

**LONDON BOROUGH  
OF  
LEWISHAM**

**MEMBER CODE  
OF  
CONDUCT**

## LONDON BOROUGH OF LEWISHAM MEMBER CODE OF CONDUCT

### 1. Introduction

- 1.1 This Code sets out the principles and standards of behaviour for all members of the London Borough of Lewisham, both elected and co-opted members. It is designed to demonstrate the Council's commitment to the highest standards of ethical behaviour. Certain minimum requirements are set out in law and these are all included in this Code. However, the Council has put in place some elements of this Code by exercising its own local discretion to do so. Those elements which the Council has included under this discretionary power are contained within text boxes below.
- 1.2 For the avoidance of doubt, when the term "members" is used in this Code, or any appendices or protocols under it, it means the Mayor, elected and co-opted members, including non-elected members of the Health and Wellbeing Board.

### 2 Principles

- 2.1 Members are required to comply with the following principles in their capacity as a member:-

- SELFLESSNESS
  - INTEGRITY
  - OBJECTIVITY
  - ACCOUNTABILITY
  - OPENNESS
  - HONESTY
  - LEADERSHIP
- |   |
|---|
| <ul style="list-style-type: none"> <li>• INDEPENDENT JUDGEMENT</li> <li>• RESPECT</li> <li>• STEWARDSHIP</li> </ul> |
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- 2.2 Accordingly the following requirements apply:-

- 1) Members must act solely in the public interest. They must never improperly confer an advantage or disadvantage on any person nor seek to do so. They must not act to gain financial or other benefit for themselves, their family, friends or close associates.
- 2) Members must not place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member.

LBL requires that members must not act to place themselves in a position where their integrity might reasonably be questioned and should on all occasions avoid situations which may create the impression of improper behaviour

- 3) Members should make decisions on merit, including when awarding contracts, making appointments, or recommending individuals for rewards or benefits.
- 4) Members are accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their office.
- 5) Members should be as open as possible about their decisions and actions and those of the Council. They should be prepared to give reasons for those decisions and have regard to the advice of the Council's statutory officers before making any decision.
- 6) Members must act to ensure Council resources are used prudently. When using or authorising the use by others of Council resources, members must ensure that they are used only for legitimate Council purposes and not for any other purpose. In particular they must not be used improperly for political purposes (including party political purposes). Members must have regard to any applicable Local Authority Code on Publicity under the Local Government Act 1986.

- 7) Members must take account of the views of others, including their political groups, but must reach their own conclusions and act in accordance with those conclusions.
- 8) Members should promote equality and not discriminate unlawfully against any person, and treat all people with respect. Whilst it is acknowledged that political debate may at times be robust and forthright, and that the right of freedom of expression is essential to vibrant political discourse, members should ensure that their comments and behaviour do not overstep the line of acceptability. They should not bully any person. They should respect the impartiality and integrity of the Council's officers

- 9) Members should promote and support high standards of conduct in particular as characterised by the above requirements by leadership and example.

### 3 When does this Code apply?

3.1 This Code applies at all times when members act in their capacity as member or claim to do so.

#### **4 Personal interests**

4.1 There are three categories of personal interest.

- Disclosable pecuniary interest
- Other registerable interest
- Non registerable interest

##### *Disclosable pecuniary interest*

4.2 The definition of disclosable pecuniary interest is set out in regulation. It is as follows:-

#### **1 Employment, office, trade, profession or vacation**

*Any employment, office, trade, profession or vocation carried on by a relevant person\* for profit or gain.*

#### **2 Sponsorship**

*Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 months prior to the date of giving notice of interest for inclusion in the register in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.*

*This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.*

#### **3 Contracts**

*Any contract which is made between a relevant person\* (or a firm in which they are a partner, or a body corporate in which they are a director or in the securities\*\* of which body corporate they have a beneficial interest) and the relevant authority—*

*(a) under which goods or services are to be provided or works are to be executed; and*

*(b) which has not been fully discharged.*

**4 Land**

*Any beneficial interest in land which is within the borough.*

**5 Licences**

*Any licence (alone or jointly with others) to occupy land in the borough for a month or longer.*

**6 Corporate tenancies**

*Any tenancy where (to the Member's knowledge)—*

- (a) the landlord is the Council; and*
- (b) the tenant is a body in which the relevant person\* is a firm in which they are a partner, or a body corporate in which they are a director or in the securities\*\* of which body corporate they have a beneficial interest.*

**7 Securities**

*Any beneficial interest in securities of a body where—*

- (a) that body (to the Member's knowledge) has a place of business or land in the borough; and*
- (b) either—*
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or*
  - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person\* has a beneficial interest exceeds one hundredth of the total issued share capital of that class.*

*\* For the purposes of this paragraph 4.2, a "relevant person" is:-*

- (i) the Member, their spouse, or civil partner;*
- (ii) a person with whom the member is living as husband and wife; or*
- (iii) a person with whom the member is living as if they were civil partners.*

**\*\* For the purposes of this paragraph 4.2, "securities" means shares, debentures, debenture stock, loan stock, units of a collective investment scheme within the meaning of the Financial Services and markets Act 2000 and other securities of any description other than money deposited with a building society**

- 4.3 Members must within 28 days of taking office as a member, notify the Monitoring Officer of any disclosable pecuniary interest where the pecuniary interest is the interest of themselves, their spouse or civil partner (or is the interest of someone with whom the member lives as spouse or civil partner) for inclusion in the Register of Members' Interests.

*Other registerable interest*

- 4.4 Members must also within 28 days of taking office as a member, notify the Monitoring Officer of such further interests as LB Lewisham has decided should be included in the register

*Membership or position of control or management in:-*

- *Any body to which you were appointed or nominated by the Council*
- *Any body exercising functions of a public nature (described below) or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party*

*Any person from whom you have received a gift or hospitality with an estimated value of at least £25*

*There is no definitive list of bodies exercising functions of a public nature, but those bodies which:-*

- *carry out a public service, or*
- *take the place of local/central government (including through outsourcing); or*
- *carry out a function under legislation or in pursuit of a statutory power; or*
- *can be judicially reviewed,*

*are likely to be bodies carrying out functions of a public nature. They include bodies such as government agencies, other councils, health bodies, council owned companies, ALMOs, school governing bodies.*

- 4.5 LBL requires all members to ensure that their entries on the Register of Members' Interests are kept up to date annually and that they notify the Monitoring Officer of any change to their interests within 28 days of the change arising

## 5. Declaration of interests

### *Disclosable pecuniary interest*

- 5.1 By law, Members with a disclosable pecuniary interest may not participate in any discussion of, vote on, or discharge any function relating to any matter in which the member has such an interest, unless a dispensation has been granted under Section 33 Localism Act 2011.

## 5. Declaration of Interests

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| 5.2 In Lewisham decisions relating to dispensation may only be taken by the Standards Committee which will decide each case on its merits. |
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- 5.3 The law requires that if a member has a disclosable pecuniary interest which is not entered on the Register of Members' Interests, then the member must disclose the interest to any meeting of the Council at which they are present where they have a disclosable interest in any matter being considered at that meeting. However this shall not apply if the interest is a 'sensitive interest' (see para 5.4 below.) Following any such disclosure the law requires that members update their entry in the Register of Members' Interests within 28 days of the date of disclosure. In this context the law defines a meeting as a meeting of the Council, or any committee, sub-committee or joint committee of it.

- 5.4 A 'sensitive interest' is an interest the disclosure of which the member and Monitoring Officer have agreed could lead to the member or a person connected with them being subject to violence or intimidation

### *Other registerable interests*

- 5.5 Members must also comply with such other provisions as the Council may require in relation to declarations of interest. The provisions which the Council has decided to include in this Code in relation to the declaration of interests are set out in paragraphs 5.6 to 5.11 below.

5.6 LBL requires that whenever a member has a registerable interest (pecuniary or otherwise) in any matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take no part in consideration of the matter and withdraw from the room before it is considered. They must not improperly seek to influence the decision in any way.

5.7 Where the member has a registerable interest which falls short of a disclosable pecuniary interest, the member must still declare the nature of that interest to the meeting at the earliest opportunity and in any event before the matter is considered, but unless paragraph 5.8 below applies, provided the member does so, they may stay in the room and participate in consideration of the matter and vote on it.

5.8 Where a member has an interest which under this Code would not be a disclosable pecuniary interest but would be registerable (and therefore would not generally by law prevent participation in consideration of a matter in which the member has that interest,) the member must consider whether a reasonable member of the public in possession of all the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.

*Non-registerable interests*

5.9 Occasions may arise where a matter under consideration would, or would be likely to, affect the wellbeing of the member, their family, friend or close associate(s) more than it would affect those in the local area generally, but which is not required to be included in the Register of Members' Interests (for example, a decision in relation to a school closure, where a member has a child at the school). In such matters, members must comply with paragraph 5 in its entirety as if the interest were a registerable one.

5.10 Decisions in relation to the declaration of interests are for the member's personal judgement. However members must consider not only whether they have an actual interest in a matter under discussion but should at all times seek to avoid the impression being created that their judgement of the public interest is or is likely to be impaired by their personal interests.

5.11 The provisions of this paragraph 5 apply not only to meetings but to circumstances where a member makes a decision alone.



## **6. ACCESS TO INFORMATION**

- 6.1 Members must not disclose confidential information given to them in the course of their duties without the consent of the person entitled to give it unless:-
- (a) there is a legal requirement to disclose the information, or
  - (b) the disclosure is to a third person for the purpose of obtaining professional advice and the third party agrees not to disclose it, or
  - (c) the disclosure is reasonable, in the public interest, made in good faith and made in accordance with the Council's reasonable requirements.
- 6.2 Conversely, members must not prevent access to information to which another is entitled by law.

