

Part 5 – Codes and Protocols

Chapter 1 – Councillors' Code of Conduct

1. Purpose of the Code

- 1.1 As a Councillor, you have a duty to maintain high standards of conduct. The purpose of this Code of Conduct (the “Code”) is to assist you in the discharge of your obligations to the Council, the local community and the public at large by:
- a) setting out the standards of conduct that are expected of you when you are acting in that capacity, and in so doing
 - b) providing the openness and accountability necessary to reinforce public confidence in the way in which you perform those activities.
- 1.2 The Code applies equally to co-opted members of Council committees who are entitled to vote on any issues coming before those committees.

2. Scope

- 2.1 The Code applies to you whenever you are acting in your capacity as a member of Barking and Dagenham Council, including:
- (a) at formal meetings of the Council and all of its committees and sub-committees;
 - (b) when acting as a representative of the Council;
 - (c) in discharging your functions as a ward councillor;
 - (d) at meetings with officers;
 - (e) at site visits;
 - (f) when corresponding with the Council other than in a private capacity.
- 2.2 The Code does not seek to regulate what you do in your private and personal lives.
- 2.3 It also does not apply to or seek to regulate the performance, politics or policies of the Council or its individual councillors. These are matters decided by the residents at local elections.
- 2.4 The obligations set out in this Code are also complementary to related Codes and Protocols of the Authority within the Council's Constitution and elsewhere.

3. Public Duties of Councillors

- 3.1 You have a duty to uphold the law, including the general law against discrimination and the requirements of the Localism Act 2011, and to act on all occasions in accordance with the public trust placed in you.
- 3.2 You have an overriding duty to act in the interests of the London Borough of Barking and Dagenham's area as a whole, but also have a particular duty to represent the views of the residents of your ward.

4. Principles of Good Conduct

- 4.1 When acting in your capacity as a Councillor you are committed to behaving in a manner that is consistent with the following seven 'principles of public life' identified by the Nolan Committee and endorsed by the Committee on Standards in Public Life:

SELFLESSNESS: Holders of public office should act solely in terms of the public interest.

INTEGRITY: Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY: Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY: Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS: Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY: Holders of public office should be truthful.

LEADERSHIP: Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

5. Standards of Conduct

- 5.1 When you sign up to this Code you must comply with the following standards of conduct and behaviour, which are consistent with the above principles:
- (i) To act solely in the public interest and never seek to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, you family, friend or close associates.
 - (ii) Not to place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
 - (iii) To make all decisions on merit when carrying out public duties, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits.
 - (iv) To be accountable for your decisions to the public and to fully submit to whatever scrutiny is appropriate to your office.

- (v) To be as open as possible about your decisions and actions and the decisions and actions of the Council and give reasons for those decisions and actions.
 - (vi) To register as required and declare any disclosable pecuniary interest, and other interests, as set out in this Code.
 - (vii) When using or authorising the use by others of the resources of the Council, to ensure that such resources are not used improperly for political purposes (including party political purposes) and to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
 - (viii) To behave in accordance with all our legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of Council resources and dealing with confidential information appropriately.
 - (ix) To value and respect colleagues, staff, partners and public, engaging with them in an appropriate manner that underpins the mutual respect between us that is essential to good local government and not to act in a manner that could be deemed as bullying, harassment or intimidation.
 - (x) To promote and support high standards of conduct by leadership and by example.
- 5.2 The principles and standards of the Council's Code of Conduct for Councillors apply to you whenever you act in your official capacity as a Councillor and a failure to comply with this Code or any formal standards investigation, may lead to someone making a complaint against you.
- 5.3 With effect from February 2016, there will be a requirement for Councillors to be subject to a Disclosure and Barring Service (DBS) check in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and Protection of Freedoms Act 2012. The DBS certificate must be provided to the Monitoring Officer within 28 days of the issue date.
- 5.4 The Committee on Standards in Public Life advises that whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (ACAS) have codified a helpful definition: "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient".
- 6. Disclosable Pecuniary Interests**
- 6.1 The Localism Act 2011 sets out specific requirements for certain personal interests of Councillors to be notified to the Monitoring Officer within 28 days of becoming a Councillor. These are called **disclosable pecuniary interests** and must be entered on the Register of Members' Interests. You must also notify the Monitoring Officer if there is any change in those interests.
- 6.2 You have a disclosable pecuniary interest in any business of the Council if it is of a description set out in 6.3 below and is either:

- (a) an interest of yours;
- (b) an interest of a "relevant person" who is defined as either
 - (i) your spouse
 - (ii) your civil partner
 - (iii) a person you are living with as a spouse or civil partnerand you are aware that that person has such an interest.

6.3 A disclosable pecuniary interest is one which relates to or is likely to affect:

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

7. Non-Pecuniary Interests

- 7.1 You have a non-pecuniary interest in any business of the Council where it relates to or is likely to affect either:
- (a) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Council;
 - (b) any body that:
 - 1. exercises functions of a public nature; or
 - 2. is directed to charitable purposes; or
 - 3. one of its principal purposes includes the influence of public opinion or policy (including any political party or trade union);of which you are a member or in a position of general control or management;
 - (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
 - (d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a person known to you to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral ward, as the case may be, affected by the decision.

8. Declaration of Disclosable Pecuniary Interests

- 8.1 Subject to paragraphs 8.2 to 8.3, where you have a disclosable pecuniary interest in any business of the Council and you are present at a meeting at which the business is considered, you must declare to that meeting the existence and nature of that interest whether or not such an interest is registered on your Register of Interests or for which you have made a pending notification.
- 8.2 Paragraph 8.1 only applies where you are aware or ought reasonably to be aware of the existence of the interest.
- 8.3 Where you have an interest in any business of the Council which would be disclosable by virtue of paragraph 8.1 but by virtue of paragraph 12 (sensitive interests) details of the interest are not registered in the published Register of Members' Interests and that the interest is a disclosable pecuniary interest (if that is the case), you need not disclose the nature of the interest to the meeting.

9. Declaration of Interests generally

- 9.1 Subject to paragraph 10.1, where you have an interest in any business of the Council you also have a declarable interest in that business where the interest is one which a member of the public with knowledge of the relevant facts

would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.

- 9.2 You do not have a declarable interest in any business of the Council where that business:
- i. does not affect your financial position or the financial position of a person or body described in paragraph 7.1 (a) and (b);
 - ii. does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 7.1 (a) and (b); or
 - iii. relates to the functions of the Council in respect of
 - (a) housing, where you are a Council tenant provided that those functions do not relate particularly to your tenancy or lease;
 - (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (d) an allowance, payment or indemnity given to Councillors;
 - (e) any ceremonial honour given to Councillors; and
 - (f) setting Council Tax or a precept under the Local Government Finance Act 1992.
- 9.3 In accordance with Section 106 of the Local Government Finance Act 1992, any Councillor who is two months or more in arrears of Council Tax cannot vote on any item involving the budgetary process, or the expenditure of money during the year or subsequent years and must declare the fact as soon as practicable after the start of the meeting. A Councillor may, however, speak on the issue unless it relates to the process of Council Tax collection and enforcement. A Councillor must be fully aware of his/her own financial matters and must not assume notification by officers before this situation arises. Failure to comply with this rule is a criminal offence.
- 9.4 Under local arrangements, a Councillor who is two months or more in arrears of Council house rent cannot vote on any item involving housing revenue account expenditure but is not required to declare the fact. A Councillor must be fully aware of his/her own financial matters and must not assume notification by officers before this situation arises.

