

## **Part 5**

### **Codes and Protocols**

# **CODE OF CONDUCT FOR MEMBERS**

# **BRAINTREE DISTRICT COUNCIL**

## **INTRODUCTION**

This Code has been adopted by Braintree District Council in accordance with Section 51 of the Local Government Act 2000. Every Councillor, including any co-opted member must sign an undertaking to observe the authority's code. Any person can then make a written complaint to the Standards Board for England that a member has acted in breach of the authority's code. A written complaint will secure an investigation and this may lead to sanctions being applied to the member by a Case Tribunal or, where the Secretary of State provides by regulations, by the authority's Standards Committee.

## **PART 1**

### **GENERAL PROVISIONS**

#### *Scope*

1. (1) A member must observe the authority's code of conduct whenever he/she:-
  - (a) conducts the business of the authority;
  - (b) conducts the business of the office to which he/she has been elected or appointed: or
  - (c) acts as a representative of the authority,  
and references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority –
  - (a) on another relevant authority, he/she must, when acting for that other authority, comply with that other authority's code of conduct; or
  - (b) on any other body, he/she must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- (4) In this code "member" includes a co-opted member of an authority.

## *General Obligations*

2. A member must –
  - (a) promote equality by not discriminating unlawfully against any person;
  - (b) treat others with respect; and
  - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
3. A member must not –
  - (a) 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 a person authorised to give it, or unless he/she is required by law to do so; nor
  - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his/her official capacity, or any other circumstance, conduct himself/herself in a manner which could reasonably be regarded as bringing his/her office or authority into disrepute.
5. A member –
  - (a) must not in his/her official capacity, or any other circumstance use his/her position as a member improperly to confer on or secure for himself/herself or any other person, an advantage or disadvantage; and
  - (b) must, when using or authorising the use by others of the resources of the authority –
    - (i) act in accordance with the authority's requirements; and
    - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions –
  - (a) have regard to any relevant advice provided to him/her by –
    - (i) the authority's Finance Director acting in pursuance of his/her duties under Section 114 of the Local Government Finance Act 1988; and
    - (ii) the authority's monitoring officer acting in pursuance of his/her duties under Section 5(2) of the Local Government and Housing Act 1989; and

- (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an Cabinet decision.
  - (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "Cabinet decision" is to be construed in accordance with any regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.
7. A member must, if he/she becomes aware of any conduct by another member which he/she reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him/her to do so.

## **PART 2**

### **INTERESTS**

#### *Personal Interests*

8. (1) A member must regard himself/herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself/herself, a relative or a friend or-
- (a) any employment or business carried on by such persons;
  - (b) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
  - (c) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
  - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
  - (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

### *Disclosure of Personal Interests*

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration or when the interest becomes apparent.
- (2) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an Cabinet decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

### *Prejudicial Interests*

- 10 (1) Subject to sub-paragraph (2) below a member with a personal interest in a matter also has a prejudicial interest in that matter 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 the member's judgement of the public interest.
- (2) A member may regard himself/herself as not having a prejudicial interest in a matter if that matter relates to –
  - (a) another relevant authority of which he/she is a member;
  - (b) another public authority in which he/she holds a position of general control or management;
  - (c) a body to which he/she has been appointed or nominated by the authority as its representative;
  - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he/she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
  - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
  - (f) the functions of the authority in respect of statutory sick pay under Part I of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
  - (g) the function of the authority in respect of an allowance of payment made under Sections 173 to 176 of the Local Government Act 1972 or Section 18 of the Local Government and Housing Act 1989.

### *Overview and Scrutiny Committees*

11. (1) For the purpose of this Part, a member must if he/she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself/herself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –
- (a) committees or sub-committees; or
  - (b) joint committees or joint sub-committees; of which he/she may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

### *Participation in Relation to Disclosed Interests*

12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he/she has obtained a dispensation from the authority's standards committee;
  - (b) not exercise Cabinet functions in relation to that matter; and
  - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
- (a) overview and scrutiny committees; and
  - (b) joint or area committees, to the extent that such committees are not exercising functions of the authority or its Cabinet.
13. For the purpose of this Part, "meeting" means any meeting of –
- (a) the authority;
  - (b) the Cabinet of the authority; or
  - (c) any of the authority's or its Cabinet's committees, sub-committees, joint committees, joint sub-committees, or area committees.

## PART 3

### THE REGISTER OF MEMBERS' INTERESTS

#### *Registration of Financial and Other Interests*

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his/her election or appointment to office (if that is later), a member must register his/her financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him/her;
  - (b) the name of the person who employs or has appointed him/her, the name of any firm in which he/she is a partner, and the name of any company for which he/she is a remunerated director;
  - (c) the name of any person, other than a relevant authority, who has made a payment to him/her in respect of his election or any expenses incurred by him/her carrying out his/her duties;
  - (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has 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;
  - (e) a description of any contract for goods, services or works made between the authority and himself/herself or a firm in which he/she is a partner, a company of which he/she is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
  - (f) the address or other description (sufficient to identify the location) of any land in which he/she has a beneficial interest and which is in the area of the authority;
  - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he/she is a partner, a company of which he/she is a remunerated director or a body of the description specified in sub-paragraph (d) above; and
  - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he/she has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his/her election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under Section 81(1) of the Local Government Act 2000 by providing written

notification to the authority's monitoring officer of his/her membership of or position of general control or management in any –

- (a) body to which he/she has been appointed or nominated by the authority as its representative;
  - (b) public authority or body exercising functions of a public nature;
  - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
  - (d) body whose principal purposes include the influence of public opinion or policy; and
  - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above provide written notification to the authority's monitoring officer of that change.

