the Chief Finance Officer in meeting his responsibilities under Section 151 of the Local Government Act 1972, to make arrangements for the proper administration of the Council's financial affairs;
  - investigating any allegations of fraud, corruption or impropriety;
  - advising on the internal control implications of proposed new systems and procedures.
46. The annual Internal Audit Plan is based on an assessment of risk areas, using the most up to date sources of risk information, in particular the Council's Corporate and Service Risk Registers. The Plan is agreed with Corporate Directors, and presented to the Audit Committee for approval. The Committee receives reports of progress against the plan throughout the year. The Internal Audit Annual Report summarises the results and conclusions of the audit work throughout the year, and provides an audit opinion on the internal control environment for the Council as a whole.

#### External Audit and Inspections

47. The Council is subject to audit by its external auditors, KPMG LLP, specifically in relation to the Council's financial statements and achievement of value for money (VFM). It is also subject to reviews by external inspection agencies, OFSTED, and the Care Quality Commission (CQC). The outcomes of external audit work and inspections are used to help strengthen and improve the Council's internal control environment and help secure continuous improvement.

#### Directors' Assurance Statements

48. Service directors' assurance statements have been reviewed by the Governance Assurance Group. Any significant governance issues identified are included in Section E.

## Monitoring Officer

49. The Monitoring Officer has not made any adverse findings in the course of the exercise of his statutory responsibilities.

### D. Review of Effectiveness

50. The Council has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework, including the system of internal control. The review of effectiveness is informed by the work of the executive managers within the Council who have responsibility for the development and maintenance of the governance environment, the Council's internal audit function, and also by reports of external auditors and other review agencies and inspectorates.

51. The key principles of corporate governance are set out in the Council's Code of Corporate Governance as follows:

- Focusing on the purpose of the Council and on outcomes for the community, creating and implementing a vision for the local area;
- Engaging with local people and other stakeholders to ensure robust public accountability;
- Ensuring that members and officers work together to achieve a common purpose with clearly defined functions and roles;
- Promoting high standards of conduct and behaviour, and establishing and articulating the Council's values to members, staff, the public and other stakeholders;
- Taking informed, risk based and transparent decisions which are subject to effective scrutiny; and
- Developing the capacity of members and officers to be effective in their roles.

52. The effectiveness of the Council's assurance framework and system of internal control is assessed against these six principles.

### **Focus on the purpose of the Council and on outcomes for the community, creating and implementing a vision for the local area**

53. The Council's vision and goals are set out in its Business Plan 2011- 2015. This is consistent with the long term priorities that are set out in the Community Plan 2011-2026.

## **Engaging with local people and other stakeholders to ensure robust public accountability**

54. The development of Wiltshire's area boards has played a key role in ensuring robust public accountability and engagement. The governance arrangements for the area boards are set out in the Council's Constitution. By the end of 2012 over 50% of items on Area Board agendas were resulting in local decisions.
55. During 2012/13 the Council introduced new ways of monitoring Area Board outcomes, including clearer reporting on outcomes from the JSA community conferences held in 2012, enhanced use of video reporting and grants evaluation and the establishment of the Area Boards achievements blog.

## **Ensuring that councillors and officers work together to achieve a common purpose with clearly defined functions and roles**

56. The Constitution sets out clearly the roles and responsibilities of Councillors and Officers in the decision making process. This includes schemes of delegation which are currently under review as part of the ongoing review of the Constitution. Guidance and training for officers is available from Legal Services on the recording of decisions made by officers under new requirements introduced in September 2012.
57. The Council has adopted a Councillor and Officer Relations Protocol which:
  - outlines the essential elements of the relationship between councillors and officers;
  - promotes the highest standards of conduct;
  - clarifies roles and responsibilities;
  - ensures consistency with the law, codes of conduct and the Council's values and practices; and
  - identifies ways of dealing with concerns by councillors or officers.
58. This Protocol has been reviewed to reflect the new Code of Conduct for Members, which came into effect on 1 July 2012.