10. Effect of Interests on Participation

- 10.1 Where you are present at any meeting and you have a disclosable pecuniary interest in any matter to be or being considered at the meeting, and you are aware that this condition is met, you must:

- (a) disclose the interest at the meeting;
- (b) withdraw from the meeting room for the relevant item, and
- (c) not participate in any discussion and/or vote on the matter

unless you have received a dispensation from the Council's Monitoring Officer. The dispensation process is set out below in paragraph 14. Further advice can be sought from the Monitoring Officer.

10.2 Additionally you may not:

- (a) exercise executive functions in relation to matters for which you are aware that you have a disclosable pecuniary interest; or
- (b) seek to influence a decision about matters for which you are aware that you have a disclosable pecuniary interest

10.3 If you have an interest other than a disclosable pecuniary interest in any Council business which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest and you are present at a meeting at which such business is to be considered or is being considered, you must disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2) and you are aware that this condition is met, you must:

- (a) disclose the interest at the meeting;
- (b) withdraw from the meeting room for the relevant item, and
- (c) not participate in any discussion and/or vote on the matter

In this case it is not possible to acquire a dispensation from the Monitoring Officer.

11 Registration of Members' Interests

11.1 Subject to paragraph 12, you must register in the Council's Register of Members' Interests details of all disclosable pecuniary interests as referred to in paragraph 6 that you are aware of within 28 days of:

- (a) this Code being adopted by or applied to the Council; or
- (b) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the Council

11.2 Subject to paragraph 12, you must also provide written notification to the Monitoring Officer within 28 days of becoming aware of any new disclosable pecuniary interest or of any change to any disclosable pecuniary interest already registered.

12 Sensitive Information

12.1 Where you have a disclosable pecuniary interest referred to in paragraph 6 or other interest referred to in paragraph 7 and the nature of the interest is such

that you and the Monitoring Officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the Council's Register of Members' Interests then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) of the Localism Act 2011 and/or this paragraph.

- 12.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 12.1 is no longer sensitive information, notify the Monitoring Officer.
- 12.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

13 Gifts and Hospitality

- 13.1 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with an actual or estimated value of £50 or more which you have accepted as a Councillor from any person or body other than the Council.
- 13.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.

14. Dispensations

- 14.1 If a Councillor has a disclosable pecuniary interest and wishes to seek a dispensation from the restrictions on participating and voting in meetings, they must complete a request for dispensation form and submit it to the Monitoring Officer.
- 14.2 The Localism Act 2011 sets out five grounds when a dispensation can be granted. However in the case of grounds 2, 3 and 5, the Monitoring Officer may refer the matter to the Standards Committee for a decision due to the nature of the circumstances, in which case the Standards Committee decision shall be final.
- 14.3 Grounds for a dispensation:
1. that without the dispensation the number of persons prohibited by section 31(4) Localism Act 2011 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 2. that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 3. that granting the dispensation is in the interests of persons living in the Borough,

4. that without the dispensation each member of the Council's Cabinet would be prohibited by section 31(4) from participating in any particular business to be transacted by the Cabinet, or
5. that it is otherwise appropriate to grant a dispensation.

15. Management of Complaints relating to Councillors

- 15.1 All complaints against Councillors and co-opted Members must be made via a completed written complaint in the prescribed form, including the complainant's full name and address, unless special circumstances exist as determined by the Monitoring Officer whose decision is final.
- 15.2 Where the complaint is unclear in terms of particulars such that there is no specific breach of the Councillors' Code of Conduct, the Monitoring Officer shall invite the complainant to clarify:
 - What the breach is that is alleged
 - When it happened
 - Where it happened
 - Names and contact details of witnesses, and
 - To attach evidence relevant to the complaint to support the allegation.
- 15.3 The Monitoring Officer may set a time for a response to rule 15.2 not less than 21 days.
- 15.4 The Monitoring Officer will only act where there is sufficient evidence in their opinion to do so.
- 15.5 Following a period for clarification, the Monitoring Officer may proceed with the complaint and make a determination as to whether the complaint merits a formal investigation and if not, the matter is dismissed. The Monitoring Officer, when making a determination, may consult with the Council's Independent Person.
- 15.6 The Monitoring Officer may dismiss a complaint without resort to further investigation if they are of the opinion that the complaint is (any one of the following or more):
 - a) lacking in evidence
 - b) fails to identify any breach
 - c) politically motivated
 - d) vexatious
 - e) repetitive
 - f) defamatory

