

## SECTION 18 – CODE OF CONDUCT FOR MEMBERS

The section below sets out the text of the Model Code of Conduct prescribed by the Local Authorities (Model Code of Conduct) (Wales) Order 2008, as amended by the following statutory instruments:

- Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014 – (No. 2014/1815) (“the 2014 Regulations”) – effective from 1 August 2014.
- Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008 (No. 2016/84) – effective from 1 April 2016.

### 18.1

#### Local Government Act 2000

#### Model Code of Conduct for Members and Co-opted Members with voting rights

Adopted by Powys County Council (amended) at a meeting held on 20th April, 2016.

#### THE MODEL CODE OF CONDUCT

#### PART 1 INTERPRETATION

1.—(1) In this code —

"co-opted member" ("*aelod cyfetholedig*"), in relation to a relevant authority, means a person who is not a member of the authority but who —

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority, and who is entitled to vote on any question which falls to be decided at any meeting of that committee or subcommittee;

"meeting" ("*cyfarfod*") means any meeting —

(a) of the relevant authority,

(b) of any executive or board of the relevant authority,

(c) of any committee, sub-committee, joint committee or joint sub-committee of the relevant authority or of any such committee, sub-committee, joint committee or joint sub-committee of any executive or board of the authority, or

(d) where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990,

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and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

"member" ("*aelod*") includes, unless the context requires otherwise, a co-opted member;

"registered society" means a society, other than a society registered as a credit union, which is —

(a) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014; or

(b) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969;

"register of members' interests" ("*cofrestr o fuddiannau'r aelodau*") means the register established and maintained under section 81 of the Local Government Act 2000;

"relevant authority" ("*awdurdod perthnasol*") means—

(a) a county council,

(b) a county borough council,

(c) a community council,

(d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies,

(e) a National Park authority established under section 63 of the Environment Act 1995;

"you" ("*chi*") means you as a member or co-opted member of a relevant authority; and

"your authority" ("*eich awdurdod*") means the relevant authority of which you are a member or co-opted member.

(2) In relation to a community council—

(a) "proper officer" ("*swyddog priodol*") means an officer of that council within the meaning of section 270(3) of the Local Government Act 1972; and

(b) "standards committee" ("*pwyllgor safonau*") means the standards committee of the county or county borough council which has functions in relation to the community council for which it is responsible under section 56(1) and (2) of the Local Government Act 2000.

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### PART 2 GENERAL PROVISIONS

2.—(1) Save where paragraph 3(a) applies, you must observe this code of conduct —

(a) whenever you conduct the business, or are present at a meeting, of your authority;

(b) whenever you act, claim to act or give the impression you are acting in the role of member to which you were elected or appointed;

(c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or

(d) at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

(e) leaders of political groups must take reasonable steps to promote and maintain high standards of conduct by members of the group.

(2) You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.

3. Where you are elected, appointed or nominated by your authority to serve —

(a) on another relevant authority, or any other body, which includes a Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or

(b) on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

4. You must —

(a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;

(b) show respect and consideration for others;

(c) not use bullying behaviour or harass any person; and

(d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

(e) undertake mandatory training as agreed by Full Council from time to time.

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- (f) in relation to Planning Matters, act in accordance with Rules 19.76 to 19.81 (Role of Decision Maker) and Rules 19.92 to 19.122 (Decision Making by the Planning Committee) of the Planning Protocol.

### 5. You must not —

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

### 6.—(1) You must —

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty);
- (c) report to your authority's monitoring officer any conduct by another member which you reasonably believe breaches this code of conduct;
- (d) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.

(2) You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

### 7. You must not —

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority —
  - (i) imprudently;
  - (ii) in breach of your authority's requirements;
  - (iii) unlawfully;

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(iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;

(v) improperly for political purposes; or

(vi) improperly for private purposes.

### **8. You must —**

(a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's officers, in particular by —

(i) the authority's head of paid service;

(ii) the authority's chief finance officer;

(iii) the authority's monitoring officer;

(iv) the authority's chief legal officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);

(b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

### **9. You must —**

(a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member;

(b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

## **PART 3 INTERESTS**

### **Personal Interests**

**10.—(1)** You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

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(2) You must regard yourself as having a personal interest in any business of your authority if —

(a) it relates to, or is likely to affect —

(i) any employment or business carried on by you;

(ii) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;

(iii) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a member;

(iv) any corporate body which has a place of business or land in your authority's area, and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;

(v) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in sub-paragraph (iv) above;

(vi) any land in which you have a beneficial interest and which is in the area of your authority;

(vii) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in subparagraph (iv) above;

(viii) any body to which you have been elected, appointed or nominated by your authority;

(ix) any —

(aa) public authority or body exercising functions of a public nature;

(bb) company, registered society, charity, or body directed to charitable purposes;

(cc) body whose principal purposes include the influence of public opinion or policy;

(dd) trade union or professional association; or

(ee) private club, society or association operating within your authority's area,

in which you have membership or hold a position of general control or management;

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(x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

*[Note: subparagraph (b) is omitted.]*

(c) a decision upon it might reasonably be regarded as affecting —

(i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;

(ii) any employment or business carried on by persons as described in 10(2)(c)(i);

(iii) any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;

(iv) any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

(v) any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management,

to a greater extent than the majority of—

(aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

### Disclosure of Personal Interests

**11.—**(1) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority and you make —

(a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication; or

(b) oral representations (whether in person or some form of electronic communication) to a member or officer of your authority you should disclose the

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interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within 14 days of the representation.

