

Governance Toolkit for Parish & Town Councils



Supported by:



Version three
April 2009

Foreword

The original Toolkit was created in October 2005 by a group of Monitoring Officers and Solicitors from the East Midlands Branch of the Association of Council Secretaries and Solicitors. It was designed primarily as an aide memoire for Parish and Town Council Clerks to help ensure good governance. It also met the authors' vested interest as an essential reference source for Monitoring Officers in their roles charged with promoting high standards of conduct within Town and Parish Councils.

The second version of the Toolkit set itself out to meet these needs in a more comprehensive way. Designed to be practical as well as informative; guidance notes could be down-loaded and given in leaflet format to parish councillors and template documents and forms can be "customised" by the clerk. Always intended to be an electronic document to make it freely available, its content was accessible through a series of interactive menus from which the user could choose to view the entire document or a specific section; this has not changed.

"Version 2" was launched at the Annual Monitoring Officers Conference in London on 2 February 2006 and was made available on websites and through wide distribution as a CD. It was well received across all sectors, winning the *Municipal Journal* Legal Achievement of the Year Award 2007.

This version is the third edition, now revised, updated and produced as a partnership between the National Association of Local Councils, the Society of Local Council Clerks, the Standards Board for England and the Association of Council Secretaries and Solicitors and is endorsed by the Local Government Association.

As a fully parished part urban and part rural authority, Milton Keynes Council is recognised as having been at the forefront of parish council initiatives for many years. It has continued that tradition by providing organisational support to the team of authors and undertaking the editing and production of this edition of the Governance Toolkit, for which the partner organisations wish to express their gratitude.

The Governance Toolkit is primarily intended for use as an easy reference guide for:

- Town/parish clerks and councillors;
- Those interested in becoming a parish councillor;
- Principal councils wanting to establish parish councils in their areas;
- Monitoring Officers.

At its heart, the Governance Toolkit intends to contain the things a parish clerk *really* needs to know and do. In this, it should be as much a signpost document to other material as a comprehensive source of reference in its own right. It is also a "living document" which will continue to be altered, amended and updated as necessary.

A primary consideration in producing the Governance Toolkit, throughout its development, has been that it should be readily accessible and available to all.

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We hope you find it a useful guide.

The Toolkit Team
March 2009
Version three
April 2009

The Toolkit Team

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The information contained in this document is designed as a general guide to the law and practice. It is not intended to provide comprehensive legal advice and where there is a particular circumstance it is recommended that advice is obtained from NALC, SLCC or a legal professional.

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**NOTE: The Toolkit does not contain any model Standing Orders.
These can be obtained from NALC.**

PART ONE

POWERS AND FUNCTIONS OF PARISH COUNCILS

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Introduction

There are some 8,500 councils at parish level in England. As a tier of local government they are elected bodies, with discretionary powers and rights laid down by Parliament to represent their communities and provide services for them. Policy has centred on the fact that they act as a focus for local opinion, and provide a way to get things done in a way that is best suited to their local community.

Parish councils in their current form were created by the Local Government Act 1894. Their governance, shape and form was consolidated in the Local Government Act 1972 (the Act). Under the Act, by passing a resolution, a parish council may be renamed a “town council”. This is particularly important since old urban district councils were incorporated into parish form. As a result of changes to the Act, brought about by the Local Government and Public Involvement in Health Act 2007, a parish council may be known alternatively as a “community”, “village” or “neighbourhood” council. This latest development is a reflection of the change in the nature of parishes, especially the needs of urban and suburban areas where there has been little tradition or expectation of a parish tier of local government.

The National Association of Local Councils (NALC) and the Society of Local Council Clerks (SLCC) quite sensibly use the generic expression of “local councils” to describe all councils which fall into this class of authority. For ease of use, and to ensure we don’t clash with any publication of NALC or SLCC, we have used the legal term of “**parish council**” throughout this publication to mean all councils at the parish level of local government.

All councils are constituted in the same way; councillors are elected by the local government electorate and each council has a Chair, who must be one of the elected councillors. Councils vary in size and capacity; many are small, representing a few hundred people, others represent communities of over 30,000 people with budgets of over £1m and expenditure and staffing levels per head of population similar to a small district council.

A council is a corporate body with perpetual succession and a name. Local councillors are often referred to as “Members” – for example in the Code of Conduct. The number of councillors is fixed by the district (or unitary) council. A parish council’s lawful acts, assets and liabilities are its own and not those of its councillors or any other council.

A council must act within the law. It can only spend, raise or use money if it has a statutory power to do so, otherwise it acts *ultra vires* (beyond its powers). Parish councils have a wide range of powers under different acts of Parliament. Most of these powers are discretionary, i.e. a council *may* do something, rather than it *must* do something.

A parish council has the unfettered right to raise money by precept (a mandatory demand) on the district council. The precept required by a parish council is then collected by the principal council as part of the council tax levied on tax payers in that parish.

Parish councils act as sounding boards for local opinion, though the range of services and amenities provided varies enormously. They often work with local voluntary organisations and other tiers of local government and have an important role in providing and improving very local services and amenities. Councils are represented nationally by NALC, referred to above, which works with independent county associations to provide routine support for councils and their clerks. County training partnerships provide training to the members and employees of parish councils.

There are certain obligations which by law a parish council must fulfil. For example:

- It must hold an annual meeting;
- It must hold at least three other meetings a year;

- It must appoint such officers as it believes necessary for the proper discharge of its functions. This must include an officer responsible for the proper administration of financial affairs;
- It must make Standing Orders for the supply of goods and services to the council.

The arrangements for meetings and proceedings of local councils are set out in Part II of Schedule 12 to the Local Government Act 1972, as supplemented by any standing orders adopted by a council.

Parish councils should not see themselves as operating in isolation. They will achieve far more by being prepared to work constructively with other public bodies and organisations around them.

Parish councils will wish to:

- Be consulted on planning applications and will need a close relationship and understanding with the planning office of their district/unitary council. Parish councils are encouraged to prepare parish plans in consultation with the planning office with a view to the plan being taken into account by the district council in considering planning applications and preparing the local development framework.
- Have points of contact with principal council services, such as highways, cleansing, parks, elections etc and to contribute to the way such services are provided.
- Work closely with the standards committee and monitoring officer of the principal council on ethical framework matters and the members' code of conduct.
- Be represented, collectively with other parish councils, on the Local Strategic Partnership.
- Liaise with other stakeholders operating services within the parish council boundaries.
- Contribute to proposals which may be made to the Secretary of State under the Sustainable Communities Act 2007

As the lowest tier of democratically elected representatives in the country, parish councils have the mandate to speak on behalf of the people they represent. It is important that parish councils learn how to do this with authority and integrity in order to have the optimum effect.

2. List of Parish Council Powers

(this is not an exhaustive list)

| Function | Powers & Duties | Statutory Provisions |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Allotments | Duty to provide allotments. Power to improve and adapt land for allotments, and to let grazing rights | Small Holding & Allotments Act 1908, ss. 23, 26, and 42 |
| Baths and washhouses | Power to provide public baths and washhouses | Public Health Act 1936, ss. 221, 222, 223 and 227 |
| Burial grounds, cemeteries and crematoria | Power to acquire and maintain Power to provide Power to agree to maintain monuments and memorials Power to contribute towards expenses of cemeteries | Open Spaces Act 1906, Ss 9 and 10; Local Government Act 1972, s. 214; Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, s. 1 Local Government Act 1972, s. 214(6) |
| Bus shelters | Power to provide and maintain shelters | Local Government (Miscellaneous Provision) Act 1953, s. 4 |
| Bye-laws | Power to make bye-laws in regard to pleasure grounds Cycle parks Baths and washhouses Open spaces and burial grounds Mortuaries and post-mortem rooms | Public Health Act 1875, s. 164 Road Traffic Regulation Act 1984, s.57(7) Public Health Act 1936, s.223 Open Spaces Act 1906, s.15 Public Health Act 1936, s.198 |
| Clocks | Power to provide public clocks | Parish Councils Act 1957, s.2 |
| Closed churchyards | Powers as to maintenance | Local Government Act 1972, s.215 |
| Common pastures | Powers in relation to providing common pasture | Smallholdings and Allotments Act 1908, s.34 |
| Conference facilities | Power to provide and encourage the use of facilities | Local Government Act 1972, s.144 |
| Community centres | Power to provide and equip buildings for use of clubs having athletic, social or recreational objectives | Local Government (Miscellaneous Provisions) Act 1976 s.19 |
| Crime prevention | Powers to install and maintain equipment and establish and maintain a scheme for detection or prevention of crime Power to contribute to police services e.g. PCSOs Duty on Parish Councils to consider crime reduction in every policy and action | Local Government and Rating Act 1997, s.31 Police Act 1996, s.92 s17 Crime and Disorder Act 1998 (as amended) |
| Drainage | Power to deal with ponds and ditches | Public Health Act 1936, s.260 |

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|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Dogs | Power to make a Dog Control Order Power to take enforcement action against those who commit an offence against a Dog Control Order | Cleaner Neighbourhoods and Environment Act 2005 |
| Entertainment and the arts | Provision of entertainment and support of the arts | Local Government Act 1972, s.145 |
| Flyposting and Graffiti | Power to take enforcement action against those that flypost or graffiti | Cleaner Neighbourhoods and Environment Act 2005 |
| Gifts | Power to accept | Local Government Act 1972, s.139 |
| Highways | Power to maintain footpaths and bridle-ways Power to light roads and public places Provision of litter bins Powers to provide parking places for bicycles and motor-cycles, and other vehicles Power to enter into agreement as to dedication and widening Power to provide roadside seats and shelters Consent of parish council required for ending maintenance of highway at public expense, or for stopping up or diversion of highway Power to complain to highway authority as to unlawful stopping up or obstruction of highway or unlawful encroachment on roadside wastes Power to provide traffic signs and other objects or devices warning of danger Power to plant trees and lay out grass verges etc. and to maintain them | Highways Act 1980, ss.43,50 Parish Councils Act 1957, s.3; Highways Act 1980, s.301 Litter Act 1983, ss.5,6 Road Traffic Regulation Act 1984, ss.57,63 Highways Act 1980, ss.30,72 Parish Councils Act 1957, s.1 Highways Act 1980, ss.47,116 Highways Act 1980, s.130 Road Traffic Regulation Act 1984, s.72 Highways Act 1980, s.96 |
| Investments | Power to participate in schemes of collective investment | Trustee Investments Act 1961, s.11 |
| Land | Power to acquire by agreement, to appropriate, to dispose of Power to accept gifts of land | Local Government Act 1972, ss.124, 126, 127 Local Government Act 1972, s.139 |
| Litter | Provision of receptacles Power to take enforcement action against those that litter | Litter Act 1983, ss.5,6 Cleaner Neighbourhoods and Environment Act 2005 |
| Lotteries | Powers to promote | Lotteries and Amusements Act 1976, s.7 |

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|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Mortuaries and post mortem rooms | Powers to provide mortuaries and post mortem rooms | Public Health Act 1936, s.198 |
| Open spaces | Power to acquire land and maintain | Public Health Act 1875, s.164 Open Spaces Act 1906, ss.9 and 10 |
| Parish documents | Powers to direct as to their custody | Local Government Act 1972, s.226 |
| Telecommunications facilities | Power to pay public telecommunications operators any loss sustained providing telecommunication facilities | Telecommunications Act 1984, s.97 |
| Public buildings and village hall | Power to provide buildings for public meetings and assemblies | Local Government Act 1972, s.133 |
| Public conveniences | Power to provide | Public Health Act 1936, s.87 |
| Sustainable communities | Able to be represented on a panel of representatives to be consulted on proposals that would contribute to sustainable communities | Sustainable Communities Act 2007 |
| Town and country planning | Right to be notified of planning applications | Town and Country Planning Act 1990, Sched.1, para. 8 |
| Tourism | Power to encourage visitors and provide conference and other facilities | Local Government Act 1972, s.144 |
| Traffic calming | Powers to contribute financially to traffic calming schemes | Highways Act 1980, s.274A |
| Transport | Powers in relation to car-sharing schemes, taxi fare concessions and information about transport Powers to make grants for bus services | Local Government and Rating Act 1997, s.26, 28 and 29 Transport Act 1985, s.106A |
| War memorials | Power to maintain, repair, protect and alter war memorials | War Memorials (Local Authorities' Powers) Act 1923, s.1; as extended by Local Government Act 1948, s.133 |
| Water supply | Power to utilise well, spring or stream and to provide facilities for obtaining water from them | Public Health Act 1936, s.125 |
| Well-Being | Power to well-being of the area (for eligible councils) | s2 and 4 of the Local Government Act 2000 |

3. A very rough guide to who does what

County Councils

Monitoring Officer for
County Members only

Education

Most schools
Special education
Nursery, adult, community

Personal Social Services

Securing provision for the elderly,
children and those with
disabilities (including social care
and health and residential care)
Inspection Services

Planning

Strategic planning/structure plans
Minerals and waste planning
Historic buildings

Highways/Transport

Public transport
Highways and parking
Traffic management
Footpaths and bridleways
Transport planning
Street lighting

Emergency Planning

Recreation

Parks and open spaces
Support for the arts
Archives and Record Office
Museums/Art Galleries

Economic Development

Tourism Development

District Councils

Monitoring Officer
Ethics & Probity for District &
Parish Members

Housing

Management and maintenance
of council houses
Working with Housing
Associations (known as
Registered Social Landlords)
Housing advice
Renovation grants
Homelessness
Unfit housing
Residential care

Cemeteries and Burials, Crematoria

Planning

Local Development Framework
Development control (Planning
applications and enforcement)
Advertising consent
Historic buildings
Conservation areas
Tree preservation

Highways/Transport

Unclassified roads
Off-street car parking
Traffic management
Footpaths and bridleways
Road safety
Local transport plans
Street lighting
Street naming

Emergency Planning

Recreation

Parks, open spaces and halls
Swimming pools and leisure
centres
Support for the arts
Museums and art galleries

Economic Development

Tourism Development

Parish Councils

Clocks

Closed Churchyards Burials/Cemeteries

Planning – as consultees

Bus shelters

War and other memorials

Street lighting

Public Open Spaces

Village Halls

Playing fields

Museums and the Arts

Tourism Development

Environmental ServicesRefuse disposal

Recycling

Gypsy sites

Trading Standards**Registration of Births,
Marriages and Deaths****Library & Information Service****Grants to voluntary bodies****Community Planning****Environmental Services**Refuse collection/street
cleansing

Recycling

Management of travellers/gypsy
sites

Food safety

Public conveniences

Markets

Dog and pest control

Noise abatement

Health & Safety

Seats**Licensing****Allotments****Electoral
Registration/Elections****Council Tax and Business
Rate collection****Grants to voluntary bodies****Help with Lottery Applications****Community Planning
Community Safety (anti-social
behaviour, alcohol byelaws)****Litter bins and litter
clearance****Local charities****Markets****Public seating
Licensing – as consultees****Allotments****Grants to voluntary
bodies**

NOTE: Both the county and district functions are discharged by single authorities in the case of metropolitan district councils and unitary councils.

PART TWO

THE PARISH CLERK

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Introduction - Roles and Responsibilities

The parish council Clerk is the 'engine' of an effective parish council. He or she is its principal executive and adviser and, for the majority of smaller parish councils, is the officer responsible for the administration of its financial affairs. The Clerk is sometimes a council's only employee.

The Clerk is required to give clear guidance to Councillors, including the Chair, before decisions are reached, even when that guidance may be unpalatable. The Clerk has a key role in advising the council, and Councillors, on governance, ethical and procedural matters. They must also liaise with the Monitoring Officer at the district/unitary council on ethical issues and the Councillors' Register of Interests.

Some larger councils employ a range of administration and support staff and the Clerk is normally responsible for advising the council on staffing provision and managing the recruitment process. In smaller councils the Clerk may also carry out the role of the Finance Officer. However, it is common, especially in larger councils, for a separate Responsible Finance Officer to be appointed and given specific duties relating to the budget, annual accounts and audit to ensure proper financial management and transparency.

Many parish councils encourage their clerks to seek professional recognition for the work that they do. A qualified Clerk is one of several pre-requisites for a parish council achieving Quality Council status and also in becoming a council eligible to exercise the power of well-being.

The Clerk is an independent and objective servant of the council who takes instructions from the corporate body and must recognise that the council is responsible for all decisions.

In an emergency (e.g. to cover a temporary vacancy) a Councillor may fulfil the role of Clerk to the parish council (this must be unpaid (see below)). However, it is not good practice for Councillors to do this as it confuses Officer/Member roles.

It should be noted that Councillors may not be paid employees of their council (as there is an unacceptable conflict of interest) and may not become employees of their former council until at least 12 months after ceasing to be a Councillor (Sections 112(5) and 116 Local Government Act 1972).

Signposting on Employment Issues

Some headline issues are set out below, but legal advice should always be sought on particular applications or circumstances. Further sources of information are listed below:

- There is no requirement to have any particular employees, but someone needs to be designated as the Officer responsible for financial affairs. Usually, this will be the Parish Clerk;
- The Parish Clerk must be an employee of the parish council, not an independent contractor or self-employed person;
- The duties and terms and conditions of employment (including pay) should be set out in writing as soon as possible after appointment and within 13 weeks after the start of the employment;
- Officers who are paid must be appointed on merit;
- Councillors can be Officers but they cannot be paid. Giving Councillors such a role should be considered only in an emergency. Also, a former Councillor cannot be appointed to a paid office until 12 months have passed since being a Councillor of that council;
- There should be written procedures for disciplinary and grievance issues (there is an ACAS Code of Practice);
- Continuous service of 12 months entitles an employee to redundancy payments and to the right not to be unfairly dismissed. A series of temporary contracts is aggregated for this purpose;
- Discrimination laws operate to protect individuals at the time of appointment and during employment. They cover direct and indirect discrimination on the grounds of sex, marital status, colour, race, nationality, ethnic or national origins, age and disability. Harassment and bullying also fall under this umbrella. It is also unlawful to discriminate on the grounds of religion or belief;
- Employees have protection under the Public Interest Disclosure Act 1998 in respect of “whistle-blowing”.

The National Association of Local Councils and the Society of Local Council Clerks have negotiated a National Agreement on Salaries and Conditions of Service for local council clerks in England and Wales and negotiate annually on a salary award. A Model Contract of Employment and Job Description have also been agreed together with a Guide to Good Employment Practice in Local Councils. Parish councils and their Clerks may secure the advantages of these agreements through membership of their county association of local councils and the Society of Local Council Clerks respectively.

Further Information:

The Advisory, Conciliation and Arbitration Service (ACAS) - www.acas.gov.uk

The Information Commissioner - www.informationcommissioner.gov.uk

The Audit Commission - www.auditcommission.gov.uk

The human resources section of the district or unitary council may also be able to offer assistance.

**MODEL CONTRACT OF EMPLOYMENT
AND JOB DESCRIPTION**

**AGREED BETWEEN
THE NATIONAL ASSOCIATION OF LOCAL COUNCILS AND
THE SOCIETY OF LOCAL COUNCIL CLERKS**

**NAME OF PARISH COMMUNITY COUNCIL
-and-
NAME OF EMPLOYEE**

CONTRACT OF EMPLOYMENT and JOB DESCRIPTION –

**CLERK/DEPUTY CLERK/ASSISTANT CLERK/RESPONSIBLE FINANCIAL OFFICER to
the COUNCIL**

1. Introduction

- 1.1** This statement sets out particulars of your terms and conditions of employment with ***** Council, which are required to be given to you by law.

Your employment commenced on ***** [date].

- 1.2** The National Agreement on Pay and Conditions of Service of the National Joint Council (“the NJC”) for Local Government Services (the ‘Green Book’) applies to your employment save as amended by this contract.

- 1.3** For all new employees confirmation of the appointment will be subject to satisfactory completion of a period of probationary service of not less than 13 weeks. During any such period of service you would be expected to establish your suitability for the post.

2. Previous Service

Your employment with any other public employer as set out in the NJC agreement will be considered as part of a continuous period of employment with the Council for the purposes of your contract of employment.

3. Job Title

The title of the job for which you are employed is Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the ***** named Council. The Council has employed you under the provisions of section 112 (1) and (2) of the Local Government Act 1972. The duties of the post are set out in the job description attached to this contract.