## **7. GIFTS AND HOSPITALITY**

The Council maintains a Register of Gifts and Hospitality in which all members must register gifts and hospitality received from any party of £25 or over. Members must also register the identity of the party whom they believe to be the source of the hospitality or gift. Members must also record in this register any gift or hospitality offered to them but not accepted if it exceeds £25. This register will be publicly available on the Council's website.

## **8 PROTOCOLS**

From time to time, the Council may put in place protocols which clarify this Code of Conduct and will be used to interpret it. Members must comply with any such protocols in place from time to time. There are attached to this Code 5 such protocols:-

- (1) Member and Officer relations
- (2) Member Use of IT
- (3) Planning and Lobbying
- (4) Local Authority Code on Publicity
- (5) Guidance Code for Members on Outside Bodies

**9 UNDERTAKING TO COMPLY**

LBL requires that all members sign an undertaking within two months of being elected to abide by this Code of Conduct. Failure to do so will itself amount to a breach.

**10 SANCTIONS**

Members are reminded that breach of any of the statutory requirements relating to the registration and declaration of interests may result in prosecution. Breach of the provisions introduced locally by the Council will be dealt with in accordance with the Council's procedure for handling allegations of breach of this Code

*Members in need of advice about the application of this Code should contact the Head of Law and Monitoring Officer, Kath Nicholson on extension 47648*

# APPENDIX 1

## MEMBER & OFFICER RELATIONS

## **Appendix 1**

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

1. An effective working relationship between members and staff is critical to the successful operation of Council business. Excellent working relationships are required to deliver best value services to local citizens and to maintain confidence in local government in Lewisham. This protocol is designed to help members and staff to perform effectively by giving guidance on their respective roles and expectations and on their relationship with each other

#### **Respective roles**

2. Both members and Council staff are public servants. They are indispensable to each other. But their responsibilities are distinct. All members (including the directly elected Mayor) are responsible to the electorate and serve only so long as their term of office lasts. Staff are responsible to the Council as a corporate body, and not to any single member including a directly elected Mayor. Their job is to give advice to all members (including the Mayor) and to the authority, and to carry out the authority's work under the direction and control of the Council, its executive and relevant committees.
3. Respect between members and staff, both personally and for their different roles is essential to good local government.

#### **'Members' roles**

4. Members have five main areas of responsibility:
  - (a) deciding on overall Council policy and giving the authority political leadership
  - (b) making decisions within overall council policy (for example on planning applications, or on the establishment or closure of a school)
  - (c) monitoring and reviewing performance in implementing policy and delivering services
  - (d) representing the area and the Council externally
  - (e) acting as advocates on behalf of constituents

Depending on whether they are members of the executive or not, and on the committees to which they are appointed, members may exercise only some of these roles. However it is not the role of members to involve themselves in the day to day management of the Council's services.

- 5 The Mayor, members of the executive and committee chairs and vice chairs have additional responsibilities. Because of this their relationships with employees may be different from and more complex than those of councillors without those responsibilities. This is recognised in the expectations they are entitled to have. However, such members must still respect the impartiality of officers and must not ask them to undertake work of a party political nature, or to do anything which will put them in difficulty in the event of a change in the composition of the authority.
- 6 As individual members, all councillors and the Mayor have the same rights and duties in their relationship with staff and should be treated equally. Members of overview and scrutiny committees are entitled to officer advice and support in the performance of their roles just as executive members are entitled to officer advice and support in the performance of theirs.

#### **Officers' roles**

- 7 The role of officers is to give advice and information to members to inform their decision making and to implement the policies and decisions of the Council. In giving their advice it is the responsibility of the officer to present his/her professional views and recommendations. Members must not pressurise an officer to make a recommendation contrary to their professional view or use undue pressure to seek to persuade an officer to withdraw a report.
- 8 In discharging their role as an officer of the authority, staff must act in a politically neutral way.
- 9 Certain officers, including the head of paid service, monitoring officer, chief finance officer, the director of children's services, the director of adult services, the director of public health & scrutiny officer have legal responsibilities over and above their obligations to the authority and members of it. Members must respect these obligations and must not obstruct them in the discharge of these responsibilities, or victimise them for discharging these legal duties.

#### **Expectations**

- 10 Members can expect from officers:-

- (a) a commitment to the council as a whole and not only to any part of it, or to any political group
- (b) Respect and courtesy
- (c) The highest standards of integrity
- (d) A working partnership
- (e) An understanding of and support for respective roles, workloads and pressures
- (f) Timely responses to enquiries and complaints
- (g) Professional advice, not influenced by political views or preference, which does not compromise the political neutrality of officers
- (h) Regular up to date information that can be considered appropriate and relevant to their needs, having regard to any individual responsibilities that they have and positions they hold
- (i) Awareness of and sensitivity to the political environment
- (j) Training and development in order to carry out their role effectively
- (k) Appropriate confidentiality
- (l) That they will not use their relationship with members to seek to advance their personal interests or to influence decisions improperly
- (m) Support for the role of councillors as the local representatives of the authority within arrangements made by the council to do so
- (n) Compliance with the Employee Code of Conduct at all times

Officers can expect from members:-

- (a) Respect and courtesy
- (b) The highest standards of integrity
- (c) A working partnership
- (d) An understanding of and support for respective roles, workloads and pressures

- (e) Political leadership
- (f) Not to be subject to bullying or to be put under pressure. Members must have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between members and officers and the potential vulnerability of officers, particularly at junior levels
- (g) That members will not use their position or relationship with officers to seek to advance their personal interests or those of others or to influence decisions improperly
- (h) Compliance with the Member Code of Conduct at all times

#### **Close personal relationships**

- 11 Both members and officers should take care not to give the impression that their distinct roles have become blurred in some way. Maintaining confidence in the separation of these roles necessarily imposes limitations on behaviour. Close personal relationships between members and officers can confuse their separate roles and get in the way of the proper discharge of the authority's functions, not least in creating the perception in others that a particular member or officer may secure advantageous treatment.

#### **Political Groups**

- 12 The operation of political groups is an integral feature of local government. They have an important part to play in the development of policy and the political management of the authority. It is in the interest of the authority to support the effective operation of political groups. However, doing so can create particular pitfalls in terms of the impartiality of officers. This protocol sets out guidance to minimise the risk of that impartiality being compromised.
- 13 National Conditions of Service for Executive Directors and JNC officers provide that they "shall not be required to advise any political group of the Council, either as to the work of the Group or as to the work of the Council, neither shall they be required to attend any meetings of any political groups. This should be without prejudice to any arrangements to the contrary which may be made in agreement with any officer which includes adequate safeguards to preserve the political neutrality of the officer in relation to the affairs of the Council"

- 14 The NJC for Local Government Services National Agreement on Pay and Conditions of Service provides that codes of practice for the official conduct and obligations of employees shall be locally determined. The Council applies a similar provision to those applying to JNC officers, without the exception contained in the last sentence.
- 15 Sometimes, officers may be asked to write reports for a political group. Normally it should only be an Executive Director who is asked to do so. Occasionally, subject to the direction of the Executive Director, other senior employees in his/her Directorate may be asked to write reports for a political group. Neither the Executive Director nor any other officer can be compelled to write reports for (or attend) a meeting of a party political group. Sometimes it will be appropriate for a senior officer to write a report for a political group where they represent an early stage in the decision making process. A report relating to the choices to be made in the budget process might be an example. However, where a senior officer does write such a report for a political group, it should be written as if it was being prepared for the full Council, Executive or the relevant committee. Reports on matters of policy or principle, prior to decisions do not need to be so formally drafted.
- 16 The principles set out in paragraph 15 do not obviate the need for there to be close and regular liaison on matters affecting the council between the Mayor, members of the Executive and committee chairs as appropriate on the one hand and Executive Directors and senior officers on the other.
- 17 Members and officers must always remember that decisions can only be taken in accordance with the Council's constitution and standing orders and that decisions taken by party political groups are not Council decisions. They must only refer matters for decision in accordance with that process.

#### **Reports to Council, Executive or Committee**

- 19 Under the constitution adopted by the Council to comply with the Local Government Act 2000, decisions may be made by a directly elected Mayor or an executive or members of it to whom the Mayor has delegated decision making power. In other cases, they may also be taken by the full council or committees or sub committees. The Council's constitution provides that member decisions may only be taken on the basis of a written report containing all relevant considerations. Reports to the Mayor, Executive (whether collectively or decision makers drawn from it,) or to a committee or sub committee should be written by the Executive Director or another officer authorised by him or her.



- 20 It is likely that a sensitive report would be discussed with the Mayor, lead member or committee chair and that member may make suggestions for inclusion in the report. However, the report is the officer's and even if the member is unhappy with its contents, it should not be amended by that member, save with the express approval of the Executive Director. If the report of the Executive Director is thought by the member to be inappropriate, then exceptionally that member should write his or her own report in addition to the report submitted by the Executive Director.
- 21 Where an officer attends a political group, they must inform the monitoring officer who will advise all other groups that the officer has attended and the subject on which they have advised. If a report was prepared by the officer he/she will supply a copy to the other political groups on request. Officers will respect the confidentiality of any matter which they hear in the course of attending a political group meeting.

