

BRAINTREE DISTRICT COUNCIL

POLICY STATEMENT

ON

FRAUD, CORRUPTION AND DISHONESTY

Revised June 2011

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Policy Statement on Fraud, Corruption and Dishonesty

INTRODUCTION

Braintree District Council is committed to an effective strategy designed to

- prevent fraud, corruption or dishonesty
- detect fraud, corruption and dishonesty
- identify the process of investigation
- ensure where fraud, corruption and dishonesty is detected that corrective measures are implemented as deemed appropriate
- ensure that action is taken against members, officers and others where proven in accordance with any policies of the Council including the Prosecution Policy

Definitions of fraud, corruption and dishonesty are:

Fraud: the intentional distortion of financial statements or other records by persons internal or external to the Authority which is carried out to conceal the misappropriation of assets or otherwise for gain.

Corruption: the offering, giving, soliciting or acceptance of an inducement which may influence the action of any person.

Dishonesty: the misuse of office to enhance a person's or associated person's or organisation's position either financially or in any other way

The Council's anti-fraud, corruption and dishonesty strategy has a number of procedures which are aimed at the prevention of or to frustrate any attempted fraudulent, corrupt or dishonest act. These procedures do and will include the following:

Constitution
Code of Corporate Governance
Code of Conduct for Employees;
Codes of Conduct for Members;
Code of practice for Councillors and Officers engaged in the
determination of Planning Applications
Whistleblowing Policy;
Standards Committee;
Prosecution Policy.

CODE OF CONDUCT FOR MEMBERS

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 chief finance officer 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 executive decision.
- (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "executive 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 executive 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 executive 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 executive.
- 13. For the purpose of this Part, "meeting" means any meeting of –
 - (a) the authority;
 - (b) the executive of the authority; or
 - (c) any of the authority's or its executive'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.

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.

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 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.
- 1.3 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.

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 from that case is as applicable today as it was then - "People who take you to 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 a 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 Whether the receiver of the gift is guilty or an offence or not, the donor commits an offence if he makes the gift with the intention of influencing the employee.
- 2.6 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.
- 2.7 The maximum penalty under this provision is 7 years imprisonment, a fine, or both.
- 2.8 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 (ie 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 eg 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 eg 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

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 eg 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 eg 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 eg 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.

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 Assistant Chief Executive

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 5/1 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.

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, Executive 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 debar 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 - ie. 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 Executive 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 Executive 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 Regulatory Committee and not under the Head of Planning Services' 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 Head of Planning Services 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 Head of Planning Services 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 Regulatory 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 Regulatory 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 Head of Planning Services 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 Regulatory 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 Head of Planning Services or the Development Control Manager does not refer an application to the Regulatory 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 Regulatory 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 Regulatory Committee shall determine otherwise.

50. If the report of the Head of Planning Services 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.

The Council expects that external individuals and organisations (e.g., suppliers, contractors, service providers) with which it comes into contact will act with integrity towards the Council at all times.

The Council expects all of its Members and employees to lead by example in ensuring adherence to legal requirements, rules, procedures, standards, practices and policies and to abide by the preceding general principles

The Council, by taking proactive initiatives, seeks to prevent, detect and terminate fraud, corruption and dishonesty by encouraging its Members, employees and members of the public to report their concerns on suspected such issues.

PREVENTION

The Council is determined that the standards and values of Members and employees will comply with all policies and that the organisation will be vigilant in its approach to fraud, corruption and dishonesty.

The Council's employees have an important role to play in its determination to prevent or detect fraud, corruption or dishonesty and they are positively encouraged to raise any concerns that they may have regarding these issues where they are associated with the activities of the Council. Employees can do this in the knowledge that such concerns will be treated seriously and will be properly investigated.

Arrangements are in place and will continue to be developed to encourage the exchange of information between the Council and other national and local enforcement and detection agencies subject to legislative requirements.

The Council has developed and is committed to continuing with systems and procedures which incorporate efficient and effective internal controls.

