

## Part 5

### The Council's Codes And Protocols For Members And Officers

The Council has established or adopted the following Codes and Protocols relating to its members (councillors) and officers.

- A. Code of Conduct for Members
- B. Code of Conduct for Local Government Employees
- C. Protocol for Member/Officer Working Arrangements
- D. Guide to Good Practice for Members and Chief Officers involved in the Planning Process





## **A. Code of Conduct for Members and Guidance**

### **1. Introduction**

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011. To help Members understand their conduct responsibilities, they should make sure they read and understand the General Principles (see below).

### **2. General Principles of Conduct for Members and Co-opted Members**

The Code and the Guidance are based on the following General Principles.

#### **2.1 General Principles**

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

#### **2.2 Selflessness**

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

#### **2.3 Honesty and Integrity**

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

#### **2.4 Objectivity**

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

#### **2.5 Accountability**

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

#### **2.6 Openness**

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

#### **2.7 Personal Judgement**

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

#### **2.8 Respect for Others**

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

## 2.9 **Duty to Uphold the Law**

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

## 2.10 **Stewardship**

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

## 2.11 **Leadership**

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

## 3. **Training**

3.1 Each Member should participate in training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Planning or Licensing Committees.

3.2 Records of attendance will be maintained by the Democratic Services Team and any apparent failure to attend training will be notified in the first place to the Member concerned and if not rectified at the next available session, will be referred to the Standards Committee for further action.

## **THE CODE OF CONDUCT**

### **Part 1 General provisions**

#### **1. Introduction and interpretation**

1.1 This Code applies to you as a Member of the Borough Council of Bolton (the Council).

1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years.

1.3 In this Code “meeting” means any meeting of:

- (a) the Council;
- (b) its Cabinet;
- (c) Executive Cabinet Members and/or Cabinet Members, and,
- (d) any of the Council’s committees or sub-committees, joint committees or joint sub-committees; and

“Member” includes a co-opted member and an appointed member of the Council.

#### **2. Scope**

2.1 Subject to paragraphs 2.2 and 2.3, you must comply with this Code whenever you are acting as a Member and references to your official capacity are construed accordingly.

2.2 this Code does not have effect in relation to your conduct other than where it is in your official capacity.

2.3 Where you act as a representative of the Council—

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or

- (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **3. General obligations**

3.1 You must treat others with respect.

3.2 You must not:

- (a) do anything which may knowingly cause your authority to breach the Equality Act 2010;
- (b) bully or be abusive to any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be:
  - (i) a complainant,
  - (ii) a witness, or
  - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

4. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - (iv) the disclosure is:
    - (a) reasonable and in the public interest; and
    - (b) made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.

6. You:

- (a) must not use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of this council:
  - (i) act in accordance with the Council's reasonable requirements; and
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
  - (a) The Council's Chief Finance Officer; or
  - (b) The Council's Monitoring Officer,
 where that officer is acting pursuant to his or her personal statutory duties.
- (2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2 DISCLOSABLE PECUNIARY INTERESTS

### 8. Registering and declaring Disclosable Pecuniary Interests

- 8.1 You must, within 28 days of your election or appointment to office as a Member notify the Monitoring Officer of any Disclosable Pecuniary Interests you have (see paragraph 9 below).
- 8.2 You must, notify the Monitoring Officer within 28 days of becoming aware of any changes to a Disclosable Pecuniary Interest previously notified or of any new Disclosable Pecuniary Interest not previously notified.
- 8.3 If a Disclosable Pecuniary Interest, has not been entered onto the Council's register of interests, then the Member must disclose the interest to any meeting of the Council at which they are present, where they have a Disclosable Pecuniary Interest and where the matter is not a "Sensitive Interest"(see paragraph 10 below).
- 8.4 Following disclosure of a Disclosable Pecuniary Interest not on the Council'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.
- 8.5 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 Disclosable Pecuniary Interest.
- 8.6 Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the Council's website.
- 9. A Disclosable Pecuniary Interest is an interest which you or your Associated Person has within the following descriptions:

<b><i>Subject</i></b>	<b><i>Prescribed description</i></b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from this council) made or provided for up to 1 year after you have given a notification of a Disclosable Personal Interest to the Monitoring Officer in respect of any expenses incurred by a Member in carrying out duties as a Member, or towards the election expenses of a Member.

	<p>This includes any payment or financial benefit from a trade union within the meaning of the <a href="#">Trade Union and Labour Relations (Consolidation) Act 1992</a>.</p>
Contracts	<p>Any contract which is made between a Member or his/her Associated Person (or a body in which a Member or his/her Associated Person is a partner, a director ( a director includes a member of the committee of management of an industrial and provident society) or has an interest in securities) and the Council—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the borough of Bolton. The definition of land excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the member or his/her Associated Person (alone or jointly with another) to occupy the land or to receive income;</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the borough of Bolton for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to a member's knowledge)—</p> <p>(a) the landlord is this council; and</p> <p>(b) the tenant is a body in which the member or his/her associated person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the member's knowledge) has a place of business or land in the borough of Bolton; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the member or his/her Associated Person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

“Associated Person” means:

- a member’s spouse or civil partner
- a person a member is living with as husband and wife, and,
- a person a member is living with as if they were civil partners.

“Securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **10. Sensitive Interests**

Where you consider that disclosure of the details of a Disclosable Pecuniary Interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a Disclosable Pecuniary Interest, the details of which are withheld under section 32(2) of the Localism Act 2011

## **11. Effect of Disclosable Pecuniary Interests on Participation**

11.1 If you are present at a meeting of the authority and you have a Disclosable Pecuniary Interest in any matter to be considered or being considered at the meeting:

- (a) You may not participate in any discussion of the matter at the meeting.
- (b) You may not participate in any vote taken on the matter at the meeting.
- (c) If the interest is not registered, you must disclose the interest to the meeting.
- (d) If the interest is not registered and is not the subject matter of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: If paragraph 11.1 applies you are required to leave the room where the meeting is held while any discussion or voting takes place.

11.2 Where an Executive Cabinet Member discharging a function alone becomes aware of a Disclosable Pecuniary Interest in a matter being dealt with or to be dealt with by him/her, then s/he must notify the Monitoring Officer of that interest and must not take any steps or further steps in the matter.

## **12. Dispensations**

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter on which you have a Disclosable Pecuniary Interest.

## **13. Offences**

It is a criminal offence to:

- Fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election;
- Fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register;
- Fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting;
- Participate in any discussion or vote on a matter in which you have a Disclosable Pecuniary Interest;
- As an Executive Cabinet Member discharging a function, acting alone, and having a Disclosable Pecuniary Interest in such a matter, having failed to notify the Monitoring Officer within 28 days of the interest, or,



- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

### **Part 3 OTHER INTERESTS**

#### **14. Notification of Other Interests**

- 14.1 In addition to Disclosable Pecuniary Interests you must, within 28 days of your election or appointment to office as a Member notify the Monitoring Officer in writing of details of your interests within the following categories, for inclusion in the register of interests:
- (a) Details of any body of which you are a member or in a position of general control or management to which you are appointed or nominated by this council;
  - (b) Details of any body exercising functions of a public nature, anybody directed to charitable purposes or anybody one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
  - (c) Details of any gift or hospitality with an estimated value of at least £25 that you have received in connection with your role as a Member and details of the donor
- 14.2 You must, within 28 days of becoming aware of any new interest or change to any interest registered under this paragraph notify the Monitoring Officer of the details of that new interest or change.
- 14.3 Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the Council's website.
- 14.4 Where a Disclosable Pecuniary Interest is notified to the Monitoring Officer under Part 2, paragraph 8 above it need not be separately notified or separately registered again as an interest under this Part 3 of the Code.

#### **15. Disclosure of Other Interests**

- 15.1 Subject to 15.2 to 15.5, where you have an interest described in paragraph 14 above or in 15.2 below in any business of the Council, and where you are aware or ought reasonably to be aware of the existence of that interest, and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 15.2 You have an interest in any business of the Council where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a member of your family or any person with whom you have a close association.
- 15.3 Where you have an interest in any business of the Council of the type mentioned in paragraph 14.1(c) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 15.4 Where you have an interest by virtue of paragraph 14 but, by virtue of paragraph 17 below, (Sensitive Interests) relating to it is not registered in the register of members'

interests, you must indicate to the meeting that you have an interest, but need not disclose the sensitive information to the meeting.