The Council may from time to time wish to amend your job description and you may at any time be requested to undertake additional or other duties as necessary to meet the requirements of the Council.

4. Declaration of Other Employment

It is a condition of this Contract of Employment that you inform the Council of any

alternative employment you undertake, in order to ensure that no tax or insurance liabilities will accrue to the Council. The Council also reserves the right to require that any other employment that you undertake does not conflict with the role or standards required to be undertaken or met in the public office of the Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the Council.

5. Place of Work

Your usual place/s of work is: ***** [Officers home address or council office address]

6. Salary

6.1 Your salary is in accordance with the current **NJC salary point** (State actual scale in relation to the benchmark profile and start point) £****) and (*if part-time*) is calculated by pro-rata reference to the standard working week for local government staff of 37 hours.

THEN EITHER

6.2 Subject to satisfactory performance, you will progress automatically through the salary scale by annual increments until you reach the maximum of the scale. Your first increment will be payable on 1st April (year) and thereafter on the 1st April each year until you reach the maximum of the scale. The Council may withhold an increment if it is considered that performance fell below the level expected, following an annual review, or award an additional increment for exemplary performance if it chooses to do so. (See Appraisal/Career Development Review 11 below).

OR

You have been appointed to a single salary point and the Council will review your salary annually on the anniversary of your appointment.

7. In addition one additional salary point will be added to your salary, up to a maximum of four points, for success in obtaining or already holding each of the following relevant qualifications:

- The Certificate in Local Council Administration and other relevant qualifications such as:
- Certificate in Local Policy Studies First Year
- the Certificate in Local Policy Studies
- the Diploma in Local Policy Studies
- BA (Hons) Degree Local Policy Studies (University of Gloucestershire).

8. Your salary will be paid by cheque or bank transfer at monthly intervals to reach your bank or Building Society as cleared funds by the last working day of the month.

9. Expenses

Any travel, mileage, subsistence expenses incurred by you and approved by the Council will be paid at the agreed NJC rate laid down at the time.

Delete whatever does not apply:

10. Working From Home – Additional Clauses

- 10.1.1** If the Council requires that your office, for the purposes of the Council, is your own home, then it will carry out a Risk Assessment to check the accommodation to ensure that Health and Safety regulations are met. The Council undertakes to meet the cost of ensuring that these conditions are met.
- 10.1.2** The Council will reimburse all expenses incurred by you in the discharge of the duties that are approved by the Council.
- 10.2** The cost of all stationery and consumables and computer consumables against vouchers/invoices submitted to the Council will be reimbursed.
- 10.2.1** The Council will provide a separate telephone/fax line or reimburse all telephone/fax call expenses incurred on a private line against an itemised account.
- 10.2.2** The Council will pay an agreed sum to take into account the use of space, lighting, heating and electricity due to working from the private premises of the Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the Council.
- 10.2.3** The Council will provide a dedicated computer or pay an agreed sum on a quarterly basis to include depreciation for the use of a private computer belonging to the Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the Council.
- 10.2.4** The Council will pay for all necessary computer software or upgrades required for the Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the Council to fulfil the duties required by the Council.
- 10.3** The Council agrees to fully indemnify the Clerk/Deputy Clerk/Assistant Clerk/Responsible Financial Officer to the Council for both Employers and Public Liability Insurance for working from their own premises or any additional premium required by the Clerk/Deputy Clerk/ Assistant Clerk/ Responsible Financial Officer to the Council's own insurance.
- 10.4** You will make yourself available to members of the public during agreed hours at the designated address or alternatively at other accessible premises designated by the council.

11. Appraisal

You will receive an annual Appraisal/Development Review. Should there be any concern about your performance, other than matters of a disciplinary nature, the Council undertakes to work with you to seek to ensure that necessary training, mentoring and support is provided to ensure that agreed standards of performance are reached in a reasonable agreed time frame.

12. Hours of Work

- 12.1** Your hours of work arehours per week [maximum 37 hours].
- 12.2** In accordance with the Flexible Time Working Regulations (Employment Act 2002)

you may apply, in writing, for flexible working time conditions on the grounds that you have a child of an age that meets the provisions of the Act. The Council retains the right to refuse this application on reasonable objective business grounds. If so, the Council must provide you with reasons in writing.

- 12.3** In accordance with the Works and Families Act 2006 you may apply, in writing for flexible working time conditions on the grounds that you are a carer of an adult who meets the provisions of the Act. The Council retains the right to refuse this application on reasonable objective business grounds. If so, the Council must provide you with reasons in writing.

13. Additional Hours

If you are required to work more than your normal working hours servicing the Council and its committees or external events, you will be reimbursed at the normal NJC rate for these hours or you may take time off in lieu at a time agreed between you and the Council.

Additional hours worked over and above the normal working week of [] hours servicing the Council and its committees or external events, will be reimbursed as (Paid Overtime at the normal rates or Time-in-Lieu – (delete which as appropriate: green book provisions allow for payment of overtime up to scp.28) at a time agreed between you and the Council.

Exceptional additional hours required to be worked must be approved by the Council.

14 Annual Leave

- 14.1** The calculation of your annual leave commences from the first day of your employment. You are entitled, in addition to the normal bank and public holidays, to twenty working days' leave in each leave year (pro rata for part time employees). The leave year runs from 1st April to 31st March.
- 14.2** Your leave entitlement will increase to twenty-five working days per year (pro rata for part time employees) when you have completed not less than five years of continuous service immediately prior to the commencement of the leave year.
- 14.3** In addition to normal bank and public holidays, you will be entitled to two extra statutory days (the timing of these extra-statutory holidays will be by mutual arrangement and must be taken at times convenient to the Council).
- 14.4** If you join the Council from another authority or other qualifying public body, your previous service will be taken into account in calculating your holiday entitlement.
- 14.5** If your employment commenced or terminates part way through the leave year, your holidays during that year will be assessed on a pro rata basis. Deductions from final salary due to you on termination of employment will be made in respect of any leave taken in excess of entitlement.
- 14.6** Holidays must be taken at times agreed with the Council. By mutual agreement no more than five days leave may be carried forward to the next leave year.
- 14.7** In the event that you fall sick during the period of your annual leave you will be regarded as being on sick leave from the date of your self or medical certificate and further annual leave will be suspended from that date.

15 Sickness Absence

- 15.1 If you are absent from work on account of sickness or injury, you or someone on your behalf should inform the Council of the reason for your absence as soon as possible, but no later than the end of the working day on which the absence first occurs.
- 15.2 In respect of absence lasting up to seven calendar days, you are required to inform the Chair/ Vice-Chair or your line manager and self-certificate your absence.
- 15.3 In respect of absence relating to illness lasting more than seven calendar days, you must provide a medical certificate stating the reason for the absence and thereafter provide a consecutive medical certificate to cover any subsequent period of absence.
- 15.4 You will be paid your agreed basic remuneration in line with the scale of payment for any one year that runs from 1 April to 31st March. The Council will be responsible for reclaiming the Statutory Sick Pay element from HM Revenue & Customs.

Entitlement to payment is subject to notification of absence and production of medical certificates as required above.

- 15.5 The Council operates the Statutory Sick Pay scheme and you are required to co-operate in the maintenance of necessary records. For the purposes of calculating your entitlement to Statutory Sick Pay 'qualifying days' are those days on which you are normally required to work. Payments made to you by the Council under its sick pay provisions in satisfaction of any other contractual entitlement will go towards discharging the Council's liability to make payment to you under the Statutory Sick Pay scheme.
- 15.6 The Council reserves the right to require you at any time to submit to a medical examination by a medical practitioner nominated by the Council, subject to the provisions of the Access to Medical Reports Act 1988 where applicable. Any costs associated with the examination will be met by the Council.
- 15.7. Whilst on absence due to sickness or incapacity you are not permitted to undertake any paid work for another employer or for any business established by you without express permission from the Council.

16. Scale of Payment

Subject to the above conditions of this scheme, when absent from duty owing to illness (which term is deemed to include injury or other incapability or disability) you will be entitled to receive an allowance in accordance with the following scale:

| | |
|------------------------------------|-------------------------------------------------------------------------------|
| during 1st - year of service | one months full pay and (after completing 4 months service) 2 months half pay |
| during 2nd - year of service | 2 months full pay and 2 months half pay. |
| during 3rd - year of service | 4 months full pay and 4 months half pay. |
| during 4th & 5th - year of service | 5 months full pay and 5 months half pay. |
| after 5-years service | 6 months full pay and 6 months half pay. |

N.B. For the purposes of calculating "half" pay, the rate of pay for the agreed salary month will be used.

17. Maternity/Paternity/Adoption Leave

Under the provisions of the Employment Rights Act 1996 (as amended by the Employment Act 2002 and regulations there under) you will be entitled to apply for Maternity/Paternity/Adoption leave.

18 Injury or Assault

In the event of death or permanent disablement arising from a violent or criminal assault suffered in the course of employment then all insurance payments will be made in accordance with paragraph 7 of Part 3 of the Green Book Terms and Conditions.

19 Pensions and Gratuities

Delete whatever does not apply:

Either

19.1 Pension

The Council is a member of the Local Government Pension Scheme, which operates a contributory pension scheme which you are entitled to join. Details of which are contained in the separate booklet provided. Delete if necessary

Or

19.2 Gratuity

The council may make appropriate provision for the payment of a gratuity in accordance with the Regulations in force at the relevant time.

19.3 Death in Service

In the event of your death in service any gratuity payments will be paid to your next of kin. Any pension benefits will be paid to your nominated beneficiary, spouse or children in accordance with the provisions of the Local Government Pension Scheme.

20. Notice of Termination of Employment

During probationary period

20.1 Either party may terminate the contract of employment by giving 1 weeks notice in writing.

After completion of probationary period

20.2 The length of notice which you are obliged to give to the Council to terminate your employment is one month in writing.

20.3 The length of notice which you are entitled to receive from the Council to terminate your employment is four weeks in writing until you have been continuously employed for four years and thereafter such notice entitlement increases by one week for each year of continuous service until you have completed twelve years of continuous employment after which time you will be entitled to twelve weeks notice.

20.4 Upon or within one week of written termination of your employment (whether that be during or after any probationary period) you are required to surrender to the Council any documents or materials that you have been holding on behalf of the Council.

21 Grievance and Discipline – Dispute Resolution

21.1 Conciliation and Mediation

Before resorting to formal procedures from the employee or from the Council it is the policy of the Council that discussions between both parties should be entered into with the express purpose of resolving the matter through a process of mediation seeking conciliation. Where necessary the Council will seek the services of an external expert to forward this process to reach a conclusion satisfactory to both parties in the dispute.

21.2 Redress of Grievance

You must apply in writing to the Chair of the Council for redress of any grievance relating to your employment and/or any disciplinary decision applied to you. The Chair shall report your application to a Grievance Panel meeting of the Council, held in the absence of the public and the press. You will have an opportunity to set out your grievance. The grievance will then be considered and a decision reached by the Panel.

Should you be dissatisfied with the Panel's decision you have the right to make an appeal to the Appeals Panel of the Council.

Under the provisions of the 1999 Employment Relations Act s.10 you have the right to have a representative of your choice present at any Grievance or Disciplinary hearing.

21.3 Disciplinary Rules

Before any disciplinary action is taken by the Council, a notice in writing giving details of the matter, either signed by the Chair and authorised by the Council, or your line manager in accordance with their delegated responsibilities, shall be given to you. You (together with an adviser if you wish) will have a full opportunity to answer the complaint at a meeting of the Council's Disciplinary Panel held in the absence of the public and the press. Should you be dissatisfied with the Panel's decision you have the right to make an appeal to the Appeals Panel of the Council.

A copy of the Discipline and Grievance Policy and all other policies of the Council are contained in the documentation given to you.

22 Health and Safety Regulations, Other Legislation & Council Policies

You are expected to familiarise yourself with all relevant Regulations, Legislation and Policies applying to or made by the Council and ensure that you comply with and ensure others comply with these as required.

23 Training and Development

It is essential that the Officers and employees of the Council maintain up to date knowledge of their function and duties. To this end the Council will expect and support your necessary agreed training and development and meet all course and examination expenses and any travel and subsistence incurred on the scale set down as paid working hours. In addition reasonable agreed time for study in paid

working hours will be given.

24 Indemnity

The Council undertakes to indemnify its officers against any actions of commission or omission that are made in good faith on behalf of the Council.

Signed:.....Dated:-.....
Chair/Town Mayor of the Council

Signed:-.....Dated:.....
**Clerk/Deputy Clerk/Assistant Clerk/Responsible
Financial Officer to the Council**

| |
|--------------------------------------------------------------------------------|
| The Parish Clerk shall be bound by the Code of Conduct in force at the time |
|--------------------------------------------------------------------------------|

SPECIMEN JOB DESCRIPTION – CLERK TO THE COUNCIL

Overall Responsibilities

The Clerk to the Council will be the Proper Officer of the Council and as such is under a statutory duty to carry out all the functions, and in particular to serve or issue all the notifications required by law of a local authority's Proper Officer. *The Clerk will be totally responsible for ensuring that the instructions of the Council in connection with its function as a Local Authority are carried out. *The Clerk is expected to advise the Council on, and assist in the formation of, overall policies to be followed in respect of the Authority's activities and in particular to produce all the information required for making effective decisions and to implement constructively all decisions. The person appointed will be accountable to the Council for the effective management of all its resources and will report to them as and when required. *The Clerk will be the Responsible Financial Officer and responsible for all financial records of the Council and the careful administration of its finances.

Specific Responsibilities

1. To ensure that statutory and other provisions governing or affecting the running of the Council are observed.
2. To monitor and balance the Council's accounts and prepare records for audit purposes and VAT. * Or to monitor the work of a designated other officer designated the Responsible Financial Officer.
3. To ensure that the Council's obligations for Risk Assessment are properly met.
4. To prepare, in consultation with appropriate members, agendas for meetings of the Council and Committees. To attend such meetings and prepare minutes for approval. *Other than where such duties have been delegated to another Officer.
5. *To attend all meetings of the Council and all meetings of its committees and sub-committees. *Other than where such duties have been delegated to another Officer.
6. *To receive correspondence and documents on behalf of the Council and to deal with the correspondence or documents or bring such items to the attention of the Council. To issue correspondence as a result of instructions of, or the known policy of the Council.
7. To receive and report on invoices for goods and services to be paid for by the Council and to ensure such accounts are met. To issue invoices on behalf of the Council for goods and services and to ensure payment is received.
8. *To study reports and other data on activities of the Council and on matters bearing on those activities. Where appropriate, to discuss such matters with administrators and specialists in particular fields and to produce reports for circulation and discussion by the Council.
9. To draw up both on his/her own initiative and as a result of suggestions by Councillors proposals for consideration by the Council and to advise on practicability and likely effects of specific courses of action.
10. To supervise any other members of staff as their line manager in keeping with the policies of the Council and to undertake all necessary activities in connection with the management of salaries, conditions of employment and work of other staff.

11. To monitor the implemented policies of the Council to ensure they are achieving the desired result and where appropriate suggest modifications.
12. To act as the representative of the Council as required.
13. To issue notices and prepare agendas and minutes for the Parish Meeting: to attend the assemblies of the Parish Meeting and to implement the decisions made at the assemblies that are agreed by the Council.
14. To prepare, in consultation with the Chair, press releases about the activities of, or decisions of, the Council.
15. To attend training courses or seminars on the work and role of the Clerk as required by the Council.
16. To work towards the achievement of the status of Qualified Clerk as a minimum requirement for effectiveness in the position of Clerk to the Council.
17. To continue to acquire the necessary professional knowledge required for the efficient management of the affairs of the Council: Suggested is membership of your professional body The Society of Local Council Clerks.
18. To attend the Conference of the National Association of Local Councils, Society of Local Council Clerks, and other relevant bodies, as a representative of the Council as required.

*Delete as appropriate

PART THREE

ENSURING EFFECTIVE GOVERNANCE

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Introduction

The term “local authority” is applicable to parish, district (sometimes known as borough), county and unitary councils, and in London, to London Borough councils. All local authorities are corporate bodies created by statute or by royal charter. Parish councils make up the first tier of local government in England and are the layer of local government closest to the communities they represent

Parish councils are corporate bodies. It is the corporate body, of a council acting in its own name, which undertakes activities conferred on it by statute and is therefore capable of owning or transferring land, entering into contracts and taking or defending legal action. A parish council enjoys its legal status and identity until it is dissolved by operation of the law. As a corporate body, a parish council has a separate and distinct legal identity to the Councillors who make up the council and the Officers who are employed by the council.

Members of a parish council are democratically elected and have a fiduciary duty to their local government tax payers.

Since 1894 parish councils have been able to exercise functions and powers specifically conferred on them by legislation or by arrangement with another local authority. Importantly, as with any body corporate, a parish council can only do that which it is authorised to do by statute. It must not do anything which it is prohibited to do by statute. A parish council must ensure that its processes and decisions are not ultra vires (beyond its legal powers). It is the principle of ultra vires which requires the need for governance in any local authority, including a parish council. For there to be public confidence in a council’s decision making process, it is desirable for that process to be as transparent as the decision itself.

Basic effective governance for a parish council entails:-

- Understanding statutory duties, powers, and subsequent legal obligations;
- Efficiently prioritising and undertaking activities arising from statutory duties, powers, and subsequent legal obligations;
- Observing statutory prohibitions and limitations to their statutory duties and powers;
- Engaging with local residents and other key stakeholders to deliver the services and facilities required;
- Taking informed, transparent decisions and managing risk;
- Developing and increasing resources (land, property, finances, staff) commensurate with activity undertaken.

Decisions made by any local authority must be made in accordance with procedures laid down in statute. The most important piece of legislation for parish council law and procedure is the Local Government Act 1972 (“the Act”).

All local authorities are required to conduct their business in an open and transparent way and must comply with statutory requirements in relation to decision making and activities undertaken.

Effective governance checks are in place to ensure that the decisions and actions of a local authority are lawful and transparent to the public at large and local council tax payers who have a vested interest in the activities of their parish council.

The legal requirements include:

- Public and advance notice of meetings of a parish council;
- Meetings of a parish council being open to the public;
- Regulation of the transaction of the business and the meetings of a parish council by appropriate standing orders;
- Procedures for voting on any decision which need to be made by a parish council;

- Opportunities to delegate functions or powers of a parish council to a committee or sub committee (with clear and unambiguous terms of reference) or an employee of the council or to another local authority. Arrangements by a parish council to delegate should be formally decided and evidenced;
- Access to minutes of meetings and accounts of a parish council;
- Strict control and regulation of the council's financial affairs;
- Regulation of the individual conduct of councillors who are elected, appointed or co-opted to a parish council;
- Regulation of the conduct of staff who are employed by a parish council.

As with other local authorities or public bodies, if a decision or the expenditure of a parish council is deemed ultra vires for any reason, it can be legally challenged by a judicial review claim in the High Court.

The Audit Commission Act 1998, and regulations made subsequent to this, require a parish council to exercise tight financial controls in respect of their finances and accounts. The legislation requires a parish council's yearly accounts to be audited by an external auditor appointed by the Audit Commission (www.audit-commission.gov.uk). Legislation makes it easy to access a parish council's accounts which detail their income and expenditure.

Unlike other local authorities, whose maladministration can be referred to the Local Government Ombudsman, the Ombudsman does not have any jurisdiction over parish councils. It is therefore vital for a parish council to adopt a comprehensive complaints procedure to handle complaints received in respect of its decisions or activities.

Other protocols have been produced to govern particular aspects of council activity where experience has shown that problems can occur, such as the relationship between Councillors and employees, gifts and hospitality.

2. Connecting with your community - Why good communication matters

How a parish council communicates with the wider world and how that communication is received and perceived is important because confusion can arise over who is talking to whom, about what, and on whose behalf.

Individual communication back and forth between council members and the Clerk, if not done appropriately, may create confusion, misunderstandings and, occasionally, even hostility.

As well as reflecting poorly on the parish council, poor communication may create tensions within the council. This has led to complaints to the Standards Board for England and also employment disputes, many of which may have been avoidable if a few simple rules were in place and agreed.