**APPENDIX 2**

**PROTOCOL ON MEMBER  
USE OF IT**

## **ACCEPTABLE USE OF ICT EQUIPMENT**

- 1.1 Council computers and ICT equipment are provided to assist members in their role as locally elected representatives.
- 1.2 ICT facilities are very useful tools for research and business. However, they are also full of risk. There are a number of reasons why guidance in respect of computers and ICT equipment is required. For example, any security breach of the Council's ICT network (and the systems and networks held on it), could have an extremely adverse affect on the Council, members, staff or the public.
- 1.3 Furthermore, while using such facilities, members could copy information and contravene Copyright law or (without realising) allow someone to use the Internet to attack your computer systems and the Council network. Other risks include:
- the transmission or introduction of computer viruses;
  - making defamatory or inappropriate remarks or negligent statements;
  - unwittingly making a contract;
  - sexual or racial discrimination;
  - criminal offences.
- 1.4 In addition, all members are bound by the provisions of Lewisham's Member Code of Conduct. Abuse of the Council's facilities, including IT equipment, amounts to a breach of the code. Members' attention is drawn to the contents of the Code of Conduct which appears at Part V of the Council's Constitution both in general and in particular to the requirement set out at paragraph 2.6, which states:
- " 2.6. Members must act to ensure Council resources are used prudently. When using or authorising the use by others of Council resources, members must ensure that they are used only for legitimate Council purposes and not for any other purpose. In particular they must not be used improperly for political purposes (including party political purposes). Members must have regard to any applicable Local Authority Code on Publicity under the Local Government Act 1986."
- The Code of Conduct may be amended from time to time and members will also be required to agree to comply with the amended code.
- 1.5 Members are reminded that the Council's Protocol for recording Council meetings which is produced at Appendix 3 to this Constitution, applies to everyone attending an open meeting. For the sake of certainty, any

councillors wishing to record the proceedings of an open public Council committee or Council sub-committee are bound by the provisions of that Protocol.

- 1.5 The following paragraphs (1.6, 1.7, 1.8 and 1.9) are intended to minimise such risks to you and the Council.
- 1.6 Members must not use Council ICT facilities for:
  - 1.6.1 promoting private business activity, personal financial interests or commercial ventures;
  - 1.6.2 promoting any political party, group, or campaigning organisation;
  - 1.6.3 personal campaigning;
  - 1.6.4 engaging in any activity which may result in actions for libel, defamation or other claims for damages;
  - 1.6.5 any use which:
    - (i) contravenes any legislation (such as the Data Protection Act 1998; the Computer Misuse Act 1990; the Copyrights, Designs and Patents Act 1988 (amended 2002); the Obscene Publications Act 1959 and 1964; the Anti-Terrorism, Crime and Security Act 2001; Equality Act 2010, or other legislation in force from time to time;
    - (ii) breaches any of the general obligations set out in the Member Code of Conduct; or,
    - (iii) breaches the council's ICT security policies.
- 1.7 ICT facilities are provided to members in order to assist them in Council related activities. However provided that the terms of the Code of Conduct, and other member Guidance, are not broken, members may also use Council PCs for lawful personal purposes, for example surfing the Internet to purchase goods and services. In such cases all associated risks and liability, including any costs, remain with the Member.
- 1.8 Members may download or install software from licensed sources which assists in their role as locally elected representatives (and does not breach any of the conditions outlined above). In such cases all associated risks and liability, including any costs (other than the costs of restoring the Council's standard software desktop), remain with the Member.

- 1.9 Members should ensure that they have duly licensed any software installed on Council ICT equipment.
- 1.10 Members are also provided with facilities enabling them to conduct their duties from home. When working from home, or remotely, members must not:
  - 1.10.1 allow any other person, including family members, access to the Lewisham ICT network;
  - 1.10.2 allow any other person, including family members, to use their user name and password.
- 1.11 The Council's network has been set up to automatically prevent users from accessing certain types of website including pornographic, homophobic, racist, on-line gaming, terrorist and computer-hacking sites.
- 1.12 However, you may occasionally find that you do encounter sites that contain this sort of material. If so, you must report this to the e-Services Help Desk immediately.
- 1.13 Any material containing child pornography found on any Council computer system must by law be reported to the police.
- 1.14 You are responsible for the content of any email sent from your username and in certain circumstances the Council may also be found liable for the content of such email, in which case action will be taken to recover any resultant penalties.
- 1.15 A disclaimer is automatically added to emails sent out from the Council in case it is wrongly addressed or reaches the wrong person. However, you must take steps to make sure that you address your email correctly. If you find out an email has been received by someone other than the person you meant to send it to, you must take steps to make sure that this does not happen again, and to secure its deletion by the unauthorised recipient if possible.
- 1.16 If you receive an email that breaches the general obligations of the Member Code of Conduct or which breaks the law, you must inform the Monitoring Officer.
- 1.17 Emails and other personal information should be retained only for the minimum period necessary, in accordance with the Data Protection Act

1998. Further details on the Data Protection Act can be obtained from the Corporate Information Manager, based within the Council's Technology and Transformation division.

- 1.18 It is important that you manage the information that you store to ensure its availability, confidentiality and integrity. Therefore members must regularly review all Council information (including files and Email messages) you hold and delete all redundant or irrelevant data.
- 1.19 Subject to reasonable notice, members must provide authorised representatives of the Council (for example computer technicians), with access to Council equipment. This access may be required for the resolution of faults, the replacement or upgrade equipment or the removal of equipment (if, for example you cease to be a member of the Council).
- 1.20 Members are also reminded of their duty to comply with investigations by regulatory services, e.g. police, audit, etc., if so required.

## **APPENDIX 3**

# **PROTOCOL ON PLANNING AND LOBBYING**

## APPENDIX 3

**PROTOCOL ON PLANNING  
AND LOBBYING****Introduction**

1. The planning system involves taking decisions about the use and development of land in the wider public interest having regard, in particular, to the Development Plan. When such decisions are made the requirements of individuals (be they applicant or neighbour) must be balanced against the broader public interest. It is of fundamental importance that the planning system should not only be fair, but should be seen to be fair.

**Elected Members**

2. Elected members set the Council's planning policy and determine planning applications and enforcement issues within the context of that policy. When elected members come to make a decision on a planning matter, they must:
  - act fairly and openly
  - approach each application with an open mind
  - carefully weigh up all relevant issues
  - determine each application on its own merits
  - avoid contacts with interested parties which might be taken to indicate that they were unduly influenced by one party or another
  - ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.
3. Elected members may delegate certain planning decisions to officers and where this is the case, officers will be bound to act in accordance with the principles set out in this paragraph.

**Role of Officers**

4. The function of officers is to advise and assist members in matters of planning policy and in their determination of planning applications and enforcement issues by:-



- providing impartial and professional advice
- making sure that all the information necessary for the decision to be made is given
- providing a clear and accurate analysis of the issues
- setting applications and enforcement issues against the broader Development Plan policies , and all other material considerations
- giving a clear recommendation
- carrying out the decisions of councillors in committee or sub-committee.

### **Lobbying**

5. There are two issues which may arise when a member has been lobbied. They are the issues of pre-determination and personal interest.

### **Pre-determination**

6. Members are under an obligation to determine matters on their merits. That means that they must not make up their minds before receiving and reading any officer report, or before hearing any debate on the matter out of which new information may arise. The important issue is that the member's mind must not be closed to consideration at the point of deliberation on a matter. Whilst a predisposition to a particular view may be legitimate, a closed mind at the point of considering a planning application would not be so. The member must be open to persuasion.
7. Whilst a predisposition to a particular point of view is acceptable, a pretermination is unacceptable. To avoid compromising their position before they have received all the relevant information, members must:
- avoid, as far as possible, meeting an applicant or potential applicant alone;
  - avoid making categorical statements in advance about whether they support or oppose the proposal;
  - not pressurise officers to make a particular recommendation in their report;
  - direct lobbyists or objectors to planning officers, who will include reference to their opinions, where relevant, in their report;

- advise the Head of Planning and the Chair of the appropriate Planning Committee of the existence of any lobbying interest.
8. Where a member has been lobbied he/she should report to the relevant committee that he/she has been lobbied and by whom. However, members must act in the public interest and not at the behest of any individual or interest. If the member feels that he/she no longer retains an open mind on the matter but that his/her impartiality has been compromised, he/she will need to decide whether to withdraw from the meeting.
  9. Where a member decides that he/she wants to act as a representative of their community, reporting and advocating the views of their constituents, it follows that they will no longer be acting impartially. In those circumstances, they should not seek to participate in any consideration of, or vote on the matter.

**Interests**

10. Whether or not a Member may participate and vote on a planning matter depends on the nature of the interest that they hold. The situation may be summarised as follows:-

(a) **Disclosable pecuniary interests**

- (i) Where a Member of the Planning Committee has a disclosable pecuniary interest then that Member cannot participate in any discussion or vote in respect of that matter at Planning Committee or otherwise. They must declare the interest and withdraw.
- (ii) Members who are not members of the Planning Committee are similarly bound by the provisions relating to disclosable pecuniary interests, and may not make any representations to the Committee on their own behalf or those of their constituents or others. They similarly must not attend during consideration of that item.

(b) **Other registerable interests and non registerable interests**

If a Member of the Planning Committee has an interest, other than a disclosable pecuniary interest, in a matter which is under consideration by Planning Committee, which would either:-

- (i) constitute an interest that would need to be registered under the Council's Code of Conduct or

- (ii) which whilst not requiring registration would, but would be likely to affect the wellbeing of a member, their family, friend or close associate(s) more than it would affect those in the local area generally

then the Member should declare the interest but may stay and participate in the consideration of the matter and may vote unless the following paragraph (c) applies.

- (c) If the interest is such that a reasonable member of the public in possession of all the facts would think that the member's interest is so significant that it would be likely to impair their judgement of the public interest the member, should not participate in the decision making process and should withdraw.
- (d) Members who are not members of the Planning Committee with such an interest may still attend to make representations to the Committee on their own behalf or on behalf of their constituents or others, provided a declaration of interest is recorded and as long as the Member leaves immediately after doing so.

11. Members with an interest that would preclude their attendance at a meeting during consideration of a matter, can still present views to the meeting, through other means:

- written representations in a private capacity. Such representations should disclose the existence and nature of the interest. Members must not seek preferential treatment and representatives should be addressed to the officers not members
- the use of a professional representative to make representations;
- arranging for another member to represent the views of constituents on matters in which a member has a prejudicial interest.

The advice of the Monitoring Officer should be sought as to whether an interest ought to be declared in cases of doubt.