- 15.5 Where you have an interest in any business of the Council by virtue of paragraph 14 or 15.2, and you have made an executive decision (as defined in section 22 Local Government Act 2000) in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

## **16. Non participation in case of certain other interests**

- 16.1 Where you have an interest in any business of the Council by virtue of paragraph 14 or 15.2 and the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest and where that business:

- (a) affects your financial position or the financial position of a Relevant Person through whom the interest arises; or
- (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or a Relevant Person

you may not participate in any discussion of the matter at the meeting, and you may not participate in any vote taken on the matter at the meeting.

“Relevant Person” means

- (i) a member of your family;
- (ii) any person with whom you have a close association;
- (iii) an employer of any a person described in (i) and/or (ii) above;
- (iv) a firm in which a person described in (i) and/or (ii) above is a partner;
- (v) a company in which a person described in (i) and/or (ii) above is a director, and,
- (vi) a body as described in paragraph 14.1(a) and (b) above.

Note: If paragraph 16.1 applies you are required to leave the room where the meeting is held while any discussion or voting takes place.

- 16.2 Where you have an interest in any business of the Council to which paragraph 16.1 applies, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, and provided that you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

- 16.3 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have an interest under paragraph 16.1 that relates to the functions of the Council in respect of:

- (a) housing, where you are a tenant of this council provided that those functions do not relate particularly to your tenancy or lease;
- (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (c) an allowance, payment or indemnity given to members;
- (d) any ceremonial honour given to members, and,

- (e) setting council tax or a precept under the Local Government Finance Act 1992.

16.4 Where, as an Executive Cabinet Member, you may discharge a function alone, and you become aware of an interest under paragraph 16.1 in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

## **17 Sensitive Interests**

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

## **BOLTON BOROUGH COUNCIL**

### **Arrangements for dealing with complaints about the Code of Conduct for Members**

#### **1. Introduction**

- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Town Council Member has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “Subject Member”.
- 1.3 No member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

#### **2. Making a complaint**

- 2.1 A complaint must be made in writing either by post or e-mail to; The Monitoring Officer, Chief Executive’s Department, 2<sup>nd</sup> Floor, Town Hall, Bolton BL1 1RU or [helen.gorman@bolton.gov.uk](mailto:helen.gorman@bolton.gov.uk).
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it and, at the same time, write to the Subject Member (and in the case of a complaint about a Town Councillor to the Clerk of the Town Council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

#### **3. Initial Assessment of Complaint**

- 3.1 The Monitoring Officer will review the complaint and take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

If the complaint fails in one or more of the following tests it will be rejected;

- The complaint is not against one or more named Members or co-opted Members of the Council or a Town Council within its district;
- The Subject Member was not in office at the time of the alleged conduct and a Code of Conduct was in force at the time.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

- 3.2 If appropriate the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the complainant to Standards for England, or the Standards Committee, or the

complaint has been the subject of an investigation by another regulatory authority;

- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
  - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
  - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

#### **4. Additional Information**

- 4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Town Councillor, the Monitoring Officer may also inform the Clerk of the Town Council of the complaint and seek the views of the Clerk of the Town Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.

Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or

the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

- 4.2 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code.

#### **5. Confidentiality**

- 5.1 If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.

- 5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.
- 5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the Subject Member.

## **6. Investigation**

- 6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.
- 6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.
- 6.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account before issuing their final report to the Monitoring Officer.

## **7. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct**

- 7.1 The Monitoring Office will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 7.2 The Monitoring Officer will write to the complainant and the Subject Member (and to the Clerk of the Town Council, where the complaint relates to a Town Councillor), with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 7.4 Where the Investigating Officer's report does not find that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the hearings panel.

## **8. Local Resolution**

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the independent person and the

complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town Council (if appropriate) for information, but will take no further action. If the complainant or the subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the complainant or the Subject Member.

## **9. Local Hearing**

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the complainant and/or Subject Member refuses to co-operate, then the Monitoring Officer will report the Investigating Officer's findings to the hearing panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

## **10. Constitution of the Hearing's Panel**

The Hearings Panel is the Council's Standards Committee. Where the complaint is about a Town Council Member, the Hearings Panel will include at least one of the Town Council Members co-opted to the Standards Committee.

The independent person is invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the hearings panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11. The Independent Person**

The independent person must be a person who has applied for the post following advertisements of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

A person is not eligible for appointment if they:

- are, or have been within the past five years a Member, co-opted Member or officer of the Council;
- are, or have been within the past five years a Member, co-opted Member or officer of a Town Council within the Borough; or
- are a relative or close friend of a person within bullet points 1 or 2 above.

For this purpose, "relative" means that:

- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were civil partners;
- Grandparents of the other person;
- A lineal descendant of a grandparent of the other person;
- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or

- Living with a person within the above bullet points or as husband and wife or as if they were civil partners.

## **12. Action**

Where a hearings panel finds that a Member has failed to comply with the Code of Conduct, the Council has delegated to the hearings panel such of its powers to take action in respect of Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the hearings panel may –

- Publish its findings in respect of the Member's conduct;
- Report its finding to Council (or to the Town Council) for information;
- Recommend to Council that the Member be censured;
- Recommend to the Members group leader (or in the case of ungrouped members) recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Town Council) arrange training for the Member;
- Recommend to Council (or recommend to the Town Council that the Member be removed) from all outside bodies, appointments to which they have been appointed or nominated by the Council (or by the Town Council);
- Withdraw (or recommend to the Town Council that it withdraws (facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access); or
- Exclude (or recommend that the Town Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and sub-Committee meetings.

## **13. Revision of these Arrangements**

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the hearings panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective threat and fair consideration of any matters.

## **14. Appeals**

Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the hearing panel.



## **B. Code Of Conduct For Local Government Employees**

### **1. EMPLOYEES' CODE OF CONDUCT**

#### **Introduction**

The public is entitled to expect the highest standards of conduct from all employees who work for the Council. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist the Council and its employees in their day to day work.

#### **Status of the Code**

The aim of the code is to lay down guidelines for employees which will help maintain conduct of the highest standard such that public confidence in their integrity is maintained.

#### **The Code applies to all Council employees.**

Inevitably some of the issues covered by the code will affect senior, managerial and professional employees more than it will others.

#### **1. Standards**

1.1 Local government employees are expected to give the highest possible standard of service to the public, and where it is part of their role, to provide appropriate advice to councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedure. The Council, acting in accordance with the provisions of the Public Interest (Disclosure) Act 1998 has approved its own "Whistleblowing" Policy - please see this link [https://boltoncouncilcloud.sharepoint.com/sites/intranet/Shared Documents/Forms/AllItems.aspx?id=%2Fsites%2Fintranet%2FShared Documents%2FWhistleblowing Policy%20pdf&parent=%2Fsites%2Fintranet%2FShared Documents](https://boltoncouncilcloud.sharepoint.com/sites/intranet/Shared%20Documents/Forms/AllItems.aspx?id=%2Fsites%2Fintranet%2FShared%20Documents%2FWhistleblowing%20Policy%20pdf&parent=%2Fsites%2Fintranet%2FShared%20Documents).

#### **2. Disclosure of information**

2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to elected members, auditors, government departments, service users and the public. The authority itself may decide to be open about other types of information. Employees must be aware of which information their authority is and is not open about, and act accordingly.

2.2 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way.

2.3 Any particular information received by an employee from a councillor which is personal to that councillor and does not belong to the authority should not be divulged by the employee without the prior approval of the councillor, except where such disclosure is required or sanctioned by the law.

2.4 Information concerning any employee's private affairs shall not be supplied to any person outside the employment of the Council unless the consent of the employee concerned is obtained first.

2.5 Information concerning any service user's private affairs shall not be supplied to any person outside the employment of the Council unless the consent of the service user concerned is obtained first or there is a legal gateway to share without consent. Please check with the Information Governance Team if in doubt.

2.6 No employee shall communicate to the public/media the proceedings of any Council or Executive Cabinet Member or Cabinet meeting nor the content of any private document relating to the Council unless required by law or expressly authorised to do so.

### 3. Political neutrality

3.1 Employees serve the Council as a whole and not just the political group in power. It follows they must serve all councillors and not just those of the controlling group and must ensure that the individual rights of all councillors are respected. The only exception to this are political assistants appointed in accordance with section 9 of the Local Government and Housing Act 1989.

3.2 The individual rights of all Councillors must be respected. On occasions senior officers may be requested to advise or brief political groups. They must make their Chief Officer aware, through their Head of Service, and seek advice to ensure that they do this in ways which do not compromise their political neutrality.

3.3 Employees must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.

3.4 Political assistants appointed on fixed term contracts in accordance with the Local Government and Housing Act 1989 are exempt from the standards set in paragraphs 3.1 to 3.3.

3.5 Under the provisions of the Local Government and Housing Act 1989 certain post holders are prevented from engaging in public political activity.