*Registration of Gifts and Hospitality*

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.

## **Officers' Code of Conduct**

DRAFT  
CODE OF CONDUCT OF EMPLOYEES  
APRIL 2001

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The public is entitled to demand  
conduct of the highest standard

**INTRODUCTION**

Lord Nolan in his report on Standards of Conduct in Local Government, commented that in general the standard of behaviour and conduct in Local Government is extremely high.

However, there is no room for complacency where this subject is concerned and the public rightly expect the highest standards from Local Government.

The purpose of this code is to ensure the Council and its employees achieve the highest standards of behaviour and conduct.

It brings together extracts from documents with which staff should already be familiar. In maintaining an effective plan to ensure fraud and corruption are minimised, it is essential that as a part of that process the standards by which employees are expected to conduct themselves are clearly defined. They must also be widely circulated to increase the overall awareness.

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| <p><b>THE BASICS</b></p> <ol style="list-style-type: none"><li>1. Each individual is accountable for their own decisions and actions. Please use this code to aid your judgement.</li><li>2. If you are doubtful or unclear about circumstances involving gifts/hospitality, it is prudent to seek advice, or simply make a polite refusal.</li><li>3. When in doubt SEEK ADVICE</li></ol> |
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**COMMITTEE ON STANDARDS IN PUBLIC LIFE**

**(The Nolan Committee)**

**The Seven Principles of Public Life**

**Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity**

In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

## **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

## **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

## **Leadership**

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Committee on Standards in Public Life (The Nolan Committee) has set them out for the benefit of all who serve the public in any way.

## **CONFLICT OF INTEREST**

### **Guidance Notes for Staff**

1. Reference is made in several parts of this code to the term conflict of interest. To avoid ambiguity, and to indicate clearly what is meant, these notes aim to help your judgement of such situations.
2. The accountability for avoiding any conflict of interest rests with the employee, and implies the employee will exercise the necessary judgement. Advice can always be obtained from your Chief Officer or your Union Representative.
3. Examples of where there may be a potential conflict of interest include:-
  - Additional Employment or Private Business Activities
  - Outside Commitments
  - Personal Interests
  - Interests (business or other) or family friends etc

4. There are two stages in any situation. The first is where an employee recognises, or should recognise, a conflict of interest could arise. The second stage is where a conflict of interest actually arises.
5. At each stage an employee must declare to their immediate line manager the existence of such a situation, whether the interest is financial or otherwise, and the particular circumstances. This will enable the immediate line manager to seek any necessary advice, and to counsel the employee. All such declarations must be recorded in the appropriate Register, which will be held centrally.
6. The proper course of action is to comply with the Council's rules, regulations and guidelines. This will ensure the employee acts prudently and avoids any misunderstanding occurring.
7. Any additional employment or private business activity which impacts on your employment with the Council should only be undertaken after informing your immediate line manager who will be responsible for notifying your Chief Officer. If your salary is above Grade 4 you require your Chief Officer's approval to engage in such "outside work".
8. Outside Commitments and Personal Interests can range from involvement in voluntary work, special interest groups, clubs/societies, sitting as a magistrate, school governor, etc. This can benefit the wider community and there is no reason to discourage it. If, however, you think there may be a possible conflict of interest arising, such involvement ought to be declared to your Chief Officer via your immediate line manager.
9. Interests of family and friends are referred to in various parts of this booklet. An employee must ensure there is complete openness in any situation which could lead to a conflict of interest. Where known this must be by a declaration to the Chief Officer via your immediate line manager.

10. The key issues are:-

distinguish between your duties/responsibilities to the Council and your own personal and/or other interests.

make the necessary declarations to your Chief Officer via your immediate line manager.

1. Each individual is accountable for their own decisions and actions. Please use this booklet to aid your judgement.
2. If you are doubtful or unclear about any situation or circumstances, it is prudent to seek advice.

## **STANDARDS OF CONDUCT**

### **Guidance Notes on Standards of Conduct for Staff**

#### **1 INTRODUCTION**

- 1.1 It would be inappropriate if a blanket prohibition was placed on employees of the Council so that they were unable to accept gifts or invitations for social involvement from persons or companies who may have had, currently have or may seek to have in the future, business dealings with Braintree DC. Social contact, when properly regulated, can be beneficial and helpful to the Council's interests.
- 1.2 Local Government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, 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.
- 1.3 The purpose of this guidance note is to provide employees with a clearer understanding of the obligations on them as local government employees whilst at the same time helping them to make the right and proper decision in each particular case.

#### **2 THE LEGAL BACKGROUND**

- 2.1 Fraud and corruption does not just happen; it develops out of relationships. The dust has long since settled on the Poulson scandal of the 1970's, but a quote Wimbledon or to watch the Rugby are not doing it because they like you, it is because they want you to like them. It is because when you go to make a decision on a contract it is going to be based on friendship".