12. Where a member receives relevant information in respect of an application which is not contained in the Head of Planning's report on the application, the member should secure that that information is made available to other members of the Committee, by advising the Head of Planning directly so that the information can

be confirmed, rather than run the risk that the Committee might take a decision on the basis of information which subsequently proves to be incorrect.

### **Discussions with Potential Applicants**

13. Members should note that breach of the requirements in relation to personal interest and for pre-determination may mean that the decision is rendered invalid if challenged in the courts.
14. Pre-Application meetings with potential Applicants are encouraged to ensure beneficial development and to resolve matters which might otherwise lead to the refusal of planning permission. However, to avoid such meetings being misunderstood, they should normally be at officer level and:
  - where meetings are to involve elected members, they will be arranged by and attended by officers and will include the Chair of the relevant Planning Committee or his/her representative
  - potentially contentious meetings will be attended by at least two officers, including the Head of Planning or his/her representative
  - a note of the discussion will be taken and placed on file and made available for public inspection at the appropriate time
  - it will be made clear at such meetings that only personal and provisional views based upon the policies in the Development Plan documents and any other relevant documents forming the local development framework can be given and no commitments can be made which would bind or otherwise compromise the relevant Planning Committee or any member of it.

### **The Party Whip**

15. Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. So, while they may give appropriate weight to the views of other members whether expressed in the committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor, which they are not prepared to state in open Committee. As a result it is not appropriate for any party group to instruct its members to vote in a particular manner on an application or to apply or threaten to apply any sanction to any member who voted contrary to the Group's collective view. Where such a whip has been applied, members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

### **Decisions Contrary to Officer Recommendation**

16. From time to time, members of the relevant Planning Committee will disagree with the professional advice given by the Head of Planning. Development Control is not an absolute science and there can be genuine disagreement about the implications of a particular proposal. The Head of Law or his/her representative will be present at the Committee making the decision and will be able to advise if the facts simply cannot support the conclusion which the members have drawn and the Committee is in danger of acting unreasonably.
17. In cases where the Planning Committee decides for good and valid reason to depart from the Head of Planning's recommendation, the Committee must define the reasons for rejecting the officer's recommendation and those reasons must be recorded in the minutes of the meeting. Where it is not possible for the Committee to define those reasons with sufficient precision at that initial meeting, the Committee should adjourn the determination of the application to permit the appropriate officers to present to a subsequent meeting a Statement of Draft Reasons for Refusal for its approval. Where an appeal arises against such a decision, officers will give support to the relevant Committee members in preparing evidence for the appeal, but it will be for members of the Planning Committee making the decision, to appear at any appeal hearing and give evidence of the reasons for the Committee's decision.

### **Site Visits**

18. Site visits can be useful to identify features of a proposal, which may be difficult to convey in a written report, but site visits do delay the decision on an application. When a member feels that a site visit is essential he/she can either make a request to the Head of Planning or request the relevant Planning Committee to defer the determination of the matter until a site visit has been held.
19. Site visits are:
  - fact finding exercises
  - not part of the formal consideration of the application and therefore public rights of attendance do not apply
  - to enable officers to point out relevant features
  - to enable questions to be asked on site for clarification.

However, discussion on the application will only take place at the subsequent Committee, as all relevant parties may not be in attendance on site.

### **Gifts and Hospitality**

20. Gifts and hospitality give rise to particular problems in respect of the credibility of the planning process and acceptance of gifts or hospitality by members or officers can be a very serious criminal offence. Members should have particular regard to the provisions of the Council's Member Code of Conduct. In particular they must immediately report to the Monitoring Officer any offer of gifts or hospitality and they should avoid any behaviour which might be taken as indicating that they are open to such offers.

### **Planning Application by Members or Officers**

21. The impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in the planning process. So, whenever any member or any officer who might be involved in the planning process submits an application to the Authority for himself/herself or on behalf of any other person, they will:

- inform both the Head of Planning and the Council's Monitoring Officer
- take no part in processing or determining the application.

The Head of Planning will ensure that all such applications are determined at the appropriate committee meeting and not under any delegated powers.

### **Planning Applications by the Council**

22. The Council itself requires planning permission to carry out or authorise development on land it owns. These applications will be treated in the same way as those from private applicants.

### **Applicant and Public Representations at Planning Committee**

23. The Planning Committee will approve procedures to ensure that where they receive representations from or on behalf of the applicant or from members of the public on a particular application, there is an opportunity for advocates both for and against the proposal to be heard in a balanced manner.

### **Complaints**

24. Any issues or concerns arising from this protocol can be raised with the Chair of the appropriate Planning Committee or the Head of Planning.

The Council also has a formal complaints system in operation, which can be used if necessary.

**APPENDIX 4**

**LOCAL AUTHORITY CODE  
ON PUBLICITY**



## **LOCAL AUTHORITY CODE ON PUBLICITY**

### **Introduction**

1. This code applies to all local authorities in England specified in section 6 of the Local Government Act 1986 and to other authorities in England which have that provision applied to them by other legislation. Where the term "local authorities" is used in this code it should be taken as referring to both those categories of authority. References to "the Act" are to the Local Government Act 1986.
2. Local authorities are required by section 4(1) of the Act to have regard to the contents of this code in coming to any decision on publicity. Section 6 of the Act defines publicity as "any communication in whatever form, addressed to the public at large or a section of the public". The code therefore applies in relation to all decisions by local authorities relating to paid advertising and leaflet campaigns, publication of free newspapers and newsheets and maintenance of websites – including the hosting of material which is created by third parties.
3. Nothing in this code overrides the prohibition by section 2 of the Act on the publication by local authorities of material which in whole or in part appears to be designed to affect public support for a political party. Paragraphs 21 to 24 offer some guidance for local authorities on the management of publicity which may contain or have links to party political material.

### **Principles**

4. Publicity by local authorities should:-
  - be lawful
  - be cost effective
  - be objective
  - be even-handed
  - be appropriate
  - have regard to equality and diversity
  - be issued with care during periods of heightened sensitivity

### **Lawfulness**

5. Local authorities should ensure that publicity complies with all applicable statutory provisions. Paid-for advertising must comply with the Advertising Standards Authority's Advertising Codes.
6. Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.
7. Section 125 of the Political Parties, Elections and Referendums Act 2000 places a specific restriction on the publication by a local authority of material relating to a referendum under Part 7 of that Act, during the period of 28 days immediately before the referendum is held.
8. Regulation 5 of the Local Authorities (Conduct of Referendums) (England) Regulations 2007 (S.I. 2007/2089) prohibits local authorities from publishing material in the 28 days immediately before a referendum which expresses support for, or opposition to a particular answer to a referendum question relating to the constitutional arrangements of the authority. \*
9. Regulation 15 of the Local Authorities (Referendums, Petitions and Directions) (England) Regulations 2000 (S.I. 2000/2852) prohibits local authorities from incurring expenditure to publish material which appears designed to influence people in deciding whether or not to sign a petition relating to the constitutional arrangements of the authority, or to assist others to publish such material.\*

### **Cost effectiveness**

10. In relation to all publicity, local authorities should be able to confirm that consideration has been given to the value for money that is being achieved, including taking into account any loss of potential revenue arising from the use of local authority-owned facilities to host authority publicity.
11. In some circumstances it will be difficult to quantify value for money, for example where the publicity promotes a local amenity which is free to use. In such a case authorities should be able to show that they have given thought to alternative means of promoting the amenity and satisfied themselves that the means of publicity chosen is the most appropriate.
12. If another public authority, such as central government, has issued publicity on a particular topic, local authorities should incur expenditure on issuing publicity on the same matter only if they consider that additional value is achieved by the duplication of that publicity. Additional value might be

achieved if locally produced publicity gives a local context to national issues.

13. The purchase of advertising space should not be used as a method of subsidising voluntary, public or commercial organisations.
14. Local authorities should consider whether it is appropriate to seek advice from economic analysts, public relations experts or other sources of expert advice before embarking on a publicity campaign involving very large expenditure.

### **Objectivity**

15. Local authorities should ensure that publicity relating to policies and proposals from central government is balanced and factually accurate. Such publicity may set out the local authority's views and reasons for holding those views, but should avoid anything likely to be perceived by readers as constituting a political statement, or being a commentary on contentious areas of public policy.
16. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on the facts or explanation or both. Local authorities should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy. It is acceptable for local authority publicity to correct erroneous material which has been published by other parties, despite the fact that the material being corrected may have been published with the intention of influencing the public's opinions about the policies of the authority. Such publicity should seek to explain the facts in an objective manner.
17. Where paid-for advertising is used by local authorities, it should be clearly identified as being advertising. Paid-for advertising, including advertisements for the recruitment of staff, should not be used in any publication owned or controlled by a political party.
18. Advertisements for the recruitment of staff should reflect the tradition of political impartiality of local authority employees and should not (except in the case of advertisements relating to the appointment of staff pursuant to section 9 of the Local Government and Housing Act 1989 (assistants for political groups)) refer to any political activities or affiliations of candidates.

### **Even-handedness**

19. Where local authority publicity addresses matters of political controversy it should seek to present the different positions in relation to the issue in question in a fair manner.

20. Other than in the circumstances described in paragraph 34 of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the “face” of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.
21. It is acceptable for local authorities to host publicity prepared by third parties – for example an authority may host a blog authored by members of the authority or a public forum on which members of the public may leave comments. Maintenance by a local authority of a website permitting the posting of material by third parties constitutes a continuing act of publication by that local authority which must accordingly have a system for moderating and removing any unacceptable material.
22. It is generally acceptable for local authorities to host publicity, such as a blog, which itself contains links to external sites over which the local authority has no control where the content of those sites would not itself comply with this code. This does not amount to giving assistance to any person for the publication of material which local authorities are not permitted to publish. However, particular care must be taken by local authorities during the period before elections and referendums to ensure that no breach of any legal restriction takes place. It may be necessary to suspend the hosting of material produced by third parties or public forums which contain links to impermissible material during such periods.
23. It is acceptable for publicity containing material prepared by third parties and hosted by local authorities to include logos of political parties or other organisations with which the third parties are associated.
24. It is acceptable for publicity produced or hosted by local authorities to include a logo associated with a particular member of the authority, such as a directly elected mayor, or leader of the authority. Publicity material produced by local authorities relating to a particular member must not seek to affect public support for that individual.
25. Where local authorities provide assistance to third parties to issue publicity they should ensure that the principles in this code are adhered to by the recipients of that assistance.