The protocol suggested below covers communications within the council and between the council and the wider world and can be adapted to suit local circumstances.

Councils sometimes fall into the trap of assuming that routine documentation is only for the benefit of the council or to meet legal requirements. Agenda and minutes may take different styles but should be understood by all. The agenda and minutes are a vital way of telling your community what the council is doing, what decisions are being made on behalf of the residents and involving local people in the life of their community. This guidance contains some good practice ideas about communication which will help raise standards of governance and provide effective ways of connecting with your community.

Agenda

Agenda for meetings of the parish council and its committees should be circulated and made available to the public a minimum of 3 clear days before the day of the meeting. Current best practice is distribution 5 or 7 clear days before the meeting. A clear day does not include the day of the notice or the day of the meeting and excludes weekends and bank holidays.

A covering letter to councillors or the agenda itself (depending on how it is expressed) comprises the statutory 'summons' to attend the meeting. The letter can be simply expressed; for example:

"You are requested to attend a meeting of the Council to be held in (venue) on (date) at (time).

The agenda for the meeting is attached.

Yours sincerely

A.N. Other
Clerk to the Council"

The letter may contain other appropriate information such as public speaking and access arrangements, refreshment details, and information regarding no smoking.

The content of an agenda must reflect any requirements of the Council's Standing Orders which may include specific items and the order in which they are to be considered.

It is sensible to adopt a standard style, using different fonts, text size, highlighting and underlining functions and line breaks to improve the readability and professional appearance of the document.

The agenda should have the name of the council at the top, using the style that the council has agreed. This may be simply the council's name, or include a logo or picture or, where applicable, a coat of arms or adopted emblem. It is practical marketing for local councils to adopt a house style and format for all official and formal documents and to use the same 'brand' for its property, whether a village sign, bench, litter bin, playing field notice or building. If a colour letterhead is chosen, it is sensible to have a black and white version for economy use (think about how your council's name and/or logo will look in different situations – reproduced small on a poster or notice board, or large on the side of the council van or the village hall).

Below the council title (and other logo or image) the agenda should be clearly headed, in bold format, as in the example shown below:

“Agenda for a meeting of the Council (Planning Committee/Finance Committee etc) to be held on (date) at (venue) at (time)”

Agendas for committee meetings usefully include a list of the members of the committee, identifying the Chair and deputy Chair.

Where it would be helpful to the public it may be appropriate to include some notes prior to the agenda items. Notes might say that mobile phones are prohibited or describe the council's arrangements for public speakers at meetings. For the planning committee, for example, an appropriate note might explain that the applicant and objectors will be permitted to speak for a maximum of, say, 3 or 5 minutes each at the discretion of the Chair (or whatever local practice has been adopted). Such notes are aimed at the public to enable them to understand how the council works.

Some spare copies of the agenda should be available for the public attending meetings.

Agenda items should be numbered consecutively for ease of reference.

Agenda Management

Procedural items

The agenda for meetings can often be divided between procedural items and business items and it is helpful to identify this on the agenda. Procedural items will normally include:

- Disclosures of Interests

The Agenda should include a standard item with a note or explanation along the following lines:

“To receive disclosures of personal and prejudicial interests from Councillors on matters to be considered at the meeting.

The disclosure must include the nature of the interest. If you become aware, during the course of a meeting, of an interest that has not been disclosed under this item you must immediately disclose it. You may remain in the meeting and take part fully in discussion and voting unless the interest is prejudicial.

A personal interest is prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice your judgement of the public interest and it relates to a financial or regulatory matter.”

If your council has arrangements in place allowing a member of the public to speak to a meeting about an item **and** has adopted paragraph 12(2) of the 2007 Model Code of Conduct, a Councillor with a prejudicial interest in a matter may make representations, answer questions or give evidence to the meeting, but must then

leave the room immediately and not take part in the council's discussion, or vote, or observe the vote.

- Minutes

“To resolve that the minutes of the meeting of the Council/committee held on the (date) (circulated to members or attached) be signed as a correct record.”

- Apologies for absence

- Chair's announcements

This should be limited to formal civic announcements, not matters that are or should be on the agenda for debate and decision.

Subject to the Council's Standing Orders, custom or practice, there may be other procedural items, by way of receiving information that are not to be the subject of discussion or debate at the meeting. For example:

- Public questions, comments or representations

The council may have arrangements for hearing members of the public. Your Standing Orders should ensure that this is limited to a fixed timescale for each person to speak for no more than, say, 3 or 5 minutes, and for the matter to be formally referred to a committee, or to be placed on the agenda of the next meeting, or responded to by the Clerk, or simply noted, so that there is no discussion at the meeting on a matter for which there has been no prior notice on the agenda.

- Appointment of members to committees

It may be necessary to change the membership of a committee during the course of a year in the event of a resignation or other reason.

- Members questions to the Chair

Your Standing Orders may include provision for Members of the council or the committee to put questions to the Chair. The rules should specify that questions must relate to the functions of the council or committee as appropriate, that notice of questions is given a specified number of days before the meeting and that the agenda item be time limited.

Business Items

Business items on the agenda will be determined by the activities of the council or the terms of reference of a committee and its functions. Some items will recur from previous agenda. In such cases it is good practice to provide a reference to the previous minutes on the agenda. Each matter should be given a clear heading that indicates what the agenda item is about and a brief indication of what the council or committee is going to consider. For example;

“Fencing at Smith Street allotment gardens

Minute 27 (Allotments Committee meeting 14 January 2005) refers.

The Clerk will submit an estimate for repairs to the fencing for consideration by the Committee.”

More complicated items may require a written report from the Clerk, in which case the agenda item should refer to the report by its title and the report should show the agenda item number clearly at the top for identification.

A draft agenda should be prepared in advance of the publication/despatch date and discussed with the Chair. The Chair has responsibility for the proper conduct of the meeting and needs to be involved in planning the meeting. The order of business items is important. For example, it might be appropriate to include controversial items, or items for which there is likely to be public interest and attendance, early in the agenda. Items where the press and public are likely to be excluded should be put at the end.

It is good practice to work out in advance a timetable for the meeting to enable the Chair to ensure that sufficient time is allowed for each item.

Minutes

The minutes of a council or committee meeting are a public record of the decisions of the council and great care should be taken in their format and production. The minutes can be produced in court and other judicial processes as evidence of decisions of the council, and they form part of the Council archives which must be preserved. Minutes should be:

- as brief as is consistent with accuracy;
- precise and concise;
- self contained (i.e. complete in themselves and understandable without reference to other documents);
- decisive (so that there is no doubt about the decision made);
- minutes, not hours!

Minutes should be produced in the house style with a clear heading containing the status of the meeting, the place and date. It is good practice to indicate the time the meeting starts and ends and any adjournments. Minutes should start with an alphabetical list of the Councillors present at the meeting.

Minutes should be numbered consecutively for ease of reference. Some councils run minutes consecutively through the municipal year.

Each minute should contain a heading clearly indicating what the minute is about, a narrative or text, as appropriate, that briefly summarises what took place, and the decision. For many routine items, for example, commenting on planning applications, a narrative will not be necessary.

The narrative should be in the past tense (known as 'reported speech') and should include reference to any written reports submitted. The narrative should be in plain English using full sentences and appropriate grammar. It is not necessary to refer to individual speakers by name unless this is significant. It may be appropriate to record the fact that an applicant or an objector addressed the Council or committee on a planning application or that the Clerk, other Officer or an Officer of the district or county council reported on a matter. The narrative should summarise points raised in debate on a sensitive matter. This can be done by bullet points.

Abbreviations should be avoided and acronyms only used after having written the title in full at the first mention.

The decision should be separately highlighted for ease of identification and words used to show that it is a decision, for example;

Resolved

- 1) **That----**
- 2) **That----**

The wording of the decision should be included in full. It is not normally necessary to note the name of the member moving and seconding a motion in the minutes or the fact that a vote was taken (unless a recorded vote is requested).

The order of the minutes will normally follow the order of the agenda.

Declarations of interest must be carefully recorded in the minutes, naming the Councillor and clearly indicating which item the interest referred to, whether the interest is a personal interest or a personal and prejudicial interest, giving the nature of the interest and, in the case of a personal and prejudicial interest, recording that the member left the meeting during the discussion and decision on the item. For example;

"26 DISCLOSURE OF INTEREST

The following disclosures of interest were received:

Planning application for conservatory at 12 Smith Road, Firsttown

Cllr Green disclosed a personal and prejudicial interest as the owner of land adjoining the development site. Cllr Green left the room during the discussion and decision on this matter."

Where Standing Orders provide for the submission by notice of formal written motions to a council meeting, it is appropriate to record the names of the Councillors proposing and seconding the motion in the minutes.

Where Standing Orders make provision for a recorded vote to be taken, or when a Councillor asks for votes to be recorded in the minutes, the minutes should record the names of Councillors voting for and against the matter or the individual Councillor's vote accordingly.

Where Standing Orders provide for a special procedure (other than routine arrangements) to be followed at a meeting it is generally appropriate to include a reference in the minutes to the procedure being followed as evidence to that effect.

The Clerk should ensure that Councillors understand that decisions of parish councils can be set aside by a Court for procedural irregularity, which is why it is so important that the correct meeting procedures are followed and decisions are accurately recorded.

Decisions to exclude the press and public should be fully recorded in the minutes, making it absolutely clear to which matter or part of it the exclusion applied.

Minutes Production

Decisions taken at a meeting take effect immediately and do not depend on the minutes being approved at the next meeting.

The minutes should be produced as quickly as possible after the meeting in order to circulate them to Members. It can be helpful for the Clerk or minute taker to provide a draft of the minutes for the Chair of the meeting. This is an opportunity to pick up any mistakes in the content or identify typing errors, but it is not to be used by the Chair as a means of re-writing the minutes.

It is good practice to circulate the draft minutes no later than 10 working days after the meeting. It is acceptable for the draft minutes to be published (on the website or notice board, or to provide copies to members of the public), but they do not become valid minutes until they are accepted as a correct record and signed by the Chair at the next meeting. Minutes in draft form should therefore record that fact clearly (at the top and bottom) to the effect: "Minutes subject to approval at the next meeting" or by using a "draft" watermark.

The signed minutes should be carefully retained by the Clerk for the council's archives. It is prudent to retain a separate set of signed minutes for public inspection and for reference at meetings or for other purposes. The end of the published minutes should include the fact of being signed by the Chair and the date on which they were signed.

If changes are made to the minutes by the council or committee before acceptance and signing, the wording changes should be recorded in the minutes of the meeting that agreed the changes and the original minutes must be amended to reflect the changes. The copy signed by the Chair will contain the alterations, recorded in longhand, with the changes signed and dated.

Reports

The council's decisions can be set aside by a court if due regard has not been had to relevant information or irrelevant considerations have been applied. Some matters may require Councillors to consider a variety of facts or documentation. It is becoming increasingly important that such information is provided to Members in advance of the meeting in the form of a report. Reports may be prepared by the Clerk or other employee. Occasionally, reports may be made by a Member, for example when reporting back to the council or committee on an event attended or research done at the council's request.

Reports should be circulated at the same time as the agenda and made available to the public, unless they include confidential matters that would justify the exclusion of the press and public at the meeting. This enhances the transparency of the council's decision making and improves local knowledge of its activities.

It greatly improves the speed of handling business at a meeting if all the relevant information is made available to Members in a report that assists their grasp and deliberation of a matter before the meeting. The vast majority of county and district council business is dealt with in this way.

Other communication methods

The Parish Notice Board

The notice board is a traditional means of communication although it is sometimes abused and often neglected. With modern materials and careful location, notice boards provide an effective mouthpiece and updated image for the council.

The notice board should display:

- The full title of the parish council;
- The name, address, telephone number and email address of the clerk;
- The council's website address;
- A list of Members of the council with contact details (address, telephone number, email) and their political group, if this is relevant locally;
- Venues, dates and times of meetings for the year;
- Agenda for forthcoming meetings;
- If practicable, minutes of meetings or a summary of recent decisions and;
- Where the minutes, the code of conduct and other public documents may be inspected.

It is essential that notice boards are kept up to date and notices replaced regularly. There should be a clear responsibility (generally the Clerk's) for this task.

Councils can make arrangements with other bodies for joint use of notice boards. A community notice board that meets the needs of public bodies and local groups, as well as

providing useful information for residents and visitors, is an economic means of achieving several objectives.

Website

The Internet is such a significant and powerful means of communication that many local councils are now investing in informative and user friendly websites.

The starting point for any Clerk is the development of a website which can provide a variety of information to the community. Parish councils should work towards having all their agenda, reports and minutes and the Council's Publication Scheme on a dedicated website, with appropriate archive facilities. Look at some current parish council websites for ideas on what is essential and appropriate material to include, or talk to the Information Manager or Parish Council Liaison Officer at the district or county council, or the County Association of Local Councils.

It is essential that the website is kept up to date on a regular basis (weekly perhaps for small local councils) and that older documents are archived. The site can be developed as a means of receiving comments and to obtain local views on topical matters. A good website can say a lot about the efficiency, effectiveness and relevance of a parish council.

Council Newsletters

Many parish councils produce a regular newsletter, monthly or quarterly, or take space in the local school or church magazine to publicise meetings and activities. This can be an effective way of keeping in touch with your community. Depending on the size of the town or parish, delivering a newsletter is a good way for Councillors to get out and about in their community. The task of producing the newsletter or text for articles is often delegated to a small group of Councillors to work with the Clerk. Responsibility for editorial control needs to be agreed by the council at the outset and it is good practice to have a clear and published editorial policy, which should also be agreed by the council. Your County Association may be able to give you advice on how to go about producing a newsletter, or put you in touch with a parish council that is doing it already.

Annual Report

Some councils also produce an Annual Report, which can usefully be presented to, and distributed at, the Annual Parish meeting. Again, this is an opportunity to engage with your community and enhance the reputation of the Council. Annual reports do not have to be coloured, glossy or expensive and professional results can be achieved with a modern computer. Stick to a clear simple design and layout, avoid lots of underlining and different fiddly fonts and remember that yellow text is extremely difficult to read. As with any publication, the important rules of effective communication apply:

- always use your agreed 'house' style;
- keep sentences short and paragraphs to 3 or 4 sentences;
- use active not passive verbs and sentences;
- use everyday words, avoiding jargon and acronyms;
- keep to plain English;
- always check your spelling – don't rely on a computer spellcheck;
- always give the Clerk's contact details, e-mail address and website if applicable;
- always use the correct name of the council;
- official correspondence should always be written and signed by the Clerk;
- use standard templates for letters, reports and official publications.

Effective communication is important to achieve and maintain a positive relationship with your community and an essential feature of good governance.

3. Model Protocol on Communications

A. Parish Council Correspondence

- (i) The point of contact for the parish council is the Clerk, and it is to the Clerk that all correspondence for the parish council should be addressed.
- (ii) The Clerk should deal with all correspondence following a meeting.
- (iii) No individual Councillor or Officer should be the sole custodian of any correspondence or information in the name of the parish council, a committee, sub-committee or working party. In particular, Councillors and Officers do not have a right to obtain confidential information/documentation unless they can demonstrate a 'need to know'.
- (iv) All official correspondence should be sent by the Clerk in the name of the council using council letter headed paper.
- (v) Where correspondence from the Clerk to a Councillor is copied to another person, the addressee should be made aware that a copy is being forwarded to that other person (e.g. copy to XX).

B. Agenda Items for Council, Committees, Sub-Committees and Working Parties

- (i) Agenda should be clear and concise. They should contain sufficient information to enable Councillors to make an informed decision, and for the public to understand what matters are being considered and what decisions are to be taken at a meeting.
- (ii) Items for information should be kept to a minimum on an agenda.
- (iii) Where the Clerk or a Councillor wishes fellow Councillors to receive matters for "information only", this information will be circulated via the Clerk.

C. Communications with the Press and Public

- (i) The Clerk will clear all press reports, or comments to the media, with the Chair of the council or the Chair of the relevant committee.
- (ii) Press reports from the council, its committees or working parties should be from the Clerk or an officer or via the reporter's own attendance at a meeting.
- (iii) Unless a Councillor has been authorised by the council to speak to the media on a particular issue, Councillors who are asked for comment by the press should make it clear that it is a personal view and ask that it be clearly reported as their personal view.
- (iv) Unless a Councillor is absolutely certain that he/she is reporting the view of the council, they must make it clear to members of the public that they are expressing a personal view.
- (v) If Councillors receive a complaint from a member of the public, this should be dealt with under the Council's adopted complaints procedure, or via a council agenda item.

D. Councillor Correspondence to external parties

- (i) As the Clerk should be sending most of the council's correspondence from a Councillor to other bodies, it needs to be made clear that it is written in their official capacity and has been authorised by the parish council.
- (ii) A copy of all outgoing correspondence relating to the council or a Councillor's role within it, should be sent to the Clerk, and it be noted on the correspondence, e.g. "copy to the Clerk" so that the recipient is aware that the Clerk has been advised.

E. Communications with Parish Council Staff

- (i) Councillors must not give instructions to any member of staff, unless authorised to do so (for example, three or more Councillors sitting as a committee or sub-committee with appropriate delegated powers from the council).
- (ii) No individual Councillor, regardless of whether or not they are the Chair of the council, the Chair of a committee or other meeting, or are styled "Leader" of the Council, may give instructions to the Clerk or to another employee which are inconsistent or conflict with council decisions or arrangements for delegated power.
- (iii) Telephone calls should be appropriate to the work of the parish council.
- (iv) E-mails:
 - Instant replies should not be expected from the Clerk; reasons for urgency should be stated;
 - Information to Councillors should normally be directed via the Clerk;
 - E-mails from Councillors to external parties should be copied to the Clerk;
 - Councillors should acknowledge their e-mails when requested to do so.
- (v) Meetings with the Clerk or other officers:
 - Wherever possible an appointment should be made;
 - Meetings should be relevant to the work of that particular officer;
 - Councillors should be clear that the matter is legitimate council business and not matters driven by personal or political agendas.

4. Governing Documents for Parish Councils

In order to give effect to good governance a parish council should commit time to producing and annually reviewing, their governance documents.

These documents set the environment in which a parish council is expected to discharge its duties and powers. They constitute the internal rules, practical arrangements and processes which are essential to those who form and work for the council.

A parish council's governance documents should be readily available for inspection, whether on a website or local notice board, and parish councillors and employees should be able to demonstrate compliance with its governing documents in relation to all its activities, decisions and decision making processes.

Core governing documents for parish councils comprise:

- Standing Orders for the conduct and transaction of business at meetings of the council (and any of its committees and sub committees). **See pages 36-51**
- Clear written terms of reference for committees and sub committees which evidence the nature and extent of the duties or powers which have been delegated. **See pages 51-52**
- Arrangements for inspection of minutes and accounts by local residents. **See pages 52-53**
- Standing orders and arrangements for the proper administration of its financial affairs. **See pages 53-54**
- Standing orders for entering into contracts. **See page 54**
- The code of conduct adopted by the council which Councillors must observe. **See page 54**
- Arrangements for access to information held by the council under the Freedom of Information Act 2000. **See Part 4 of the Toolkit for more on Freedom of Information**
- Arrangements for handling complaints. **See pages 71-73**

Governing documents may be amended with a view to improving the council's method and efficiency in conducting its business.

It is suggested that the full council carries out an annual review of its governing documents. It is also suggested that resolutions adopting governing documents (or amending them) be phrased in terms of continuing to have effect until superseded by new or amended arrangements. In a year that no changes are made, it would be appropriate to record in the minutes that a review was carried out, in order to demonstrate that the council was continuing to review its governing arrangements.

Standing Orders

Parish councils are subject to the basic arrangements relating to the conduct of meetings and making decisions many of which are contained in the Local Government Act 1972 and in particular Schedule 12 to the 1972 Act (paragraphs 7-13 and 39-45). These provide for:

- Holding an annual meeting;
- Holding other meetings;
- Location of meeting not to be in licensed premises unless no other suitable room is available;
- Public Notice of meetings;
- Service of summons on councillors to attend meetings;
- A councillor to preside at meetings;
- Quorum to be no less than 3;
- Voting by show of hands;
- Arrangement for votes to be recorded;

- Decisions to be by majority vote;
- Provision for casting vote;
- Recording attendance;
- Provisions for minutes and their validity;
- Power to make Standing Orders subject to the above provisions.