(3) Subject to paragraph 14(1)(b) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.

(4) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to sub-paragraph 11(1), give written notification to your authority in accordance with any requirements identified by your authority's monitoring officer, or in relation to a community council, your authority's proper officer from time to time but, as a minimum containing —

(a) details of the personal interest;

(b) details of the business to which the personal interest relates; and

(c) your signature.

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your monitoring officer has agreed that the nature of such personal interest is sensitive information.

(6) For the purposes of sub-paragraph (4), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a member of your authority.

(7) For the purposes of sub-paragraph (3), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

### Prejudicial Interests

**12.—**(1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business—



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(a) relates to —

- (i) another relevant authority of which you are also a member;
- (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- (iii) a body to which you have been elected, appointed or nominated by your authority;
- (iv) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
- (v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to —

- (i) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
- (ii) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in full time education, unless it relates particularly to the school which that child attends;
- (iii) the functions of your authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay from your authority;
- (iv) the functions of your authority in respect of an allowance or payment made in accordance with the provisions of Part 8 of the Local Government (Wales) Measure 2011, or an allowance or pension provided under section 18 of the Local Government and Housing Act 1989;

(c) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

### Overview and Scrutiny Committees

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**13.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint subcommittees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, board, committee, sub-committee, joint-committee or joint sub-committee mentioned in sub-paragraph (a) and you were present when that decision was made or action was taken.

### Participation in Relation to Disclosed Interests

**14.—(1)** Subject to sub-paragraphs (2), (2A), (3) and (4), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee —

(a) withdraw from the room, chamber or place where a meeting considering the business is being held—

(i) where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or

(ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.

(2) Where you have a prejudicial interest in any business of your authority 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.

(2A) Where you have a prejudicial interest in any business of your authority you may submit written representations to a meeting relating to that business, provided that the

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public are allowed to attend the meeting for the purpose of making representations, answering questions or giving evidence relating to the business, whether under statutory right or otherwise.

(2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that your authority may adopt for the submission of such representations.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if —

(a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

(b) you have the benefit of a dispensation provided that you —

(i) state at the meeting that you are relying on the dispensation; and

(ii) before or immediately after the close of the meeting give written notification to your authority containing —

(aa) details of the prejudicial interest;

(bb) details of the business to which the prejudicial interest relates;

(cc) details of, and the date on which, the dispensation was granted; and

(dd) your signature.

(4) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within 14 days of making the representation.

### **PART 4 THE REGISTER OF MEMBERS' INTERESTS**

#### **Registration of Personal Interests**

**15.—**(1) Subject to sub-paragraph (4), you must, within 28 days of—

(a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(b) your election or appointment to office (if that is later),

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register your personal interests, where they fall within a category mentioned in paragraph 10(2)(a), in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(2) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any new personal interest falling within a category mentioned in paragraph 10(2)(a), register that new personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any change to a registered personal interest falling within a category mentioned in paragraph 10(2)(a), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

(4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).

(5) Sub-paragraphs (1) and (2) do not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.

(6) You must, when disclosing a personal interest in accordance with paragraph 11 for the first time, register that personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.

### Sensitive information

**16.—**(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) is no longer sensitive information, notify your authority's monitoring officer, or in relation to a community council, your authority's proper officer asking that the information be included in your authority's register of members' interests.

(3) In this code, "sensitive information" ("*gwybodaeth sensitif*") means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

### Registration of Gifts and Hospitality

**17.** You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written

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notification to your authority's monitoring officer, or in relation to a community council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage.

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### **Conduct of Members – The Principles<sup>1</sup>**

#### **SELFLESSNESS**

18.2.1 Members must act solely in the public interest. They must never use their position as Members to improperly confer advantage on themselves or to improperly confer advantage or disadvantage on others.

#### **HONESTY**

18.2.2 Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

#### **INTEGRITY AND PROPRIETY**

18.2.3 Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

#### **DUTY TO UPHOLD THE LAW**

18.2.4 Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

#### **STEWARDSHIP**

18.2.5 In discharging their duties and responsibilities Members must ensure that their authority's resources are used both lawfully and prudently.

#### **OBJECTIVITY IN DECISION-MAKING**

18.2.6 In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, Members must make decisions on merit. Whilst Members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

#### **EQUALITY AND RESPECT**

18.2.7 Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

#### **OPENNESS**

18.2.8 Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

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<sup>1</sup> The Conduct of Members (Principles) (Wales) Order 2001 – S.I. 2276

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### **ACCOUNTABILITY**

18.2.9 Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a Member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **LEADERSHIP**

18.2.10 Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

### **Protocol - Standard of Conduct Expected by Members**

18.3 This protocol sets out the standards of conduct expected from Members within Powys County Council in dealing with each other. It should be read in conjunction with the Members Code of Conduct <sup>2</sup>and the Member-Officer Protocol<sup>3</sup>. It adds to these documents and does not detract from them.