- 2.2 The Public Bodies Corrupt Practices Act 1889 provides that it is an offence for any employee to corruptly receive or agree to receive any gift, loan, fee, reward or advantage as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction in which a local authority is concerned. It is also an offence corruptly to give, promise or offer any gift, loan etc in such circumstances. The maximum penalty in the event of the commission of such an offence is imprisonment for 2 years, a fine, or both.
- 2.3 The Prevention of Corruption Act 1916 further provides that where the gift, loan etc is received by certain persons (including a Council employee) by or from a person or agent of a person holding or seeking to obtain a contract from (the Council) then the gift, loan etc is DEEMED to have been paid or given and received CORRUPTLY
- 2.4 The burden of proof is therefore, upon the person(s) giving and receiving the gift etc to prove that they did NOT do so dishonestly. This reverses the usual burden of proof and may be very difficult to rebut since it is not easy to see why such gifts should be made to Council employees at all.
- 2.5 To say that the employee was not influenced either way by the gift is no excuse. For the employee to receive the gift corruptly is sufficient for an offence to have been committed
- 2.6 The maximum penalty under this provision is 7 years imprisonment, a fine, or both
- 2.7 Section 117 of the Local Government Act 1972 states that an employee of a local authority shall not, under colour of their office or employment, accept any fee or reward whatsoever other than their proper remuneration

### **3. GIFTS**

- 3.1 Considerable caution needs to be exercised by employees with regard to the acceptance of gifts. Other than the exceptions shown below an employee should refuse any gift offered to them or to a member of their immediate family (i.e. spouse, partner or child) by any person or body who has or seeks to have dealings with the Authority. All refusals should be notified to the appropriate Director/Chief Officer (via the immediate line manager) who will maintain a Register for his/her Services.
- 3.2 Any gifts received by an employee during their employment belong to the Authority although they may be used by the employee during the course of their employment.

### 3.3 Exceptions

- i) A modest gift of a promotional/advertising character given to a wide range of people and not uniquely to the employee. The gifts would normally bear the Company's name and/or trademark/logo and would be the sort of item that would be useful in the every-day working environment e.g. pens, calendars, diaries, note pads, desk sets, tape measures.
- ii) However, cash or monetary gifts should be refused as should legacies, and this should be recorded.
- iii)
  - a) From time to time, as part of a sales promotion drive, firms offer gifts or vouchers exchangeable for gifts, for orders in excess of certain targets. When this happens Value for Money and the best interests of the Authority should always be uppermost in an employee's mind. Employees should not be lured to over ordering, over stocking, or purchasing items not forming part of the Authority's normal requirements.
  - b) Gifts are also given as prizes at Exhibitions, Conferences, Seminars etc as part of a free raffle or draw.

These gifts may be accepted but they are the property of the Authority and not the employee. The gift must be recorded in the Register maintained by the Chief Officer via the immediate line manager and may be used by the Chief Officer for the benefit of the Department. The failure of an employee to disclose a gift may render that employee liable to disciplinary action and criminal prosecution.

Where the gift is of no direct use to the Department, it can be the subject of a raffle (or donation) with the proceeds going to a charitable fund e.g. Chair's Charity Fund, Union Welfare Fund. However this arrangement can only be made with the Chief Officer's written approval and must be recorded in the Service's register.

## 4. HOSPITALITY

- 4.1 The traditional view of offers of hospitality would be to consider them as being a "sweetener" for future business, the purpose being simply to try to place the person providing the hospitality in a more favoured position if and when contracts are on offer. However, that view is perhaps too rigid and dated. Business habits change and so therefore should attitudes in local government.
- 4.2 It is difficult to draw up precise rules that would cover every occasion, and the use of terms such as "modest" or "lavish" are not helpful. That which to us in the public sector may appear "lavish" may in fact be seen as "modest" by those in the private sector.
- 4.3 Invitations accepted need to be on the clear understanding that the employee is acting in their official capacity, and this code of conduct cannot be circumvented by allowing their immediate family to benefit.
- 4.4 The following are examples of the ACCEPTABLE:
- i) A working meal provided to allow the parties to discuss or continue to discuss business. (Employees are reminded they must not claim subsistence unless money has actually been expended by them on paying for their share of the meal or purchase of drinks). Employees should endeavour to pay their share of the cost where practicable.
  - ii) An invitation from an established or prospective trading partner to a function that is part of a wider gathering e.g. conference lunches or dinners, where other local government employees connected with the service provided by the trading partner are also invited.
  - iii) An invitation to attend a dinner or function of a Society or Institute with whom the Authority has contact.
  - iv) An invitation to attend a function organised as part of a company's anniversary or jubilee celebration.

### 4.5 Caution Required

Some companies with whom the Authority deals are now sponsoring events. These are usually sporting but can also be cultural. No link appears to exist between the nature of the sponsor's business and the event itself, but the purpose of sponsorship is publicity.

In these circumstances it would not be unusual for the sponsor to treat customers preferentially and invite them to attend. If the event is local, or, if at a distance, does not involve overnight accommodation paid for by the sponsor, acceptance of an invitation could be reasonable.

If however, an employee receives an invitation to attend a sporting or cultural event from an established or prospective trading partner who has no apparent connection (sponsorship or otherwise) with the event e.g. Football at Old Trafford or Rugby at Twickenham then these invitations should be rejected.

4.6 Amongst those invitations that are also UNACCEPTABLE and should therefore be refused are:-

- i) Holidays
- ii) Offers of hotel vouchers, theatre tickets, free travel etc
- iii) Use of a Company flat or hotel suite

4.7 In general terms if the offer/invite is something unique to yourself or of doubtful integrity SAY NO.

When a particular person or body has a matter currently at issue with the Council e.g. an arbitration arising from a contract, then clearly common sense dictates that offers of hospitality should be refused even if in normal times they would be acceptable.