## **Promoting high standards of conduct and behaviour, and establishing and articulating the authority's values to members, staff, the public and other stakeholders**

59. All staff are required to meet high standards of ethical conduct under the Officers' Code of Conduct.
60. The Officers' Code of Conduct was significantly strengthened by the introduction in the Spring of 2012 of the Behaviours Framework. This framework clearly articulates the behaviours expected of Council Officers. In 2012/13 the Council's staff appraisal procedure was amended to include a requirement for performance to be entered on

to a central database (SAP) and for performance to be formally assessed against the Behaviours Framework.

61. The Council adopted a new code of conduct for Councillors and arrangements for dealing with member misconduct complaints under the requirements of the Localism Act 2011 which came into effect on 1 July 2012. The effectiveness of the code of conduct will be reviewed by the Standards Committee in the autumn of 2013.
62. Following the election of the Police and Crime Commissioner in November 2012, the Council has put in place a Police and Crime Panel and adopted a procedure for receiving and investigating complaints about the Police and Crime Commissioner and the Deputy Police and Crime Commissioner for Wiltshire.
63. The Council's Governance Service is responsible for customer complaints, access to information legislation, operation of the agreed arrangements under the new standards regime, and the promotion of good governance within the Council and with key partners, including the town and parish councils of Wiltshire. This helps to ensure that robust governance arrangements are supported across the Council.

#### Internal Audit

64. Internal Audit represents an important element of the Council's internal control environment, and to be effective it must work in accordance with the Code of Practice for Internal Audit in Local Government, which lays down the mandatory professional standards for the internal audit of local authorities.
65. The Internal Audit Annual Report and Opinion 2012 -13 summarises the results and conclusions of the audit work throughout the year, and provides an independent audit opinion on the internal control environment for the Council as a whole. The Council's internal auditors, SWAP, have given an overall audit opinion of reasonable assurance on the adequacy and effective operation of the Council's control environment for 2012-13.

#### External Audit

[This will be updated when the report to those charged with governance for 2012/13 is available]

66. The latest report to those charged with governance, issued by KPMG LLP in respect of Wiltshire Council for 2011/2012, was presented to the Audit Committee in September 2012. The report summarised the key issues arising from the audit of Wiltshire Council for the year ended 31 March 2012 and an assessment of the Council's arrangements to secure value for money in its use of resources.

67. The report highlighted the key message as follows:

- KPMG LLP issued an unqualified opinion on the accounts.
- The Council had addressed critical accounting matters appropriately. This included the implementation of International Financial Reporting Standards (IFRS).
- A number of adjustments to the draft financial statements were identified. However, these amendments related to technical accounting adjustments and did not affect the 'cash' surplus position of the Council. These were all adjusted as required.
- KPMG LLP confirmed that the Council continued to evidence a strong financial reporting process. Additionally the Council had implemented all the recommendations in the report to those charged with governance for 2010/2011 in relation to the financial statements.
- KPMG LLP concluded that the Council had made proper arrangements to secure economy, efficiency and effectiveness in its use of resources.

68. KPMG LLP's report to those charged with governance for 2012/2013 will be tabled at the meeting of the Audit Committee on 4 September 2013.

**Taking informed, risk based and transparent decisions which are subject to effective scrutiny**

69. Cabinet Members and Officers exercising delegated powers are required to take decisions in accordance with their respective schemes of delegation. The Leader's protocol for decision-making by Cabinet Members ensures transparency by requiring publication of the intention to make a decision on 5 clear days' notice and the final decision.

70. In April 2012 the Council amended its constitutional Procurement and Contract Rules. This amendment resulted in strengthened arrangements for the governance of procurement, including a robust check and challenge system.