Members are expected:

### **PUBLIC BEHAVIOUR**

- 18.3.1.1 to show respect to each other;
- 18.3.1.2 not to make personal abusive comments about each other;
- 18.3.1.3 not to publish anything insulting about each other;
- 18.3.1.4 not to make malicious allegations against each other;
- 18.3.1.5 not to publish or spread any false information about each other;
- 18.3.1.6 to show respect to diversity and equality;

### **BEHAVIOUR IN MEETINGS**

- 18.3.2.1 to behave with dignity;
- 18.3.2.2 to show respect to the Chair and obey his/her decisions;
- 18.3.2.3 not to use indecent language nor make racial remarks or remarks which prejudice any section of society;

### **CONFIDENTIALITY**

- 18.3.3.1 to keep the confidentiality of exempt papers and any other documents which are not public;
- 18.3.3.2 not to release confidential information to the press or the public;
- 18.3.3.3 not to use confidential information for purposes other than intended;

### **LOCAL MEMBERS**

- 18.3.4.1 to work with Members of adjoining electoral divisions for the benefit of the locality;
- 18.3.4.2 if dealing with any matter relating to another electoral division:
  - to explain to anyone seeking assistance that he/she is not the local Member;
  - to inform the local Member, unless it would lead to a breach of confidentiality.

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<sup>2</sup> See Section 18.1 above.

<sup>3</sup> See Section 21.

## **SECTION 18 – CODE OF CONDUCT FOR MEMBERS**

### **Procedure for Dealing with Allegations made against Councillors and referred to the Standards Committee**

#### **INTRODUCTION**

18.4.1 This document sets out the procedure that the Council's Standards Committee will follow where it is required to make decisions about the conduct of Councillors following investigations by the Public Services Ombudsman for Wales or the Council's Monitoring Officer under Part III of the Local Government Act 2000 and related regulations. If there is any conflict between this document and any statutory requirements then those statutory requirements will prevail.

#### **INTERPRETATION**

18.4.2 In this procedure:

18.4.2.1 the "Act" means the Local Government Act 2000;

18.4.2.2 the "Council" means Powys County Council;

18.4.2.3 the "Code of Conduct" means the code of conduct for members <sup>4</sup>adopted by the Council or the community councils within the Council's area in 2008 in accordance with section 51 of the Act, including any revisions;

18.4.2.4 the "Complainant" means any person who made any allegation which gave rise to the investigation;

18.4.2.5 the "Investigating Officer" means the person who conducted an investigation into any alleged breach of the Code of Conduct and produced the investigation report, being either the Ombudsman (or a person acting on his or her behalf) or the Monitoring Officer;

18.4.2.6 an "investigation report" means a report on the outcome of an investigation into any alleged breach of the Code of Conduct produced either by the Ombudsman under s71(2) of the Act or by the Monitoring Officer under the Regulations;

18.4.2.7 the "Member" means any person who is the subject of an investigation into any alleged breach of the Code of Conduct;

18.4.2.8 the "Monitoring Officer" means the officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989;

18.4.2.9 the "Ombudsman" means the Public Services Ombudsman for Wales;

18.4.2.10 the "Regulations" means the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 as amended;

18.4.2.11 the "Standards Officer" means the officer for the time being appointed by the Council to support the work of the Standards Committee.

#### **SUMMARY OF THE PROCEDURE**

18.4.3.1 Under section 69 of the Act, the Ombudsman may investigate any alleged breach of the Code of Conduct by Members or Co-Opted Members (or former Members or co-opted Members) of the Council or a community council in the Council's area.

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<sup>4</sup> See Section 18.1



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- 18.4.3.2 Under section 70(4) of the Act, where the Ombudsman ceases such an investigation before it is completed, he/she may refer the matters which are the subject of the investigation to the Monitoring Officer. The Monitoring Officer will then investigate matters in accordance with the Regulations before reporting and, if appropriate, making recommendations to the Standards Committee.
- 18.4.3.3 Alternatively, under section 71(2) of the Act, where the Ombudsman decides after investigating that it is appropriate, he/she will produce a report on the outcome of the investigation and send it to the Monitoring Officer. The Monitoring Officer will then consider the report of the Ombudsman in accordance with the Regulations, before, if appropriate, present the report and make recommendations to the Standards Committee.
- 18.4.3.4 The Standards Committee will then make an initial determination either:
- (a) that there is no evidence of any failure to comply with the Code of Conduct; or
  - (b) that the Member should be given the opportunity to make representations, either orally or in writing.
- 18.4.3.5 Where the Member is given an opportunity to make representations, the Standards Committee will convene a hearing to consider any response made by the Member and it must determine under regulation 9(1) of the Regulations either that:
- (a) there is no evidence of any failure to comply with the Code of Conduct and that therefore no action needs to be taken;
  - (b) the Member has failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
  - (c) the Member has failed to comply with the Code of Conduct and should be censured; or
  - (d) the Member has failed to comply with the Code of Conduct and should be suspended or partially suspended from being a member or co-opted Member of his/her authority for a period not exceeding six months

and take any such action accordingly.

### **INVESTIGATIONS BY THE MONITORING OFFICER (REFERRALS UNDER SECTION 70(4) OF THE ACT)**

- 18.4.4.1 Where the Ombudsman ceases his/her investigation before it is completed and refers the matters which are the subject of the investigation to the Monitoring Officer under section 70(4) of the Act, the Monitoring Officer must:
- (a) conduct an investigation; and
  - (b) report, and if appropriate, make recommendations to the Council's Standards Committee.

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18.4.4.2 The Monitoring Officer will investigate in accordance with the Regulations and may follow such procedures as he or she considers appropriate in the circumstances of the case.