#### **Appropriate use of publicity**

26. Local authorities should not incur any expenditure in retaining the services of lobbyists for the purpose of the publication of any material designed to influence public officials, Members of Parliament, political parties or the Government to take a particular view on any issue.

27. Local authorities should not incur expenditure on providing stands or displays at conferences of political parties for the purpose of publicity designed to influence members of political parties to take a particular view on any issue.
28. Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly. Such communications should not include material other than information for the public about the business, services and amenities of the council or other local service providers.
29. Publicity about local authorities and the services they provide should be freely available to anyone who wishes to receive such information in a format readily accessible and understandable by the person making the request or by any particular group for which services are provided.
30. All local authority publicity should clearly and unambiguously identify itself as a product of the local authority. Printed material, including any newsletters, newsheets or similar publications published by the local authority, should do this on the front page of the publication.

#### **Equality and diversity etc**

31. Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.
32. Local authorities should consider how any publicity they issue can contribute to the promotion of any duties applicable to them in relation to the elimination of discrimination, the advancement of equality and the fostering of good relations.

#### **Care during periods of heightened sensitivity**

33. Local authorities should pay particular regard to the legislation governing publicity during the period of heightened sensitivity before elections and referendums – see paragraphs 7 to 9 of this code. It may be necessary to suspend the hosting of material produced by third parties, or to close public forums during this period to avoid breaching any legal restrictions.
34. During the period between the notice of an election and the election itself, local authorities should not publish any publicity on controversial issues or

report views or proposals in such a way that identifies them with any individual members or groups of members. Publicity relating to individuals involved directly in the election should not be published by local authorities during this period unless expressly authorised by or under statute. It is permissible for local authorities to publish factual information which identifies the names, wards and parties of candidates at elections.

35. In general, local authorities should not issue any publicity which seeks to influence voters. However this general principle is subject to any statutory provision which authorises expenditure being incurred on the publication of material designed to influence the public as to whether to support or oppose a question put at a referendum. It is acceptable to publish material relating to the subject matter of a referendum, for example to correct any factual inaccuracies which have appeared in publicity produced by third parties, so long as this is even-handed and objective and does not support or oppose any of the options which are the subject of the vote.

\* London Borough Lewisham N.B.

Since publication of this statutory guidance, the regulations referred to in this document have been updated as follows

- Para 8 The current regulations are the Local Authorities (Conduct of Referendums) (England) Regulations 2012 as follows.
- Para 9 The current regulations are the Local Authorities (Referendums) (Petitions) England Regulations 2011.

# **APPENDIX 5**

## **GUIDANCE CODE FOR MEMBERS ON OUTSIDE BODIES**

**A GUIDANCE CODE FOR MEMBERS ON OUTSIDE BODIES**

1. Members are appointed formally by the Council annually to serve on a range of outside bodies, including voluntary organisations, local government associations, and companies formed to provide specific local services such as SELCHP.
2. In carrying out that role, members act both as individuals and as representatives of the Council. This has implications for the members appointed.
  - a) **Positively**
    - It entails acting according to the rules, constitution and framework set by the outside body
    - It entails making independent and personal judgments in line with their duty of care to the outside body
    - It entails reporting back, at least annually, to the Council or relevant committee
    - It entails behaving ethically and following as far as applicable the Lewisham Member Code of Conduct
    - It entails taking an active and informed role in the management of the outside body's affairs.
  - b) **Negatively**
    - It does not entail representing the political party to which members owe their political loyalty
    - It does not entail avoiding taking part in the outside body's discussions and decisions
    - It does not entail looking at things simply from the Council's perspective
    - It does not entail being there in name only and merely turning up to meetings.



3. The role of members on outside bodies may give rise to occasional uncertainty and perhaps to conflicts of interest. The attached Appendix offers a simple legal guide on the responsibilities of members and officers. Members are asked to read the guide and if there are issues arising from their particular situation at any time, to contact the Head of Law for advice.
4. Members (and officers) are under a specific obligation as a result of the 1995 Local Authorities (Companies) Order to report back to the Council on their involvement in outside companies to which they have been nominated by the Council. That obligation is best met by an annual report to the Mayor and Cabinet and/or relevant committee with an opportunity for questions, and an item on agendas allowing questions by prior notice. While the law now makes this a requirement for involvement in outside companies, it is self-evident that facilities for report back should apply to involvement in all outside bodies.
5. Members will appreciate that the guide and also the Lewisham Member Code of Conduct addresses some of the issues around the possibility of conflicts of interest. In essence, if the outside body comes into conflict with the Council and the member is a director or on the management committee of the outside body, it is likely that the member's prime duty would be to the outside body in the conduct of the outside body's affairs. The member is however, also given certain specific dispensations in the Lewisham Member Code of Conduct to participate in the Council decision-making affecting the outside body to which he or she has been appointed.
6. If there is a major dispute between the Council and the outside body, then the member may be placed in an untenable situation. Before taking precipitate action, the member is advised to seek the advice of the Chief Executive or the Head of Law.
7. Ultimately, it is possible that the member may find he/she is unable adequately to carry out their responsibilities properly, both as a member of the Council and as a member or director of the outside body. But that would be an exception, and should not deflect members generally from being prepared to participate in the management and running of outside organisations.

#### 1. GENERAL

- 1.1 There are some general provisions which apply to members and officers who act in the role of company director, trustee or member of an incorporated body, such as the committee of management of an unincorporated voluntary organisation.
- 1.2 Members are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that members and officers may have a commitment to representing the Council on the outside organisation, they must be aware that it is their responsibility to decide what view

to take on any question before that organisation. Where a member or officer is partaking in an outside organisation in a representative capacity, he/she must declare that fact to the organisation. There will be a fine line to tread between his/her duty to the organisation and to the Council.

- 1.3 In the end, the member or officer in acting as a director/trustee or member of a management committee of an organisation, must act in accordance with the interests of that organisation. A mandate from the Council to vote one way or the other would put the member or officer in breach of the duty to the organisation. It is permissible to take account of the Council's wishes, but not to vote simply in accordance with them. The overriding duty in considering an item before the outside organisation is to vote in accordance with the interests of that organisation.
- 1.4 Members and officers must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid this responsibility by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.

## 2. COMPANIES

- 2.1 On incorporation a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its shareholders and members. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company. This can be as little as £1.
- 2.2. Companies limited by shares are those which have a share capital (e.g. 1000 shares of £1 each). Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will agree to pay a certain amount. This may also be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.
- 2.3 The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

## 2.4 Directors' Duties

A director is an agent of the company. His/her prime duties are as follows:-

- (1) A fiduciary duty to the company (not individual shareholders) to act honestly and in good faith and in the best interests of the company as a whole. Directors are therefore in the position of "quasi trustees" who must take proper care of the assets of the company. The fiduciary duty of the director towards the company is very similar to the fiduciary duty of Councillors to the Council Tax payers of the borough.
- (2) A general duty of care and skill to the company, but a director requires no greater skill than might reasonably be expected of someone of that individual's particular knowledge and experience. A director is not deemed to be an expert, but is expected to use due diligence and to obtain expert advice if necessary.
- (3) Like a councillor in respect of Council decisions, the director is under a duty to exercise independent judgement though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and treads a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with a Council mandate. To do so would be a breach of duty.
- (4) No conflict. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In the most serious circumstances the only proper way for the conflict to be resolved may be for the Councillor to resign either from the company or from the Council.
- (5) Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family may have in relation to the company's contracts. Whether they are then allowed to vote will depend on the Articles of Association.
- (6) Directors must ensure compliance with the Companies Acts in relation to the keeping of accounts, and that the relevant returns are made to the Registrar of Companies. Failure to do so incurs fines and persistent default can lead to disqualification as a director.

## 2.5 Directors' Liabilities

- (1) The company's identity must clearly be shown on its stationery. The company number, place of registration, registered office address and if

any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.

- (2) A company can only act within the scope set out in its Articles of Association (the document which sets out the objects of the company). Those directors knowingly causing the company to act beyond those activities will be liable personally. In very limited circumstances it is possible for the actions of the directors to be ratified by the members of the company.
- (3) A director may also be liable for breach of trust, if he/she misapplies the money or property of the company. Directors may also be liable if they fail to take action to prevent the breach of a co-director of which they are aware.
- (4) In the event of failure to act in accordance with the best interests of the company, or if a director uses his/her powers improperly or makes a personal profit from his/her position as director, then the director may be personally liable for loss to the company and may be required to give to the company the personal profit made.
- (5) If the level of skill and care shown by a director falls below that which could be reasonably expected and the company suffers loss, the director will be liable for the loss incurred. However, if it believes the director acted honestly and reasonably, a Court may excuse the director the liability.
- (6) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. If a director has concerns about the company's financial position he/she would be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.
- (7) A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can also lead to disqualification from acting as a director.
- (8) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may

also be liable to the payee if the company fails to honour the cheque. It is therefore wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (e.g. Director, for and on behalf of .....).

- (9) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.
- (10) Though company liability ceases on dissolution the liability of the directors (if any) may still be enforced after dissolution.

## 2.6 Indemnities

- (1) Directors cannot be indemnified against liability arising out of negligence, default, or breach of duty or trust. However, the company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.
- (2) The Council has power to provide indemnity and/or insurance for the Mayor and councillors acting as directors on the nomination of the Council. Generally it is prudent for members who act as directors to ensure that the company takes out and maintains an appropriate policy of insurance. However, where appropriate, the Council will consider giving individual members such indemnity and insurance, having considered all the factors associated with the particular instance.