A parish council is generally not required by law to make Standing Orders which regulate how they conduct their business. However, the basic provisions in the 1972 Act (and other legislation) are insufficient for the majority of parish councils. Standing Orders are therefore necessary for regulating the practical arrangements to give effect to statutory requirements.

Where Standing Orders are adopted, it is preferable that they include any statutory requirements for procedures. This avoids the need for separate referencing to legislation. Any Standing Orders adopted by a council must not have the effect of overriding or conflicting with requirements that are laid down by legislation. Once Standing Orders which are additional to those which reflect statutory requirements have been made, a parish council is bound to observe and comply with them (unless they vary or suspend them by resolution).

A variety of Standing Orders have been made by parish councils to deal with particular situations and to provide consistency in respect of necessary procedure. Examples of matters requiring regulation by standing orders include:

- Formulating motions for debate and discussion at meetings;
- Order of business at annual meetings;
- Order of business at ordinary meetings;
- Formulating rules of debate for motions;
- Participation by the public at meetings;
- Dealing with disorderly conduct;
- Awarding and entering into contracts;
- Regulating and controlling finances;
- Appointing employees;
- Rules for committees and sub-committees;
- Excluding the public and press;
- Amending Standing Orders.

The object of Schedule 12 provisions and any additional Standing Orders is to provide parish councils with a methodology in respect of how they conduct their business and make decisions. A consistent and logical system or method of working, as set by Standing Orders, should deliver transparent, efficient and effective decision making and prevent unlawful activity occasioned by unclear, inconsistent or ad hoc processes. Standing Orders provide checks and balances that should ensure coherent and sound governance arrangements.

Model Standing Orders applicable to parish councils are available from NALC (ask for their publication "Standing Orders for Local Councils").

Examples of Standing Orders and Procedural Requirements for Parish Councils

The matters below explain the main procedural requirements contained in the 1972 Act and other legislation and set out why Standing Orders are necessary.

1 COUNCIL MEETINGS

1.1 Chairing meetings

The Chair of the parish council (and in his absence the Deputy Chair, if there is one) shall chair or preside meetings of the council.

In the event that the person normally expected to preside the meeting is not able to, those Members present should decide who amongst them shall preside. The Clerk should supervise the selection by inviting nominations and putting them to the vote. Where a chair has to be selected, the meeting starts when the selection decision is made. The minutes should record the selection of the chair (i.e. 'Cllr X was selected to chair the meeting').

1.2 Quorum

No business shall be considered at a meeting of the parish council unless one-third of the total number of Councillors is present, or, where more than one-third of the Councillors are disqualified from acting, then one-third of the remainder is present. In any event, there must be no fewer than 3 Members present at a meeting.

Unless the quorum is met, the council meeting cannot commence, no business may be transacted and no decisions can be made.

A meeting which is inquorate is unlawful and those Members present are not competent to resolve that the meeting is adjourned. It is desirable to have a Standing Order which has the effect of declaring that the meeting shall stand adjourned if the quorum is not present within 30 minutes of the start time of the meeting.

In practical terms, the meeting should be reconvened.

1.3 Holding meetings

1.3.1 An annual meeting of the parish council shall be held every year in the month of May. In the year of ordinary elections of parish Councillors the annual meeting of the parish council shall be held within 14 days after the day on which Councillors elected take office.

1.3.2 The annual meeting of the parish council may be at any time but if the council does not fix a time, the meeting shall take place at 6pm.

Most meetings of a parish council take place in the evening and should not last more than 3 hours. It should be possible to transact the business of a meeting in 1 hour or 1 hour and 30 minutes. If a meeting is scheduled for a longer period, e.g. 2 or 3 hours, it is difficult to maintain the interest of members of the public and Councillors. Meetings of parish councils and their committees are required to be open to the public and in the interest of facilitating public attendance and engagement, it is important that meetings are not convened too late in the evening and do not run over time.

Standing Orders should lay down the time and duration of meetings of the council.

- 1.3.3 In addition to the annual meeting of a parish council, at least 3 meetings shall be held in every year. In most cases a parish council will need to meet more than 3 times a year. The frequency of meetings will depend on the size and activities of the council, the volume of business to be transacted and the level of delegation of functions to committees, sub committees or Officers. Standing Orders should diarise meetings of the full council to fit with the cycle of committee (and sub committee) meetings. The regular meetings of a parish council convened by its proper officer in accordance with the Standing Orders which dictate their timetable are known as ordinary meetings.
- 1.3.4 An extraordinary meeting of the parish council may be called at any time by the Chair (and in his absence by the Deputy Chair if there is one).
- An extraordinary meeting is one which is called specifically. They are usually convened to deal with urgent or unforeseen business.
- 1.3.5 Any 2 Members of a parish council may submit a written request signed by them to the Chair of the parish council to call an extraordinary meeting. In the event of the Chair not calling an extraordinary meeting within 7 days of receiving the request, the 2 members may call an extraordinary meeting.
- 1.3.6 Meetings shall be held at a place, date and time fixed by the council. Meetings shall not be held in premises being used at the time for the supply of alcohol as permitted by the Licensing Act 2003 unless no other suitable room is available free of charge or at a reasonable cost.
- 1.3.7 Notice of the time and place of meetings must be fixed in a conspicuous place in the parish at least 3 clear days before the meeting. Where a meeting is called by Members of the council (1.3.4 above), the notice shall be signed by those Members and shall specify the business proposed to be transacted at the meeting (the agenda).
- 1.3.8 All Members of the council (or the committee, if this is the case) shall be given at least 3 clear days written notice (at their residence) of all meetings of the council (or committee) from the Proper Officer specifying the business proposed to be transacted which will take the form of an agenda.

Agendas and any relevant background papers should, wherever possible, be published and circulated to Members with as much notice as possible.

1.4 Order of Business for Annual Parish Council Meetings

- 1.4.1 Section 15 of the 1972 Act provides that the **first** business to be transacted at the Annual Meeting of a parish council is the election of the Chair. This is because a parish council is not lawfully constituted unless a Chair has been elected by Members of the council.

The person elected as Chair is required to make and deliver his declaration of acceptance of office to the Proper Officer of the council at that meeting (this is on a statutory prescribed form). If the declaration of office cannot be delivered at that meeting the parish council can resolve to do this at a later meeting (*but see Note at the end of this paragraph 1.4*).

Legislation does not require a parish council to have a Deputy Chair. However, to address problems caused by the absence of the Chair, most parish councils do elect a Vice-Chair who is able to step in to the role during such absence.

1.4.2 Apart from the above, legislation does not prescribe any other business to be completed at the annual meeting. However, the annual meeting is an ideal opportunity for parish councils to deal with significant administrative arrangements essential for conducting everyday business and activities. This will include a review of the delegation of functions to any committee, sub committee, Officer or to another local authority and Standing Orders.

Below is a list of other business matters which may be dealt with in the following order:

- Election of Deputy Chair – as appropriate;
- When the Annual Meeting follows council elections, there should be receipt of declarations of acceptance of office by Members. If this is not possible a decision must be made as to the date of the meeting by which, or at, they should be received (*but see Note at the end of this paragraph 1.4*);
- Record Members present;
- Record apologies from Members unable to be present ;
- Declarations of acceptance of office by Members. If this is not possible a decision must be made as to the date of the meeting by which, or at which, it should be received;
- Members' disclosures of interests in respect of relevant items of business on the agenda;
- Agreeing the minutes of the last meeting and signing them;
- Comprehensive review of any arrangements delegating functions to committees, sub committees, Officers and local authorities
- A review of arrangements to contribute to the expenses of another local authority that is exercising the functions of the parish council (s136 of the 1972 Act);
- A review of a parish council's ability to meet the criteria to qualify as a parish council eligible to exercise the power of well-being;
- Consideration of public participation at council meetings. This includes the right for the public to make representations, answer questions and give evidence. If these rights are given, will the public be permitted to participate in all meetings of the Council and their committees and sub committees or only those where it is likely that they will have a particular interest (e.g. meetings at which planning applications or local festivities, recreational facilities, allotments are discussed)?
- A review of any existing committees (and sub committees) and confirmation that their terms of reference and applicable Standing Orders (if any) are clear and still relevant. If not, it may be necessary to make changes in arrangements for delegation;
- Appoint any new committees and sub committees, determining the terms of reference, the number of Members and term of office and to implement Standing Orders in relation to them;
- Receive nominations or make nominations to any committee or sub committee;
- Set the dates, times and place of meetings of the council for the year;
- Receive recommendations from committees.

Note

The Annual Meeting can be retained as more of a ceremonial meeting which deals with the only mandatory item of business i.e. the election of the Chair.

It should be noted that members cannot act as Councillors until they have made and delivered their declaration of acceptance of office containing their undertaking to observe the code of conduct. In order to deal with items listed above it might be

more practical to deal with these at a meeting of full council convened as soon as possible after the annual meeting of the council.

1.5 Order of Business for Ordinary Parish Council Meetings

1.5.1 At ordinary meetings of a parish council, business will usually be dealt with in the following order:

- Record of Members present;
- Record of apologies from Members unable to be present;
- Declarations of interests (existence and nature) with regard to items on the agenda;
- Formal announcements from the Chair;
- Agreeing the minutes of the last meeting and signing them;
- Public participation session with respect to items on the agenda (which includes an opportunity for Members with a prejudicial interest in any item of business on the agenda to make representations, answer questions and give evidence);
- Any business remaining from previous meetings;
- Any appointments of committees;
- Any appointment of members of the council to other bodies;
- To receive recommendations from committees (recommendations of committees must be included in full on the agenda for the council meeting). Normally only one recommendation may be discussed at a time, but the Chair may allow 2 or more recommendations to be discussed together where this is conducive to the efficient conduct of business;
- To receive business motions from Members;
- Other business placed on the agenda (e.g. authorisation of orders and payments, to consider internal auditors and external auditors reports).

Note

The first 3 items are always taken first as matters of procedure.

Announcements from the Chair should be limited to formal matters relating to the conduct of the meeting rather than any substantive discussion of business on the agenda.

If the council does not have a public participation session (which is good practice) then it can make provision for members of the public to submit written questions to the council in time for when the agendas are sent out. The council is not obliged to respond to the written questions at the meeting. A more considered written response to the person who asked the question may be more appropriate.

If there is a public participation session, the Chair will need to effectively control the question time to allow members of the public and, if the council has adopted paragraph 12 (2) of the Model Code of Conduct applicable to parish councils, Councillors with a prejudicial interest in any business to participate within the allocated time scale allowed.

1.6 Public Participation Sessions

Pursuant to the Public Bodies (Admission to Meetings) Act 1960, the public have a statutory right to attend meetings of a parish council and its committees. Importantly they have no right to participate in a meeting, unless permitted to do so by the Council. Permitting the public to contribute at council meetings is an effective mechanism for community engagement.

Normally, a Councillor with a prejudicial interest is not permitted to be present or to participate in any part of a meeting of a council considering or determining a

matter in which he has a prejudicial interest as defined by the Model Code of Conduct. He would be expected to leave the meeting room.

However, if a parish council has resolved and evidenced through their Standing Orders that the public are permitted to participate, and the council has adopted paragraph 12(2) of the Model Code of Conduct, a Member with a prejudicial interest in any business being considered, is entitled to make representations, answer questions and give evidence in the same way as the public also enjoy this right. A Member with a prejudicial interest would be expected to leave the room immediately after he has made representations (this could be a mere comment), answered questions and given evidence. The Code of Conduct prohibits a Member with a prejudicial interest in a matter from voting on it, unless he has obtained a dispensation from his local standards committee.

Once a parish council has resolved that public participation sessions will be incorporated in their meetings, Standing Orders are required to regulate the conduct and duration of the sessions. Standing Orders need to limit the time that individuals speak (no more than 5 minutes per person would be sensible). A maximum of 20 or 30 minutes could be allowed for public questions and comments to be raised. In the absence of Standing Orders, a public participation session is unregulated. This could disrupt the meeting from dealing with the business on the agenda and may also cause the meeting to overrun.

Standing Orders should restrict public participation to items of business on the agenda. Parish councils should not make immediate decisions on comments and representations made by the public, but they can be considered when the council formally considers that item of business, debates the matter and then makes a decision on that matter.

No discussion shall take place on any question put or comment made. Where practical, the Chair may respond to the question or indicate that a written response will be made. There may be instances when comments made by the public would be better addressed and considered at a later meeting, or at the meeting of a particular committee, as they may not have all the relevant information to make a valid decision.

1.7 Role of Chair

The Chair or Member presiding over a meeting of a council is required, by common law, to regulate the conduct of a meeting and preserve its order. Orderly conduct and keeping good order is key to ensuring that business is completed. The job of the person chairing a meeting is not an easy one.

Councillors and members of the public will be keen to have their point heard and sometimes the robust comment or dialogue can become out of hand. In order to control and complete the meeting's business, the Chair will need to check for comments which are irrelevant, repetitious and not addressed to the Chair and check the use of rude or disrespectful language and personal insults. If a Councillor or a member of the public disregards the Chair's request to modify their conduct, the Council can resolve to have the person causing the disturbance to the meeting excluded.

Legislation does not prescribe how meetings of parish councils are to be conducted. Standing Orders regulate the venue, date, duration and manner in which meetings of the Council are to be conducted.

1.8 Rules of Debate

Discussion or debate at meetings of a parish council is ordinarily permitted on a **motion** properly put before the meeting. A matter or item of business for consideration before a meeting must be expressed as a motion in positive terms. Examples include motions to adopt a certain course of action, to do some act, or to document a particular approach or attitude. The motion must relate to a matter in which a parish council has the statutory power to act or which relates to parish business.

When such motion is passed, with or without amendment, by a majority of Members present and voting the motion becomes a **resolution**.

A motion can be original or procedural. An original motion is one which proposes the substantive issue for consideration and council action. A procedural motion relates to procedure and form. Any Member at any time may move, between speakers, any of the following procedural motions:

- to proceed to the next business;
- to move to the vote;
- to refer a matter to a committee.

An amendment is a motion to amend the substantive original motion being considered by the meeting.

Original motions may be passed by resolution with or without amendment or may be thrown out.

Alternatively during consideration and debate in respect of any motion, there maybe a procedural motion or a point of order.

A point of order is an objection submitted to the Chair which claims some irregularity in the constitution or conduct of the meeting. Primarily it relates to the conduct or procedure in the meeting and should not be concerned with the principles, views or correctness of statements made in the course of debate or consideration of the original motion. Common examples of irregularities are:

- use of irrelevant or improper language;
- non compliance with standing orders;
- the motion debated is not within the scope of the motion on the agenda.

If a Member raises a point of order it should be raised as soon as the reason for it became apparent. The Member who was speaking before the point or order was raised must stop speaking and allow the Chair to make a decision. The Chair's decision should be final.

- 1.8.1 A Member should provide the proper written notice of an original motion he wishes to move in advance of a meeting. As the Proper Officer is required to give at least 3 clear days notice of any meeting, Standing Orders must specify how many days in advance of the meeting written notice must be given to the Clerk. At least 7 clear days written notice is sensible.

Standing Orders must make clear the exact arrangements for giving notice to the Proper Officer. It is crucial that these are understood by all Members. Assuming the Proper Officer has received the proposed motion in good time, they will need to consider if the motion may be ultra vires or otherwise irregular or improper. If this is the case, the Chair should be consulted and will need to decide if they are valid motions for inclusion (or take such action as prescribed in the Council's Standing Orders). If a motion received is vague or uncertain, the Proper Officer should return it to the Member with an indication of the same.

1.8.2 Motions are included in full on the agenda in the order they are received by the Clerk.

1.8.3 Motions cannot be discussed until they have been moved (by the Member who lodged the motion).

There is no legal requirement for a motion to be seconded but it is established practice in local authorities to second a motion to prompt discussion. The requirement to second a motion should be reflected in Standing Orders.

1.8.4 Normally only one motion may be discussed at a time. Dealing with more than one subject/issue at a time should be avoided where possible.

Disregarding this rule could easily confuse the relevant issues for discussion, extend debates beyond matters which are relevant and encourage open ended or protracted debate. For example the motion "to purchase land to provide allotments or a field for recreational use" relates to two separate statutory functions but deals with many considerations, including whether land is required to ensure that the council meets a statutory duty to meet unmet demand for allotments or if the council should provide more land for recreational use.

In a situation when a motion deals with more than one subject issue, the Chair should request the mover to separate the component parts and move them one by one.

If the separate components of the one motion (as in the example above) or two different motions share similar or common issues, the Chair may permit them to be moved together if this is conducive to the efficient conduct of business. However, to ensure the meeting considers only the relevant points, the discussion and voting on each motion should be separated.

1.8.5 Standing Orders are key to ordering debate and ensuring that this can be completed within the time allocated for the meeting. Standing Orders should provide members (and the public) with an opportunity to speak, consider information and exchange views but should not permit rude language, open ended protracted monologues/speeches or debate in respect of irrelevant considerations. Even clear Standing Orders regarding the formalities, style, order and length of comment by Members (and public) can be ignored. Whilst the Chair should not stifle relevant debate, he will be required to rule on a point of order e.g. when a comment or speech is irrelevant to the motion in debate.

It is sensible for Standing Orders to limit the number and length of speeches or comments by Members and not to permit Members other than the mover of the motion or the mover of an amendment to a motion to speak more than once on any one motion. This is important for Members and the public.

1.8.6 An amendment to a motion must relate directly to the subject matter of motion. It may seek to delete words, add words or require the motion or amendment to the motion to be referred to a committee for consideration or further consideration. An amendment must not have the effect of nullifying the recommendation or motion.

1.8.7 An amendment to the original motion cannot be discussed until it has been moved and seconded.

1.8.8 An amendment can be withdrawn at any time by the Member moving it.

1.8.9 Amendments to the original motion will be discussed together unless the meeting agrees to discuss them separately on the motion of any Member.

- 1.8.10 Amendments will be put to the vote in the reverse order in which they were moved.
- 1.8.11 An amendment which is carried shall become the substantive motion or recommendation and other amendments will not be put to the vote.
- 1.8.12 The order of speaking shall be:
- mover of the motion;
 - mover of first amendment;
 - mover of second amendment (and so on);
 - any other member wishing to speak;
 - right of reply of movers of amendments in reverse order;
 - right of reply of mover of recommendation or motion.
- 1.8.13 A Member may speak only once in a debate except where the Member has a right of reply or where the Chair in her/his discretion permits it in the interests of debate.
- 1.8.14 During a debate, but between speakers, any Member may move a procedural motion:
- That the question be put to the vote immediately;
 - That the meeting move to the right of reply of the mover of the recommendation or motion and then to the vote;
 - To proceed to the next business.
- If seconded, the procedural motion shall be put to the vote immediately without discussion.

1.9 Voting

- 1.9.1 All questions to be decided by the council shall be decided by a majority of the members present and voting.
- 1.9.2 Unless otherwise provided by Standing Orders, Members shall vote by a show of hands. A Member's vote will only be counted if the Member is in the room of the meeting at the time the vote is taken.
- 1.9.3 Immediately before a vote is taken any Member may request that a vote is recorded. When a request is made the Chair, or other Member presiding, shall call the names of all the Members and after each name is called the Member shall state whether they are voting for or against the question put or abstaining. The record of voting shall be recorded in the minutes.
- 1.9.4 In the case of an equality of votes the Chair, or other Member presiding the meeting, has to give a casting vote in addition to their first vote.
- 1.9.5 The outgoing Chair must give a casting vote in the event of there being an equality of votes for the election of the Chair of the council at the annual meeting of the parish council.

Note:

Once a resolution has been passed, a decision by the council has been made; this ends the debate on the matter. Although it is widely accepted, and a matter of common sense, that a resolution cannot be rescinded at a meeting in which it was passed, a Standing Order could confirm this position.

A resolution passed at one meeting of a Council may be rescinded at a subsequent meeting if there are no practical obstacles or legal consequences (for

example which affect or prejudice a third party who has relied on the former resolution).