18.4.4.3 After concluding an investigation, the Monitoring Officer must:

- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee;
- (b) send a copy of the report to the Member; and
- (c) take reasonable steps to send a copy of the report to the Complainant.

18.4.4.4 The Standards Committee will consider the Monitoring Officer's report and any recommendations in accordance with the procedure set out below.

### **INVESTIGATIONS BY THE OMBUDSMAN (REFERRALS UNDER SECTION 71(2) OF THE ACT)**

18.4.5.1 Where the Ombudsman completes his or her investigation and sends a report to the Monitoring Officer and the Council's Standards Committee under section 71(2) of the Act, the Monitoring Officer must consider the Ombudsman's report and, if appropriate, make recommendations to the Council's Standards Committee.

18.4.5.2 The Standards Committee will consider the Ombudsman's report together with any recommendations made by the Monitoring Officer in accordance with the procedure set out below.

### **THE FIRST MEETING OF THE STANDARDS COMMITTEE - INITIAL DETERMINATION**

18.4.6.1 After the Monitoring Officer has:

- (a) produced an investigation report in accordance with rule 18.4.4.3(a); or
- (b) considered the Ombudsman's investigation report in accordance with rule 18.4.5.1

he/she will arrange for a meeting of the Standards Committee to be convened as soon as possible and for a copy of the investigation report, together with the Monitoring Officer's recommendations (if any), to be sent to each of the members of the Standards Committee.

18.4.6.2 Notice of the time and place of the meeting will be given in accordance with Part VA of the Local Government Act 1972 as amended by the Standards Committees (Wales) Regulations 2001. The agenda will name the Councillor against whom the allegation of misconduct have been made. The first substantive item on the agenda will be to determine whether the members of the public and Members should be excluded in accordance with Rule 4.81.

18.4.6.3 If the investigation report is produced by the Ombudsman, the Monitoring Officer will advise the Standards Committee. If the investigation report is

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produced by the Monitoring Officer, the Standards Officer or some other suitably qualified person will advise the Standards Committee.

18.4.6.4 The business of the Standards Committee meeting will be limited to considering the investigation report and the Monitoring Officer's recommendations (if any) and to making an initial determination either:

- (a) that there is no evidence of any failure to comply with the Code of Conduct; or
- (b) that the Member should be given the opportunity to make representations,

either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the Code of Conduct.

18.4.6.5 The decision of the Committee under Rule 18.4.6.4 will be published and the name of the Councillor against whom the allegation of misconduct has been made will be made public even if the Committee decides that there is no failure to comply with the Members' Code of Conduct.

### **AFTER THE FIRST MEETING OF THE STANDARDS COMMITTEE**

18.4.7.1 Where the Standards Committee decides that there is no evidence of any failure to comply with the Code of Conduct, the Standards Officer will accordingly notify the Member, the Complainant and the Ombudsman.

18.4.7.2 Where the Standards Committee decides that the Member should be given the opportunity to make representations, the Standards Officer will notify the Member of the Committee's decision and the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

### **PREPARING FOR THE HEARING TO CONSIDER THE MEMBER'S REPRESENTATIONS**

18.4.8.1 The Standards Officer, in consultation with the Chair of the Standards Committee, will write to the Member to propose a date for a hearing to consider any representations that the Member may wish to make and the Member will respond in writing within 7 days indicating whether he / she wishes to attend the hearing and his / her ability to attend the hearing. In the event that the Member is unable to attend a hearing on the date(s) proposed, the Member will be able to propose alternative dates for consideration by the Chair of the Standards Committee, who will decide the reasonableness or otherwise of the proposed alternative date and arrange the date for the hearing to take place at which meeting the Committee will decide whether or not to proceed in the event that the Member fails to attend the hearing.

18.4.8.2 The letter from the Standards Officer in accordance with 18.4.8.1 will also ask the member to respond in writing within 14 days of that letter to confirm whether he / she:

- (a) wants to make representations, whether orally or in writing and if so, to include any written representations in his or her response;

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- (b) disagrees with any of the findings of fact in the investigation report, and if so, which matters he or she disagrees with and the reasons for any disagreements in addition to the disputed facts set out in the investigation report;
- (c) wants to appear before the Committee in person or be represented at the hearing by a solicitor, barrister or any other person, in accordance with his/her right under the Regulations;
- (d) wants to give evidence to the Standards Committee, either orally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Standards Committee and confirm their identity and either provide a statement of their evidence or the substance of the evidence to be given orally to the Standards Committee;
- (f) wants any part of the meeting to be held in private and the reasons why the meeting should not be in public;
- (g) wants any part of the investigation report or other relevant documents to be withheld from the public and the reasons why the document should not be made public

18.4.8.3 The Standards Officer will notify the Investigating Officer of the proposed hearing date and ask whether he or she will be attending the hearing.

18.4.8.4 The Standards Officer will send a copy of the Member's response under rule 18.4.8.1 to the Investigating Officer and will ask him/her to confirm in writing within seven days whether he/she:

- (a) has any comments on the Member's response;
- (b) wants to be represented at the hearing;
- (c) wants to call relevant witnesses to give evidence to the Standards Committee;
- (d) wants any part of the meeting to be held in private; and
- (e) wants any part of the investigation report or other relevant documents to be withheld from the public.

18.4.8.5 The Standards Officer will write to the members of the Committee, the Member and the Investigating Officer at least two weeks before the hearing to:

- (a) confirm the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the Member or the Investigating Officer will attend or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the investigation report, any relevant documents, the Member's response and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the meeting.