DETECTION AND INVESTIGATION

The scope of preventative systems and proactive measures in particular, internal control systems within the Council, are designed to deter and provide indications of fraudulent, corrupt, or dishonest activities. It is the duty of the Chief Executive, Directors, Heads of Service and Service Unit Managers to ensure compliance by employees with the internal control systems in place.

It is acknowledged that many frauds are discovered by accident, "tip-off", or Whistleblowing and the Council has arrangements in place to enable such information to be properly dealt with. It is the alertness of employees and the public that will enable the detection of such an act which can then result in the appropriate action being taken where there is evidence that fraud, corruption or dishonesty may have been committed or is in progress.

It is essential to maintain vigilance in the light of the rapid increase in recent years of frauds perpetrated against a variety of organisations which usually involves fraudsters having multiple identities and addresses. The necessity to liaise between organisations has therefore become paramount and some of these include:

- Police Forces
- Essex Audit Group
- Essex Investigations Group
- National Anti-Fraud Network
- Audit Commission & External Auditors
- Government Agency Investigators
- Other Local Authorities

The Council has appointed its Head of Finance to act as its Whistleblowing Officer to receive, record and instigate investigation into any complaints received under the Whistleblowing Policy.

In addition, all employees are required by the Council's Codes of Governance to report all suspected irregularities to their Director / Head of Service who should then immediately inform the Corporate Director or the Audit Services Manager.

Investigations into alleged fraud, corruption or dishonesty will be undertaken by Internal Audit who will, where required, have direct and full access to internal services and where appropriate, external agencies (e.g., Police, DSS).

The external auditor also has powers to investigate independently fraud and corruption and the Council can also make use of this service where required.

Where financial impropriety is discovered, the matter may be referred to the Police with a view to the prosecution of the perpetrators in accordance with the Council's Prosecution Policy.

Allegations of Housing Benefit fraud are thoroughly and promptly investigated to ensure that the Council receives maximum subsidy and reimbursement of overpayments from the Government. Any resulting action is taken in accordance with the Prosecution Policy.

TRAINING

The Council recognises that the continuing success of its anti-fraud, corruption and dishonesty strategy will depend largely on the effectiveness of communication of its policies to its employees throughout the organisation.

The Council supports the concept of training particularly for employees involved in internal control systems, to ensure that their responsibilities and duties in this respect are regularly highlighted and reinforced.

The investigation of fraud, corruption and dishonesty requires employees who are properly trained to undertake such investigations. Each such investigation will be under the direct supervision of the Audit Services Manager.

CONCLUSION

An effective Fraud, Corruption and Dishonesty Policy together with a Whistleblowing Policy provides a means by which proper supervision and public accountability may be maintained while avoiding the tendency towards prescriptive or excessively bureaucratic controls.

The Council has in place a network of systems and procedures to assist in deterring and detecting fraud, corruption or dishonesty. It is determined that these arrangements will keep pace with any future developments, in both preventative and detection techniques regarding the fraudulent, corrupt or dishonest activity, that may effect its operation or related responsibilities.

The Council maintains a continuous overview of such arrangements and in particular, through its Chief Executive, Directors and Heads of Service, Code of Corporate Governance, Codes of Practices, internal and external audit arrangements.

The Chief Executive, Directors, Heads of Service and Service Unit Managers have a responsibility to keep procedures under continuous review and to seek advice and guidance from the Corporate Director or the Audit Services Manager where new risks are identified or changes in procedures are required.

The Council's affairs are open to scrutiny by a variety of bodies:

- External Auditors
- HM Customs & Excise
- Inland Revenue
- Department of Social Security
- Benefit Fraud Inspectorate
- Local Government Ombudsman
- Police

Additionally, there is a continuous internal scrutiny applied by the Council's Internal Audit Section.

Ways in which matters can be reported:

Corporate Director (telephone. 01376 557800)

Audit, Insurance & Risk Manager (telephone. 01376 557821)

Whistle-blowing Officer (telephone. 01376 557801)

BDC Fraud Line (telephone. 0800 7811 355)

External Auditor (telephone. 020 7831 7393)

If employees feel unable to raise their concerns through any of the internal routes, then they may wish to raise them through 'Public Concern and Work' (telephone 0171 404 6609), a registered charity whose services are free and strictly confidential.