General "Complimentary" tickets are, of course, to be dealt with in a different way. Depending on the type of event they can be properly used by making them widely available to the staff in the Service.

People making offers of gifts and/or hospitality should be made aware Braintree District Council has a code of conduct for its employees.  
It is appropriate, when circumstances warrant, to decline with the explanation: "I am unable to accept your offer as it contravenes the Council's code of conduct". Such a refusal should be entered in the Departmental register.  
It may also be appropriate, and prudent, to confirm your refusal in writing to the head office of the person making the offer.

## **5. DISCLOSURE OF INFORMATION**

- 5.1 The law requires that certain types of information must be available to 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.
- 5.2 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. Any particular information received by an employee from a Councillor or a third party which is personal to that individual and does not belong to the authority should not be divulged by the employee without the prior approval of that individual, except where such disclosure is required or sanctioned by the law.

## **6. POLITICAL NEUTRALITY**

- 6.1 Employees serve the authority as a whole. 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
- 6.2 Occasionally, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
- 6.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work.

## **7. RELATIONSHIPS**

### **7.1 Councillors**

Employees are responsible to the authority through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the authority's work. 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, if possible, therefore be avoided. Where such relationships do exist those involved should be careful to apply their mind to the issues and not be influenced by other factors including their relationship and that this is also seen to be the case by an impartial observer.

## 7.2 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.

## 7.3 Contractors

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 businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against. 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 immediate line manager.

## 8. **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 him or her. Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

## 9. **EQUALITY ISSUES**

- 9.1 All local government employees should ensure that policies relating to equality issues as agreed by the authority 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 with fairness and equity.

## 10. **SEPARATION OF ROLES DURING TENDERING**

- 10.1 Employees involved in the tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the authority. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- 10.2 Employees in contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

- 10.3 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.
- 10.4 Employees contemplating a management buy out should, as soon as they have formed a definite intent, inform the appropriate manager and withdraw from the contract awarding processes.
- 10.5 Employees should ensure that no special 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.

## 11. USE OF FINANCIAL RESOURCES

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 authority.

### USEFUL REFERENCE DOCUMENTS

DETR - Modernising Local Government - A New Ethical Framework paper - Chapter 5

Local Government Management Board - Code of Conduct for Local Government Employees

Local Government Act 1972 - Sections 117(1) and (2)

Public Bodies Corruption Act 1889

Prevention of Corruption Acts 1906 and 1916

National Joint Council - Scheme of Conditions of Service

Constitution - Braintree DC

Commission for Local Administration in England (Ombudsman) - Members Interests Guidance on Good Practice

Common Law Offence of Misconduct in Public Office

[NOTE: These documents can be obtained from the Head of Corporate Services or the Head of Finance (Internal Audit)]

## **Protocol on Member/Officer Relations**

# BRAINTREE DISTRICT COUNCIL

## MEMBER/OFFICER PROTOCOL

### Key Points

- Mutual respect between Councillors and officers is essential to good local government. Courtesy should be extended to one another at all times (paragraph 1.7)
- Support and advice to political party groups is available provided that this is first agreed between the relevant group leader and the Chief Executive (paragraph 2)
- Requests for information, explanation, advice should be reasonable in terms of time and quantity and be directed to the relevant Head of Service. The Executive, individual Members of the Executive and Committees acting under delegated authority can instruct officers, other individual Members cannot (paragraph 4.1)
- Individual Members rights to inspect documents are restricted by the “need to know” principle. There is no right to a “roving commission” (paragraph 4.5)
- It is a betrayal of trust to disclose or use confidential information for personal advantage, or to the disadvantage or the discredit of the Council or anyone else (paragraph 4.7)

# BRAINTREE DISTRICT COUNCIL

## A PROTOCOL FOR MEMBER/OFFICER RELATIONS

### 1. Introduction

- 1.1 The purpose of this protocol is to guide Members and Officers of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations this protocol does not seek to be either prescriptive or comprehensive. It offers guidance on some of the issues which most commonly arise. It is hoped that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol is to a large extent no more than a written statement of current and recommended good practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.4 This protocol also seeks to reflect the principles underlying the Council's adopted Code of Conduct for Members ("the Code") and the General Principles of Conduct (annexed as Appendix A to this protocol) which have been adopted by the Council. The shared objective of the Code and the General Principles is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand very high standards of personal conduct.
- 1.5 A relevant extract from the Code is reproduced below:-
- "2 A Member must -
- (a) promote equality by not discriminating unlawfully against any person
  - (b) treat others with respect; and
  - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority".
- 1.6 A relevant extract from the General Principles is reproduced below
- "Relations with Officers*
- You should respect the role of the Council's officers and employees and treat them in a way that engenders mutual respect at all times"*
- 1.7 Both the Code and the General Principles refer to "respect". It is important, therefore, that any dealings between members and officers should observe normal standards of courtesy and that neither party should seek to take unfair advantage of their position.
- 1.8 Relationships between Members and officers are also subject to the Council's policy on harassment (including bullying) a copy of which can be obtained from Business Support Services. Bullying is defined as:-

*“ the misuse of power or position to persistently criticise and condemn, to openly humiliate and professionally undermine an individual’s professional ability”*

## **2. Officer Advice to Party Groups**

- 2.1 There is 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 relevant Council decision-making body. Officers may properly be called upon to support and contribute to such deliberations by party groups provided that this is first agreed between the relevant Group Leader and the Chief Executive
- 2.2 The support provided by officers can take many forms, ranging from a briefing meeting with a Chairman, a Cabinet Member or a Group (either jointly or individually) 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.
- 2.3 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 inform 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 interpreted or acted upon as such;
  - (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; and
  - (d) the attendance of officers at a party group meeting does not confer on that meeting any official standing.
- 2.4 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 Code (in particular, the provisions concerning the declaration of interest 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 members only meeting.
- 2.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.
- 2.6 Any particular cases of difficulty or uncertainty in this area of officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant Group Leader(s).