3.5.1 The Act specifies three categories of posts to which the political restrictions apply:-

(i) Specified posts:-

- the person designated under section 4 of the Local Government and Housing Act 1989 currently the Chief Executive

- Statutory Chief Officers

- Non-Statutory Chief Officers

- Deputy Chief Officers

- the monitoring officer designated under section 5 of the Local Government and Housing Act 1989, currently the Borough Solicitor

- Political Assistants

- Officers designated under S100G (2) of the Local Government Act 1972 – those officers with delegated authority to make decisions as set out in the Scheme of Delegation.

(ii) Posts where the remuneration is or exceeds SCP 44 or equivalent

(iii) Posts where the duties include:-

- advising the Council, the Executive Cabinet Member, Cabinet or Regulatory Committees or Sub-Committees on a regular basis;

- speaking on behalf of the Council to journalists or broadcasters.

3.5.2 Employees whose posts are listed under paragraph (ii) or (iii) above have the right to apply to be exempted from the political restrictions. An application for exemption may be made to the Monitoring Officer.

3.5.3 The restrictions to be applied to holders of politically restricted posts are as follows:-

(i) The post holder is disqualified from membership of the House of Commons, European Parliament and Local Authorities (excluding Parish and Community Councils).

(ii) The post holder may not announce that they are or intend to be a candidate for election to the House of Commons.

(iii) The post holder shall not act as an election agent or sub-agent for a candidate for election.

(iv) The post holder shall not be an officer of a political party or member of any Committee, if such membership requires participation in the general management of the party or acting on behalf of the party in dealings with persons other than members of the party.

(v) The post holder shall not canvass on behalf of a political party or candidate for election.

(vi) The post holder shall not speak in public with the intention of affecting public support for a political party.

(vii) The post holder shall not publish any written or artistic work intended to affect public support for a political party (excluding the display of a poster in their dwelling or on their vehicle).

3.5.4 Where an employee holds a politically restricted post, certain restrictions on political activity are incorporated by statute into their contract of employment and must be complied

with. Irrespective of whether they hold a politically restricted post, all employees must follow every lawfully expressed policy of the Council.

## **4. Relationships**

### **4.1 Councillors**

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to councillors and senior managers. Mutual respect between employees and councillors is essential to good local government. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors and should therefore be avoided.

### **4.2 The local community and service users**

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.

### **4.3 Contractors**

4.3.1 All relationships of a business or private nature with external contractors, or potential contractors, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to any businesses including those run by, for example, friends, partners or relatives.

4.3.2 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors should declare that relationship to their Head of Service/Director. Employees should note that to fail to declare such a relationship is contrary to section 117 of the Local Government Act 1972 and, on conviction, subject to a fine at level 4.

4.3.3 If an employee becomes aware that a contract in which they have a pecuniary interest, whether direct or indirect has been, or is proposed to be entered into by the Council they must notify the Monitoring Officer in writing of their interest as soon as possible. Employees should note that to fail to declare such a relationship is contrary to section 117 of the Local Government Act 1972 and, on conviction, subject to a fine at level 4.

## **5. Appointment and other employment matters**

Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant or have a close personal relationship outside work with them.

## **6. Outside Commitment/Off duty Conduct**

### **6.1 All Employees**

6.1.1 All employees must obtain written consent from their Head of Service to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the Council's interests.

6.1.2 An officer's "off duty" hours are their personal concern. Employees should not place themselves in a position where their public duties and private interests conflict or where their private interests take precedence.

### **6.2 Additional requirements for those employees working with children and young people and vulnerable adults.**

6.2.1 All adults working with children and young people and with vulnerable adults have a responsibility to maintain public confidence in their ability to safeguard the welfare and best interests of children and young people and vulnerable adults. It is therefore expected that they will adopt high standards of personal conduct in order to maintain the confidence and respect of the public in general and all those with whom they work.

6.2.2 There may be times, for example, when an adult's behaviour or actions in their personal life come under scrutiny from local communities, the media or public authorities. This could be because their behaviour is considered to compromise their position in their workplace or indicate an unsuitability to work with certain people. Misuse of drugs, alcohol or acts of violence would be examples of such behaviour.

6.2.3 Adults in contact with children and young people and vulnerable adults should therefore understand and be aware, that safe practice also involves using judgement and integrity about behaviours in places other than the work setting.

6.2.4 The behaviour of an adult's partner or other family members may raise similar concerns and require careful consideration by an employer as to whether there may be a potential risk to children and young people and vulnerable adults in the workplace.

## **7. Personal interests**

7.1 Employees must notify their Director/Head of Service of interests that they consider could bring about conflict with the Council's interests.

7.2 Employees must notify their Director/Head of Service of any financial interests which could conflict with the Council's interests.

7.3 Employees must notify their Director/Head of Service or the Monitoring Officer (as appropriate) of their membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct e.g. Masonic lodges.

## **8. Equality issues**

8.1 All employees should ensure that policies relating to equality of opportunity as agreed by the Council are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated fairly.

## **9. Separation of Roles During Tendering**

9.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority and should not normally take part in a procurement exercise if it becomes apparent that they are related to a contractor who participates in the process. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

9.2 Employees in "contractor" or "client" roles must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.

9.4 Employees should ensure that no favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

## **10. Gifts and Hospitality**

The area of gifts and hospitality can be a particularly difficult area and specific guidance on this issue is attached as an Appendix to this Code.

## **11. Corruption**

11.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity.

## **12. Use of Financial Resources**

12.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

### **13. Sponsorship – Giving and Receiving**

13.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

13.2 Where the Council wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without their being full disclosure to an appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## **APPENDIX TO LOCAL GOVERNMENT OFFICER CODE OF CONDUCT GUIDANCE FOR OFFICERS ON GIFTS AND HOSPITALITY**

### **1. Introduction**

1.1 These Guidelines supplement the law, the Council's Code of Conduct for Local Government Officers and the guidance set out by the National Joint Council for Local Government Services.

1.2 Officers should be aware of, and observe, the provisions of the National Agreement on Pay and Conditions of Service, which state:

"Employees will maintain conduct of the highest standard, such that public confidence in their integrity is sustained. Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers."

The area of gifts and/or hospitality is one where adverse perceptions can easily arise, even when unjustified. So as to maintain public confidence, and for the protection of officers themselves, it is particularly important that the following guidelines are observed.

1.3 The reputation of local government depends greatly not only on the conduct of its officers, but also on what the public believes about their conduct. Officers are expected to use common sense in assessing any situation where improper influence could be construed. Accordingly they should not do anything in their capacity as an officer which could give rise to accusations of improper influence, or which might not seem to the public to be justified.

1.4 These guidelines are intended to assist officers to reach the right decision in any particular case. If officers find themselves in any doubt about the right course of action to take, they can, and should, seek advice from more senior colleagues.

### **2. Gifts**

2.1 In almost every case, the acceptance by an officer of a gift from a person who has, or may seek to have, dealings with their Council could be viewed by the public with understandable suspicion. It would leave both the officer and the Council extremely vulnerable to criticism. An officer should, therefore, actually decline any gift offered to them or to a member of their family, either directly by, or in a manner indirectly attributable to, the following categories of person:

- Any person who has dealings with the Council;
- Any person seeking to have dealings with the Council, or,
- Any person who has applied, or may apply, to the Council for planning permission or any other kind of decision.

In cases where refusal might cause embarrassment, these guidelines can be cited as a reason.

2.2 There are a few limited exceptions to the above rule, as follows:

- Small gifts of only token value, (i.e., no more than £5) often given to a wide range of people by way of trade advertisements, e.g. calendars, diaries, tape measures and similar small office items;
- Small gifts of only token value, given on the conclusion of a courtesy visit e.g., to a factory or other premises.
- Small gifts where the officer concerned (and perhaps their partner) is a personal friend of the donor and where refusal would be regarded as churlish. In such cases, however, whilst the gift may be accepted, a letter should be sent by the officer concerned, explaining the problems of accepting such gifts.

2.3 If there is any doubt about whether a gift should be accepted, it should be politely and tactfully refused.

2.4 Where gifts and/or hospitality have been offered, but declined by the intended recipient, for their own protection the intended recipient may wish to record the offer by informing the Head of Service/Director in writing.

2.5 All officers should be aware that Section 117 of the Local Government Act 1972 expressly forbids the acceptance by an officer/employee of any fee or reward other than their proper remuneration. Any person contravening this provision would be liable, if convicted, to a fine not exceeding level 4.