### **POWERS OF THE STANDARDS COMMITTEE**

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- 18.4.9.1 The Standards Committee may, in accordance with the requirements of natural justice, conduct the meeting in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings. The Committee must to whatever extent it considers to be appropriate, seek to avoid formality and inflexibility in its proceedings. The Standards Committee will decide factual evidence on the balance of probabilities.
- 18.4.9.2 The Member or the Investigating Officer, whether or not they are legally qualified, may be represented or accompanied by another person but if in any particular case the Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
- 18.4.9.3 The Standards Committee may take legal advice from a Council officer appointed for this purpose at any time during the meeting or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the Member and the Investigating Officer if they are present.
- 18.4.9.4 Where appropriate, and in accordance with the Regulations, the Standards Committee has power to censure the Member, or suspend or partially suspend the Member for a period not exceeding six months.

### **PROCEDURE AT THE HEARING**

- 18.4.10.1 The hearing will be held in public unless the Standards Committee is persuaded that there is a good reason to exclude the public.
- 18.4.10.2 The procedure at the meeting shall be as set out below, subject to the Chair making such changes as he or she thinks fit in order to ensure a fair and efficient hearing.

### **Introduction**

- 18.4.10.3 The Chair of the Standards Committee will introduce those persons present and will explain the manner and order of proceedings

### **First Stage - Preliminary Procedural Issues**

- 18.4.10.4 The Standards Committee will then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the prehearing process.

### **Second Stage - Making Findings of Fact**

- 18.4.10.5 The Standards Committee will then consider whether or not there are any significant disagreements about the facts contained in the investigation report.

- 1 If there is a disagreement as to the facts:
  - (a) the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant findings of fact in the investigation report;
  - (b) the Investigating Officer may call any necessary supporting witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Member an

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- opportunity to challenge any evidence put forward by any witness called by the Investigating Officer;
- (c) the Member will then be invited to make representations to support his or her version of the facts;
  - (d) the Member may call any necessary witnesses to give evidence, with the Standards Committee's permission and the Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member.
- 2 At any time, the Standards Committee may question any of the people involved or any of the witnesses.
- 3 If the Member disagrees with any relevant fact in the investigation report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
- (a) continue with the hearing, relying on the information in the investigation report;
  - (b) allow the Member to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
- 4 At the conclusion of the representations as to matters of fact, the Standards Committee will retire to deliberate in private on the representations, after which the Chair of the Standards Committee will announce their findings of fact.

### **Third Stage - Deciding whether the Member has failed to comply with the Code**

#### **18.4.10.6**

- 1 The Standards Committee will then consider whether, based on the facts it has found, the Member has failed to comply with the Code.
- 2 The Standards Committee will invite the Investigating Officer to make representations as to whether or not, based on the facts the Committee has found, the Member has failed to comply with the Code of Conduct.
- 3 The Standards Committee will invite the Member to respond to the representations of the Investigating Officer and to make representations as to whether or not, based on the facts the Committee has found, he or she has failed to comply with the Code of Conduct.
- 4 The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

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- 5 The Member will be invited to make any final relevant points.
- 6 The Standards Committee will retire to deliberate in private on the representations and decide whether or not the Member has failed to comply with the Code of Conduct, after which the Chair of the Standards Committee will announce their findings.

### Fourth Stage - Action to be Taken

#### 18.4.10.7

- 1 If the Standards Committee decides that the Member has not failed to comply with the Code of Conduct, it will formally record that there is no evidence of any failure by the Member to comply with the Code of Conduct and that therefore no action needs to be taken.
- 2 If the Standards Committee decides that the Member has failed to comply with the Code of Conduct it will invite the Member and the Investigating Officer to make representations as to:
  - (a) whether or not the Committee should apply a sanction; and
  - (b) what form any sanction should take.
- 3 The Standards Committee will retire to deliberate in private on the representations and decide either that:
  - (a) no action needs to be taken in respect of the failure to comply with the Code of Conduct;
  - (b) the Member should be censured; or
  - (c) the Member should be suspended or partially suspended from being a member or Co-Opted Member of his or her authority for a period not exceeding six months (or, if shorter, for the remainder of that person's term of office);after which the Chair of the Standards Committee will announce their decision in public.
- 4 After making a decision the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision (including details of the Member's right of appeal) to the Member, the Complainant and the Ombudsman as soon as reasonably practicable.
- 5 The decision of the Standards Committee will be deemed to have been received by the Member on the second day after the date the letter was sent by first class post, provided that the Standards Officer has proof of postage.

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### **FAILURE TO MAKE REPRESENTATIONS / ATTEND THE HEARING**

18.4.11.1 If the Member fails to make representations, the Standards Committee may:

- (a) unless it is satisfied that there is sufficient reason for such failure, consider the investigation report and make a determination in the Member's absence; or
- (b) give the Member a further opportunity to make representations.

18.4.11.2 If a party fails to be present or represented at a hearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence:

- (a) adjourn the hearing; or
- (b) hear and decide the matter in the party's absence;
- (c) and in either case the Standards Officer will inform the Member of the outcome of the hearing by email or telephone and will thereafter arrange for the outcome to be notified to the press.