71. The Partnership Protocol and Register, now in operation for two years, captures the Council's partnerships arrangements. At present there are 42 identified partnerships in operation. Each partnership has an identified owner within the Council and has been reviewed to identify the risk status. The details of each partnership are available via the electronic Partnerships Register on the Council's intranet. These arrangements are being reviewed to ensure that all partnerships are appropriately captured on the register.

72. Since implementing the recommendations of a major review in May 2012 to increase the effectiveness of the Overview and Scrutiny function, a single work programme has been developed in discussion with Cabinet members and senior management which focused on Council priorities, customer needs, intervention and outcomes. It aims for early dialogue enabling most of its work to support policy

development and pre-decision scrutiny in the Council.

73. The work undertaken by the Audit Committee this year has included:

- review and approval of the Annual Governance Statement and Statement of Accounts for 2011-12 ;
- review of the work and findings of Internal Audit, including the Annual Report and audit opinion on the control environment;
- review of the Council's risk management arrangements;
- review of the work and findings of external audit, including the Annual Audit Letter and Report to Those Charged with Governance.

74. Work on the Council's Business Continuity Management is a continuous development process designed to achieve resilience and the best possible outcomes for services and communities. A strategic and tactical training day was held in January 2013 for all Corporate Directors, Service Directors and Heads of Service. The training familiarised senior managers with the new major incident and recovery plans, increased resilience amongst managers and offered a practical exercise to put knowledge into practice. This training also built on the resilience arrangements and training that were put in place as a result of the Olympic and Jubilee celebrations during the summer of 2012.

75. The successful transfer of the Public Health team into the authority in April 2013 offers an opportunity to strengthen our response to both business continuity and emergency planning - to learn from their experience and expertise and to ensure the Council is able to respond to Public Health emergencies. We are therefore reviewing what form these services might take and how they may be delivered in the future to ensure continued robust resilience.

### **Developing the capacity of councillors and officers to be effective in their roles**

76. The Council is committed to the ongoing development of its Councillors and recognises the importance of building up their capacity and effectiveness.

77. The Council's Councillor Development Policy:

- Establishes Councillors' individual training needs and protocols and allocates budget according to the Council's priorities;
- Ensures equality of access to funds and training events;
- Evaluates the effectiveness of councillor development annually to inform the allocation of funding for future years.

78. Wiltshire Council was externally assessed by South West Councils on 9 August 2011 and was subsequently awarded Charter Status for Councillor Development. This is recognition that the Council has achieved best practice in the way it provides learning and development opportunities for its elected councillors. The accreditation lasts for three years. The Council hopes to apply for Charter Plus Status after the new Council has been elected in 2013.
79. All of this work will be updated and refreshed following the detailed induction programme for the new intake of councilors at the elections in 2013.
80. A refreshed People Strategy for 2012 – 2015 has been developed and launched to support delivery of the business plan and the transformation programme. This includes embedding the behaviours framework and developing the culture of the council. An action plan will support the delivery of the People Strategy, which is critical to enabling the Council to create the capacity it needs to work in different ways and successfully meet current and future challenges.

#### Housing Landlord Service Improvement Plan

81. Wiltshire Council's housing services have engaged in a range of improvement projects which will modernise the services and address the issues raised in recent audits. The improvements include:
- Four new maintenance and repairs contracts delivering significant additional expenditure in the housing stock;
  - A draft Asset Management Strategy and Business Plan;
  - The implementation of a new housing IT system with improved work flows and an electronic document filing facility;
  - A restructure of the Housing Management function to deliver a modern housing service;
  - Increased resources into tenancy engagement and participation including a new housing board and tenant scrutiny.
82. The improvement programme will continue through 2013. The programme of work is governed by a programme board which considers all risks and issues at its fortnightly meeting.

## E) Significant Governance Issues

83. The following have been identified as significant governance issues:

### **Safeguarding Children and Young People**

In March 2012 Ofsted carried out an inspection of Wiltshire's safeguarding and looked after children services. Their report, published on 24 April 2012, judged the overall effectiveness of safeguarding services to be inadequate. In response to the Ofsted report in September 2012 the Department for Education issued the authority with an Improvement Notice which sets out a number of actions which must be completed before the end of 2013.