2.6 In the event of an officer receiving, without warning, a gift which does not fall within the exceptions listed in paragraph 2.2 above, this should immediately be reported to the appropriate Head of Service/Director. That officer should then decide whether the gift should be returned, or whether it could be forwarded to some charitable or other deserving cause. In the latter case, the Head of Service/Director should inform the donor what has happened and why, and request that such gifts not be sent in future.

### **3. Giving and receiving hospitality**

3.1 A number of general principles should be borne in mind when the question of offering hospitality arises.

- The hospitality must be justifiable as being in the public interest.
- The hospitality should be on a scale appropriate to the occasion
- Parsimoniousness and extravagance should both be avoided.

3.2 In the case of offers of hospitality, there should generally be no cause for concern if the offer is made by another non-commercial public body and, in some cases with key partners with whom the Council are engaged in an established relationship (and subject to 3.3 below). In all other cases, offers of hospitality must be treated with caution.

3.3 Officers must refuse offers of hospitality where any suggestion of improper influence is possible. Special caution is necessary where hospitality is offered by a person or body having or seeking business with, or a decision from, the Council, and most especially where the offer is made to an individual officer.

3.4 Hospitality should only be accepted where a number of criteria are satisfied: it is on a scale appropriate to the circumstances; it is reasonably incidental to the occasion and not extravagant; and it is apparent that no cause could reasonably arise for adverse criticism about acceptance. As indicated above, adverse public perception is as important as the facts of the case in deciding whether or not it is appropriate to accept hospitality.

3.5 Whenever hospitality is provided to an officer, the circumstances and the type of hospitality should be notified to the Head of Service/Director.

3.6 A number of examples of acceptable and unacceptable hospitality respectively are given below.

#### **Acceptable**

- (a) An offer of modest light refreshments following a site inspection.
- (b) Invitations to attend functions where the officer represents the Council (e.g. events where the officer is officially representing the Council, dinners involving invitations to speak, opening ceremonies, trade shows, etc.) or where they attend by virtue of their professional position.
- (c) Hospitality offered by other non-commercial public bodies or partner organisations (subject to the conditions outlined in paragraph 3.3 above).
- (d) A working lunch of modest standard provided to enable the parties to continue to discuss business.

#### **Unacceptable**

- (a) Entertainments unconnected with Council business or holidays
- (b) Personal invitations to have evenings out with representatives from a company or firm which has dealings with the Council.
- (c) Offers of hotel accommodation or use of a company flat.

## **C. Protocol For Member/Officer Working Arrangements**

### **1. Introduction**

- 1.1 In accordance with the Local Government Act 2000, Bolton Borough Council (“the Council”) has adopted a Code of Conduct for Members, and every Member and Co-opted Member (with voting rights) of the Council has undertaken to observe the Code of Conduct. The Council has also adopted a Code of Conduct for Employees. This protocol should be read and applied in conjunction, and in accordance, with those Codes of Conduct.
- 1.2 In drawing up and adopting this protocol, the Council has taken into account the recommendations of the Committee on Standards in Public Life, in their report on standards of conduct in local government (published July 1997) with respect to codes of conduct and working arrangements between local authority members and officers.
- 1.3 The principles and procedures set out in this protocol are already, to a large extent, established and form the basis of the Council’s working arrangements. The purpose of this protocol is to provide guidance on member/officer working arrangements, particularly in any case of doubt or difficulty.
- 1.4 In particular, this protocol aims to support the enhancement of local democracy by: -
  - ◆ facilitating the participation of members and officers in the Council’s policy development and decision making processes;
  - ◆ assisting members, and those officers who support them, in their role as representatives of the community, within the Council and externally; and
  - ◆ clarifying arrangements for the provision of information and support for members and their party groups.
- 1.5 This protocol is also intended to assist members and officers in maintaining the highest standards of integrity and propriety, and ensuring that all that they do is seen by others to be done properly, fairly and, where possible, openly.
- 1.6 In accordance with the general obligations set out in the Council’s Codes of Conduct, both members and officers of the Council should treat all others with respect. The Council considers it important that in all dealings members and officers should observe reasonable and proper standards of mutual courtesy and respect, and that neither should seek to take unfair advantage of their position in any circumstances.

### **2. Member/Officer Communication**

- 2.1 Members should communicate with officers at the appropriate level. Routine service-related enquiries should be initiated through normal departmental enquiry/contact points. Other matters will normally involve the appropriate Director, Chief Officer or other senior manager.
- 2.2 In communicating with members, officers should have regard to the Council’s Code of Conduct for Employees, the requirements of this protocol, and any instructions issued by their departmental management.



### 3. Officer Advice To Party Groups

- 3.1 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the Council or the relevant committee or sub-committee. Officers may properly be called upon to support and contribute to such deliberations by party groups.
- 3.2 The support provided by officers can take many forms, ranging from a briefing meeting with a chair or spokesperson prior to a committee meeting, to a presentation to a full party group meeting. Whilst in practice such officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.
- 3.3 Certain points must however be clearly understood by all those participating in this type of process, members and officers alike. In particular:
  - (a) Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of **Council** business. Officers must not be involved in advising on matters of **party** business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of **party** business are to be discussed.
  - (b) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do **not** therefore rank as Council decisions and it is essential that they are not communicated (inside or outside the organisation), interpreted or acted upon as though they have that official status.
  - (c) Similarly, where officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant committee or sub-committee when the matter in question is considered.
- 3.4 Special care needs to be exercised whenever officers are involved in providing information and advice to a party group meeting which includes persons who are not members of the Council. Such persons will not be bound by the Council's Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a meeting of members only.
- 3.5 Officers must respect the confidentiality of any party group discussions at which they are present and should not, in particular, relay the content of any such discussion to another party group.
- 3.6 Any request for an officer to attend a meeting arranged by a party or party group, for the purpose of presenting information to the meeting (in relation to an issue or proposal affecting or involving the Council) must be made to the relevant Director, who will consult the Chief Executive, or to the Chief Executive. Where it is agreed that an officer will attend for this purpose, the same facility will be offered or made available to the other party groups. Any officer who so attends will do in his/her

official capacity, will be politically neutral, and attendance will not signify support for any particular political view, proposal or response.

- 3.7 Attendance at any public meeting will generally be avoided during the period between the announcement and conclusion of any local or parliamentary election affecting the area involved, and will only occur during such a period if representatives of all parties supporting candidates in the election have been invited to attend to take part in the meeting.
- 3.8 At any public meeting organised by any party group, or by any individual member (rather than by the Council), officers will attend only to provide information which is publicly available. **No such officer attendance will take place during the 'pre-election' period referred to in paragraph 3.7.**
- 3.9 Any particular difficulty or uncertainty concerning officer advice to party groups should be raised with the Chief Executive (or with the Borough Solicitor) who will, where appropriate, discuss with the relevant group leader(s).

#### **4. Support Services And Facilities For Members And Party Groups**

- 4.1 Secretarial and other support services and facilities (e.g. computer equipment, stationery, typing, printing, photocopying, meeting rooms, transport, etc.) are provided for members to assist them in discharging their role as members of the Council. Such support services and facilities must therefore only be used in accordance with specific guidance issued by the Council. They should never be used in connection with party political or campaigning activity or for private business purposes.
- 4.2 Members and officers should use the Council's e-mail, internet, intranet, fax or any other information or communication system or equipment in accordance with any code, policy or guidance approved by the Council.
- 4.3 Support services for members will normally be provided (or arranged/ co-ordinated) by Democratic Services.

#### **5. Members' Access To Information And To Council Documents**

- 5.1 Members are free to request from the Council such information as they may reasonably need in order to assist them in discharging their role as members of the Council, having regard to any special responsibility e.g. as an Executive Cabinet Member/Cabinet Member or Committee Chair. Such requests should normally be directed to the Director or another appropriate senior officer of the department concerned.
- 5.2 The legal rights of members to inspect Council documents (including information held by electronic and other means) arise partly from statute and partly from the common law (judicial decisions).
- 5.3 Members (except co-opted members) have a statutory right to inspect any Council document **which contains material relating to any business which is to be transacted at a Council, Committee or Sub-Committee meeting.** This right applies irrespective of whether the member is a member of the Cabinet, or of the Committee or Sub-Committee concerned, and extends not only to reports that are to be submitted to the meeting, but also to any relevant background papers. This right does **not** however apply to documents which are exempt from publication, unless the member is a member of the relevant committee.

Certain documents are (by statute) exempt from publication because, for example, they relate or refer to employees, occupiers of Council property, applicants for grants or other services, the care of children, the proposed terms of a contract or contractual negotiations or other commercially-sensitive information, industrial relations negotiations, legal advice or legal proceedings.