In order to control the rescission of resolutions and to restrict attempts to resurrect previous unsuccessful motions, Standing Orders should prohibit motions to rescind resolutions passed in the preceding 6 months. A proposal to rescind a resolution must be treated as an original motion.

1.10 Minutes

- 1.10.1 The minutes must record the names of Members present at the meeting and the existence and nature of any interest declared by Members.
- 1.10.2 The minutes are not a verbatim record of debate at a meeting but must accurately reflect the resolutions made and record voting if this is requested by a Member at that meeting.
- 1.10.3 The draft minutes of a meeting must be attached to the agenda for the next meeting for approval and signing by the Chair (or persons presiding the meeting).
- 1.10.4 There should be no discussion in respect of the draft minutes except that which relates to the motion to agree the accuracy of the draft minutes.
- 1.10.5 Any corrections shall be made by moving that the minutes are agreed with the corrections stated.

1.11 Conduct

- 1.11.1 When speaking a Member must address the Chair.
- 1.11.2 Members must behave in a way that is conducive to the efficient conduct of business and respect the role of the Chair in the proper management of the conduct of the meeting.
- 1.11.3 If a Member persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructing business, the Chair may move that the Member be not further heard. If the motion is seconded, it must be put to the vote immediately without discussion.
- 1.11.4 If the Member continues to behave improperly after a motion that the Member be not further heard, the Chair may move that either the Member leaves the meeting or that the meeting is adjourned for a specified period. If the motion is seconded, it must be put to the vote immediately without discussion.
- 1.11.5 If there is a general disturbance at the meeting involving any person present, making the orderly conduct of business impractical, the Chair may adjourn the meeting for as long as they consider necessary.

Apart from Standing Orders reflecting statutory requirements, a parish council may suspend any of them by resolution in respect of a particular item of business.

2 COMMITTEE MEETINGS

Much of the above information relating to conduct and proceedings of meetings of full council applies to meetings of committees. In respect of committee meetings, the following applies:

2.1 Chiring meetings

- 2.1.1 At the first meeting following the Annual Meeting of the council every committee shall, before conducting any business, elect a Chair for the year. A committee may also elect a Deputy Chair. Alternatively, the council may appoint the Chairs and Deputy Chairs of committees at the time the committees are appointed.

A meeting of a council (or a committee and sub committee) cannot take place unless a person has been lawfully appointed to preside the meeting. In legal terms, the Chair of a meeting of a committee is vital because of their power, in the event of a equality of votes, to exercise a second or casting vote in addition to their own

The effect of s.99 of the 1972 Act and paragraph 11 of schedule 12 is that if the Chair (or in his absence the Vice Chair of the council) attends any meeting of the parish council including any committee of a council, he must preside and will enjoy the second/casting vote in the event of an equality of votes. This can cause problems if a council has delegated functions to a committee and intended Councillors other than the Chair (or Vice Chair) of the council to experience a chairmanship role.

There is no reason why any parish council should **not** appoint as Chair of any committee, a councillor who is not Chair (or Vice Chair) of the council. The council would need Standing Orders to the effect that the Chair (and Deputy Chair) shall not be appointed as the Chair or Vice-Chair of any committee (or sub committee).

2.2 Quorum

- 2.2.1 No business shall be dealt with unless the committee is quorate.

Note: If a parish council has not made standing orders in respect of its committees, then each committee shall by virtue of s.106 of the 1972 Act, be entitled to implement standing orders regarding its quorum which should never be less than 3.

- 2.2.2 If there is no quorum the meeting will stand adjourned and should be reconvened.

2.3 Holding meetings

- 2.3.1 The Clerk will call the first meeting of the committee following consultation with the Chair.
- 2.3.2 Subsequent meetings shall be held at a place, date and time fixed by the committee. Meetings shall not be held in premises being used at the time for the supply of alcohol permitted by the Licensing Act 2003 unless no other suitable room is available free of charge or at a reasonable cost.
- 2.3.3 Notice of the time and place of meetings must be fixed in a conspicuous place in the parish at least 3 clear days before the meeting.
- 2.3.4 All Members of the committee shall be given (by post or left at their residence) at least 3 clear days written notice of a meetings of a committee from the Clerk specifying the business proposed to be transacted (the agenda).

2.4 Order of business

- 2.4.1 Business will usually be dealt with in the following order:

- Record of Members present;

- Record apologies and reasons for absence;
- Declarations of interests (existence and nature) with regard to items on the agenda;
- Formal announcements from the Chair;
- Agreeing the minutes of the last meeting and signing them;
- Public participation session with respect to items on the agenda;
- Business placed on the agenda.

Note:

Councils operating delegation arrangements may consider it appropriate to extend the provision for public participation to committee meetings. The extent of public participation in committee meetings can be regulated and limited as appropriate.

2.5 Voting

- 2.5.1 Subject to any legal requirement all questions to be decided by a committee shall be decided by a majority of the Members present and voting.
- 2.5.2 Unless otherwise provided by Standing Orders, Members shall vote by show of hands. A Member's vote will only be counted if the Member is in the room of the meeting at the time the vote is taken.
- 2.5.3 Immediately before a vote is taken any Member may request that a vote is recorded. When a request is made the Chair, or other Member presiding, shall call the names of all the Members and after each name is called the Member shall state whether they are voting for or against the question put or abstaining. The record of voting shall be recorded in the minutes.
- 2.5.4 In the case of an equality of votes the Chair, or other Member presiding the meeting, has to give a casting vote in addition to their first vote.

2.6 Minutes

- 2.6.1 The minutes must record the names of Members present at the meeting and the existence and nature of any interest declared by Members.
- 2.6.2 The minutes are not a verbatim record of debate at a meeting but must accurately reflect the resolutions made and record voting if this is requested by a Member at that meeting.
- 2.6.3 The draft minutes of a meeting must be attached to the agenda for the next meeting for approval and signing by the Chair (or persons presiding the meeting).
- 2.6.4 There should be no discussion in respect of the draft minutes except that which relates to the motion to agree the accuracy of the draft minutes.
- 2.6.5 Any corrections shall be made by moving that the minutes are agreed with the corrections stated.

2.7 Attendance by Members

- 2.7.1 Any Member not being a Member of a committee may attend any meeting of the committee but their right to participate in the meeting will be equal to the public's right to do so and should be governed by Standing Orders.

2.8 Individual Members

- 2.8.1 A Member cannot individually exercise any statutory functions of the council on behalf of the council.

Appointment of Committees and Delegations

The parish council will appoint the following committees with the composition, quorum and role and functions indicated:

Resources Committee

- The Committee will comprise --- Members.
- The quorum of the Committee shall be --- Members.
- The Committee shall undertake the following role and functions:
 - To determine all the resource requirements of the council and make recommendations to the council. Resources include finances, land and property, employees and contractors;
 - To issue, vary and terminate employment contracts. It is necessary for a council to appoint committees as appropriate to deal with the two stages of any statutory disciplinary action (instigated by the employer) or grievance action brought by employees. A sub committee is required to take responsibility for general staff matters e.g. health and safety matters, implementing equalities/diversity or dignity at work policies, to handle recruitment matters. A sub committee is required to undertake line management responsibility for the Clerk as the most senior officer of the council. This sub committee is responsible for carrying out the Clerk's appraisals, handling any informal or formal grievance and initiating any informal or formal disciplinary action in the first instance;
 - To recommend to the council an annual budget and precept;
 - To regularly monitor income and expenditure and to make any recommendations to the council;
 - To incur and authorise expenditure not otherwise delegated to another committee or employee.

Planning Committee

- The Committee will comprise --- Members.
- The quorum of the Committee shall be --- Members.
- The Committee shall undertake the following roles and functions:
 - To make recommendations to the council;
 - In relation to the approval or otherwise of any development plan or strategy proposals under planning legislation affecting the parish;
 - In respect of representations to the Local Planning Authority in support of any departure application;
 - In relation to any arrangements between the parish council and the Local Planning Authority about the involvement of the parish council in the discharge of planning functions;
 - To make representations to the Local Planning Authority on any application referred to the parish council and on any other planning matter that affects the parish.

Allotments Committee

- The Committee will comprise --- Members.
- The quorum of the Committee shall be --- Members.
- The Committee shall undertake the following roles and functions:
 - To make recommendations to the council on the formulation of any policy or strategy in relation to the discharge of the allotments function;

- To make recommendations to the Resources Committee on the resources necessary to discharge the allotments function;
- To discharge all other aspects of the allotments function in accordance with relevant legislation, any policy or strategy relating to the function approved by the council, and within the budget provision made by the council.

Parish Community Safety Committee

- The Committee will comprise --- Members.
- The quorum of the Committee shall be --- Members.
- The Committee shall undertake the following role and functions:
 - Keep under review the safety of the community within the parish and make recommendations to the council on any matters involving community safety;
 - Liaise with the emergency services in relation to community safety matters;
 - Liaise with the local planning and highways authorities on community safety matters affecting the parish in relation to their functions;
 - Liaise with the district council, county council, NHS bodies, Environment Agency and other public bodies on community safety matters affecting the parish;
 - Encourage and support community involvement in community safety initiatives within the parish.

Delegation to Employees

The Parish Clerk

- The Clerk shall be the proper officer and carry out the functions of the Proper Officer as provided by the Local Government Act 1972;
- The Clerk should monitor and be responsible for all incoming and outgoing council correspondence;
- The Clerk shall manage all employees (not including any variation of employment contracts and not any matters relating to grievances lodged against him/her) of the council and has the authority to take disciplinary action excluding termination of employment under agreed procedures;
- The Clerk shall make arrangements to pay salaries and wages to all employees of the council (subject to the council's financial regulations);
- The Clerk shall, in the first instance, handle and acknowledge all complaints regarding the council (except where the complaint relates to the clerk);
- The Clerk shall arrange and call meetings of the council, its committees and sub-committees in consultation with the relevant Chair;
- The Clerk shall carry out and implement any council, committee or sub-committee decision;
- The Clerk shall, in the first instance, handle all requests for information under Freedom of Information Act 2000.

The Allotments Officer

The Allotments Officer shall deal with day to day matters in relation to the allotments function, including the allocation of allotments, in accordance with policies and decisions of the Allotments Committee.

Note:

The above are examples of the sort of matters which might be included in delegation arrangements.

The 'Resources Committee' is a form of central corporate committee. The 'Planning Committee' and 'Allotments Committee' are functional committees and the 'Community Safety Committee' is a thematic committee crossing the boundaries of the more traditional functions. Parish councils may design the terms of reference of committees to suit their

individual needs. In drawing up terms of reference, parish councils should look to include, as appropriate, the formulation of policies or strategies, the discharge of statutory functions and liaison with other bodies involved.

Access to Information Arrangements

Access to meetings:

The public and press are entitled to attend any meeting of the council or any committee unless excluded by formal resolution in relation to any matter of business.

Notice of all meetings and agenda for meetings will be placed at ---- at least three clear days before the meeting. Agenda for meetings will also be put on the parish council website.

The public may put questions and/or make comments to meetings of the parish council in accordance with Standing Orders as follows; ----

The taking of photographs and video and sound recording by any person at any meeting may only be done with the permission of the council or committee.

Access to documents:

A reasonable number of copies of agendas shall be available from the Clerk for the public attending meetings.

Minutes of meetings shall be available free to the public on application to the Clerk (bulk and multiple applications may be subject to a copying charge).

Agreed minutes shall be available at ---- and on the parish council's website.

A reasonable number of open reports submitted to meetings of the council and committees shall be available from the Clerk for the public attending meetings.

Open reports may subsequently be obtained by the public on application to the Clerk (a copying charge may be applied).

Applications under the Freedom of Information Act should be addressed to the Clerk.

Applications for personal information under the Data Protection Act 1998 should be addressed to the Clerk.

Financial Arrangements

(No model clauses included in this toolkit)

Parish councils need to be familiar with the Accounts and Audit Regulations 2003 No 533 which apply to them. A 'relevant body' in the regulations includes parish councils. It should be noted that different regulations apply to different levels of expenditure.

For detailed and practical information, parish councils should refer to a publication entitled "Governance and Accountability in Local Councils in England" which is produced and updated by the Joint Practitioners Advisory Group which includes representatives from the Audit Commission, NALC, SLCC, the Department of Communities and Local Government CLG and other key stakeholders. The publication can be downloaded from the websites of the Audit Commission, NALC and SLCC. A printed version of the publication can be requested from SLCC.

For model Standing Orders relating to matters of financial regulation, please contact NALC.

Some frequently asked questions about Standing Orders and Conduct of Meetings:

- **What are Standing Orders for?**
To make meetings easier to manage. Some requirements for conducting meetings reflect statutory requirements, but Standing Orders enable clear processes to be applied. Matters requiring Model Standing Orders are explained in this Toolkit. Model Standing orders can be obtained from NALC.
- **How often are meetings required?**
The minimum is four meetings in a year, one of which is the Annual Meeting of the Parish Council (note: this is not the same as the Annual Parish Meeting). There is no maximum.
- **When should meetings be held?**
The Annual Meeting should be held in May. In an election year, the Annual Meeting should be held within 14 days of the elected Councillors taking office (i.e. on the fourth day after the election or within 14 days after that day).
- **At what time of day can meetings be held?**
Anytime. If no time is fixed for the Annual Meeting, it must start at 6pm.
- **Where can meetings be held?**
Anywhere that is available free of charge or subject to a reasonable cost. If the parish council does not own premises, it may require free use of a room maintained by the local education authority or any other room maintained out of a "rate". Licensed premises may be used if no suitable room is available free of charge or at reasonable cost.
- **How many councillors must attend for a meeting to have a quorum?**
Subject to any Standing Orders which dictate the quorum, there must be no fewer than three Councillors present.
- **Does the way Councillors' vote have to be recorded in the minutes?**
No, unless any Councillor asks that the votes cast on a particular item are recorded.
- **Does a meeting have to carry on until the agenda is completed?**
No, a meeting may be adjourned (a good example of an aspect that can be dealt with in Standing Orders) and the business can be completed on another specified occasion prior to the next scheduled regular meeting.
- **Can an agenda include "Any Other Business"?**
This is not good practice, but this item can be used to impart or exchange urgent information which has arisen since the agenda was sent to members. No decision may be made on an item of business raised in this way.
- **What if a matter of genuine urgency arises?**
Good practice would be for Standing Orders to provide for decisions to be delegated to the Clerk in consultation with the Chair and/or another named (or named office holding) Councillor or Councillors.
- **Can the public and press be excluded from a meeting?**
Yes, if there is confidential business or if there is some other good reason. The exclusion has to be voted for by a majority of Councillors present and the reason has to be stated in the motion to exclude and then recorded in the minutes of the meeting. It is important to do this even if no member of the public is actually present

at the time, in case someone arrives during the discussion of the item. The most likely cases are when employment, contracting or legal matters are to be discussed.

- **Can the public speak at meetings?**

Yes, but only if the parish council has resolved to permit public participation at that particular meeting and in accordance with their Standing Orders.

Terms of Reference for Committees and Delegations

Unless a parish council delegates functions to a committee, sub committee, Officer or another local authority, decisions for the discharge of functions can only be made at meetings of the council. Decisions cannot be delegated to individual Councillors. Decisions can be set aside by a court if made by a body or person not having the power to make them.

Any delegation to a committee, sub committee or Officer should identify the nature and extent of responsibility or decision making. Delegations should be evidenced. A parish council can arrange for the discharge of part or all of their functions (except in respect of levying the precept) by committees (and subcommittees) and/or Officers. Such arrangements can provide for certain decisions to be referred to or made by full council.

The 1972 Act gives the parish council's Proper Officer (who is commonly the Clerk) certain responsibilities. As the council's Proper Officer, the Clerk is regarded as a parish council's most senior member of staff. A parish council needs to decide who will be responsible for day to day routine tasks involving decisions that should, for reasons of efficiency, be delegated to the Clerk (and other employees, where appropriate). Obvious examples include receiving and sending council correspondence, handling face to face, telephoned and emailed queries relating to the council's powers and activities, updating the council's website, taking minutes of meetings, keeping the council's minute book up to date and available for inspection, the initial handling of requests for information under Freedom of Information Act 2000 and the initial handling of complaints (except when the complaint relates to the Clerk). Delegations to Officers must also reflect statutory duties conferred on particular officers. For example, the 1972 Act requires a parish council's Proper Officer to sign the summons to members to attend meetings and to convene a meeting of the council if a casual vacancy of the Chair's office occurs. The 1972 Act also requires a parish council to employ a person who is responsible for the proper administration of the council's financial affairs. This is a consuming and responsible role. It is common, though not best practice, for a parish council's Proper Officer (i.e. Clerk) to also have this responsibility.

Other delegations to the Clerk may be appropriate. This will depend on the size and activities of the council, the Clerk's level of experience and qualifications and the number of other staff employed by the council. Most clerks should be authorised to purchase, for example, basic office equipment or supplies or to arrange emergency repairs to the council office/premises and equipment up to a fixed sum which is subject to arrangements which control the council's finances. Delegation of functions to the Clerk should be reflected in his/her contract of employment and job description.

Many parish councils appoint a committee to make representations to the planning authority in respect of planning applications affecting the parish. This is sometimes because the short timeframes associated with submitting such written submissions may not fit within the dates of parish council meetings.

A parish council may wish to appoint committees to fully deal with, or only make recommendations to it (or a combination of both), in respect of powers to provide and manage allotments, parking, recreational facilities, open spaces and events for the community. Other committees may be appointed by the council to be responsible for a specific short term project (e.g. the drafting of a parish plan) or a thematic issue relevant to specific functions (e.g. safety in the community).

Parish councils normally appoint a finance committee whose functions are to monitor the council's income and expenditure in detail, allocate funds to particular functions of the council (and the responsible committee) and to formulate and recommend the following year's budget and precept. Any decision relating to the precept levied by the parish council must be taken by a meeting of full council.

Parish councils have a wide flexibility as to the number of committees (and sub committees) appointed and their terms of reference. Clear and certain written terms of reference confirm the nature, extent and limitations of the duties or powers which have been delegated. It is important that any delegation arrangements are regularly reviewed to ensure that they meet the needs of the parish council in changing circumstances. The scope of any delegation, including any limitation, should be reviewed to ensure the arrangements are efficient.

There is no standard model in respect of the appointment of committees (and sub committees) and other delegation arrangements that will suit all parish councils.

Pages 47-48 above contain some examples that may provide assistance to parish councils and their Clerks on the format that may be followed in preparing delegation arrangements.

Arrangements for Access to Information

Under the Freedom of Information Act 2000, a parish council has a duty to adopt and maintain a model publication scheme. The model scheme, in essence, commits a parish council to produce and publish the method by which the specific information will be available so that it can be easily identified and accessed by members of the public.

Parish councils have the following obligations:

- To ensure that the public know what information is covered by the model scheme and how it can be obtained;
- Where the council has a website to provide the information on that website;
- If the council does not have a website or it is impractical to provide it in that format, or if the requester of information does not wish to access the information via the website, the council must indicate how information can be obtained by other means and provide it by those means;
- The council must provide details of the person to be contacted by the requester of information if they wish to view the information in person and must take account the possibility that certain information only lends itself to be viewed in person. In such circumstances an appointment to view the information must also be arranged within a reasonable timescale;
- To provide information in the language in which it is held or in such other language that is legally required. To translate any information where the council is legally required to do so;
- To adhere to requirements under disability and discrimination legislation and any other legislation to provide information in other forms and formats.

The classes of information which a parish council must provide information in respect of are:

- Organisational information, locations and contacts;
- Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts;
- Council priorities (e.g. parish plan, annual report, Quality Status, local charters);
- Policy and procedure for delivery of services and in respect of employment, and for the conduct of council business (includes Standing Orders, committee and sub-committee terms of reference delegated authority in respect of officers, adopted Code of Conduct, complaints procedures, data management, records management);
- Current written protocols for delivering functions and responsibilities;

- Information held in registers required by law and other lists and registers relating to the functions of the authority;
- Services offered.

A parish council must provide a “guide to proactively published information for the public”. This document must be in the public domain and in essence will set out the practical effect of the model publication scheme. It will specify what information a council will routinely publish, what format(s) that information will be available in, whether they intend to charge for providing the same and, if so, the level of charge.