The Improvement Notice includes a requirement to create an Improvement Board with an independent chair. Wiltshire established the Improvement Board prior to the Improvement Notice being issued and an independent chair was appointed in June 2012. The Improvement Notice also requires that there is an Improvement Plan which is monitored by the Board at each meeting. The Council has had a risk action plan in place since June 2012. This focuses on failure to implement the actions included in the Improvement Plan. It is updated after each meeting of the Improvement Board.

The independent chair of the Improvement Board has completed 2 progress reports for the Department for Education in December 2012 and March 2013. Officials from the Department for Education undertook a review of progress in January 2013 reporting back on this in April 2013. A Safeguarding Peer Review took place in January 2013. The Director of Children's Services, Lead Member for Children's Services and the chair of Wiltshire Safeguarding Children Board also report on progress and any issues and blocks to each Board meeting. The Improvement Plan is RAG rated and any action items or performance indicators RAG rated red are reported at each Board meeting along with mitigating action being taken.

There has been a consensus that Wiltshire is making steady progress to address the issues raised by Ofsted and noted in the Improvement Plan. The strengthened focus on safeguarding by the Lead Member for Children's Services, Portfolio Holder for Safeguarding, the Safeguarding Scrutiny Task Group and the Director of Children's Services have been commended. There is also consensus that good frameworks have been established for example a set of practice standards, a new auditing programme, revised supervision policy and introduction of a model for managing risk.

Much still needs to be done. Getting the social care "front door" right remains a high priority. Audits are noting that practice is safer and is improving, however analysis of the data indicates that aspects of the overall system still need to improve. The next few months – June to September 2013 - are crucial in terms of triangulating all available evidence to assess whether the action taken so far is having the sustained and desired impact on practice.

Ofsted undertake an inspection of authorities found to be "inadequate" within 2 years of the last inspection. There is not a set pattern in terms of the timing of the follow up inspection.

## **Managing Significant Reductions in Government Funding and Changes in Legislation**

There have been significant changes in the funding formula for local government and other public sector partners in recent years.

This continues to cause uncertainty over the process of setting budgets and precepts. The government is announcing a new comprehensive spending round in June 2013, which should give more certainty to the grants due to the council in the next two years.

Other changes have been introduced, such as the Welfare Reform Act, and the impact of these will need to be reviewed to look at any cost pressures that might arise.

At the same time the Council must continue its drive for transformation and manage the increasing demand for services, for example, to protect vulnerable children and adults. The Council's business plan and financial plan deal with these challenges, but these areas will need to be closely monitored.

## **Information Security**

In February 2013 the Corporate Leadership Team agreed an action plan to strengthen and improve the Council's information governance arrangements. A number of priority actions have been put in place, including the appointment of a Corporate Director as the Council's Senior Information Risk Owner (SIRO), the establishment of an Information Governance Steering Group and the introduction of an on-line register of data incidents. Progress against the improvement plan is being monitored by the Corporate Leadership Team with the direct involvement of the SIRO.

Jane Scott  
Leader of the Council

---

Corporate Directors

---

---

---

Dated



DRAFT MINUTES OF THE AUDIT MEETING HELD  
ON 18 JUNE 2013 AT ALAMEIN SUITE - CITY HALL,  
MALTHOUSE LANE, SALISBURY, SP2 7TU.