### **ILLNESS OR INCAPACITY**

18.4.12 If the Standards Committee is satisfied, based upon the medical evidence supplied, that any party is unable, through physical or mental sickness or impairment, to attend the hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, which may include adjourning the hearing to a suitable date or proceeding with the hearing in the absence of the party if appropriate to do so in the opinion of the Standards Committee.

### **SUSPENSION**

18.4.13 A period of suspension or partial suspension will commence on the day after:

- 18.4.13.1 the expiry of the time allowed to lodge a notice of appeal to the Adjudication Panel for Wales under the Regulations (i.e. 21 days after receiving notification of the Standards Committee's determination in accordance with Rule 18.4.10.7.5); or
- 18.4.13.2 receipt of notification of the conclusion of any appeal in accordance with the Regulations; or
- 18.4.13.3 a further determination by the Standards Committee made after receiving a recommendation from the Adjudication Panel for Wales under the Regulations,

whichever occurs last.

### **REFERRAL TO THE ADJUDICATION PANEL FOR WALES**

18.4.14.1 Where the Standards Committee determines that the Member has failed to comply with the Code of Conduct, the Member may seek permission to appeal against the determination from the President of the Adjudication



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Panel for Wales (APW) within 21 days of receiving notification of the Standard Committee's determination.

18.4.14.2 The APW may endorse the decision of the Standards Committee, refer a matter back to the Standards Committee recommending it impose a different penalty, or overturn the decision.

18.4.14.3 If:

- (a) the Standards Committee determines that the Member failed to comply with the Code of Conduct; and
- (b) the Member appeals to an APW drawn from the Adjudication Panel for Wales; and
- (c) the APW refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed,

the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the APW and will determine whether or not it should uphold its original determination or accept the recommendation.

- (d) After making its determination the Standards Committee will instruct the Standards Officer to confirm the decision and the reasons for the decision in writing and to send a copy of the written decision to the Member, the Complainant, the Ombudsman and the president of the APW as soon as reasonably practicable.

### **PUBLICATION OF THE STANDARDS COMMITTEE'S REPORT**

18.4.15.1 The Standards Committee will produce a report on the outcome of the investigation and send a copy to the Ombudsman, the Monitoring Officer, the Member and take reasonable steps to send a copy to the Complainant within 14 days after either:

- (a) the expiry of the time allowed to lodge a notice of appeal under the Regulations, or
- (b) receipt of notification of the conclusion of any appeal in accordance with the Regulations, or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an Adjudication Panel for Wales under the Regulations,

whichever occurs last.

18.4.15.2 Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:

- (a) publish the report on the Council's website for a minimum period of 21 days and make copies available for inspection by the public without charge during office hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available;
- (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and

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- (c) not later than seven days after the report is received from the Standards Committee, give public notice, by advertisement in newspapers circulating in the area and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

### **COSTS**

- 18.4.16 The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

### **Exclusion of Public and Members from Standard Committee Hearings**

- 18.4.17.1 Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules in Section 14 of this Constitution or Rules 4.89 and 4.90 (Disturbance by the Public).
- 18.4.17.2 For the purpose of this Rule 18.4, where members of the public have been excluded pursuant to Rule 18.4.17.1, Members are also excluded (save for the Member appearing before the Standards Committee).

### **18.5 Protocol Concerning Gifts and Hospitality to Members**

- 18.5.1 The acceptance of gifts and hospitality by Councillors is not merely an administrative issue. It reflects directly upon the perception of Councillors and of the authority as acting in the public interest or as acting for the personal advantage of friends and for what personal benefit Councillors can get out of their position.
- 18.5.2 The law on the acceptance of gifts and hospitality is set out in the authority's Code of Conduct for Members and in the Prevention of Corruption Acts. These requirements are then supplemented by this Protocol which has been adopted by this authority, to provide a clear set of rules for the protection of both Councillors and the authority. Acceptance of a gift or hospitality in breach of the Code, or failure to declare receipt of such a gift or hospitality, can lead to disqualification from holding any public officer for a period of up to five years. Corrupt acceptance of a gift or hospitality can lead to a heavy fine or up to 7 years' imprisonment.
- 18.5.3 This Protocol sets out:
  - (a) the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality;
  - (b) a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it;
  - (c) a procedure for declaring any gift or hospitality which you receive and for accounting for any gift to the authority.

This Code does not apply to the acceptance of any facilities or hospitality which may be provided to you by this authority.

### **18.5.4 General Principles.**

- 18.5.4.1 You should never accept any gift or hospitality in any of the Precluded Situations described in paragraph 6(c) of this Protocol

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18.5.4.2 In deciding whether in situations, other than Precluded situations, it is proper to accept any gift or hospitality, you should apply the following principles. Even if the gift or hospitality comes within one of the general consents set out below, you should not accept it if to do so would be in breach of one or more of these principles:

**(a) Never accept a gift or hospitality as an inducement or reward for anything you do as a Councillor**

As a Councillor, you must act in the public interest and must not be swayed in the discharge of your duties by the offer, prospect of an offer, or the non-offer of any inducement or reward for discharging those duties in a particular manner.

The Public Bodies (Corrupt Offences) Act 1889 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement to or reward for doing or forbearing to do anything in respect of any matter or transaction in which the authority is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 7 years.

Further, the authority's Code of Conduct for Members provides that you must act in the public interest, serving the authority and the whole community, rather than acting in the interests of any particular individual or section of the community, and that it is a breach of the Code improperly to confer any advantage or disadvantage on any person, including yourself.