Parish councils must have arrangements in place for handling requests for information and any complaints arising from the original request for information.

Comprehensive guidance in respect of the application of the 2000 Act is available from the Information Commissioner. Detailed information regarding the practical effect of the 2000 Act on parish councils is available from NALC.

Parish councils are also “data controllers” as defined by the Data Protection Act 1998 and therefore have obligations for processing the data held in relation to any living individual. A parish council’s Standing Orders should regulate how they handle requests for personal data in relation to (i) a member of the public (ii) an employee or (iii) a Councillor.

Arrangements for proper administration of financial affairs

Parish councils are subject to various Accounts and Audit Regulations made pursuant to the Audit Commission Act 1998.

Financial control arrangements for local authorities are normally given the title ‘financial regulations’. Whatever the size of a parish council’s budget and annual expenditure, it is essential that robust financial controls and checks are built in to its governing arrangements. A parish council’s financial control arrangements should include:

- The formulation of spending plans, budget and precept, and provide for the approval of them;
- Monitoring expenditure;
- Transferring money between budget heads;
- Authorising expenditure and payment, and making payment;
- Internal and external audit of accounts;
- Approving borrowing and capital expenditure;
- Banking;
- Payroll and pensions;
- Receipt of Income;
- Credit facilities;
- Reviewing fees and charges;
- VAT;
- Register or inventory of assets (with review and update);
- Insurance;
- Use of IT facilities and records for accounting;
- Reviewing and reporting on the integrity of these arrangements.

The nature and extent of the checks necessary will largely depend on the scale of a parish council’s activity and financial turnover. All financial control arrangements should identify which person or body is responsible for each aspect, what arrangements apply and when they apply.

For any receipt of income or expenditure incurred, a clear audit trail of responsibility and decision making will demonstrate a robust and transparent financial system of control.

Annual review is again essential in order to keep abreast of changing needs and developments.

The financial regulation arrangements and Standing Orders to be implemented by a parish council are complex and outside the scope of this Toolkit.

For detailed and practical information, parish councils should refer to a publication entitled "Governance and Accountability in Local Councils in England" which is produced and updated by the Joint Practitioners Advisory Group which includes representatives from the Audit Commission, NALC, SLCC, the Department of Communities and Local Government (CLG) and other key stakeholders. The publication can be downloaded from the websites of the Audit Commission, NALC and SLCC. A printed version of the publication can be requested from SLCC.

Model Standing Orders relating to matters of financial regulation and administration are available from NALC.

Standing Orders for Entering into Contracts

Parish councils may make Standing Orders with respect to the making of all contracts. They must make Standing Orders in respect of contracts for the supply of goods or materials or for the execution of works. Section 135 Local Government Act 1972 is aimed at securing competition and at regulating the way tenders are invited. Section 135 permits Standing Orders to stipulate a financial limit or special circumstances (such as emergency repairs to council office premises) when the normal tendering arrangements do not apply.

Members' Code of Conduct

The policy reasons for the introduction of a Code of Conduct for members were to impose sound ethical standards on individuals who are in a public office.

Under s.51 Local Government Act 2000, parish councils, like other local authorities, are required to adopt the Model Code of Conduct applicable to parish councils. The Model Code of Conduct contains rules which govern the conduct and behaviour of individual councillors in conducting the business of the parish council. It is important for parish councillors to understand how the Code applies to them. Members who fail to observe the Code of Conduct adopted by their council risk being reported to the standards committee of the principal authority who may investigate the complaint. A finding that a councillor has failed to observe the Code of Conduct can result in their suspension or disqualification from office. A complaint that a Member of a parish council has failed to observe the Code of Code must be submitted in writing to the standards committee of the relevant district or unitary authority.

For detailed information in relation to applying and understanding the Code of Conduct and the statutory regime of investigation and sanctions which members are subject to, please contact the Standards Board for England (SBE). For information on the arrangements relating to how a complaint under the code of conduct is handled, please contact the standards committee of the relevant principal authority.

Employees' Code of Conduct

Under s.82 Local Government Act 2000, it is expected that employees of parish councils, as with the employees of other local authorities, will become subject to a Model Code of Conduct for employees of local authorities. The government issued a consultation in respect of their proposal to introduce such a Code of Conduct for employees in October 2008. Pursuant to section 82(7) of the 2000 Act, any statutory code for employees of parish councils which comes into effect would become part of such employees' terms and conditions of employment.

The conduct and behaviour controls within the Code complete the system of controls outlined above that are designed to ensure high standards in local government.

Other Documents

Members of parish councils often work with other tiers of local government, voluntary/not for profit groups and organisations, charities, community or lobby groups and the Parochial Church Council. Parish councils should document the list of the bodies with which they have partnerships or protocols and other liaison or working arrangements. Parish Councillors (and committees or sub committees) appointed or involved with partner organisations should be required to report back to the parish council.

References

The Good Governance Standards for Public Services available at www.cipfa.org.uk
Community Engagement and Local Leadership available at www.countryside.gov.uk
The Information Commissioner's Office available at www.ico.gov.uk
The Standards Board for England available at www.standardsboard.gov.uk
More information also available in Part 5 of this Toolkit.

5. The Conduct of the Annual Town or Parish Meeting

The Legal Background

- To comply with the Local Government Act 1972, the Parish Annual Meeting must take place between 1 March and 1 June (both inclusive) in each year. The meeting cannot start before 6pm. The Annual Parish Meeting is not the Parish Council's AGM.
- All parish electors are entitled to attend the Parish Meeting and vote. The Public Bodies (Admission to Meetings) Act 1960 provides for the general public and the press to attend.
- The Chair of the Council (or in his absence the Vice-Chair) must preside if present. If they are not present, the meeting may appoint a Chair for the meeting.
- At least seven days' public notice must be given. Fourteen days' notice must be given if the agenda includes any of the following items:
 - dissolution of the Parish Council;
 - grouping the Parish with another Parish.
- The notice must specify the business to be done. It must be signed by the Chair or any two Parish Councillors or, if necessary, six electors may act as convenors.
- The expenses of the meeting are paid by the Parish Council.
- There are some resolutions of a Parish Meeting that are necessary to, or binding on the Parish Council. These are:
 - that a resolution, by a well attended meeting, requiring the Council to provide allotments places an obligation on it to do so; and
 - that sometimes a trust instrument requires a resolution of the Parish Meeting for some act of the council as trustee.
- Under the Charities Act 1960 the accounts of parochial charities must be laid by the council before the Parish Meeting.
- No method of voting at the meeting is laid down. Any convenient method may be used, but a poll (i.e. a vote of the whole body of electors by ballot) may be claimed before the end of the meeting and must be held if demanded by ten persons present, or one-third of those present (whichever is the less), or if the Chair consents. The poll is conducted by a Returning Officer appointed by the District Council.

Things to Think About

- There is no point publicising a meeting with nothing to discuss, or organising an interesting meeting without proper publicity.
- The aim should be to make the meeting a social occasion as well as a formal occasion and make people feel that they are important in their village or town.

The Agenda

- It is important to frame the agenda so that everyone who has some public standing in the locality has an appointed time when they can tell the meeting what they are doing. The County Councillor and District Councillor should be invited to speak; there should be a report on the activities of the Parish Council; the trustees of local charities should be given their opportunity, as might representatives of bodies such

as the village hall committee, the Women's Institute or local sports clubs. This is an excellent opportunity for them to publicise their activities and their friends will be glad to support them. A non-electoral may always speak during a meeting with consent. Consent of the meeting should be treated as having been given if there is no objection.

- Accounts which are presented to the meeting should be topical. It is better to exhibit recent unaudited accounts than to produce audited statements which are nearly always a year old and therefore largely irrelevant.
- Outside speakers can be invited. These could be local government officials or experts on matters likely to be of local interest.
- It is useful to include a particular local public issue on the agenda, something important or controversial, e.g. a village plan; planting trees on the green; the expansion of an airport; more houses; water or sewerage schemes; the amalgamation of charities; removal of telephone kiosks and post-offices; bus and train services; commons; clearing the churchyard. On the other hand, it is sensible to restrict the number of controversial issues to be raised at any one meeting.

Publicity

- It is useful to issue a preliminary notice of the meeting about three weeks in advance, inviting local residents to send in resolutions or subjects which they wish to discuss.
- Apart from the statutory publicity, other means include:
 - *The Council Newsletter*. Create a special edition of your newsletter for the occasion or frame the agenda as the newsletter;
 - *Press*. Ask the local press to use the agenda or an item on it as a news item; advertisements in the official notice columns are largely ignored;
 - *Invitations*. Frame the agenda as part of an invitation for Councillors to deliver to each household;
 - *Parish magazines*. Articles on local council affairs and notices of meetings can be put in the parish magazine, or into a *Parish Bulletin* of future events.

On the Night

- Provide refreshments;
- Try to arrange chairs in a deep horseshoe or rectangle so that everyone can see the face of at least half the meeting and recognise speakers;
- Provide an agenda for everyone and a table and agenda for the press;
- The meeting should be as informal as is consistent with order.

6. Guidance on Gifts and Hospitality

Introduction

The Standards Board Guidance on the Code of Conduct requires you to register any gifts or hospitality worth £25 or over that you receive in connection with your official duties as a member, and the source of the gift or hospitality. You must complete the registration within 28 days of receiving it.

As with other registered interests, you have a personal interest in any matter under consideration at a meeting if it is likely to affect a person giving you a gift or hospitality. You must declare the existence and nature of the gift or hospitality as an interest at the meeting. You will also need to consider whether your interest is prejudicial.

A form for registering gifts and hospitality is included at the end of this guidance (see page 61).

The receipt of gifts or hospitality can be misinterpreted. This guidance is intended to help you to consider the implications of receiving gifts and hospitality and to make an appropriate judgement.

General Caution

Treat with extreme caution any offer or gift, favour or hospitality that is made to you personally which may possibly be perceived to be in connection with your position as a Parish Councillor.

Your personal reputation and that of your parish council can be seriously jeopardised by the inappropriate acceptance by you of gifts or hospitality.

The acceptance of gifts and hospitality is not always unlawful or inappropriate. The decision for you, in every case, is whether or not it is appropriate to accept any gift or hospitality that might be offered to you having regard to how it might be perceived.

No hard and fast rules can be laid down to cover every circumstance as to what is appropriate or inappropriate. The following general principles will enable you to make your own decision.

Criminal Law

It is a criminal offence corruptly to solicit or receive any gift, reward or advantage as an inducement to doing, or forbearing to do anything, in respect of any transaction involving your parish council.

The onus would be on you to disprove corruption in relation to a gift from a person holding or seeking to obtain a contract from your parish council.

Limits of Guidance

The Code of Conduct does not apply to:

- Gifts and hospitality you may receive from family and friends (as birthday or other festival presents) that are not related to your position as a Parish Council Member. You should however question any such gift or hospitality offered from an unusual source;
- The acceptance of facilities or hospitality provided to you by your parish council;
- Gifts given to your parish council that you accept formally on your parish council's behalf and are retained by the parish council and not by you personally.

Meaning of Gifts and Hospitality

The expressions 'gifts' and 'hospitality' have wide meanings and no conclusive definition is possible.

Gifts and hospitality include:

- The free gift of any goods or services;
- The opportunity to acquire any goods or services at a discount or at terms not available to the general public;
- The opportunity to obtain goods or services not available to the general public;
- The offer of food, drink, accommodation or entertainment or the opportunity to attend any cultural or sporting event;
- The use of a free car.

Common gifts include pens, diaries, calendars and other business stationery, articles of clothing, books, flowers and bouquets. When making purchases you should be cautious if additional services, privileges or advantages are offered which might be related to your position as a Member of your parish council.

Appropriate Gifts and Hospitality

There are some circumstances where you may accept gifts and hospitality as being in the normal course of your duties as a Member:

- Civic hospitality provided by another public authority;
- Normal and modest refreshment in connection with any meeting in the course of your work as a Parish Council Member (e.g. tea, coffee and other normal beverages and biscuits);
- Tickets for sporting, cultural and entertainment events which are sponsored or promoted by your parish council or bodies to which you have been appointed by your parish council, and the tickets are offered in relation to that sponsorship or promotion;
- Small low value gifts (below £25.00 such as pens, calendars, diaries, flowers and other mementos and tokens);
- Drinks or other modest refreshment received in the normal course of socialising arising consequentially from parish council business (e.g. inclusion in a round of drinks after a meeting);
- Modest meals provided as a matter of courtesy in the office or meeting place of a person with whom your parish council has a business connection;
- Souvenirs and gifts from other public bodies intended as personal gifts (e.g. arising from twin-town and other civic events).

Principles to Apply in Relation to Gifts and Hospitality

In deciding whether it is appropriate to accept any gift or hospitality you must apply the following principles:

- Do not accept a gift or hospitality as an inducement or reward for anything you do as a Parish Council Member. If you have any suspicion that the motive behind the gift or hospitality is an inducement or reward you must decline it.
- "Reward" includes remuneration, reimbursement and fee.

- Do not accept a gift or hospitality of significant value or whose value is excessive in the circumstances.
- Do not accept a gift or hospitality if acceptance might be open to misinterpretation. Such circumstances will include gifts and hospitality:
 - From parties involved with your parish council in a competitive tendering or other procurement process.
 - From applicants for planning permission and other applications for licences, consents and approvals in which your parish council has an involvement.
 - From applicants for grants, including voluntary bodies and other organisations applying for public funding from your parish council.
 - From parties in legal proceedings with your parish council.
- Do not accept a gift or hospitality if you believe it will put you under any obligation to the provider as a consequence.
- Do not solicit any gift or hospitality and avoid giving any perception of so doing.

Gifts Received and Donated to a Chair's Appeal

It may be customary for some Members on receiving gifts of value not to retain these personally but to pass them to the Chair for use in relation to a charity appeal.

Members may continue to do this, but should indicate this intention to the provider and make this clear on the registration form.

Reporting of Inappropriate Gifts and Hospitality offered

It is a criminal offence for a person corruptly to give or offer any gift, reward or advantage as an inducement or reward to you for doing or forbearing to do anything as a member of your parish council.

You must immediately report to the Monitoring Officer any circumstances where an inappropriate gift or hospitality has been offered to you.

You may thereafter be required to assist the Police in providing evidence.

Reference

The Local Authorities (Model Code of Conduct) Order 2007

[The Local Authorities \(Model Code of Conduct\) Order 2007 No. 1159](#)

Standards Board Guidance

<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/filedownload,16126,en.pdf>

Standards Board Factsheet

<http://www.standardsboard.gov.uk/TheCodeofConduct/Guidance/CodeofConduct/Factsheets/filedownload,16140,en.pdf>

Gifts and Hospitality Registration Form

----- PARISH COUNCIL

To: The Monitoring Officer
(EMAIL ADDRESS)

Notification of Receipt of Gifts or Hospitality

| | |
|--------------------------------------------------------------|--|
| What was the gift or hospitality? (Give full description) | |
| What is your best estimate of its market value or cost? | |
| Who provided it? | |
| When and where did you receive it? | |
| Signed | |
| Name in Capitals | |
| Dated | |

7. Relationships between Councillors and Council Employees

Mutual trust and respect between Councillors and Officers is essential to ensure good governance and the effective running of a council. To help ensure that relationships do not go awry, it is advisable to have a written protocol, which can cover:

- The respective roles and responsibilities of the Councillors and the Clerk, and any other staff employees;
- Relationships between Councillors and Officers;
- Where/Who the Clerk should go to if they have concerns;
- Who is responsible for making decisions.

The same fundamental principles apply regardless of the nature and size of the Council. This protocol has been written in a way that will be particularly relevant to larger councils but personal relationships and personnel matters can be particularly problematic in smaller councils where the Clerk may be the sole employee and means having an agreed protocol is very important.

It is the National Association of Local Councils' (NALC) policy that party politics should have no place in parish councils, the concept being that parish councillors are there to serve their community as members of that community and should not be sidetracked by party political issues. NALC does not therefore encourage parish councils to adopt political groupings.

Model Protocol on Member/Officer Relations

1. Background

- 1.1 This protocol is intended to assist Councillors and the Clerk, in approaching some of the sensitive circumstances which arise in a challenging working environment.
- 1.2 The reputation and integrity of the council is significantly influenced by the effectiveness of Councillors, the Clerk and other staff working together to support each other's roles.
- 1.3 The aim is effective and professional working relationships characterised by mutual trust, respect and courtesy. Close personal familiarity should be avoided.

2. Roles of Councillors and Employees

- 2.1 The respective roles of Councillors and employees can be summarised as follows:
Councillors and Officers are servants of the public and they are indispensable to one and other, but their responsibilities are distinct. Councillors are responsible to the electorate and serve only so long as their term of office lasts. Officers are responsible to the council. Their job is to give advice to Councillors and to the council, and to carry out the council's work under the direction and control of the council and relevant committees.

2.2 Councillors

- 2.2.2 Councillors have four main areas of responsibility:
 - To determine council policy and provide community leadership;
 - To monitor and review council performance in delivering services;
 - To represent the council externally; and
 - To act as advocates for their constituents.

- 2.2.3 All Councillors have the same rights and obligations in their relationship with the Clerk and other employees, regardless of their status or political party, and should be treated equally.
- 2.2.4 Councillors should not involve themselves in the day to day running of the Council. This is the Clerk's responsibility, and the Clerk will be acting on instructions from the Council or its Committees, within an agreed job description.

2.3 Chairmen and Vice-Chairmen of Committees

Committee Chairs and Vice-Chairs have additional responsibilities. These responsibilities mean that their relationships with employees may be different and more complex than those of other Councillors. However, they 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 would prejudice their impartiality.

2.4 Officers

The role of Officers is to give advice and information to Councillors and to implement the policies determined by the Council.

In giving such advice to Councillors, and in preparing and presenting reports, it is the responsibility of the Officer to express his/her own professional views and recommendations. An Officer may report the views of individual Councillors on an issue, but the recommendation should be the Officer's own. If a Councillor wishes to express a contrary view they should not pressurise the officer to make a recommendation contrary to the officer's professional view, nor victimise an officer for discharging his/her responsibilities.

3. Expectations

3.1 All Councillors can expect:

- a commitment from Officers to the Council as a whole, and not to any individual Councillor, group of Councillors or political group;
- a working partnership;
- Officers to understand and support respective roles, workloads and pressures;
- A timely response from Officers to enquiries and complaints;
- Officer's professional advice, not influenced by political views or personal preferences;
- regular, up to date, information on matters that can reasonably be considered appropriate and relevant to their needs, having regard to any individual responsibilities or positions that they hold;
- Officers to be aware of and sensitive to the public and political environment locally;
- Respect, courtesy, integrity and appropriate confidentiality from Officers;
- training and development opportunities to help them carry out their role effectively;
- not to have personal issues raised with them by Officers outside the council's agreed procedures;
- that Officers will not use their contact with Councillors to advance their personal interests or to influence decisions improperly;
- that Officers will at all times comply with the relevant code of conduct.

3.2 Officers can expect from Councillors:

- a working partnership;

- an understanding of, and support for, respective roles, workloads and pressures;
- leadership and direction;
- respect, courtesy, integrity and appropriate confidentiality;
- not to be bullied or to be put under undue pressure;
- that Councillors will not use their position or relationship with officers to advance their personal interests or those of others or to influence decisions improperly;
- that Councillors will at all times comply with the council's adopted Code of Conduct.

3.3 Some General Principles:

- Close personal relationships between Councillors and Officers can confuse their separate roles and get in the way of the proper conduct of Council business, not least by creating a perception in others that a particular Councillor or Officer is getting preferential treatment.
- Special relationships with particular individuals or party political groups should be avoided as it can create suspicion that an employee favours that Councillor or political group above others.