## 2.7 Local Authorities (Companies) Order 1995

- (1) This Order, made under the Secretary of State's powers contained in Part V Local Government & Housing Act 1989, sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls, and their involvement in other companies where a number of rules apply.
- (2) "Regulated companies" are those which are controlled or influenced by the local authority. "Influenced companies", under the effective control of the local authority, will be subject to capital finance regime and special

propriety controls. In broad terms, the test as to whether companies are local authority influenced is whether the local authority has the right to or in fact does exercise a dominant influence over the company in question.

- (3) The original concept of controlled, influenced and minority interests in companies were introduced by the 1989 Act.

"Influenced" means at least 20% local authority interest plus one of a number of business relationships being satisfied. Perhaps the most significant are (broadly) where the company derives over 50% of its turnover from the Council, or the company is located on local authority land leased or sold for less than best consideration.

"Controlled" means over 50% local authority interests, and "minority" less than 20% interest.

The concepts in the 1989 Act still stand, but the Order introduces the term "regulated".

- (4) Members who are directors of outside companies to which they have been nominated by the Council are under the following obligations:-

- (a) that the remuneration they receive from the company should not exceed that received from a local authority, and should be declared;
- (b) to give information to Councillors about their activities as required by the local authority (save for confidential information); and
- (c) to cease to be a director immediately upon disqualification as a Councillor.

Under the Local Government & Public Involvement in Health Act 2007, the Secretary of State has power to regulate activity of local authority entities, and at a date yet to be agreed Part V of the 1989 Act will be repealed. Until such time, the provisions of the 1995 Order above apply.

### 3. LIMITED LIABILITY PARTNERSHIPS (LLPs)

- 3.1 LLPs are a form of vehicle that gives the benefits of limited liability but allows its members the flexibility of a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the members will be limited.

3.2 It would be extremely unusual for members to be appointed by the Council to a limited liability partnership and members should take advice on the implications from the head of law before doing so.

3.3 LLPs are not available to charities.

#### 4. CHARITIES

4.1 To be a charity an organisation must operate for a charitable purpose. These are defined in the Charities Act 2011 and include:-

- (a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
- (m) any other purpose recognised as or analogous to charitable purposes.

4.2 The Charity Commissioners may also grant charitable status to an organisation set up for an analogous purpose. It must operate for the public benefit and have exclusively charitable purposes. An organisation which operates for political purposes will not qualify for charitable status.

4.3 To register as a charity the organisation must submit its Trust Deed (usually the Articles of Association of a company limited by guarantee) to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

4.5 Those who are responsible for the control and administration of a charity are referred to as its trustees, even where the organisation is a company limited by guarantee even though they are not strictly trustees. Trustees of a charity retain personal liability, and can only delegate if the trust deed authorises them so to do.

#### 4.6 Trustees' Duties

4.7 Charitable trustees owe duties of compliance, prudence and care. They are as follows:-

4.8 Compliance

- To ensure that the charity complies with legal requirements and those of the Charity Commissioners, and that the charity submits annual reports and accounts
- To ensure that the charity acts within the terms of its governing document
- To act with integrity, avoiding personal conflict of interest

4.9 Prudence

- To ensure that the charity is and will remain solvent.
- To use charitable funds and assets reasonably, and only in furtherance of the charity's objects.
- To avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk.
- To take special care when investing the funds of the charity, or borrowing funds for the charity to us

4.10 Care

- To use reasonable care and skill in their work as trustees
- To take external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties.

Trustees must not make a private profit from their position. They must also perform their duty with the standard of which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.

4.11 Trustees' Personal Liability

- (1) If in doubt, always consult the Charity Commissioners. A trustee who does so will avoid personal liability for breach of trust if he/she acts in accordance with the advice given.
- (2) Generally though, a trustee incurs personal liability if he/she:-
  - acts outside the scope of the trust deed



- falls below the required standard of care
  - makes a personal profit from the trust assets
- (3) In such circumstances the trustee will incur personal liability for losses incurred.
- (4) Trustees can be liable personally to third parties because unlike a company, a trust has no separate identity from the trustees. Trustees are however, entitled to an indemnity from the trust assets, provided they act properly in incurring the liability. Trustees remain personally liable once they retire (e.g. if they have entered into a contract on behalf of the trust) and should therefore seek an indemnity from their successors. If the charity is a company however, the trustees for the time being will be responsible.
- (5) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

#### 4.12 Indemnities

An indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it.

### 5. COMMITTEES OF MANAGEMENT

#### 5.1 Unincorporated Associations

Groups which are not charitable trusts or limited companies are "unincorporated associations" and have no separate legal identity from their members. The rules governing the members' duties and liability will be set out in a constitution, which is simply an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. An unincorporated organisation may be charitable and may register as a charity.

5.2 Property will have to be held by individuals as the organisation has no existence of its own.

#### 5.3 Duties

Broadly, Management Committee members must act within the constitution, and must take reasonable care in exercising their powers.

#### 5.4. Liabilities

- (1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.
- (2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint liability for the agent's actions.
- (3) Members of the Committee of Management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees' tax etc.

#### 5.5 Indemnities

Members will be entitled to an indemnity if they act in accordance with the organisation's constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution.

# APPENDIX TWO

## **Procedure for handling complaints of breach of the Member Code of Conduct**

### **Introduction**

- 1) This booklet describes the procedure that the London Borough of Lewisham will use to deal with complaints of breach of its Member Code of Conduct.

### **Making a complaint**

- 2) Complaints should be made in writing (including by fax or email) to the Monitoring Officer, LB Lewisham, Town Hall, Catford, London SE6 4RU (fax no 0208 314 3107); email [monitoring.officer@lewisham.gov.uk](mailto:monitoring.officer@lewisham.gov.uk) . Complaints may be made using the Ethics Complaint Form available on the Council's website, <http://www.lewisham.gov.uk/mayorandcouncil/aboutthecouncil/how-council-is-run/Documents/Form%20Ethics%20Complaints.pdf>, and from the Monitoring Officer. If a complainant find it hard to put their complaint in writing, Council staff will help them to do so. The Council will make reasonable adjustments to help a disabled complainant.

### **Notice of complaint**

- 3) The Monitoring Officer will normally write to the complainant to acknowledge their complaint and write to the member concerned to tell them that an allegation has been received. The Monitoring Officer may decide that it is not appropriate to inform the member if s/he thinks it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.
- 4) Unless the Monitoring Officer decides that it would not be appropriate to inform the member of the complaint, s/he will also tell the member the paragraphs of the Member Code of Conduct that may have been breached.
- 5) The Monitoring Officer will normally tell the member concerned the name of the complainant, unless the Monitoring Officer thinks in all the circumstances it is appropriate not to do so.

### **Informal resolution**

- 6) In some circumstances it may be possible to resolve the complaint informally without considering whether it is necessary to proceed to investigation. If the complainant and the member concerned agree to this and it appears to the Monitoring Officer that informal resolution is appropriate, s/he will seek to achieve an informal resolution at that stage. It may be for example, in less serious allegations that an apology or a meeting between the parties may resolve the issue. However informal resolution is unlikely to be appropriate if the allegation is serious or the parties do not agree.

### **Initial assessment**

7) If informal resolution is not appropriate or possible, the Monitoring Officer will make initial enquiries so that s/he may reach a decision about whether the matter should be investigated in detail. If the Monitoring Officer is not satisfied that:-

- the complaint is against a member of the Council,
- the member was in office at the time of the alleged complaint , and
- the complaint, if proven would amount to a breach of the Member Code of Conduct in place at the time of the alleged breach

then the complaint cannot be investigated.

8) In making an initial assessment, the Monitoring Officer will apply assessment criteria in deciding whether to investigate further. These assessment criteria are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and member time. The criteria are designed to balance the need to promote confidence in local governance and to make sure that public resources are applied appropriately.

*Public interest* – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involved. If the Monitoring Officer is not so satisfied s/he will decide not to investigate.

*Sufficient information* – The complainant must provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.

*Previous action* – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body, in relation to the complaint, the Monitoring Officer will not normally decide to investigate, though s/he may do so if circumstances dictate (e.g. if a criminal charge was dropped)

*Repeated complaints* – If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.

*Timing* – If there has been a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.

*Trivial matters* – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.

*Ulterior motive* – No further action will be taken if it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation unless it involves a serious allegation.

*Special circumstances* – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, were a very serious allegation to be made after a long delay, it may be appropriate to investigate notwithstanding the delay.

These criteria are for general guidance, but they have to be applied in the light of any particular circumstances of each case.

### **Police involvement**

- 9) If it appears to the Monitoring Officer at any time that if proven the breach might amount to a breach of the criminal law and a referral to the police is appropriate, s/he may, if appropriate, defer any decision about investigation until the police investigation is complete.

### **Investigation**

- 10) If the Monitoring Officer decides that an investigation is appropriate, s/he will investigate the complaint or appoint another person to do so on her behalf. The investigation will be conducted thoroughly and both members and staff are required to co-operate with such investigation. Once the investigation is complete the Monitoring Officer, or person appointed to investigate on her/his behalf, will prepare a report for a sub committee of the Standards Committee. A copy of that report will be sent to the member concerned at least 4 weeks before the meeting of the sub committee. The member concerned will be entitled to make a written submission to the Standards Committee, but if s/he does so it must be delivered to the Monitoring Officer at least 2 weeks before the Sub Committee meeting.

### **Independent Person**

- 11) The Council has appointed an Independent Person whose views are to be sought prior to the Standards Sub Committee making any decision on an allegation that has been investigated. The Monitoring Officer will therefore send her/his report to the Independent Person at the same time as s/he sends it to the member concerned. Should the member make any written representations in response, the member may also send these to the Independent Person, but should they fail to do so, the Monitoring Officer will do so.
- 12) The comments of the Independent Person will be made in writing and presented to the Standards Sub Committee for consideration.
- 13) The member concerned is also entitled to approach the Independent Person directly for their views.