- 5.4 The common law right of members is much broader and based on the principle that any member has a prima facie right to inspect Council documents, so far as his/her access to the documents is reasonably necessary to enable the member properly to perform his/her duties as a member of the Council. This principle is commonly referred to as the “need to know” principle.
- 5.5 Whether a member is, in any particular case, entitled to exercise this common law right depends therefore upon the member’s ability to demonstrate that he/she has the necessary “need to know”. In this respect, a member has no right to a “roving commission” to examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the “need to know” for a purpose necessary to enable the member to carry out his or her public duties. In any case of doubt or difficulty the member should refer to the Chief Executive or Borough Solicitor.
- 5.6 In some circumstances (e.g. a committee member wishing to inspect documents relating to the functions of that committee or one of its sub-committees), a member’s “need to know” will normally be presumed. In other circumstances (e.g. a member wishing to inspect documents which contain personal information about third parties) a member will normally be expected to justify the request in specific terms.
- 5.7 The term “Council document” is very broad and includes, for example, any document produced by whatever means with Council resources. It is accepted by convention that a member of one party group will not have a “need to know”, and therefore no right to inspect, a document which forms part of the internal working of another party group.
- 5.8 Further and more detailed advice regarding members’ rights to inspect Council documents may be obtained from the Borough Solicitor.
- 5.9 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided; that is, only to enable the proper performance of the functions of the Council. This point is emphasised in the Code of Conduct for Members in the following terms:

“A member must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes is of a confidential nature, without the consent of the person authorised to give it, or unless he/she is required by law to do so.”

The Code further provides that a member must not prevent another person from gaining access to information to which that person is entitled by law.

- 5.9 Whilst co-opted members do not generally have the same statutory and common law rights of access to documents and other information held by the Council as elected members, the Council will normally provide co-opted members with such information as is necessary for the purposes for which they have been appointed.

## **6. Officer/Executive Cabinet Member/Chair Relationships**

- 6.1 It is clearly important that there should be a close working relationship between an Executive Cabinet Member/ Cabinet Member or the Chair of a committee and the Director and other senior officers of any department which reports to that Executive Cabinet Member/Cabinet Member or committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the officers' ability to deal impartially with other members and other party groups, or with any other individual or organisation.
- 6.2 The Executive Cabinet Member or Chair will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting. It must, however, be recognised that in some circumstances the proper conduct of business may require a particular matter to be included on an agenda, and that the Executive Cabinet Member/Chair is not entitled to require the removal of such an item from the agenda. Directors will always be fully responsible for the contents of any report submitted in their name. Any issue concerning the inclusion of any item on an agenda, or the submission of any particular report that cannot be agreed between an Executive Cabinet Member/Chair and a Director should be referred to the Chief Executive. There may also be circumstances in which the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer, will be under a duty to submit a report.
- 6.3 In relation to action under any delegated power, it should be noted that any decision in the discharge of any of the Council's functions can only be taken in accordance with the Council's Constitution by the full Council, the Cabinet, an Executive Cabinet Member, a committee or sub-committee, or by a designated officer under delegated powers. The power to make a decision cannot be delegated to an individual member, apart from a member of the Cabinet in accordance with the Constitution. Normally, whenever the authority to make a decision is delegated to an officer, it is on the basis that the officer will exercise that authority in consultation with the Executive Cabinet Member/Cabinet Member and/or other nominated members.
- 6.4 It must be remembered that officers within a department are accountable to their Director, and that whilst officers should always seek to assist an Executive Cabinet Member/Chair (or indeed any member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director. It should also be noted that the Chief Executive has statutory responsibility, as Head of Paid Service, for ensuring the proper organisation and management of the Council's staff, and has therefore an overall responsibility for the direction and management of all officers.

## **7. Correspondence**

- 7.1 Correspondence (recorded in letter, e-mail, facsimile or any other form) between an individual member and an officer should not normally be copied (by the officer) to any other member, except at the discretion of the Chief Executive or Director where necessary for the proper conduct of business. Where, exceptionally, it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, 'blind' copies of such correspondence should not be circulated.
- 7.2 Official letters and other forms of correspondence on behalf of the Council should normally be sent out in the name of the appropriate officer rather than in the name of a member. It may be appropriate in certain exceptional circumstances (e.g. representations to a government minister or correspondence with the Leader of another local authority) for a letter to be issued in the name of the Leader of the

Council. Letters which, for example, create obligations, confirm or deny the acceptance of any liability, or give instructions on behalf of the Council should always be sent out by the Chief Executive or the appropriate Director or other senior officer.

## **8. Publicity And The Media**

- 8.1 Contact with the media on issues related to the Council, or to Council business, is handled through or with advice/support from the Marketing and Communications Agency (Chief Executive's Department).
- 8.2 Any member who communicates with the media on any item involving or affecting the Council, without first approaching or consulting the Council (through the relevant Executive Cabinet Member/Chair, department or Corporate Communications), will be responsible for such action. **Any member who does so should make it clear that he/she is speaking on his/her own behalf and not representing or speaking for the Council.**
- 8.3 The Code of Conduct for Employees requires officers to obtain the approval of their department (and to seek guidance/advice, where appropriate, from Corporate Communications) before issuing any information to the media.
- 8.4 Members and officers should be mindful of the prohibition on the publication by the Council of any information intended to promote, or canvas support for, any political party or candidate for election. In any case of doubt, advice should first be obtained from the Borough Solicitor.

## **9. Personal Relationships**

- 9.1 No member or officer should allow any personal connection or relationship with any other member or officer to affect the performance of his or her official responsibilities, or the taking of any action or decision by or on behalf of the Council. This includes, for example, any family relationship, membership of the same household, or any business connection. Members and officers should always consider how such a relationship or connection would be likely to be regarded by anyone outside the Council, or by any other member or officer, and avoid creating any impression of bias or unfairness.
- 9.2 An officer who is personally connected or related to any member should notify his or her Director in writing.
- 9.3 Members should take into account any personal relationship or connection with any other member or officer, in considering the need in accordance with the Code of Conduct for Members to register or disclose any personal interest whenever appropriate.

## **10. Involvement Of Area Committees /Ward Councillors**

- 10.1 Whenever a public meeting is organised by the Council to consider a local issue affecting a particular area all the members of the relevant Area Committee or Forum or (if only affecting a particular ward or wards) those members representing the ward or wards affected should, as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Area Committee/Forum or ward members should be notified at the outset of the exercise.

## **11. Further Guidance**

- 11.1 Any member who needs further guidance on any of the matters referred to in this protocol, or on any similar or related issue, is advised to contact the Chief Executive or Borough Solicitor. Any officer needing such guidance should refer initially to his or her manager, who will consult senior management and obtain advice as necessary

Adopted by resolution of the Council 20th February 2002

## **D. The Bolton Guide To Good Practice For Members And Officers Involved In The Planning Process**

### **1. Introduction and Background**

- 1.1 A key purpose of the planning system is to manage development in the public interest. It is important that the Council should make planning decisions openly, impartially, with sound judgement and for justifiable reasons. The aim of this Code of Good Practice is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. This Code sets out the standards of conduct required of all Members and officers of the Council in dealing with planning matters, including applications, policy development and enforcement. The Code should be complied with equally in formal decision making, in Council meetings and in less formal circumstances, such as Member/officer meetings, meetings with the public and consultative meetings.
- 1.2 If you have any doubt or concern regarding the appropriate application of the Code in a particular situation, you should refer to the Monitoring Officer as soon as possible.

### **2. Status**

- 2.1 Members and Officers should have full regard to this Code in carrying out their responsibilities and duties in relation to planning matters on behalf of the Council. Although it is a guide to good practice and not a definitive set of rules, it provides a general standard against which the conduct of Members and Officers can be judged by the public, fellow Members and Officers and, if necessary, the Local Government Ombudsman.

### **3. Relationship to the Members Code of Conduct and Localism Act 2011**

- 3.1 If you are a Member of the Council, the rules in the Members Code of Conduct must be applied first.
- 3.2 The rules in this Code supplement the Members Code of Conduct for the purposes of planning matters. Where Members or officers fail to abide by the requirements of the Codes the Council will be at risk of legal challenge which could lead to its decision being quashed or complaint may be made to the Ombudsman. If the failure to comply is also a breach of the Members Code of Conduct by an individual Member, complaints of maladministration may be upheld.