4. Political Groups

- 4.1 The operation of political groups is becoming more of a feature within parish councils, but it is worth repeating that it is NALC policy that party politics should have no place in parish councils. Parish Councillors are there to serve their community as members of the community, and should not be sidetracked by party political issues. Party politics within a parish council can pose particular difficulties in terms of the impartiality of the Clerk and other employees, and the relationship between Councillors and the staff generally.
- 4.2 Party political groups have no power to require the Clerk or any other employee to attend group meetings or to prepare written reports for them, and employees can legitimately refuse to do so. The Clerk and other Officers are responsible to the council as a whole and should not take action under instructions from any individual Councillor, even if he/she has been styled as 'Leader' of the council.
- 4.3 If your council has adopted party political groupings, the Clerk should ensure that any reports or advice offered to a political group are statements of relevant facts, with an appraisal of options and do not deal with the political implications of the matter or options, or make any recommendations. It is not the Clerk's job to make recommendations to a political group.
- 4.4 If a report is prepared for one political group, the Clerk should advise all other political groups that the report has been prepared, or that advice was given.
- 4.5 Any Clerk needing advice or guidance on matters relating to party groups or how to operate within a political environment, should seek advice from their County Association of NALC, or from the Society of Local Council Clerks.

5. When things go wrong

Procedure for officers

- 5.1 From time to time the relationship between Councillors and the Clerk (or other employees) may break down or become strained. Whilst it is always preferable to resolve matters informally, through conciliation by an appropriate third party, it is important that the council adopts a formal grievance protocol or procedure.

- 5.2 The district or unitary council's Monitoring Officer may be able to offer a mediation/conciliation role or it may be necessary to seek independent advice. For example, the Society of Local Council Clerks may be able to provide an independent person. The Chair of the council should not attempt to deal with grievances or work related performance or line management issues on their own. The council should delegate authority to a small group of Councillors to deal with all personnel matters.
- 5.3 The law requires all employers to have disciplinary and grievance procedures. Adopting a grievance procedure enables individual employees to raise concerns, problems or complaints about their employment in an open and fair way.
- 5.4 For an example grievance procedure, contact your district or unitary council's Personnel or HR Department or the County Association of NALC.
- 5.5 If a Councillor is dissatisfied with the conduct, behaviour or performance of the Clerk or another employee, the matter should be raised with the Clerk in the first instance. If the matter cannot be resolved informally, it may be necessary to invoke the council's disciplinary procedure.

8. Protocol on Bullying and Harassment

Introduction

An analysis of complaints made against Councillors (previously assessed by the Standards Board for England and now dealt with by local standards committees) indicates that there is a significant problem of bullying and harassment occurring at parish level between Members and Officers. It may be that this is caused in part because of the lack of clarity between the respective roles of Officers and Members and of the relatively isolated nature of the position of the Clerk. Other factors that may contribute to a breakdown in relations between Members and Officers include the absence of authoritative Member/Officer protocols, proper disciplinary and grievance procedures and (in some cases) written contracts of employment.

Bullying is specifically prohibited in the Member Code of Conduct (paragraph 3(2)(b) of the Model Code). Councillors must not bully any person, including other Councillors, Officers or members of the public.

The attached protocol is therefore commended for adoption to ensure that Members and Officers operate in an environment of mutual trust and respect. It should assist in the development of a culture of clear and honest communication between Officers and Members.

Model Protocol on Bullying and Harassment (including Grievance Procedures and Whistle Blowing)

1. Background

- 1.1 The relationship between Councillors and Officers is an essential ingredient that should contribute to the successful working of the organisation. This relationship within the authority should be characterised by mutual respect, informality and trust. Councillors and Officers must feel free to speak to one another openly and honestly. Nothing in this Protocol is intended to change this relationship. Objective criticism is usually acceptable but can be unacceptable if the criticism becomes personal. This protocol gives guidance on what to do on the rare occasions when things go wrong.
- 1.2 Everyone should be treated with dignity and respect at work. Bullying and harassment of any kind are in no-one's interest and should not be tolerated in the workplace.

2. What is bullying and harassment?

- 2.1 Examples and definitions of what may be considered bullying and harassment are provided below for guidance. For practical purposes, those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect. If employees complain they are being bullied or harassed, then they have a grievance which must be dealt with regardless of whether or not their complaint accords with a standard definition.

3. How can bullying and harassment be recognised?

- 3.1 There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means to undermine, humiliate, denigrate or injure the recipient.

- 3.2 Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.
- 3.3 Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the “grey” areas that cause most problems. Examples of what is unacceptable behaviour include:
- “inappropriate behaviour”
 - intimidation/humiliation
 - excessive criticism
 - autocratic/dictatorial behaviour
 - shouting
 - browbeating
 - haranguing
 - swearing
 - ridiculing
 - expressions of intolerance
 - general discourtesy
- 3.4 Bullying and harassment are not necessarily face to face; they may be by written communications, e-mail (so called “flame mail”) and telephone.

4. Why does the Council need to take action on bullying and harassment?

- 4.1 There is an implied term of mutual trust and confidence in every contract of employment. Where the parish council is aware of a situation of bullying or harassment of an employee by one of its Councillors, but fails to act to stop it, it will be in breach of that implied term of employment contract and may be held liable for the constructive dismissal of that employee.
- 4.2 It is in every employer’s interest to promote a safe, healthy and fair environment in which people can work.
- 4.3 A parish council’s duty of care to an employee relates to all forms of personal injury, which will include mental as well as physical health. If a risk to health was foreseeable but no action was taken then the parish council could be at fault and compensation could be sought.

5. The Members’ Code of Conduct

- 5.1 Bullying is expressly forbidden under paragraph 3(2)(b) of the Model Code of Conduct. There are, in addition, complementary obligations to;
- not do anything which may cause the authority to breach any equality laws;
 - treat others with respect;
 - not intimidate any person who is or is likely to be a complainant, a witness or involved in an investigation relating to a breach of the Code; and;
 - Not compromise or attempt to compromise the impartiality of those who work for, or on behalf of, the authority.
- 5.2 A proven allegation of bullying or harassment will always be a breach of the Code of Conduct and the Councillor involved is liable to be reported to the Local Standards Committee. Councillors are entitled to challenge Officers as to why they hold their views. However, if criticism amounts to a personal attack or is of an

offensive nature, the Councillor is likely to have crossed the line of what is acceptable behaviour.

- 5.3 If there are instances of bullying or harassment by Councillors towards officers or other Councillors, then those Councillors who are aware of the incident should consider reporting it to the Standards Committee of the relevant principal authority. It is also open to Officers who are either the subject of bullying or harassment or who witness such an incident to similarly report it to the Standards Committee (which is likely to have established an Assessment Sub-Committee to decide whether to investigate such complaints).
- 5.4 If Members or Officers are unsure what to do or how to report the matter, they should seek the advice of the Monitoring Officer.

6. Grievance and disciplinary procedures

- 6.1 Obviously it is best to try to avoid things getting to a state where an employee considers themselves dismissed or issues a personal injury claim against the Council. This can be done through having an accessible and useable grievance procedure.
- 6.2 Since October 2004 all employers have been required by law to have disciplinary and grievance procedures. These cover disciplinary rules and procedures for handling discipline, grievance and appeals. Details must be included in the employee's written statement of employment particulars or reference made to a separate document which is readily accessible to the employee.
- 6.3 A grievance procedure enables individual employees to raise concerns, problems or complaints with management about their employment. It should allow for both an informal and formal approach.

A grievance procedure provides an open and fair way for employees to make known their concerns, problems or complaints. It enables such grievances to be resolved quickly before they fester and become major problems. An employee who fails to raise a grievance with their employer using the statutory procedure may be prevented from taking a claim relating to that grievance to employment tribunal.

Grievance procedure should allow grievances to be dealt with fairly, consistently, speedily and should include:

- how and with whom to raise the issue
- whom next to appeal to if not satisfied
- time limits for each stage
- the right to be accompanied by a fellow worker or trade union representative
- the statutory grievance procedure

7. Whistle-blowing

Protection for employees, contractors or staff is relevant to allow any bullying or harassment to be reported without fear of victimisation or further harassment.

9. Guidance Notes on Whistle-Blowing

Whistle-blowing, sometimes referred to as confidential reporting or public interest disclosure, provides a link between employment concerns, such as bullying, and the more general complaints procedures discussed below.

The principles of whistle-blowing should apply to Members, contractors and partners in any ongoing project, as well as employees. It is to employees, however, that the law in this area is aimed.

The Public Interest Disclosure Act 1998 (PIDA) encourages people to raise concerns about malpractice in the workplace and will help ensure that organisations respond by

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice.

Through protecting whistleblowers from dismissal and victimisation in the following circumstances, the Act promotes the public interest.

Malpractice

The Act applies to people at work raising genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential.

Individuals covered

In addition to the Clerk and other employees, it covers trainees, agency staff, contractors, homeworkers, etc. The usual employment law restrictions on minimum length of service and age do not apply. The Act does not presently cover the genuinely self-employed, volunteers, the intelligence services, or the army.

Legal Advice

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work, a charity established to help people with these issues and which is designated a legal advice centre by the Bar Council.

Internal disclosures

A disclosure in good faith to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur. Where a third party is responsible for the matter this same test applies to disclosures made to it.

Regulatory disclosures

The Act also protects disclosures made in good faith to prescribed bodies where the whistleblower reasonably believes that the information and any allegation in it are substantially true. In respect of Parish Councils the prescribed bodies would include the Health and Safety Executive, HM Revenues and Customs, the Audit Commission (or appointed external auditors) and the Standards Board for England.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions.

Provided they are not made for personal gain, these preconditions are that the whistleblower:

- reasonably believed he would be victimised if he raised the matter internally or with a prescribed regulator;

- reasonably believed a cover-up was likely and there was no prescribed regulator; or
- had already raised the matter internally or with a prescribed regulator.

In deciding the reasonableness of the disclosure the employment tribunal will consider the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether it breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the reasonableness of its response will be particularly relevant. Finally, if the concern has first been raised with the employer, it is relevant whether any whistle-blowing policy in the organisation was or should have been used.

Exceptionally serious matters

Where the concern is exceptionally serious, a disclosure will be protected if it meets the test for regulatory disclosures and is not made for personal gain. The disclosure must also be reasonable having particular regard to the identity of the person to whom it was made.

Full protection

Where the whistleblower is victimised in breach of the Act he can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on the losses suffered. Additionally where an employee is sacked, he may apply for an interim order to keep his job.

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Further Advice

There is specific information about the Public Interest Disclosure Act from the following Organisations:

Public Concern at Work, a charity that provides free, confidential advice on what is protected by the Act and how best to raise a concern, on 0207 404 6609 or see www.pcaaw.co.uk.

The website also includes a section entitled "*Practical hints for small organisations*".

The **Department for Business, Enterprise and Regulatory Reform** also has a guide to the Act. This is available via the website at www.berr.gov.uk.

10. The Complaints Procedure

Complaint procedures are an integral part of the machinery of nearly every commercial or public service organisation. This is because it is through dealing with, and responding to, accusations or instances of poor performance or service delivery that the organisation sees its faults and has the opportunity to address them and improve.

Principal councils (county, unitary and district) have the added incentive in that there is the local government ombudsman service that has the statutory remit to investigate complaints and the power to issue public reports where it is deemed appropriate. The ombudsman may recommend the payment of compensation or another remedy if appropriate.

This does not mean that local councils may ignore the need to have a robust complaints system, nor that there are not other places that a member of the public, or a member of the council, can go to seek redress for a wrong they consider the council has committed.

Depending on the nature of the complaint, and to some extent the person who is making it, there will be an occasion in the life of every parish council when a complaint cannot be resolved and the complainant wishes to take the matter further.

These will include complaints concerning the following:

- Where someone feels very strongly that a decision of the Parish Council was unlawful, they may apply to the courts for a judicial review of the Council's decision;
- An accusation of financial wrongdoing, where a complaint may be made to the council's external auditor. Aside from referring the matter to another body if required, the auditor will have the power to carry out such actions as refusing to sign off the accounts or producing a public interest report;
- Breaches of the Members' code of conduct for the council may result in an allegation being made to the local standards committee. It has been known for all members of a council to be reported for a possible breach of the code. This may be in respect of financial wrongdoing, acting on prejudicial interests, not complying with equality legislation and so on;
- Any matter that raises a suspicion of criminal wrongdoing can be referred to the police;
- Where the council carries out functions on behalf of another authority, such as litter picking or crime and disorder measures under an agency agreement with the district council, the complaint can be referred to them. In such a situation, the ombudsman may be involved if the matter is not resolved by the principal authority;
- A complaint that the council has not released information under the Freedom of Information Act 2000 in the manner that a person requesting believes it should have done, can be referred to the Information Commissioner. A parish council must give reasons for any decision and must inform the applicant if he/she has a right to complain to them about the handling of the request (e.g. through a complaints or other procedure and give details of the procedure), or state that there is no procedure, and of his/her right to complain to the Information Commissioner.

Model Complaints Procedures

The Local Government Ombudsman has extensive guidance on the subject of complaints procedures which is available from their website www.lgo.org.uk.

The following text is based on guidance provided by the Society of Local Council Clerks and provides a template for a complaints procedure which could be adopted by a parish council.

Further detailed guidance with regard to handling complaints is available from NALC, they also have a model procedure for formal complaints which can be adapted to individual parish councils.

XX PARISH COUNCIL – COMPLAINTS PROCEDURE

1. The following procedure will be adopted for dealing with complaints about the Council's administration or its procedures. Complaints about a policy decision made by the Council will be referred back to the Council, or relevant Committee, as appropriate, for consideration.
2. This procedure does not cover complaints about the conduct of a Member of the Parish Council.
3. If a complaint about procedures, administration or the actions of any of the Council's employees is notified orally to a Councillor, or to the Clerk to the Council, a written record of the complaint will be made, noting the name and contact details of the complainant and the nature of the complaint.
4. The complainant will be asked to put the complaint in writing (letter/e-mail/standard form) to the Clerk to the Council at [*add address/contact details*]. The complaint will be dealt with within XX days of receipt. (*specify time e.g. 14 or 21 days*). Refusal to put the complaint in writing does not necessarily mean that the complaint cannot be investigated, but it is easier to deal with if it is in writing.
5. If the complainant prefers not to put the complaint to the Clerk to the Council (because the matter relates to the Clerk, for example,) he or she should be advised to write to the Chair.
6. (a) On receipt of a written complaint, the Clerk to the Council (except where the complainant is about his or her own actions) or Chair of Council (if the complaint relates to the Clerk), will seek to settle the complaint directly with the complainant. This will not be done without first notifying any person complained about and giving him or her an opportunity to comment. Efforts should be made to resolve the complaint at this stage.

(b) Where the Clerk to the Council or a Councillor receives a written complaint about the Clerk's actions, he or she shall refer the complaint to the Chair of Council. The Clerk to the Council will be formally advised of the matter and given an opportunity to comment.
7. The Clerk to the Council (or Chair) will report any complaint disposed of by direct action with the complainant to the next meeting of the Council.
8. The Clerk to the Council (or Chair) will report any complaint that has not been resolved to the next meeting of the Council. The Clerk will notify the complainant of the date on which the complaint will be considered and the complainant will be offered an opportunity to explain the complaint to the Council orally.

9. Matters relating to Grievance or Disciplinary proceedings that are taking, or are likely to take place, should be dealt with in accordance with the Council's grievance and disciplinary procedures.
10. The Council may consider whether the circumstances of any complaint warrant the matter being discussed in the absence of the press and public, but any decision on the complaint will be announced at the Council meeting in public.
11. The Council may consider in the circumstances of any particular complaint whether to make any without liability payment or provide other reasonable benefit to any person who has suffered loss as a result of the Council's maladministration. Any payment may only be authorised by the Council after obtaining legal advice and advice from the Council's auditor on the propriety of such a payment.
12. As soon as possible after the decision has been made (and in any event not later than 10 days after the meeting) the complainant will be notified in writing of the decision and any action to be taken.
13. The Council may defer dealing with any complaint if it is of the opinion that issues arise on which further advice is necessary. The advice will be considered and the complaint dealt with at the next meeting after the advice has been received.

PART FOUR

PUBLIC ENGAGEMENT AND MANAGING INFORMATION

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Freedom of Information Act Guidance for Parish Councils

The Freedom of Information Act 2000 (FOI Act) received Royal Assent on 30 September 2000 but its implementation was phased in, with the duty on public authorities to adopt publication schemes being introduced first, followed by the individual right to access provisions which came into force on 1 January 2005. This note is intended to summarise the main provisions of the Act and to indicate where further guidance may be found.

The Basics of the Freedom of Information Act:

- Section 1 of the Act gives a general right of access to information held by public authorities. Public authorities include all local authorities, including Parish Councils. The right applies to all information, obtained from any source. The right of access includes both the right to be told whether the information exists, as well as the right to receive it.
- Since the right of access applies to all information which is “held” by the authority, the Act is effectively retrospective. There is no exemption for old records. However, the Act does not require authorities to hold onto information for longer than is necessary, or is otherwise required by law, simply because it might be the subject of a request sometime in the future.
- A request for information (unless for environmental information – see below) needs to be in writing, although an e-mail request is sufficient. The request must give enough details about the information to enable the authority to identify it and basic contact details must be provided so that a reply can be sent. The Information Commissioner takes the view that this need not be a postal address and that an e-mail address is sufficient. There is a duty on authorities to advise and assist applicants, which would normally require the authority to give some help to an applicant to better identify the information they request.
- The right of access to information is subject to a range of exemptions and these are listed in Appendix 1 (page 80). Some of the exemptions are “absolute”. Once an authority decides that an absolute exemption applies to information requested it does not have to release it under the FOI Act, although discretionary release is still possible. In the case of all other exemptions, once it is decided that one or more of them applies, the authority must still release the information unless it judges that the public interest in withholding the information is greater than the interest in disclosure (the “public interest test”).
- Two statutory Codes of Practice, one covering aspects of compliance, and the other covering the management of records, have been produced and authorities have to comply with these Codes. Both of these documents can be downloaded from the Information Commissioner’s web site (www.informationcommissioner.gov.uk).
- The Act includes provisions for enforcement and appeal. The Information Commissioner has a substantial role to promote the Act to the public, to set standards of good practice which authorities must follow, and the power to over-rule an authority’s judgment that the balance of the public interest lies in favour of refusing to disclose information, and to impose his own view. There is also an appeal process for a dissatisfied applicant to the Information Commissioner, and from the Commissioner to a new Information Tribunal.
- Generally requests must be dealt with within 20 working days from the receipt of the request, but if it is necessary to apply a public interest test, this time limit does not apply and the authority should respond within a reasonable period.

- If a request is refused, the refusal notice should give the reasons for refusing the request and advise the applicant as to their rights of appeal – both internally by way of a complaint and, following that, by way of an appeal to the Information Commissioner.

Publication Schemes

Every public authority must prepare and publish a “publication scheme” which sets out the classes of information which the authority publishes or intends to publish, how that information may be obtained, and any charge that is made for it. An authority’s Publication Scheme must be approved by the Information Commissioner. Individual schemes that were originally approved by the Commissioner were replaced, from 1 January 2009, by a new model publication scheme which the Commissioner has produced for all public authorities.

The new scheme simply needs to be adopted by councils without the requirement for approval by the Commissioner. The scheme must be supported by a guide to the specific information that the authority holds and which is contained within any of the models scheme’s seven classes. However, the Commissioner has also produced a model template guide to information specifically for parish councils to use when they adopt the new model scheme.

Both the model scheme and the parish council model guide to information can be downloaded from the Information Commissioner’s website, along with associated guidance on completing these documents.

Councils should commit to reviewing and updating their information guide and its contents on a regular basis

Relationship with Other Legislation

Public Bodies (Admission to Meetings) Act 1960

The FOI Act does not amend the provision in the 1960 Act which allows local councils to exclude the press and public by resolution if publicity would prejudice the public interest by reason of the confidential nature of the business or for some other reason stated in the resolution.

However, the effect of the FOI Act is that any information held by the council which relates to matters discussed, either in open or private session (e.g. in a report or minutes), may have to be disclosed unless one of the exemptions under the Act applies.

Local Government Act 1972

The provisions of the FOI Act effectively supersede the old exemptions in the Local Government Act 1972 in respect of the access to information rights and for this reason the categories of “exempt information” (Schedule 12A of the 1972 Act) were amended in 2006 to mirror relevant FOI exemptions.