### **Standards Sub Committee meeting**

- 14) The Standards Sub Committee will meet to consider the report of the Monitoring Officer and any written representations made by the member concerned as well as any views received from the Independent Person. The member will be entitled to attend the meeting, which will normally be held in public unless the Sub Committee takes the view that there are compelling reasons to the contrary. The Sub Committee will not normally take oral evidence at the meeting (but may decide to do so in appropriate cases). However it may require the member concerned, the Monitoring Officer (and/or person appointed on her/his behalf to investigate), the Independent Person and/or any other person to attend to answer their questions. The conduct of the meeting will be a matter for the Chair so long as the process used accords with the principles of fairness and natural justice. Legal advice will be available to the meeting.

### **Findings**

- 15) The Standards Sub Committee will decide whether there has been a breach of the Member Code of Conduct. Both the complainant and the member concerned will be notified in writing of the decision.

### **Appeal**

- 16) If there is a finding of breach, the Member concerned may appeal to a different sub committee of the Standards Committee within 21 days of the date of notification. The decision of that sub-committee will be final.

### **Sanctions**

- 17) If there is a finding of breach of the Member Code of Conduct, the Standards Sub Committee will decide whether it is appropriate to require action to be taken in respect of it. That may be a sanction, such as censure or in certain circumstances the withdrawal of access to Council facilities provided that is proportionate and does not interfere unduly with the members' ability to carry out their duties as a member. It may also report any finding of breach to the full Council and/or publicise them on the website and/or in a local newspaper. It may also recommend that a member in breach undergo training, or that Council processes be amended.

## APPENDIX THREE

### Complaint against the Mayor of failure to record relevant interests in the Register of Members' interests

#### The Issue

1. In the absence of the Monitoring Officer (MO) on Friday 13 January 2017 a telephone call was received in Legal Services. A principal lawyer took the call. A gentleman who gave his name as Woodward Bernstein claimed that the entry of the Mayor in the Register of Members' Interests was incomplete. The principal lawyer asked the caller to put his concerns in writing addressed to the MO, but he declined, instead asking that the MO telephone him when she returned to the office.
2. On Monday 16 January 2017, the MO telephoned the number left by Mr Woodward Bernstein. On that occasion, the caller revealed his real name to the MO but requested that his identity not be disclosed. He said he wanted to raise an issue that the Mayor had not made full disclosure in the Register of Members' Interests of his position in several companies. He gave the company numbers of three companies at Companies House:-

03486186

03675577

09655497

but indicated that there may also be others which may need investigation. He also stated that at that stage he was not raising the issue formally and he hoped there would be "an email somewhere in the background putting the record straight".

3. The MO stated that she would look into the matter carefully, but urged the caller to give details of an address or email contact details to enable her to keep him informed of the outcome. He, however, declined to do so.
4. The MO then caused a search to be made at Companies House against the name of the Mayor. That search was conducted on Tuesday 17 January 2017. The results showed that the Mayor is registered at Companies House as a director in only two active companies which did not appear in his entry in the Register of Members' Interests, namely:-
  - (1) The Local Government Information House Limited (03490270)
  - (2) Improvement & Development Agency for Local Government (03675577)
5. Both of these companies are associated with the Local Government Association, (LGA) with their registered office at Local Government House, Smith Square, London SW1P 3HZ, the headquarters of the LGA, and the company secretary of each is an officer of the LGA.

6. The Mayor has made an entry in the Register of Members' Interests that he is Deputy Chair of the LGA but there is no reference to either of the 2 companies referred to above.
7. The MO then advised the Mayor to make sure that his entry in the Register of Members' Interests was amended. He updated his entry in the Register of Members' Interests on Wednesday 18 January 2017 by email.
8. On Thursday 19 January 2017 the caller telephoned the MO to ask about progress. She informed him that she had caused a search to be conducted at Companies House and found 2 entries not reflected in the Register of Members' Interests. She informed him that the Mayor had amended his entry to clarify that he was a director of (1) The Local Government Information House Limited; and (2) Improvement & Development Agency for Local Government, with which he was associated through his connection with the LGA. The caller then confirmed he wanted his complaint dealt with formally under the Whistleblowing Policy under which he wanted to exercise his right to confidentiality. He said that he wanted the MO to investigate and report formally as he was of the view that the Mayor had committed a criminal offence. The MO confirmed that she would look into the matter under the Procedure for Handling Complaints of Breach of the Member Code of Conduct. She informed the caller that a copy of the procedure and the Member Code of Conduct is available on the Council's website. Normal practice would be for the MO to send the link to these documents by mail or email, but without contact details that was not possible in this case.
9. The MO also confirmed that a complaint under the Procedure for Handling Complaints of Breach of the Member Code of Conduct usually required a complaint to be made in writing, but that in the circumstances she would not require that. She asked whether, given that the caller believed a criminal offence had been committed, he had referred the matter to the police. If so, she said she would not investigate pending the outcome of any police enquiry. The caller did not supply a direct answer, but stated that he was not giving the MO any reason to believe his complaint may have been so referred.
10. The Procedure for Handling Complaints of Breach of the Member Code of Conduct provides for informal resolution if both parties agree. The MO asked the caller if he was prepared to proceed to informal resolution, given that the entry on the Register of Members' Interests had been rectified. However, he confirmed that he would not be prepared to countenance informal resolution unless the Mayor resigned or was suspended. The MO pointed out that there was no provision for suspension.
11. As the MO did not view informal resolution as a feasible alternative, she informed the caller that she had conducted an initial assessment as required by the Procedure for Handling Complaints of Breach of the Member Code of Conduct and would investigate formally and report the outcome to the Standards Committee in accordance with the procedure.



### **Has a criminal offence been committed?**

12. The statutory provisions relating to the declaration of interests by Members are summarised in Appendix 1 to this report.
13. In short, the statutory requirement in relation to entries in the Register of Members' Interests relates only to disclosable pecuniary interests. The LGA have confirmed that the Mayor does not receive any payment for his directorship of either company, so in law there is no need for those directorships to be entered in the Register, as they do not qualify as a disclosable pecuniary interest. Even were such a statutory requirement to exist, the statutory requirement to register is only to do so within 28 days of election. There is no statutory requirement to update the entry in the register after that 28 day period has expired. The LGA have also confirmed that though Local Government Information House Limited is shown as 'active' at Companies House, in practice the company has not conducted any business and is effectively dormant.
14. It would however be a criminal offence were a member to participate in decision making, notwithstanding the existence of a disclosable pecuniary interest. As set out above, the directorships of the Mayor do not amount to a disclosable pecuniary interest, but even were this to be the case, the Council's Head of Committee Business and Business Services has confirmed that the Council has not made any decisions affecting either of these two companies of which the Mayor is a director.

### **Has there been a breach of the Council's Member Code of Conduct?**

15. The Council introduced a Member Code of Conduct which incorporates all the statutory requirements and goes further in relation to the Register of Members' Interests. Paragraphs 4.4 and 4.5 of the Council's Member Code of Conduct states as follows:-
- "4.4 Members must also within 28 days of taking office as a member, notify the Monitoring Officer of such further interests as LB Lewisham has decided should be included in the register

#### *Membership or position of control or management in:-*

- *Any body to which you were appointed or nominated by the Council*
- *Any body exercising functions of a public nature (described below) or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party*

*Any person from whom you have received a gift or hospitality with an estimated value of at least £25*

*There is no definitive list of bodies exercising functions of a public nature, but those bodies which:-*

- *carry out a public service, or*

- *take the place of local/central government (including through outsourcing); or*
- *carry out a function under legislation or in pursuit of a statutory power; or*
- *can be judicially reviewed,*

*are likely to be bodies carrying out functions of a public nature. They include bodies such as government agencies, other councils, health bodies, council owned companies, ALMOs, school governing bodies.*

- 4.5 LBL requires all members to ensure that their entries on the Register of Members' Interests are kept up to date annually and that they notify the Monitoring Officer of any change to their interests within 28 days of the change arising"
16. The Mayor is a Council nominee to the Local Government Association, but he is not a Council nominee to either Local Government Information House Limited nor to the Improvement and Development Agency for Local Government. These nominations are made by the LGA. So there would be no requirement for these directorships to be registered in the Register of Members' Interests by virtue of the first limb of paragraph 4.4 of the Council's Member Code.
17. Therefore, the directorships would only trigger the need to be registered in the Register of Members' Interests if they amount to a position of management or control in a body exercising functions of a public nature or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party.
18. The company objects of Local Government Information House Limited are set out in its Memorandum of Association, which contains the following clause:-
- "3.1 To promote, assist with, advise on , negotiate and/or co-ordinate any arrangements or activities, whether or not in the nature of a commercial venture, which may lawfully be undertaken by any local authority or related local government organisation, (sic) local authority or related local government organisation."*
- That would enable it to carry out functions of a public nature and hence trigger the requirement for registration. However, the Monitoring Officer has been informed that the company is effectively dormant and in the process of being wound up.
19. The company objects of the Improvement and Development Agency for Local Government are set out in its Articles of Association. At clause 2(vi), one of the company objects is stated to be as follows:-

*"2 (vi) to exchange information and opinion with other organisations and to act as a liaison body, to advise, co-operate, work with, or to act as agents or to provide services for , the, the (sic) Local Government Association ("the LGA") and any public sector body or body not conducted for private profit, whether or not established in the United Kingdom, having objects similar, in whole or in part, to those of the Company, and to contribute to the work of any such body and to make available the results of the work of any such bodies;"*

That would enable it to carry out functions of a public nature and hence trigger the requirement for registration

## **Findings**

20. The MO's findings are as follows:-

- (1) The Mayor was a director in (1) The Local Government Information House Limited and (2) Improvement & Development Agency for Local Government on 13 January 2017.
- (2) At that time, those directorships did not appear in the Mayor's entry in the Register of Members' Interests.
- (3) Statute does not require the registration of those directorships in the Register of Members' Interests as they are not disclosable pecuniary interests.
- (4) The provisions of the Council's own Member Code of Conduct does require the entry of the directorships of the Mayor in the Register of Members' Interests.
- (5) Failure to register those directorships was a breach of the Council's Member Code of Conduct. The Mayor did register his participation in the LGA, but not these two companies associated with it. That breach has now been rectified.
- (6) The Mayor did not participate in any decision making affecting the 2 companies of which he is a director but which did not appear in his entry in the Register of Members' Interests.
- (7) The Mayor has apologised to the MO for his oversight and updated his entry in the Register of Members' Interests to include his directorships in the two companies concerned and to remove entries which no longer existed but had not been removed.