### **4. General Conduct and Role of Members and Officers**

- 4.1 Elected Members and Officers have different but complementary roles. Both serve the public but Members are responsible to the electorate of Bolton whilst Officers are responsible to the Council as a whole. Officers advise Members and the Council and carry out the Council's work. They are employed by the Council, not by individual Members. Instructions may only be given to Officers through a decision of the Council or its Executive/Executive Cabinet Member or a Committee. Any other system which develops is open to question.
- 4.2 Both Members and officers are guided by codes of conduct. The code of conduct for members provides guidance for Members. Planning Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's Code of Professional Conduct; breaches of which may be subject to disciplinary action by the Institute. A Protocol for Member/Officer Working Arrangements in Bolton was also approved in February 2002. In addition to these codes, the Council's standing orders set down rules which govern the conduct of council business.

4.2 Elected Members have determined the Council's planning policies by adopting the Development Plan. When Members of the Planning Committee come to make a decision on a planning application, they will be guided by the following principles:

- To act fairly and openly;
- To approach each application with an open mind;
- To weigh up carefully all the relevant issues;
- To determine each application on its merits and with reference to the Development Plan and any other material considerations;
- To avoid undue contact with interested parties that could give rise to accusations of unfair bias;
- To ensure that the reasons for their decisions are clearly stated;

The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members who do not feel they can act in this way should consider whether they are best suited to serve on Planning Committee.

Members should also be very cautious about accepting gifts and hospitality. The code requires any members receiving, in their capacity as members, any gift or hospitality over the value of £25, to provide written notification of the details to the Monitoring Officer within 28 days of its receipt. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible.

## **5. Member Declaration and Registration of Interests**

- 5.1 The Localism Act 2011 and the Code of Conduct place requirements on Members on the registration and declaration of their interests, as well as the consequences for the Member's participation in consideration of an issue, in the light of those interests. The requirements must be followed scrupulously and Members should review their situation regularly. Ultimate responsibility for fulfilling the requirements rests individually with each Member.
- 5.2 A register of members' interests is maintained by the Monitoring Officer which is available for public inspection. Members must provide the Monitoring Officer with written details of any disclosable pecuniary interests within 28 days of their election, or appointment to office. Any changes to those interests must also be notified within 28 days of the member becoming aware of such changes.
- 5.3 Members are also required to disclose disclosable pecuniary interests in items considered at Planning Committee and are not allowed to take any further part in any discussion on the matter or to vote on the matter.
- 5.4 The Localism Act 2011 makes it a criminal offence if a Member fails without reasonable excuse to comply with requirements to register or declare disclosable pecuniary interests or take part in council business at meetings or when acting alone when prevented from doing so. The magistrates can impose a fine of up to level 5 (currently £5000) and can make an order disqualifying the person from being a Member of a relevant authority for up to five years.



- 5.5 Any other disclosable interests (outlined in the Code of Conduct) must also be disclosed and in certain circumstances Members may not participate in any discussion or vote on the matter at the meeting.

## **6. Development proposed by the Council**

- 6.1 Parliament has decided that local planning authorities are, in the majority of circumstances, the appropriate body to determine planning applications affecting the area, including where the application is submitted by the Council itself. There are separate statutory requirements for the Council in determining applications to develop its own land, or to develop it jointly with another body.
- 6.2 Proposals for the Council's own development (or development involving the Council and another party) should be treated by Members and officers involved in reaching a determination of the application in the same way as those by private developers. The planning decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. All such applications will be determined by the Planning Committee and not by the Director of Development and Regeneration under delegated powers. It is important that the Council is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.
- 6.3 If the Planning Committee wish to refuse a Council development proposal, it will be deemed withdrawn.

## **7. Development proposed by Members and Officers**

- 7.1 Members or Officers of the Development and Regeneration Department who submit their own planning applications, either by themselves directly or as agents for others, shall take no part in the decision-making process for that proposal. All such applications will be determined by the Planning Committee and not by the Director under delegated powers.

## **8. Pre-application discussions and presentations**

- 8.1 Pre-application discussions between applicants, officers and, on occasions Members, can be of great benefit in addressing key issues at an early stage in the application process. It may be of particular relevance to involve Members when dealing with major or sensitive development schemes. The exchange of views and information can allow Members to understand the proposal and bring to the applicant's attention possible local concerns. Officers may gain some understanding of particular sensitivities and concerns expressed by Members on behalf of local residents and businesses. It is now recognised that this interaction can help achieve positive outcomes for all involved in the process.
- 8.2 It is preferable if this form of engagement takes place before the application has been submitted. Before the application is submitted, it may be appropriate for Members of the Planning Committee to be involved in the same way as ward Members. At any such meeting it must be made explicit that these discussions cannot bind in any way the decision of the council or control the voting intentions of the Member.
- 8.3 Planning officers should always be in attendance at pre-application discussions with applicants and agents involving Members. A comprehensive note of the meeting should be placed on file and sent to the Member concerned. If an application is made following such discussions, a copy of the note must be put on that application file. Members should not accept invitations to meetings from prospective developers or objectors unless it is clear to them that the meeting is either a public meeting or one to which residents or other persons with an interest in the potential development have also been invited.

- 8.4 Where planning officers are involved in pre application discussions, it should always be made clear at the outset of discussions that by law they cannot commit the Council to make a particular decision. Officers should also make it known that any views expressed are their provisional professional opinions, based on their knowledge of development plan policies and of locally relevant material considerations. A note that these statements were made should be kept on file.
- 8.5 Every effort will be made to ensure that the advice of planning officers is consistent and that there are no significant differences of interpretation of planning policies between planning officers. A note of the advice given should be kept on file.
- 8.6 Planning officers will ensure that their advice does not favour the interests of particular individuals or groups, to reduce any risk that their subsequent advice could be seen as advocacy for a particular point of view. Two or more officers will attend potentially contentious meetings and a follow-up letter should be sent, particularly when material has been left with the Council by the applicant or agent.
- 8.7 If a Member is approached by a potential applicant the first course of action should be a clear written note from the Member to the Chief Planning Officer recording what has been discussed and any specific comments or advice that has been given by the Member.
- 8.8 In certain circumstances the decision making function may be aided by the Planning Committee receiving a presentation from applicants or potential applicants. To ensure that such presentations are seen in a positive way:-
  - (i) Planning Committee will decide whether a presentation should be received, and the Chair of the Committee on the day shall chair the presentation;
  - (ii) Should significant and potentially contentious matters be involved, the presentation should normally be open to the public and consideration be given to publicity arrangements and whether third parties should be invited and given the right of address and right of reply. In exceptional circumstances the presentation may be made in private, and a written summary placed on the case file;
  - (iii) Council officers will start every presentation by outlining the basis of the presentation and that it is without prejudice to the eventual decision taken on any application submitted.

## **9. Informal Briefings**

- 9.1 Officers will seek to brief Ward Members on significant or potential contentious planning applications in their areas at an early stage so that they are aware of what is being proposed and the main issues that may be associated with them.

## **10. Site Visits**

- 10.1 The submitted planning application drawings, the Officers Report to Committee and Members' own local knowledge should, in most circumstances, be sufficient for a sound decision. There may be occasions, however, where a Committee site visit may be justified, for example where the site is not clearly visible from public highways, where a particular site needs viewing from a neighbour's property or where physical circumstances in the area have recently changed.
- 10.2 The purpose of the site visit is for Members to see the application site and surrounding area. Site visits should not be seen primarily as an opportunity to gather representations, listen to submissions, seek opinions from applicants, agents or neighbours, or allow Members the opportunity to share their views with residents.

10.3 During a site visit Members and Officers should avoid any appearance of impropriety and must not accept gifts or hospitality. Comments should be restricted to planning matters and questions should be put through the planning officers attending the site visit. Officers and Members must refrain from making comments that might be construed as supporting or opposing a particular view and from making any personal comments.

10.4 The purpose of a formal site visit is not to receive or allow representations to be made outside the formal Committee meeting. Where Members and officers attending site during a formal visit are approached by persons wishing to speak about the application, officers will explain that any representations must be made at the Committee meeting and will explain the process for doing so.

10.5 Members may find the following guidelines helpful:

- Planning Committee will decide whether a regular site visit is justified. Details of all attending site visits will be recorded by the Committee Administrator who will accompany the Members on visits;
- The Chair and Vice Chair of the Planning Committee and the Director of Development and Regeneration will decide whether an advance site visit prior to the Committee is justified (for example, where there is a critical time period for determining the application or where it is clear that the Committee would in any event have asked for a visit);
- In order that Members have the opportunity to be briefed on the proposal by the planning officer, it may be better if they attend together on the organised site visit;
- The Chair of the Committee should explain to the applicant and any interested parties that the decision will be taken in full Committee, and Members of the Committee and Officers should avoid expressing views about the application or the information provided on the visit;
- Members and Officers should seek to avoid being addressed by the applicant or interested parties in small separate groups during the visit;
- Members who have declared or intend to declare an interest in the proposal may find it more appropriate to remain on the coach when the site is visited.