### 3. Support Services to Members and Party Groups

The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, etc) to members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes or for purposes not directly related to Council business. A similar restriction applies to the Public Relations Officers.

### 4. Members' Access to Information and to Council Documents

- 4.1 Members are free to approach any Council Service with a *request* to provide them (*within a reasonable period*) with such information, explanation and advice (about that Service's functions), as they may reasonably need in order to assist them in discharging their role as members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. **Such approaches should normally be directed to the relevant Head of Service or another senior officer of the Service concerned.** It must be remembered, however, that officers within a Service are accountable to their Head of Service and whilst officers should always seek to assist members they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Head of Service. Individual Members (except Cabinet Members acting under delegated authority) do not have the power or authority to *instruct* officers to provide information, explanations, advice or to carry out any specific task or tasks.
- 4.2 As regards the legal rights of Members to inspect Council documents, these are covered partly by statute and partly by the common law.
- 4.3 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 committee or sub-committee concerned and extends not only to reports which are to be submitted to the meeting, but also to relevant background papers. This right does not, however, apply to documents relating to certain items which may appear on the private agenda for meetings. The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 4.4 The common law right of members is much broader and is based on the principle that any member has a prima facie right to inspect Council documents as 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.
- 4.5 The exercise of 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 go and examine documents of the Council. Mere curiosity is not sufficient. The question must initially be determined by the particular Head of Service whose Service holds the document in question (with advice from the Head of Corporate Services). In the event of dispute, the question falls to be determined by the

Cabinet or the relevant committee, Panel or Group – i.e. the body in connection with whose functions the document is held.

- 4.6 In some circumstances (e.g. a member wishing to inspect documents relating to the functions of a committee, group or panel of which he/she is a member) 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 and, on request, in writing.
- 4.7 Finally, any Council information provided to a member must only be used by the member for the purpose for which it was provided i.e. in connection with the proper performance of the member's duties as a member of the Council. This point is emphasised in the Code in the following terms:

"3 A Member must not -

- (a) *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 a person authorised to give it, or unless he/she is required by law to do so; nor*
- (b) *prevent another person from gaining access to information to which that person is entitled by law".*

## **5. Correspondence**

- 5.1 Correspondence between an individual member and an officer should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary to copy the correspondence to another member, this should be made clear to the original member. In other words, a system of "silent copies" should not be employed.
- 5.2 Official letters on behalf of the Council should normally be sent out over the name of the appropriate officer, rather than over the name of a member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear over the name of a member, but this should be the exception rather than the norm. Letters which for example, create obligations or give instructions on behalf of the Council should never be sent over the name of the member

## **APPENDIX “A”**

### **General Principles**

Elected Councillors of local authorities in England are expected to behave according to the highest standards of personal conduct in the performance of their duties. In particular, elected Councillors must observe the following principles of conduct.

#### **Community Leadership**

You should promote and support these principles by leadership and example, always acting in such a way to preserve public confidence in the Council.

#### **Duty to uphold the law**

You have a duty to uphold the law, and to act on all occasions in accordance with the public trust placed in you.

#### **Constituency**

You have a duty to assist the Council to act as far as possible in the interests of the whole community that it serves. Where constituents' interests are in conflict with those of other groups or areas, you should help to ensure that the Council is aware of them and that constituents are able to pursue their concerns, but you are not obliged to put the interest of constituents above the general interest.

#### **Selflessness**

You should act solely in the public interest. You should never use your position as a Councillor to gain for yourself, your family or your friends any financial benefits, preferential treatment or other advantage, or to confer such benefits, treatment or advantage improperly on others.

#### **Integrity and propriety**

You should not put yourself in a position where your integrity is called into question by any financial or other obligation. As well as avoiding actual impropriety, you should avoid any appearance of it.

#### **Hospitality**

You should record all gifts and hospitality received in connection with membership of the Council. You should not accept gifts or hospitality that might reasonably be thought to influence or be intended to influence, your judgement: or where to do so could bring discredit upon the Council.

#### **Decisions**

Whilst you may very properly be influenced by the views of others, including your political group, it is your responsibility to decide what view to take, and how to vote on any question which Councillors have to decide.

## **Objectivity in decision-making**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make decisions on merit.

## **Accountability**

You are accountable to the electorate and the Council's wider community for your actions and your part in reaching decisions, and must submit yourself to whatever scrutiny appropriate to your office.

## **Openness**

You should be as open as possible about all your actions and your part in reaching decisions. You should seek to ensure that reasons are given for decisions of your Council and that disclosure of information is restricted only in accordance with the law.