## **In conclusion**

21. Technically the Mayor was in breach of the requirement to register these two directorships. The situation has been rectified and he has not participated in any decision which would affect either of these two companies.



## APPENDIX 1

Section 30 of the Localism Act 2011 requires that a member or co-opted member of a relevant authority must, within 28 days of becoming a member, notify the monitoring officer of any disclosable pecuniary interests (DPI) that they, their spouse or civil partner they live with, have, at the time when notification is given.

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) define disclosable pecuniary interests (DPIs) as :

- *Any employment, office, trade, profession or vocation carried on for profit or gain.*
- *Any payment or provision of any other financial benefit (other than from the relevant authority made or provided within the relevant period in respect of any expenses incurred by a member of a relevant authority in carrying out duties as a member, or towards election expenses of a member of a relevant authority. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.*
- *Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority –  
(a) under which goods or services are to be provided or works are to be executed; and  
(b) which has not been fully discharged.*
- *Any beneficial interest in land which is within the area of the relevant authority*
- *Any licence (alone or jointly with others) to occupy land in the area of the relevant authority.*
- *Any tenancy where (to the member of a relevant authority's knowledge) –  
(a) the landlord is the relevant authority; and  
(b) the tenant is a body in which the relevant person, has a beneficial interest.*
- *Any beneficial interest in securities of a body where –  
(a) that body (to the member of a relevant authority's knowledge) has a place of business or land in the area of the relevant authority; and  
(b) either –  
  
(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or  
  
(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.*

Section 31 of the Localism Act 2011 provides that where a member or co-opted member is present at any meeting of the authority or any committee and is aware that they have a DPI in any matter that will be considered at the meeting then that member or co-opted member:

- must disclose the DPI to the meeting if it has not been entered in the authority's register and must ensure that the monitoring officer is notified within 28 days (if they have not already done so);
- may not participate in any discussion of the matter; and
- may not participate in any vote on the matter

Section 34(1) of the Localism Act created a new criminal offence and establishes that a member of a relevant authority commits an offence if they:

- Fail, without reasonable excuse to comply with requirements under sections 30 or 31 of the Localism Act 2011 to register or declare a DPI; or
- Take part in council business at meetings (or when acting alone)

Section 34(3) empowers the Magistrates Court upon conviction to:

- Impose a fine up to level 5 on the standard scale
- Make an order disqualifying the individual from being a member of a relevant authority for up to five years.



Sir Steve Bullock, Mayor of Lewisham

Mayor's Office  
Civic Suite  
Lewisham Town Hall  
London SE6 4RU

Telephone 0208 314 6193  
Fax 0208 314 3466  
E-mail mayor@lewisham.gov.uk

Kath Nicholson  
Head of Law  
Legal Services  
Laurence House

Date: 24 April 2017

Dear Kath

### **Complaint of breach of the Member Code of Conduct**

I refer to your letter of 11 April and the report and recommendation concerning the complaint made against me on 16 January 2017. In particular I am responding to the invitation to make a written representation to the sub-committee.

I consider that the report is accurate and I accept and unreservedly apologise for the omission of the two LGA Companies in my register of interest entry.

I am not seeking to excuse this omission but feel it appropriate to offer members of the Standards Committee an explanation. I believe that I have been scrupulous in entering into the register all matters which arise directly and are personal to me. In this case the two directorships arise from the way that the Local Government Association (LGA) has arranged for the governance of the Improvement and Development Agency (IDEA). It's appointed members meet as a board and serve as directors of two companies, one of which is effectively dormant at present.

I have served as a Deputy Chair of the LGA for several years and I became a member of the IDEA board during the brief period I was Acting Joint Leader of the LGA Labour Group in 2016 following the election of the previous Leader to Parliament. Subsequent to the election of a permanent Leader I reverted to my role of Deputy Leader of the Group and Deputy Chair of the Association but continued as a member of the IDEA Board. I hold a number of internal LGA appointments but this is the only one which involves appointment as a company director. The LGA also designates a number of those other bodies as "Boards" but they do not involve appointment as company directors. As soon as the error and omission were drawn to my attention I corrected the entry.

I should make clear that neither of these directorships involves any payment to me and that I take care to ensure that if any decisions arise in Lewisham which are relevant I make the appropriate declarations at the time just as I do with any other external bodies that I sit on whether they are companies or not.

It was not my intention to conceal the appointment but it is clear that I should have specifically and separately declared these appointments rather than relying on the overall declaration of my role as Deputy Chair of the LGA which covered those appointments which did not also involve appointment as a company director.

I have apologised to you in your role as Monitoring Officer and wish to extend that apology to the Standards Committee and I would be grateful if you could draw this letter to their attention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Steve Ball". The signature is written in a cursive, somewhat stylized font. The first name "Steve" is written in a larger, more prominent script, while "Ball" is written in a smaller, more compact script to its right.



Report of the Monitoring Officer: Complaint against the Mayor of failure to record relevant interests in the Register of Members' interests

Comments of the Independent Person

The Monitoring Officer has provided me with a copy of her investigation report in respect of the above complaint, prepared pursuant to paragraph 10 of the Procedure for Handling Complaints of Breach of the Member Code of Conduct. In doing so the Monitoring Officer has sought my views with regard to that report, as required under paragraph 11 of the Procedure, prior to the Standards Sub Committee making any decision on the allegation investigated.

Initial point considered

On receipt of the report, I sought and obtained clarification from the Monitoring Officer with regard to which limb of paragraph 4.4 of the Council's Member Code of Conduct was considered to be triggered in the case of the Mayor's directorships of The Local Government Information House Limited (LGIH) and the Improvement & Development Agency for Local Government (IDEA) such that these directorships were required to be included in the Register of Members' Interests, as constituting 'membership or a position of control or management' in those companies; that is, whether either or both of these companies comprised:

- a body to which the Mayor was appointed or nominated by the Council; or
- a body exercising functions of a public nature, or directed to charitable purposes, or whose principal purposes included the influence of public opinion or policy, including any political party.

The Monitoring Officer confirmed that, although the Mayor is a Council nominee to the Local Government Association, the LGA itself appoints directors to the two companies concerned; thus neither body is a company to which the Mayor is appointed by the Council (the first limb of paragraph 4.4, as above). Further, the Monitoring Officer kindly supplied me with copies of the Memorandum/Articles of Association of the respective companies (LGIH, company number 0349027 and the IDEA, company number 03675577). She advised that, following analysis of the constitutional documents, the second limb of paragraph 4.4 of the Code is the relevant provision triggered, requiring that these directorships be notified to the Monitoring Officer as registrable interests, because the respective objectives of the companies, as set out in their constitutional documents, confirm that both companies are empowered to 'exercise functions of a public nature'. The Monitoring Officer sets out the relevant provisions of the companies' respective constitutional documents at paragraphs 18 and 19 of her report.

Comments

1. Having considered the constitutional documents of the respective companies, I concur with the Monitoring Officer's view as set out at paragraphs 17-19 and 20(4) of her report that the Mayor's directorships in LGIH and IDEA constitute interests which are required to be notified to the Monitoring Officer pursuant to paragraph 4.4 of the Member Code of Conduct, as each company is, on any reasonable interpretation of its objectives, a body exercising (or capable of exercising) functions of a public nature.

2. Accordingly I agree that the failure by the Mayor to notify the Monitoring Officer of the said directorships (each being 'a position of control or management' in the respective companies) within 28 days of appointment to these (the date of appointment being 4 January 2016 in both cases) rendered the Mayor in technical breach of paragraphs 4.4 and 4.5 of the Code (paragraph 4.5 requiring that all members ensure that any changes in their interests are notified to the Monitoring Officer within 28 days of the change arising).
3. I note that that breach has now been rectified.
4. Further, in my view the seriousness of the breach in this case is mitigated by the following factors:
  - The fact that one of the companies, LGIH, is understood from information provided by the LGA, referred to at paragraph 13 of the Monitoring Officer's report, to be effectively dormant, and that it has never conducted any business; hence although the company's objects enable it to exercise functions of a public nature, it may never have done so;
  - The fact that the Council's Head of Committee Business and Business Services has confirmed that the Council has not made any decisions affecting either of these two companies of which the Mayor is a director; hence the Mayor has not participated in any Council decision making in respect of either of the companies;
  - The fact that the Mayor has apologised to the Monitoring Officer for this oversight;
  - The fact that the Mayor expeditiously updated his entry in the Register of Members' Interests to include these two directorships as soon as the Monitoring Officer advised him of the concern.
5. Should the Standards Sub Committee reach a finding of breach of the Code, it may consider that the breach is of such a minor nature that it does not merit further action, for instance by way of sanction, for the reasons given above.
6. Finally, simply by way of footnote, the Mayor indicated to the Monitoring Officer that he would be happy to speak with me should I find this at all helpful. However in considering this matter I did not find this to be necessary.

Wendy Innes

Independent Person

19 March 2017