## **11. Making decisions transparently and fairly**

11.1 Members who have to make decisions on planning matters and applications will begin to form a view as more information becomes available. When approached by applicants, developers or objectors, Members must make it clear that the decision on any planning matter must be taken in accordance with the law, and can only be taken at the Planning Committee when all available information is to hand and has been considered.

11.2 Individual Members should reach their own conclusions on an application or other planning matter after considering all the information, advice and material available to them and relevant to the decision. Rather than follow any previously expressed opinion, the lead of another Member, or of any political group, each Member must weigh up the factors that are relevant, ignore matters that are not relevant, and make a reasonable decision that could be justified if challenged.

11.3 Officers who are wholly or partly involved in the processing or determination of planning matters should not attend public meetings in connection with pre-application development proposals or submitted planning applications unless their attendance has been agreed by their manager. To do so could lead to allegations of prejudice or bias to a particular point of

view. If it occurs accidentally that officers are put in such a position, officers should limit remarks and comments to provide information and give no view on the merits or otherwise of the proposal.

- 11.4 When attending public meetings, Members should take great care to maintain their impartial role as a Member, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals and submitted planning applications.
- 11.5 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will advise the Member.

## **12. Lobbying of and by Members**

- 12.1 It is quite common for applicants or other interested parties (such as objectors) to wish to discuss a proposed development with Members before a planning application is determined, and this can help Members understanding of the issues and concerns associated with the application. As local Ward representatives, Members must listen and be responsive to the views of their constituents. As Members of the Planning Committee, however, they must be careful that they do not give the impression that they have firmly made up their minds on a development proposal prior to the full facts being presented to the Committee. It is recognised, however, that for a Planning Committee Member who is actively lobbied for or against a proposal in their own ward, this is a difficult and delicate balance to achieve.
- 12.2 In making decisions the Local Government Association guidance document "Probity in Planning" advises:  
"Members, and Members of planning committees in particular, need to take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the evidence presented, before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality". (para 7.4)
- 12.3 Political reality suggests that it is often important to distinguish between the role of a Committee Member who is, and who is not, a ward Member for the area affected by a particular planning application. A Committee Member who does not represent the ward affected is in an easier position to adopt a (formally) impartial stance, however strong their feelings about the application may be, and to wait until the Committee meeting before declaring one way or another. A Committee Member who represents the ward affected by an application may be in a more difficult position if it is a controversial matter around which a deal of lobbying takes place.
- 12.4 It is the Members' own decision on how they should respond to lobbying, but the following points may be helpful:
  - (i) it is sensible and proper that Members of the Committee should reflect their local knowledge and experience in making decisions on planning applications;
  - (ii) the information supplied by lobbyists may represent an incomplete picture of the relevant considerations on an application, and more information (such as the views of the consultees, neighbours and the technical assessment of the case by the planning officer) will be available in the report to Committee, which is where the final decision will be made (subject to any rights of appeal);
  - (iii) the Council's decision-making processes may be compromised or brought into disrepute if there is an appearance that a final decision has been made before the relevant Committee meeting;

- (iv) it may be appropriate for a Member to indicate provisional support to a particular body of opinion, whilst making it clear that the Member intended to wait until the Committee had heard all the evidence to be presented, both in support of and opposing the application, before making a final decision on the matter.
- (v) if a Committee Member decides that he/she would prefer to commit themselves publicly for or against an application at an early stage, they will need to consider whether it would be inappropriate to vote on the application at the Committee. If they do, they may nevertheless wish to make representations on the application at the Committee meeting;
- (vi) Committee Members may be particularly at risk of accusations of unfair bias if they actively organise support or opposition to a particular proposal;
- (vii) any political group meetings prior to the Planning Committee should not be used to decide how Members of the Committee should vote;
- (viii) if a Member of the Committee is invited to a meeting to discuss a particularly difficult or contentious proposal, or where the proposal is of a significant scale, the attendance of a professional officer at that meeting could help avoid any allegations of impropriety or improper partiality.
- (ix) Committee Members who are also Members of a Town Council should seek to avoid giving the impression that their minds are already made up when the Town Council discusses an application prior to it being decided by the Planning Committee, although there would not necessarily be any conflict if the Town Council (or its planning committee) as a whole expresses its view.

12.5 Members are encouraged to direct lobbyists or objectors to planning officers, who will include reference to their opinions where relevant in the reports to Committee.

12.6 Members of the Council who are not on Planning Committee but who have a legitimate and proper representational interest in the matter may, if they wish, speak at meetings about planning applications within their own ward or where, in the opinion of the Chair, there is sufficient evidence to suggest that the proposal, in an adjacent ward, will affect the Member's ward.

12.7 Members should not bring undue pressure on the Director of Development and Regeneration or his/her staff to make a particular recommendation. They may, however, wish to alert Officers to the strength of local feelings about a proposal, and may also wish to give weight to different material planning considerations at the Committee meeting.

### **13. Predisposition, Predetermination and Bias**

13.1 Members of the Planning Committee must avoid giving any appearance that an application or other matter referred to the Committee has already been determined before the Committee has the opportunity to consider the merits and demerits of a matter in accordance with the law, in public, and in accordance with the normal conduct of the Committee business. Every person making application to the Council or objecting to an application must be encouraged to believe that in considering the matter before it, the Committee will give consideration to all views that are expressed, that such views will be openly heard, and fairly considered in a balanced way before the Committee's decision is made.

13.2 It is particularly important that Members of the Planning Committee do not give the impression that they have already made up their mind about a matter that will come before the Committee, or that their minds are closed to any alternative, and that no additional or different information or advice will persuade them to change that fixed view. Such "pre-determination" has been held to amount to the "surrender by a decision-maker of its judgment by having a closed mind and failing to apply it to the task".

- 13.3 The Localism Act 2011 has clarified the position of Members of the Council who have expressed a preference for a particular outcome of an application as it proceeds to determination. Such a “pre-disposition” is acceptable and the Member concerned will not be taken to have had a closed mind when making the decision just because they have previously done or said anything to indicate the view that had or might be taken in respect of a matter.
- 13.4 Members and officers should also be concerned to avoid the appearance of bias, that is, appearing to give undue weight to particular matters on the basis of personal attributes, or social acquaintance, that may influence their conduct generally. Whilst it may remain possible for a Member to apply an open mind to the matter to be determined in such circumstances, Members must avoid giving the impression or appearance that particular personal interests or attributes would lead them to consider aspects of an application more carefully or with more regard than other aspects unaffected by their own character and experience.

#### **14. Decisions of the Planning Committee**

- 14.1 In coming to a decision on a planning or other application, the Committee will have before it a written report of the Director of Development and Regeneration which will seek to be as accurate and comprehensive as possible and appropriate. Matters that arise between the time of the completion of the report and the Committee meeting will be reported in a written form or orally at the meeting (but where Members wish to see the actual late responses, it would be necessary to defer the matter until the next meeting). The main points made in the representations from consultees and local residents will be included in the report, together with the policy context, relevant planning history, site description and an analysis of the issues. A recommendation will always be given at the end of the report. On occasion, arguments for and against a proposal may be particularly finely balanced, and this will be reflected in the conclusions immediately prior to the 'on balance' recommendation. The scope and content of the Director's report is set out in Appendix 1.
- 14.2 In the course of preparing the report, planning officers will seek, where appropriate, to suggest improvements to the proposal to help make it better accord with local and national policies. The Town Councils will be consulted, although it should be noted that the officer recommendation may change once the proposal reaches the Planning Committee if new issues or facts emerge after the Town Council meeting. When seeking additional information from the applicant, good practice will be to limit the number of such individual requests to the minimum, although further requests may have to be made if new issues arise through, for example, comments received from consultees.
- 14.3 Guidelines for determining planning applications are set out in Appendix 2.
- 14.4 The key point is that the Town and Country Planning Act 1990 requires decisions to be based on the provisions of the Development Plan, unless other material considerations indicate otherwise. The system is therefore 'plan-led'.
- 14.5 The reports on the planning applications will be circulated to Committee Members and the press prior to the meeting in accordance with access to information regulations. It would be helpful if any Members who have queries about a particular application contact the relevant officers prior to the meeting, so a considered response can be made at the meeting.
- 14.6 In determining planning applications, the Committee is entitled to decide the weight to be attached to the various planning criteria which are relevant to the application. This could lead to a decision contrary to the recommendation of the Director. In these circumstances, it is essential that Members set out clear reasons for any refusal, or the conditions to be applied to any permission. It is often possible for the Committee to be clear about the reasons for refusal and to set these out in detail when the application is first considered.