## **Confidentiality**

You should also ensure that confidential material, including material about individuals, is handled in accordance with the law and – having regard to the public interest – any decisions on such handling taken by the Council; and is not used for private purposes.

## **Stewardship**

You have a responsibility to play your part in ensuring that the Council uses its resources prudently and in accordance with the law.

## **Participation**

You may take part in the consideration of questions which come before Councillors unless you have a private interest of a kind which, in accordance with this Code, precludes you from participation.

## **Declarations**

You have a duty to declare any private interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should make relevant declarations of interest at meetings of the Council, its committees and working groups, or any outside body to which you are appointed or nominated by the Council, during informal contacts, active in your role as a Councillor.

## **Relations with Officers**

You should respect the role of the Council's officers and employees and treat them in a way that engenders mutual respect at all times.

**BRAINTREE DISTRICT COUNCIL**

**CODE OF PRACTICE FOR COUNCILLORS**

**AND OFFICERS ENGAGED IN THE**

**DETERMINATION OF PLANNING APPLICATIONS**

## **FOREWORD**

"The role of an elected Member on the Planning Committee involves balancing representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals".

The above is a quote from *'probity in planning (update) - the role of councillors and officers'*, a guidance note published by the Local Government Association on 19 March 2002. The guidance note was considered by, amongst others, the Standards Board for England prior to publication. This Code of Practice is based on the advice contained in the guidance note.

The guidance note, on which this Code of Practice is based, seeks to relate the requirements of the Code of Conduct for Members (in Part 5 of the Council's Constitution) specifically to planning but goes beyond the probity concerns of the Code of Conduct to give more detailed advice on the operation of the system. A copy of the guidance note can be found in the Members' Room.

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

## **INTRODUCTION**

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

## **THE NEED FOR GUIDANCE**

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

## **STATUS OF THE GUIDANCE**

4. The guidance in this Code is purely advisory. However, it is based on guidance issued by the Local Government Association which itself is based on the provisions of the Code of Conduct for Members (Part 5/1 of the Constitution), the Royal Town Planning Institute's Code of Professional Conduct, the findings of various Inquiries, together with advice issued by the Audit Commission, the Commissioners for Local Administration in England (the Ombudsman) and the National Planning Forum. Failure to follow the Code of Practice without good reason could be taken into account in investigations into possible maladministration.

## **THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

5. Councillors and officers have different, but complementary roles. Both service the public but councillors are responsible to the electorate, while officers are responsible to the Council as a whole. As a general rule, instructions will usually be given to officers through a Council, Cabinet or committee decision.

6. Both councillors and officers are guided by codes of conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. Not all planning officers are members of the RTPI and its Code of Professional Conduct should therefore be operated as a Local Code for all planning officers.
7. The Code of Conduct for Members, supplemented by guidance from the Standards Board for England, provides standards and guidance for councillors and sets out requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, but also appropriate relationships with other members, staff and the public, which will impact on the way in which councillors participate in the planning process.
8. Of particular relevance to councillors engaged in the determination of planning applications is the requirement that a member:

*"must not in his/her official capacity, use his/her position as a member **improperly** to confer on or secure for himself/herself or any other person, an advantage or disadvantage"* (paragraph 5(a) of the Code of Conduct for Members).

Under the Council's Constitution (Article 4) all Members of the Council are responsible for approving or adopting the policy framework, including the plans and strategies which together comprise the Development Plan. **Nothing in this Code restricts or interferes with the role of Members in formulating, implementing, supporting and defending the policies of the Council.**

The basis of the development control system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are strongly held by those involved. **While councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.**

9. The Local Government Ombudsman has concluded that the use of whipped votes at group meetings, or reliance on party political loyalty, to compel a councillor to vote on a planning application in a particular way will amount to maladministration. The Court of Appeal has given judicial endorsement to this approach. Votes in Committee and Council on planning applications are a matter of individual conscience based on planning judgement and should not be influenced or controlled by whipped votes.
10. Staff must always act impartially. In order to ensure that senior officers do so, the Local Government and Housing Act 1989 imposes restrictions on their outside activities. The Council has identified which of their officers are subject to these restrictions. This list is reviewed regularly.
11. Councillors should be very cautious about accepting gifts and hospitality. The Code of Conduct for Members requires that any members receiving any gifts or hospitality, **in their capacity as members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.
12. Similarly, officers may be offered hospitality from people with an interest in a planning proposal. Such offers should be declined politely. If receipt of hospitality is unavoidable,

the recipient should ensure it is of the minimum level and declare its receipt as soon as possible.

13. For councillors the Democratic Services Manager maintains a voluntary register of gifts and hospitality for this purpose. For officers, each Service maintains a hospitality book.

### **DECLARATION AND REGISTRATION OF INTERESTS**

14. Councillors must observe scrupulously the requirements on declaring 'personal' and 'prejudicial' interests as set out in the Code of Conduct for Members. Ultimate responsibility for fulfilling the requirements rests individually with each councillor.
15. A register of members' interests is maintained by the Council's Monitoring Officer, which will be available for public inspection. A member must provide the Monitoring Officer with written details of relevant interests within 28 days of his or her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.
16. The Code of Conduct for Members abandons the use in the old National Code of the terms 'pecuniary' and 'non-pecuniary' interests. Instead, it uses the terms '**personal**' and '**prejudicial**' interests. The Code defines a personal interest in any matter under discussion as:
  - (1) if the matter relates to an interest in respect of which the member has given notice in the statutory register of members' interests; and
  - (2) if a decision upon it might reasonably be regarded as affecting **to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or
    - any employment or business carried on by such persons;
    - any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
    - any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
    - any body which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.
17. Where a member considers he/she has such a personal interest in a matter, he/she must always declare it, but **it does not then necessarily follow that the personal interest debars the member from participation in the discussion.**
18. The member then needs to consider whether the personal interest is a **prejudicial** one. The Code of Conduct provides that a personal interest becomes a prejudicial one "... 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 the member's judgement of the public interest". If a member has such an interest, he/she should not participate in a discussion on the matter and must withdraw from the room and must not seek improperly to influence a decision in the matter.