**(b) You should only accept a gift or hospitality if there is a commensurate benefit to the authority.**

The only proper reason for accepting any gift or hospitality is that there is a commensurate benefit for the authority which would not have been available but for the acceptance of that gift or hospitality.

Acceptance of hospitality can confer an advantage on the authority, such as an opportunity to progress the business of the authority expeditiously through a working lunch, or to canvass the interests of the authority and its area at a meeting. Acceptance of a gift is much less likely to confer such an advantage. But unless the benefit to the authority is clear, and is commensurate with the value of the gift or hospitality, the presumption must be that the gift or hospitality is purely for your personal benefit.

As set out above, the authority's code provides that you must not improperly confer any advantage on anyone, including yourself. Acceptance as a Councillor of a gift or hospitality for your own benefit or advantage, rather than for the benefit to the authority, would be a breach of the Code.

**(c) Never accept a gift or hospitality if acceptance might be open to misinterpretation**

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The appearance of impropriety can be just as damaging to the authority and to you as a Councillor as actual impropriety. The authority's ability to govern rests upon its reputation for acting fairly and in the public interest. You must therefore consider whether the acceptance of the gift or hospitality is capable of being interpreted as a sign that you or the authority favours any particular person, company or section of the community or as placing you under any improper obligation to any person or organisation. If there is any possibility that it might be so interpreted, you must either refuse the gift or hospitality or take appropriate steps to ensure that such a misunderstanding cannot arise.

Certain occasions are particularly sensitive, and require the avoidance of any opportunity for such misunderstanding. These include:

- (i) occasions when the authority is going through a competitive procurement process, in respect of any indication of favour for a particular tenderer.
- (ii) determinations of planning applications or planning policy, in respect of any person or organisation which stands to gain or lose from the determination,
- (iii) funding decisions, when the authority is determining a grant application by any person or organisation.

**(d) Never accept a gift or hospitality which puts you under an improper obligation.**

Recognise that some commercial organisations and private individuals see the provision of gifts and hospitality as a means of buying influence. If you accept a gift or hospitality improperly, it is possible that they may seek to use this fact to persuade you to determine an issue in their favour. Equally, if others note that you have been prepared to accept a gift or hospitality improperly, they may feel that they will no longer be able to secure impartial consideration from the authority.

**(e) Never solicit a gift or hospitality**

You must never solicit or invite an offer of a gift or hospitality in connection with your position as a Councillor unless the acceptance of that gift or hospitality would be permitted under this Code. You should also take care to avoid giving any indication that you might be open to such any improper offer.

### 18.5.5 Consent Regimes

#### 18.5.5.1 General consent provisions

For clarity, the authority has agreed that in situations other than the Precluded Situations you may accept gifts and hospitality in the following circumstances provided that to do so would not be in breach of any one or more of the general principles contained in paragraph 2 above:

- (i) civic hospitality provided by another public authority

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- (ii) modest refreshment in connection with any meeting in the ordinary course of your work, such as tea, coffee, soft drinks and biscuits
- (iii) tickets for sporting, cultural and entertainment events which are sponsored by the authority
- (iv) small gifts of low intrinsic value below £25, branded with the name of the company or organisation making the gift, such as pens, pencils, mouse pads, calendars and diaries. However, you should take care not to display any such branded items when this might be taken as an indication of favour to a particular supplier or contractor, for example in the course of a procurement exercise
- (v) a modest alcoholic or soft drink on the occasion of an accidental social meeting, such as a pint of beer from an employee of a contractor or party with whom you have done business on behalf of the authority if you meet accidentally in a public house, cafe or bar. In such cases, you should make reasonable efforts to return the offer where this is practicable
- (vi) a modest working lunch not exceeding £10 a head in the course of a meeting in the offices of a party with whom the authority has an existing business connection where this is required in order to facilitate the conduct of that business. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction, when arranging any such meeting, to make it clear to the other party that such a lunch must not exceed a value of £10 a head
- (vii) modest souvenir gifts with a value below £25 from another public authority given on the occasion of a visit by or to the authority
- (viii) Hospitality received in the course of an external visit or meeting which has been duly authorised by the authority. Councillors should not make such arrangements themselves, but request officers to settle the detailed arrangements, and officers are under instruction to make it clear that any such hospitality for Councillors and officers is to be no more than commensurate with the nature of the visit
- (ix) other unsolicited gifts, where it is impracticable to return them to the person or organisation making the gift, provided that the Councillor deals with the gift strictly in accordance with the following procedure: The Councillor must, as soon as practicable after the receipt of the gift, pass it to the Secretary to the Chairman of the Council together with a written statement identifying the information set out in Paragraphs 3.2 below. The Secretary will then write to the person or organisation making the gift thanking them on your behalf for the gift and informing them that you have donated the gift to the Chairman's Charity Fund, on whose behalf it will be raffled or other wise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Chairman.

### 18.5.5.2 Special consent provisions

If you wish to accept any gift or hospitality, in a situation, other than the Precluded Situations, which is in accordance with the General Principles set out in Paragraph 2, but is not within any of the general consents set out in

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Paragraph 3.1, you may only do so if you have previously obtained specific consent in accordance with the following procedure:

You must make an application in writing to the Monitoring Officer, setting out:

- (i) the nature and your estimate of the market value of the gift or hospitality
- (ii) who the invitation or offer has been made by or on behalf of
- (iii) the connection which you have with the person or organisation making the offer or invitation, such as any work which you have undertaken for the authority in which they have been involved
- (iv) any work, permission, concession or facility which you are aware that the person or organisation making the offer or invitation may seek from the authority
- (v) any special circumstances which lead you to believe that acceptance of the gift or hospitality will not be improper

You must not accept the gift or hospitality until you have received the appropriate consent.