Sometimes, however, it may be necessary to defer an application for further consideration. This would be particularly relevant for significant or contentious proposals, where the arguments for and against are finely balanced, or where Members raise new relevant issues not covered in the Committee report. Where Committee wishes to grant permission contrary to officer advice, Committee may be content to leave the terms of any conditions to be determined by the relevant officer(s) or in appropriate cases by the officer(s) in consultation with the Chair and Vice-Chair.

14.7 During any deferment, the following issues, among others, may need to be considered:

- further consideration of the issues involved, including the views of relevant Ward Members;
- sustainable reasons for refusal (if Members are minded to refuse permission);
- possible planning conditions and the terms for any Agreement made under Section 106 of the Town and Country Planning Act 1990 (if Members are minded to approve);
- the desirability of a site visit if one has not already occurred;
- an opportunity for further representations from applicants and third parties to be invited;
- any potential material amendments to the proposed development;
- the costs and legal implications of the Committee's decision.

14.8 Where the Committee wishes to refuse an application contrary to the Director's recommendation, either following a deferment or not, the reasons for refusal should be clearly stated and a detailed minute of the decision should be made. A copy of the minute should be placed on the application file. Similarly, where the Committee wish to grant planning permission contrary to the Director's recommendation, a detailed minute of the Committee's reasons will be made and copy placed on the application file.

14.9 Committee should indicate whether there are any specific conditions which they wish to see imposed.

14.10 In the cases of decisions made contrary to the Director's recommendations, the Officer attending the meeting should be given the opportunity to explain the implications of the decision. This is particularly important where decisions are contrary to the Development Plan.

14.11 Where an appeal to the Secretary of State is subsequently lodged against a decision made contrary to the Director's recommendation, planning officers (and other officers as appropriate) will act as professional witnesses to present, to the best of their abilities, the Council's case at public inquiries and local hearings, unless the Borough Solicitor considers that this would prejudice the outcome. The Planning Committee should normally identify a Member or Members to support the case at a Public Inquiry or Hearing, in order to stress to the Planning Inspector the strength of Members' views and the reasoning behind them.

14.12 At the earliest stage possible after an appeal is lodged and if a Public Inquiry is requested by the Appellant, the following issues will be determined by the Director of Development and Regeneration and Borough Solicitor in consultation with the Chair and Vice-Chair of the Committee:

- whether it would be appropriate to engage external counsel to advocate the Council's case;
- which officer(s) and Member(s) should appear at the inquiry to support the Council's case;
- whether it would be appropriate to engage external consultants to give evidence on behalf of the Council.

- 14.13 It is possible for a Member who disagrees with the majority Committee view on an application to appear at an inquiry or hearing to present his/her own views, but should make it clear he/she is doing so as a Ward Member or private individual.

## **15. Training and Development**

- 15.1 Members and Officers will receive regular and systematic training around the issues involved in this guide and in the general responsibilities of the Council as Local Planning Authority. Planning legislation and guidance can be complex. Members (either regular or substitute Committee Members) must not sit on the Planning Committee until they have received training on probity, procedural and policy issues.
- 15.2 Members should endeavour to attend any specialised training sessions provided, since these will be designed to extend Members knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan.

## **16. Reviewing Planning Decisions and the Decision Making Process**

- 16.1 Members of the Planning Committee and Planning Officers will regularly review the outcome of a sample of implemented planning decisions to assess the quality and consistency of those decisions in practice, in order to learn lessons for the future.
- 16.2 Informal meetings of the Committee will be held as necessary to review the effectiveness and efficiency of the decision-making process itself.

## **17. Complaints procedures**

- 17.1 The Council has an approved Complaints procedure that will be followed in relation to public complaints about the handling of planning applications and planning matters generally.
- 17.2 Details of the Complaints procedure and complaints forms are available on-line and from the One Stop Shop, Ground Floor, Town Hall, Bolton.

## **18. Review of this Guidance**

- 18.1 The usefulness and effectiveness of this Code will be reviewed no longer than 12 months from its formal adoption in order to assess if any improvements or amendments are necessary.



## Appendix 1

### Officer Reports To Committee

Reports to Planning Committee on planning applications will always be in written form and will include reference to the following:

- a location plan of the proposed development and, where appropriate, plans and drawings of the proposed development
- a visual indication on the location plan of those who have expressed support and those who have objected. [Where Members consider it appropriate, they may request a plan showing all those who have been consulted]
- description of the proposal (if not obvious from the application name itself)
- name of the applicant
- site characteristics
- Development Plan and policy context including other material considerations
- technical consultees' responses and their contents
- representations received and the main points raised therein [including summary of views of any local Ward Members who are not Members of the Committee]
- where a petition has been submitted, a comment on how many addresses are near, and how many are distant from, the application site
- responses, objections or representations that have been received after the Committee report has been written but before the day of the Committee meeting will be summarised in a report that will be tabled at the meeting. Any items received on the day of the meeting will be summarised orally by the planning officer at the Committee meeting. Where Members wish to see such late responses, it would be necessary to defer the application to the next meeting
- relevant planning history
- an analysis of the issues to be considered
- planning issues where there are relevant and cogent arguments on both sides, and where the final recommendation is finely balanced
- a recommendation to approve (with or without conditions), to refuse (with reasons), or to delegate to the Director, for example, to enable a Section 106 Agreement to be drawn up or to refer the application to the Secretary of State

## Appendix 2

### Guidelines For Determining Planning Applications

#### A. Applications under the Town and Country Planning Act 1990 (TCPA)

- (i) The basic purpose of the planning system is to regulate the development and use of land in the public interest. As required by Section 54A of the TCPA, all planning applications should be determined by reference to the development plan for the area, and any other material considerations. Where the development plan contains relevant policies, planning applications which are in accordance with that plan should be allowed unless material considerations indicate otherwise. Similarly, applications which are not in accordance with the development plan should be refused, unless other material considerations justify granting permission. The emphasis in determining applications is therefore firmly upon a plan-led system. The Core Strategy, adopted in March 2011, is the development plan covering the whole of the Borough.
- (ii) Other documents, such as the Supplementary Planning Documents and site-specific development briefs that supplement the policies of the Core Strategy, will also be material considerations to the planning decision.
- (iii) Local Planning Authorities are required to state clearly and precisely on the notice of decision on planning applications their full reasons for granting or refusing an application and the reasons for imposing conditions, specifying all policies and proposals in the development plan which are relevant to the decision. This will need to be considered by Committee when making decision contrary to an officer recommendation.
- (iv) Material considerations also include national planning guidance in the form of Government Circulars, the National Planning Policy Framework and case law. A ministerial statement may also be a material consideration.
- (v) In exceptional cases the personal circumstances of an applicant for planning permission may be a material consideration that may outweigh other planning considerations. Where this is the case specific valid reasons must be given to justify an exception.
- (vi) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgement for the decision maker having regard to the planning evidence. In attaching weight to any offer of community benefit (e.g. commuted sum for play facilities) accompanying any planning application, Members should be mindful of the advice in Circular 1/97.
- (vii) It is necessary to consider thoroughly any advice given by a statutory consultee or relevant Government Department before coming to a decision.
- (viii) Members may take into account the view of local residents when determining a planning application, but recognise that such opposition cannot be a reason in itself for refusing planning permission unless founded on valid planning reasons which are supported by evidence.
- (ix) Members should take into account earlier Council decisions and appeal decisions in relation to the site, or other related appeal decisions.
- (x) Planning applications which could reasonably be permitted should not be prevented, inhibited or delayed.
- (xi) Planning conditions should not be imposed which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

- (xii) Applications which the Council intend to approve as departures from the Development Plan will be advertised, will be identified in the Officer's Report to the Committee and where necessary, will be the subject of referral to the Secretary of State.

**B. Applications under the Planning and Listed Building Act 1990 (PLBA)**

- (i) it is now established that the determination of planning applications and applications for Listed Building Consent and Conservation Area Consent are separate statutory duties. The provisions of the TCPA do not override those of the PLBA.
- (ii) Bolton's UDP contains policies that deal with development in Conservation Areas and applications for Listed Building Consent to which Members should have regard in determining applications under the PLBA, in order to enable them to consider the desirability of preserving the building or its setting or any other feature of special historic or architectural interest.
- (iii) Members should also have regard to the replies of statutory consultees (e.g. English Heritage and amenity societies), Government policy and any other material considerations (e.g. appeal decisions, site history and case law).
- (iv) Members may take into account the views of local residents when dealing with the application but recognise that such opposition cannot be a reason in itself for refusing Listed Building Consent or Conservation Area Consent unless founded on valid reasons, which are supported by substantial evidence.