Present:

Cllr Richard Britton, Cllr Tony Deane (Chairman), Cllr Stewart Dobson, Cllr Howard Greenman, Cllr David Jenkins, Cllr Julian Johnson, Cllr Stephen Oldrieve, Cllr Helen Osborn, Cllr Linda Packard, Cllr Sheila Parker (Vice Chairman), Cllr David Pollitt and Cllr James Sheppard

Also Present:

Cllr Jane Scott OBE and Cllr Dick Tonge

---

45 Annual Governance Statement 2012/2013Draft

Ian Gibbons, Service Director of Law and Governance and Monitoring Officer, presented the draft Annual Government Statement for 2012-2013, a required part of the annual review of the effectiveness of the Council's governance arrangements, which would proceed to Cabinet, then Standards Committee, before returning to the Audit Committee for final approval.

The Monitoring Officer took the Committee through the report, highlighting key issues including the following:

- Safeguarding Children and Young People
- Managing significant reductions in Government funding and changes in legislative
- Information Security

The Monitoring Officer particularly highlighted the action plan agreed by the Corporate Leadership Team to strengthen and improve the Council's information governance arrangements. Progress against the plan was being monitored and the Committee would be updated as to whether this should remain as a significant governance issue.

The Leader of the Council and Carolyn Godfrey – Corporate Director, reminded the Committee of the work that had and was currently being undertaken in relation to safeguarding children and young people. The Leader and Corporate Director were pleased to report that Wiltshire were making steady progress to address the issues raised by Ofsted and noted in the Improvement Plan. The strengthened focus on safeguarding by the Lead Member for Children's Services, Portfolio Holder for Safeguarding, the

Safeguarding Scrutiny Task Group and the Director of Children's Services had been commended. There was also consensus that good frameworks had been established for example a set of practice standards, a new auditing programme, revised supervision policy and introduction of a model for managing risk.

It was noted that paragraph 15 of the Draft Annual Governance Statement that referred to the Police and Crime Panel should indicate that the Panel was a joint Panel with Swindon Borough Council and should read 'the Wiltshire Police and Crime Panel'.

**Resolved:**

That the draft Annual Governance Statement would be revised in light of the comments of the Audit Committee, Cabinet, Standards Committee and ongoing review work by the Governance Assurance Group, before final approval by the Audit Committee and publication with the Statement of Accounts in September 2013.

46 Appointment of Representatives to Working Groups

The Committee was asked to make appointments to the following bodies for the rest of the municipal year:

- Focus Group on the Review of the Constitution
- Governance Assurance Group

The Committee were also reminded that they had previously agreed, prior to the Local Authority elections in May 2013, to set up a Working Group of three members to shadow the work of SWAP when undertaking an Audit of a Council Service. The Working Group would then highlight those areas that they felt would be of benefit to other members and should be incorporated within a training programme for the Committee.

Resolved:

1. That Councillor Helen Osborn be nominated to represent the Audit Committee on the Focus Group on the Review of the Constitution, subject to no other member of the Committee wishing to attend the meetings.
2. That Councillor Sheila Parker continues to represent the Audit Committee on the Governance Assurance Group.
2. That the Audit Working Group be re-established with three members of the Audit Committee to shadow the work of SWAP on one or two Audits of a Council Service.
4. That the Audit Working Group report on those issues raised during the

shadowing exercise to be included in a training programme for the Committee.

47 Date of next meeting

That the next meeting will take place on 4 September, 2013 starting at 10:30am in the Council Chamber at Monkton Park, Chippenham.

The Chairman asked members for areas of concern in relation to the safeguarding of adults and responses received included nursing homes for the elderly and living at home.

48 Urgent Items

(Duration of meeting: 3.00 - 5.00 pm)

The Officer who has produced these minutes is Stuart Figini, of Democratic Services, direct line (01225) 718376, e-mail [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)  
Press enquiries to Communications, direct line (01225) 713114/713115

This page is intentionally left blank

## COMMITTEE'S WORK PLAN

<u>Meeting Date and Time</u>	<u>Name of Report</u>	<u>Scope of Report</u>
9 October 2013	Annual Report of the Local Government Ombudsman	
	Status report on complaints	
	Review of effectiveness of code of conduct and complaints procedure	
8 January 2014	Status report on complaints	

This page is intentionally left blank