19. The Code of Conduct includes some exceptions to this. For example, if the matter under discussion relates to:
- another authority of which the councillor is a member;
  - another public authority in which the councillor has a position of general management or control;
  - a body to which the councillor has been appointed or nominated as a representative of the authority.

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

20. It can be seen that the foregoing provisions of the Code of Conduct are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts. The Standards Board will be providing guidance on this aspect of the Code. In the end, however, the decision will be for the councillor alone to take.
21. Translated to a councillor's involvement in planning issues, the two stage test of personal and prejudicial interests require a councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the councillor, his family, friends or employer.
22. The exceptions made to the definition of prejudicial interests relating to membership of outside bodies mentioned above are attempts to clarify the nature of such interests and to encourage participation in such cases.
23. When considered in the context of planning matters, this approach will require the exercise of particular judgement on the part of the councillor. The use of the term 'prejudicial' to describe the interest is helpful here. If a planning matter under consideration relates to another body upon which the councillor serves, the exemption in the Code of Conduct would suggest that the member could participate in a decision on that matter - i.e. membership of that body could not be considered in itself a prejudicial interest, which would bar the member.
24. However, if a member, in advance of the decision-making meeting takes a firm view on the planning matter, either in meetings of the other body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account - they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place their authority in danger of judicial review. So the exemption in the Code of Conduct will only operate in the planning context, if the member has scrupulously avoided forming a fixed view on the issue in advance.
25. Where the Cabinet Member with responsibility for development is committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area to the extent that he/she is not able to demonstrate that he/she is able to take account of counter arguments before a final decision is reached the Cabinet Member should be able to argue for the development but should not vote on the relevant application(s).

## **DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS AND OFFICERS, AND COUNCIL DEVELOPMENT**

26. Applications to their own authority by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety.
27. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving councillors and council officers who act as agents for people pursuing a planning matter with the Council should play no part in the decision-making process for those proposals. Similarly, should they submit their own application to the Council, they should take no part in its processing. The Council's Monitoring Officer should be told by the councillor or member of staff that an application has been made as soon as it is submitted. Any such applications, whether by members or officers, will not be dealt with under delegated powers.
28. A councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered.
29. A councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should not 'seek improperly to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' does not imply that a councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee'.
30. An officer submitting an application will have an interest in that application. He or she must also declare an interest if present at the meeting at which the application is discussed. Applications submitted by councillors or officers will always be determined by an Area Committee or the District Development Committee and not under the Development Directors' delegated powers.
31. Proposals for the Council's own development should be treated in the same way as those by private developers and in accordance with DoE Circular 19/92. This requirement also applies to private applications on Council owned land (such as a private application prior to a Council land sale being agreed or negotiated). 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. It is important that the Council is seen to be treating all such applications on an equal footing with all other applications, as well as actually doing so.

## **LOBBYING OF AND BY COUNCILLORS**

32. Lobbying, which can be defined as an approach to a councillor by an applicant, developer, objector or other third party, is a normal and perfectly proper part of the democratic process. The Committee on Standards in Public Life recognised the additional roles that councillors perform in the planning process beyond policy formulation and implementation, namely, the representation of public opinion and the determination of applications.
33. However, lobbying can, unless care and common sense are exercised by all parties, lead to the impartiality of a councillor being called into question and the need for an interest to be declared. When being lobbied, all councillors should take care about expressing an opinion which may be taken as indicating that they have already made

up their mind on the application before they have considered all representations and the planning content. Councillors should not lobby other councillors to act for them, or act as an agent for other councillors, or put pressure on officers for a particular recommendation.

34. In such situations, they should restrict themselves to giving procedural advice including recommending that those who are doing the lobbying should write to the Development Director so that their views can be included in the officer's report to the Committee. A councillor should not give a firm indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair, prejudicial and may amount to maladministration.
35. When attending public meetings councillors should take great care to maintain their impartial role, listen to all the points of view expressed by the speakers and public and not state a conclusive decision on any pre-application proposals or submitted planning applications.
36. Correspondence received by councillors should be passed to the Development Director without delay to ensure that all material considerations are available to those members or officers responsible for determining the application. A response by a councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
37. Taking account of the need to take decisions impartially, councillors must weigh up all the material considerations reported at each committee meeting. Without prejudice to their roles in formulating, implementing, supporting and defending the policies of the Council, they should not be biased (or appear to be biased) towards any person, company, group or locality. Councillors who commit themselves firmly to a particular view on a planning issue, prior to its consideration at a Committee, must decide whether the public (or other interested body) would believe that they have prejudiced their position and were incapable of weighing up all the material considerations. **If the Councillor feels that the public would believe he or she had come to a conclusive view on the planning matter or application before the Committee meeting, then he or she should consider not taking part in the debate and not voting on the issue.**
38. If planning applications are considered by a succession of committees or meetings each consideration will require the councillor to weigh up, afresh, all the reported material factors before reaching a decision at that particular meeting.
39. Whilst councillors involved in making decisions on planning matters and applications will begin to form a view as more information and options become available, a decision can only be taken by the relevant Committees when all available information is to hand and has been considered.