- g) has no reasonable prospect of success
 - h) about a Council service. Such a complaint will be referred to the relevant service area in accordance with the Council's complaints policy.
- 15.7 If a matter proceeds to investigation the Monitoring Officer may circulate copies of the complaint form to whoever they consider necessary, including the Member and their representative(s) and outside agencies.
- 15.8 During the investigation the Monitoring Officer may require the complainant to furnish further details or co-operate in terms of disclosure of evidence. If the complainant fails to co-operate in a timely manner or do not make themselves available, the Monitoring Officer may continue their investigation in the absence of the complainant's co-operation, including making a determination to dismiss the complaint.
- 15.9 In the event that the circumstances of a standards complaint are such that there is potential for a conflict of interest regarding investigation of the matter involving the Monitoring Officer such as, for example, the Monitoring Officer is a material witness or has made the complaint, then arrangements will be made by the Chief Executive for another officer of the Authority to discharge the investigatory role or alternatively commission an independent investigator which may be from another local authority.

16 Complaints against Councillors - Public Interest Considerations

- 16.1 The Council's Monitoring Officer is tasked with conducting investigations. The Monitoring Officer in accordance with best practice guidance issued by the Committee for Standards in Public life will not be undertaking investigations that do not support these wider benefits because they will not be in the public interest. In addition, our resources are limited and it is important that the Monitoring Officer focuses on the investigation of significant matters which go to the heart of the relationship between Councillors and the public they serve and not on matters which are either vexatious, trivial, petty, party political, have no realistic prospect of success, without evidence or which have little or no impact on the public. Furthermore, the Council's Monitoring Officer cannot consider complaints about any matters currently before the Secretary of State, the courts or tribunals either criminal or civil matters, nor employment issues.
- 16.2 The public interest will be considered in deciding:
- (i) whether a complaint against a councillor can and should be investigated, or
 - (ii) whether an investigation should continue
- 16.3 There is no widely accepted definition of public interest, but it has been described as 'something which is of serious concern and benefit to the public'. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public may find to be of interest, or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the entire population of the London Borough of Barking and Dagenham. It may refer to a distinct section of the

public such as a small community or interest group. The Monitoring Officer in taking a view will consider:

1. Seriousness

The more serious the alleged breach, the more likely it is that the Monitoring Officer will investigate.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the Councillor was responsible for or was to blame for the alleged breach; the circumstances of the complaint; and whether the alleged conduct caused harm to any person.

(a) To what extent was the Councillor responsible for or to blame for the conduct complained of?

Questions of responsibility or blame are likely to be determined by the Councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned; whether they have previously been investigated or been referred to the Standards Sub-Committee for an adjudication decision on a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the Councillor's length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

(b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?

Although a breach of the Code may affect the public at large, it can also cause harm to individuals or to specific groups or bodies. In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and the Monitoring Officer will take these into consideration. The Monitoring Officer should also have regard to whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor demonstrated hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest investigators should take into account any views expressed by the complainant, or any other person affected, about the impact that the alleged breach has had on them.

2. Proportionality

The Monitoring Officer will consider the cost of the investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. The Monitoring Officer will not decide the public interest on the basis of cost alone, but it is a relevant consideration when making an overall assessment of the public interest.

3. Consultation with the Localism Act Independent Person

The Monitoring Officer may consult with an Independent Person appointed by the Council as to the Public Interest merits of continuing with an investigation, however the Monitoring Officer's decision will be final.

These considerations will assist the Monitoring Officer in identifying the public interest but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one of a number of criteria which must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code.