The Monitoring Officer will enter details of any approval in a register which will be available for public inspection on the occasion of the public inspection of the authority's accounts for the relevant year. But note that this does not relieve you of the obligation to register the receipt of gifts and hospitality in accordance with Paragraph 4, below.

### 18.5.6 **Reporting**

18.5.6.1 Where you accept any gift or hospitality which you estimate to have a market value or cost of provision of £25 or greater, (or where you accept a working lunch of the type described in paragraph 3.1 (vi) above where the cost or value exceeds £10) you must, as soon as possible after receipt of the gift or hospitality, make a declaration in writing to the Monitoring Officer officer, setting out the information set out in Paragraphs 2(b) above. A form for this purpose is attached to this Code, but you can send the same information by any convenient means. The Monitoring Officer will retain a copy of any such declaration in a register which will be available for public inspection until the approval of the authority's accounts for the year in question.

18.5.6.2 Even if the value of the gift or hospitality is less than £25, (or less than £10 in respect of a working lunch of the type described in paragraph 3.1 (vi)) if you are concerned that its acceptance might be misinterpreted, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

### 18.5.7 **Gifts to the authority**

18.5.7.1 Gifts to the authority may take the form of the provision of land, goods or services, either to keep or to test with a view to future acquisition, an offer to carry out works or sponsorship of a function which is organised or supported by the authority. You should not solicit any such gift on behalf of the authority except where the authority has formally identified the opportunity for

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participation by an external party and how that participation is to be secured, for example in relation to sponsorship of public musical and theatrical performances and developers' contributions under Section 106 Agreements. If you receive such an offer on behalf of the authority, you must first consider whether it is appropriate for the authority to accept the offer (in terms of whether the acceptance of the gift might be seen as putting the authority under any improper obligation, whether there is a real benefit to the authority which would outweigh any dis-benefits). If you do not have delegated authority to accept the gift, you should report the offer directly to the Monitoring Officer who has such delegated authority, together with your recommendation. The Monitoring Officer will then write back to the person or organisation making the offer, to record the acceptance or non-acceptance of the gift, record the gift for audit purposes and ensure that the gift is properly applied for the benefit of the authority. If you have any concerns about the motives of the person or organisation making the offer, or whether it would be proper for the authority to accept the gift, you should consult the Monitoring Officer directly.

### 18.5.8 Definitions

#### 18.5.8.1 "Gift or hospitality" includes any:

- (i) the free gift of any goods or services
- (ii) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public
- (iii) the opportunity to obtain any goods or services which are not available to the general public
- (iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

#### 18.5.8.2 References to the "value" or "cost" of any gift or hospitality are references to the higher of:

- (i) your estimate of the cost to the person or organisation of providing the gift or consideration
- (ii) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the cash sum of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

#### 18.5.8.3 References to "Precluded Situations" are references to situations where a member MUST NEVER accept any gift or hospitality and are:-

- (i) situations covered by the Planning Protocol, the relevant extracts of which are for ease of reference reproduced in Annex A to this Protocol;
- (ii) situations where the gift or hospitality would be provided by an individual who is an applicant for any order, licence, permission or consent to be made or granted by the Council or any objector to, or supporter of the grant of such order, licence, permission or consent or

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- any other individual who may be affected by the grant or refusal of such order, licence, permission or consent; and
- (iii) situations where the gift or hospitality would be provided by an individual who is in negotiation with the Council or has submitted a tender or offer to the Authority in relation to any proposed contract or transaction for the acquisition or disposal of any estate or interest in land or for the supply of goods or services to or from the Authority.

For the purposes of this definition:-

- “individual” includes any public or statutory body, a company, a partnership, an unincorporated association and any other organisation or legal entity or legal person known to and recognised by the law of England and Wales;
- “Planning Protocol” means the **Code of Conduct Dealing With Planning Matters/Applications In Respect Of The Planning Service** adopted by the County Council on 24<sup>th</sup> April 2008



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To: Monitoring Officer.

### Declaration of Receipt of Gifts or Hospitality

Name	
Address	
What was the gift or hospitality?	
What is your best estimate of its market value or cost?	
Who provided it?	
When and where did you receive it?	
Does it come within one of the general consents set out in the Code of Conduct? If so, which?	
Did you get the consent of any officer before accepting it? If so, who?	
Were there any special circumstances justifying acceptance of this gift or hospitality?	
Do you have any contact with the person or organisation providing the gift or hospitality?	
Signed	Date

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### GIFTS AND HOSPITALITY.

A Councillor who is a “Decision Maker” must:

- not accept any gifts or hospitality from anyone connected with a planning application or matter;
- register any offers of gifts or hospitality refused in a register kept for that purpose maintained by the Monitoring Officer.

All other Councillors must comply with the Protocol Concerning Gifts and Hospitality to Members as set out in Part 5 – Section 3 of the Constitution.

#### **Definition.**

“**Decision Maker**” means, in relation to a specific planning application, a Member who is neither a “Member with an Interest” nor a “Local Member” and who is involved in the determination of that planning application as a Member of the Planning Committee.