#### **PRE-APPLICATION DISCUSSIONS**

40. Discussion between a potential applicant and with representatives of Council prior to the submission of an application can be of considerable benefit to both parties and is encouraged by the Audit Commission. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process.
41. In order to avoid such problems, pre-application discussions should take place within clear guidelines.

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

### **POST-APPLICATION DISCUSSIONS**

42. A councillor should not approach an applicant for planning permission with a view to securing changes to an application or achieving planning gain. Such an approach would contravene the principles of good practice set out in this Code and would inevitably give rise to allegations of partiality or bias. Any contact with applicants should normally be conducted with and through officers and should always be reported to the Area Committee or the District Development Committee.

### **SITE VISITS BY COUNCILLORS**

43. Site visits are intended solely for the purpose of acquiring information about the nature of a planning application. They should not be used as an opportunity for applicants, agents or objectors to seek to influence the views of Councillors. During site visits Councillors should:-
- (a) as far as is possible, not visit sites alone;
  - (b) ensure that applicants, agents or objectors do not impose themselves; and
  - (c) refrain from making comments on the merits or otherwise of the application to any interested party who may be present.
44. Formal site visits can cause delay and additional costs and should only be used where the expected benefit is substantial. They should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit.
45. The principles set out in paragraph 43 should apply to formal site visits. In addition, Councillors with accompanying officers should carry out the visit in one group.

## **OFFICER REPORTS TO COMMITTEE**

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

## **DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND/OR THE DEVELOPMENT PLAN**

47. If a committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the Committee's reasons should be made. The courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds.
48. If on consideration of an Area Committee's decision to refuse an application the Development Director or the Development Control Manager considers that it may be difficult to sustain the Council's case on appeal, the application will be referred to the District Development Committee. This procedure will also apply if an Area Committee makes a decision to grant permission which is contrary to Development Plan policy or proposes unworkable planning conditions. If the Development Director or the Development Control Manager does not refer an application to the District Development Committee the councillors who moved and seconded the motion to refuse will support the Council's case in the event of an appeal.
49. If the District Development Committee confirms the decision to refuse an application, the councillors who moved and seconded the motion to refuse at the Area Committee will support the Council's case in the event of an appeal unless the District Development Committee shall determine otherwise.
50. If the report of the Development Director recommends approval of a departure from the Development Plan, the full justification for this recommended departure shall be included in the report.

## **REGULAR REVIEW OF DECISIONS**

51. From time to time arrangements will be made for councillors to visit a sample of implemented planning permissions, so that a regular review of the quality of planning decisions can be undertaken.

## **COMPLAINTS AND RECORD KEEPING**

52. Whatever procedures a local authority operates, it is likely that complaints will be made. The Council's existing complaints procedure is well established and any complaints received will need to be recorded and dealt with in the normal way.
53. So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. These principles apply equally to enforcement and development plan matters. Monitoring should be undertaken regularly.
54. The same principles of good record keeping will be observed in relation to all enforcement and Development Plan matters. Monitoring of record keeping will be undertaken regularly by the managers in the Forward Planning and Development Control Service Units.

# **Braintree District Council**

## **Gifts and Hospitality**

### **A Code of Conduct for Councillors**

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.

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 the procedures which have 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 office 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.

This Code of Conduct sets out:

1. the principles which you should apply whenever you have to decide whether it would be proper to accept any gift or hospitality;
2. a procedure for obtaining consent to accept a gift or hospitality, when you consider that it would be proper to accept it; and
3. 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.

#### **1 General Principles**

In deciding whether 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**

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.

## **2 Consent Regimes**

**(a) General consent provisions**

For clarity, the authority has agreed that you may accept gifts and hospitality in the following circumstances:

- (i) civic hospitality provided by another public authority
- (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 2(b) below. The Chief Executive 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 otherwise disposed of in due course, the proceeds being devoted to a charitable cause chosen by the Chairman.

**(b) Special consent provisions**

If you wish to accept any gift or hospitality which is in accordance with the General Principles set out in Paragraph 1, but is not within any of the general consents set out in Paragraph 2(a), 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 3, below.

**3 Reporting**

Where you accept any gift or hospitality which you estimate to have a market value or cost of provision of £25 or greater, you must, as soon as possible

but not later than 28 days 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.

Even if the value of the gift or hospitality is less than £25, if you are concerned that its acceptance might be misinterpreted, and particularly where it comes from a contractor or tenderer, you may make a voluntary declaration in the same manner to ensure that there is nothing secret or underhand about the gift or hospitality.

#### **4 Gifts to the authority**

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 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.

#### **5 Definitions**

- (a) "Gift or hospitality" includes any:
- (i) free gift of any goods or services
  - (ii) 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) opportunity to obtain any goods or services which are not available to the general public
  - (iv) offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

- (b) 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.

To:

### Declaration of Receipt of Gifts or Hospitality

Name	
Ward Represented	
Department	
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 other contact with the person or organisation providing the gift or hospitality?	
Signed	Date