Data Protection Act 1998

The Data Protection Act 1998 (DPA) gives an individual the right to obtain a copy of any personal information held about him/her (subject to access), and imposes responsibilities upon those who collect and process personal information. If someone requests information about himself, this should be handled as a subject access request under the DPA. The exemption in the FOI Act, which relates to information requested by the subject, simply means that the decision whether or not to release the information must be decided in accordance with the provisions of the DPA, and not the FOI Act.

If a person requests personal information about a third party, then the matter should be decided under the FOI Act, but in accordance with the data protection principles set out in

the DPA. For example, the authority must consider whether the third party has given consent to release, and if not, whether it would be fair and lawful to release the information.

Environmental Information Regulations 2004

The rules concerning the disclosure of environmental information are now set out in the Environmental Information Regulations 2004 (EIR), which replace Regulations made in 1992. "Environmental Information" is very widely defined in the Regulations which give effect to European Directives. A copy of the full definition is set out below.

The exemptions from disclosure under the EIR are more limited than for other information requests under the FOI Act and all are subject to a public interest test. The Local Government Association has produced an excellent guide to the Environmental Information Regulations and further information may also be obtained from DEFRA's website.

Definition of Environmental Information (Regulation 2):

"Environmental Information" has the same meaning as in Article 2(1) of Directive 2003/4/EC namely any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

Freedom of Information Fees Regulations

In respect of requests made under the FOI Act, the only charges which can generally be made are to cover the cost of photocopying, printing, postage, etc., i.e. disbursements rather than the labour costs associated with collating the information.

If the request is for environmental information, a "reasonable amount" may be charged for its provision under the EIR.

More detailed information regarding fees for requests under the Freedom of Information Act follows:

Introduction

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 came into force with the Freedom of Information Act on 1 January 2005. The purpose of this document is to provide a brief outline as to how a fee is calculated under the Regulations.

Fee Calculation

Under the Fees Regulations costs are split into two categories, prescribed costs and disbursements. Prescribed costs are mainly concerned with the amount of staff time that is devoted to processing a request whilst the disbursements cover the costs incurred through material costs and some out of pocket expenses. All fees will have to be estimated with the estimate forwarded to the applicant for acceptance, the Regulations state that the final fee can be no higher than the estimate so accurate estimates are of vital importance.

Prescribed Costs

Prescribed costs can be viewed as the labour costs that would be incurred by the Authority when processing a request. The Regulations have set a ceiling on these costs of £450 above which the Authority is not obliged to provide the information. For the purposes of estimating the prescribed costs the Regulations provide a figure of £25 per hour, this equates to 18 hours of staff time.

Prescribed costs are those costs which the Authority reasonably expects to incur in:

- determining if the information is held;
- locating the information;
- retrieving the information and;
- extracting the information from a document containing it.

The Authority **cannot charge** for time taken by staff to inform the requestor that the information is or is not held or for them to communicate it to them.

Disbursements

Disbursements are the costs incurred for materials used or other expenses reasonably incurred when processing a request. All disbursements can be recovered in full.

These costs can include, but are not limited to:

- reproduction costs – paper and toner, not the staff time for copying etc;
- complying with a request for the information to be provided in a specific format and;
- postage or other delivery costs.

Calculating the Fee

The prescribed costs are estimated to be below the £450 appropriate limit

Where prescribed costs are estimated to be below £450 the fee chargeable to the requestor can consist only of the disbursements. The actual fee charged can be less than the estimate but not greater.

The prescribed costs are estimated to be above the £450 appropriate limit

There is no requirement in the Freedom of Information Act to provide information where the prescribed costs are above the appropriate limit of £450. If the Authority decides to provide the information it can charge for both the disbursements and prescribed costs. The final fee charged to the requestor cannot be higher than the estimate.

Sources of Further Information

This guidance is only intended to provide a relatively succinct overview of the main provisions of the Freedom of Information legislation. If a request is received, it may well be necessary to seek further guidance, the following is a list of possible sources for further information:

- Information Commissioner's website: www.informationcommissioner.gov.uk
This provides a lot of useful information and advice concerning the FOI Act 2000, the DPA 1998 and the EIR, including a series of detailed awareness guidance notes on a range of FOI topics;
- Local Government Association publication – “A Practical Guide to the FOI Act 2000” (£10). See www.lga.gov.uk;
- Local Government Association publication – “Accessing environmental information” (£10);
- Department for Environment, Food and Rural Affairs' website: www.defra.gov.uk
Contains some useful guidance on the Environmental Information Regulations;
- National Association of Local Councils (NALC): www.nalc.gov.uk.

APPENDIX

List of FOI Act Exemptions

Absolute exemptions:

- information accessible to applicant by other means (s21);
- information supplied by, or relating to, bodies dealing with security matters (s23);
- court records (s32);
- Parliamentary privilege (s34);
- information provided in confidence (s41); and
- prohibitions on disclosure (s44).

Partly absolute:

- prejudice to effective conduct of public affairs (s36); and
- personal information (s40).

Qualified:

- information intended for future publication (s22);
- national security (s24);
- investigations and proceedings conducted by public authorities (s30);
- formulation of Government policy etc. (s35);
- communications with Her Majesty, etc and honours (s37);
- health and safety (s38);
- environmental information (s39);
- legal professional privilege (s42);
- defence (s26);
- international relations (s27);
- relations within the United Kingdom (s28);
- the economy (s29);
- law enforcement (s31);
- audit functions (s33); and
- commercial interests (s43).

2. Guidance on Data Protection

The rules that govern the storage and use of personal data are set out in the Data Protection Act 1998. These rules are intended to protect individuals. Initially, only the processing of electronic personal data was covered by Data Protection legislation but the 1998 Act extended this to include many types of manual records. Manual data was originally defined by reference to a “relevant filing system” (see Glossary on page 82), but for public authorities, such as councils, the Freedom of Information Act has extended the definition to include most categories of manual records. Consequently, the Data Protection legislation applies to almost all personal information held by councils and it is important therefore to acquire a basic understanding of the rules.

Notification

Data controllers must notify the Information Commissioner of their processing of personal data. The system involves provision of basic details about the data controller, the classes of data held, the purposes for which the data is held or processed and classes of persons to whom the data might be disclosed. Once notification has been made to the Commissioner, it must be renewed annually and there is a standard fee (currently £35) for both the initial registration and renewal. Full details of the notification process are given on the Information Commissioner’s website (www.informationcommissioner.gov.uk). A number of organisations, including councils, have been troubled by bogus data protection notification agencies and further information about this can also be found on the Information Commissioner’s website.

It is a criminal offence to process personal data without being notified and the fines for such a breach are unlimited.

The Data Protection Principles

The Data Protection Act sets out eight data protection principles which are key to achieving compliance with the legislation. They are

- Personal data shall be processed fairly and lawfully. (Often this will require the consent of the data subject, but there are exceptions to this. In the case of “sensitive personal data”, special rules apply and these are set out in Schedule 3 to the Act.);
- Personal data shall be obtained only for one or more specified and lawful purposes;
- Personal data processed shall be adequate, relevant and not excessive;
- Personal data shall be accurate and, where necessary, up to date;
- Personal data processed shall not be kept for longer than is necessary for the relevant purpose;
- Personal data shall be processed in accordance with the rights of data subjects under the Act;
- Appropriate technical and organisation measures shall be taken against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, personal data;
- Personal data shall not be transferred to a country outside the European Economic area unless that country ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

Further information

This note only gives very basic guidance and much more detailed advice, on both the legislation and the notification procedures, can be found on the Information Commissioner's website www.informationcommissioner.gov.uk

The address for the Information Commissioner is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone (Helpline): 01625 545 745

Notification Helpline: 01625 545 740

Glossary

Data

Recorded information whether stored electronically on computer, or in paper-based filing systems.

Personal Data

Means data that relates to a living individual who can be identified from that data or from that data and other data held by the data controller.

Sensitive Personal Data

Includes information about someone's racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, health, sexuality and criminal proceedings or convictions. Sensitive personal data can only be processed under strict conditions. In most cases, this means getting express permission from the person the information is about.

Processing

Is virtually any activity that involves the data. This includes collecting, recording or retrieving the data or doing work on the data such as organising, adapting, changing, erasing or destroying it.

Relevant Filing System

The Data Protection Act definition of this is rather complex. However, the key elements are that there must be a set of paper-based information about an individual and there is a structure to this set; and the structure works so that specific information about a particular individual is readily available.

Data Controller

Is the person or organisation that holds and uses personal information, e.g. the Council.

Data Processor

May be a separate organisation which processes information on behalf of a data controller who must also follow the Act to ensure information is handled properly.

Data Users

Includes employees whose work involves processing personal information. Data users have a legal duty to protect the information they handle and should follow their employer's data protection and security policies.

Data Subjects

Are the people the information is about. All data subjects have certain legal rights under the Data Protection Act in relation to their personal information.

3. Guidance on Health and Safety

- The Parish Council has a duty to ensure, so far as reasonably practicable, the health, safety and welfare of its employees and visitors to its premises.
- This includes maintaining any places of work and the working environment (including equipment) safe and without risks to health.
- Employees also have to avoid risks to themselves, colleagues and the public so there can be a shared responsibility. This could be relevant particularly where a Clerk works from home.
- A written policy statement is needed if there are more than five employees.
- An employer can be liable for stress suffered by employees in certain circumstances, notably if they have failed to respond adequately to known problems.
- Risks need to be assessed, e.g. in children's playgrounds and cemeteries.
- The Disability Discrimination Act 1995 imposes obligations on employers of 15 or more people in terms of making adjustments to working conditions.
- The Act imposes wider obligations to ensure access to services, including making permanent physical adjustments to premises.
- A disabled person is one who has a physical or mental impairment which has substantial and long-term adverse effects on his or her ability to carry out normal day to day activities.

Further information

This guidance gives only basic information. More details guidance and advice is available from the district or unitary authority and from the Health and Safety Executive (HSE). Insurers will also offer advice.

Useful websites are: www.hse.gov.uk
www.disability.gov.uk
www.dwp.gov.uk

4. Guidance on Defamation

Statements made in council and committee meetings are subject to the general principles of law concerning defamation. Anyone who makes a defamatory statement therefore commits a tort (i.e. civil wrong).

Some Frequently Asked Questions

What is a defamatory statement?

A defamatory statement is one which exposes a person to hatred, ridicule or contempt, or which causes them to be shunned or avoided, or which has a tendency to lower them in the estimation of right thinking members of society generally or injure them in their office, profession or trade.

Are there any defences?

There is a general defence to an action in defamation to show that the statement was made on a "privileged occasion".

Absolute privilege - applies in only very limited circumstances, which will not normally be relevant to local councils, e.g. judicial and parliamentary proceedings, between a local authority and the Ombudsman, but not council meetings.

Qualified privilege - attaches on "...any occasion where the person who makes the communication has an interest or duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding duty to receive it". (House of Lord case decided in 1917). An essential feature of qualified privilege is absence of malice. So long as a person believes in the truth of what they say, malice cannot normally be inferred.

Qualified privilege may well be relevant to statements made in Council or committee.

Other possible defences are justification, i.e. if the words are true. It may also be a good defence to show that it was fair comment on a matter of public interest, honestly believed to be true, relevant and not inspired by malicious motive, and that the statements of fact on which the comment was based were materially true.

Can the Council be defamed?

The House of Lords has held, in a case involving Derbyshire County Council in 1993, that it is not possible for a Council to be defamed, so it cannot sue to protect its reputation. However, if statements are made *by the Council*, in an official capacity, then the normal rules apply and the Council could be sued, subject to the possible defences.

PART FIVE

A GUIDE TO THE ROLE AND RESPONSIBILITIES OF PARISH COUNCILLORS

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1. Introduction - What Parish Councillors Do

Parish Councillors have a dual role:-

- They represent the views and concerns of the residents of the parish to the parish council itself and, through it, to the district, county or unitary authority;
- They report back to residents on issues affecting the parish.

The formal part of these roles, especially the first one, is carried out by attending meetings and corresponding with the parish Clerk. The parish council might have committees and even sub-committees. This is more likely to be the case in larger councils. Individual councillors do not have, and cannot be given, powers to make decisions on behalf of the parish council. This applies to the Chair as much as to the other Councillors, although the Chair does have personal responsibilities in connection with the running of formal meetings.

The less formal part of these roles of listening and talking to people, including the local elected members of the district, county or unitary council, will almost certainly take up more of the Councillor's time. However, it is important to remember that "rules of behaviour" apply whenever activities of being a Parish Councillor are being undertaken.

What follows below are guidance notes intended to assist Councillors in avoiding pitfalls which can catch the unwary in the carrying out of what might seem the most straightforward of activities. The information will also help Parish clerks to advise their Councillors both inside and outside meetings and to induct newly-elected or co-opted Councillors.

The requirement to complete a register of interests caused some controversy when it was extended to Parish Councillors, but it is a crucial element of complying with the code of conduct. In rural parishes, and those centred on smaller settlements in particular, the risk of Councillors being affected by personal or prejudicial interests can be quite high. Also, it can be difficult to maintain an appropriate distance from local lobby or campaign groups. This is most likely to be the case in planning matters, an issue that should engage particularly those Councillors who are also elected members of the local planning authority. Advice on these potential problem areas is included in the briefings.

2. The Role of the Chair

The main rules of law governing the role of the Chair of a parish council are set out in the Local Government Act 1972, principally within Schedule 12, which sets out, for example:

- that the Chair must preside at a meeting of the parish council if he or she is present and;
- that it is the person who presided at the meeting who has the responsibility to sign the minutes as a true record.

It is the duty of the Chair

“to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting”

National Dwellings Society v Sykes (1894)

It is the Chair’s responsibility:

- (a) To determine that the meeting is properly constituted and that a quorum is present;
- (b) To inform himself as to the business and objects of the meeting;
- (c) To preserve order in the conduct of those present;
- (d) To confine discussion within the scope of the meeting and reasonable limits to time;
- (e) To decide whether proposed motions and amendments are in order;
- (f) To formulate for discussion and decision questions which have been moved for the consideration of the meeting;
- (g) To decide points of order and other incidental questions which require decision at the time;
- (h) To ascertain the sense of the meeting by:
 - (i) Putting relevant questions to the meeting and taking the vote thereon (and if so minded giving a casting vote);
 - (ii) Declaring the result; and
 - (iii) Causing a ballot to be taken if duly demanded;
- (i) To approve the draft of the minutes or other record of proceedings (with the consent of the meeting);
- (j) To adjourn the meeting when circumstances justify or require that course; and
- (k) To declare the meeting closed when its business has been completed

“Knowles on Local Authority Meetings” (ICSA Publishing)

Voting

During the meeting, if a vote on a matter is tied, the Chair, or other person presiding, has a second or casting vote.

Whilst it is a convention in some councils that the Chair will not vote when a matter is put before the meeting and will only use his or her casting vote, there is no rule of law on this and it is becoming a practice little followed. Some councils apply a convention that the Chair will use his or her second or casting vote in a way to support the status quo and keep the

question open for reconsideration at a later date, which is generally considered to be best practice.

The Chair's term of office continues until the appointment of a successor, other than where the Chair resigns or is disqualified. This continuity also applies when the Chair has not been re-elected following local elections. In this case, the Chair does not have a vote on the appointment of a successor but does have a casting vote in the event of equal votes.

Outside of the Meeting

The Chair:

- is the person to whom notice of resignation is given by other Councillors or the Clerk;
- may convene meetings of the council (on proper notice to the Clerk);
- when attending ceremonial events, is the proper person to represent the parish;
- may receive an allowance to meet the expenses of his or her office.

Beyond that, the workings and decisions not taken by the council or through the delegation scheme, by one of its committees or sub-committees are to be taken by the Clerk to the parish council.

The Chair may have an enhanced role, as functions may be delegated to the Clerk in consultation with the Chair (or the Chair of a Committee). This means that the decision and the responsibility for it, remains with the Clerk (not the Chair) but that he or she must first bring the matter to the attention of the Chair and take into account the views of the Chair in coming to his or her decision.

It is also likely to be the case that the Chair will be the person whom the Clerk will approach;

- for information about the council and the parish;
- to seek to informally discuss matters with and;
- to informally consult on decisions that are in the Clerk's remit to make or pass back to a formal meeting.
- Correspondence to and from the council should normally be dealt with by the Clerk, not by the Chair, although, where there are no other administrative staff, the Chair will be the most appropriate person to deal with correspondence in the absence of the Clerk e.g. to sign letters giving effect to a council decision, or to send a 'holding' reply pending consideration of a matter by the council.

3. Guide to the Code of Conduct - Complaints and Investigations

Since May 2008, all complaints are referred locally to the standards committee of principal authorities in the first instance. In the case of town and parish councils, complaints concerning the conduct of town and parish Councillors will be referred to the standards committee of the district or unitary authority in whose area the town or parish council is situated.

An assessment sub-committee of the standards committee will consider the complaint, usually within 20 working days, and will decide, in the presence of a parish council representative:

- whether to refer it for investigation;
- whether it is more suitable for some other form of action such as mediation or conciliation;
- whether it appears to be so serious or otherwise unsuitable for local investigation that it should be referred to the Standards Board or;
- whether no further action should be taken on the matter

In the event of the assessment sub-committee deciding to take no further action, the complainant can request a review of that decision which will then be heard by a review sub-committee comprising different members of the standards committee than those who undertook the initial assessment.

If it is decided that the complaint will be investigated, the Monitoring Officer of the principal authority is responsible for appointing an investigating officer. However, if the complaint has been referred to the Standards Board the investigation will be undertaken by an ethical standards officer. It should be noted that the Standards Board does have the ability to send any referred cases back to the local standards committee if they feel that this is appropriate. If this is the case, and it has been referred back for investigation, the Monitoring Officer is again responsible for appointing an investigating officer.

Once the investigation has been completed a report will be prepared and presented to the standards committee which may meet as a committee or may proceed by way of a hearing sub-committee.

Where an ethical standards officer has undertaken an investigation he or she may still refer it back to the standards committee if it is considered it to be suitable for local determination. In the event that it is not, it will be heard by the Adjudication Panel which can impose more stringent sanctions than those available to a local standards committee, up to a maximum of 5 years disqualification.

Where the standards committee hear any matter they must first determine the facts if disputed then, if they are satisfied that there has been a breach of the code, decide on the appropriate sanction. The standards committee will normally follow rules of procedure as to the conduct of the hearing. Once a decision has been taken as to an appropriate sanction, the subject member has a right to seek permission to appeal that decision.

The Standards Board has issued extensive guidance on making complaints, what happens to complaints and also on local investigations and other action, including how to conduct an investigation, all of which can be downloaded from their website.

4. Guide to the Code of Conduct – Some Frequently Asked Questions

What is the code of conduct?

Every authority is required to adopt a code of conduct which sets out rules governing the behaviour of its members. All elected, co-opted and independent members of local authorities, including parish councils, fire, police and national parks authorities are covered by the code.

Are all councils bound by the same code?

Each authority must include the provisions of a model code of conduct approved by Parliament. Authorities can choose to add their own local rules to the model code if they wish, although most adopt the model code without additions. Any local rules must be in keeping with the spirit of the code of conduct and not make it unenforceable. If changes are made there is a duty to notify the Standards Board and advertise in a local newspaper.

What sort of things does the code cover?

The code of conduct covers areas of individual behaviour such as members not abusing their position and not misusing their authority's resources. In addition, there are rules governing disclosure of interests and withdrawal from meetings when members have relevant interests. Members are also required to record their financial and other interests.

Can I get any further guidance on the code of conduct?

Yes. A model code for parish councils and a full guide to the code of conduct was published by the Standards Board in May 2007 and can be downloaded from their website (www.standardsboard.co.uk). A pocket guide to the code is also available.

In addition the Standards Board has produced a series of fact sheets covering the following topics:

- Bullying;
- Disclosing confidential information;
- Gifts and hospitality;
- Lobby groups and declarations of interest;
- Personal and prejudicial interests;
- The ethical framework for local government.

There is also a series of frequently asked questions available from the Standards Board, which is subject to regular review and updating, to explain key points of the code of conduct.

5. Interests and bias

Members have a general duty under the code of conduct to register and, where applicable, declare personal interests at meetings. They must also consider whether their personal interest gives rise to a prejudicial one and, if so, take the relevant steps as set out below. Whilst interests can apply to many scenarios, parish councillors often have particular queries with regards to membership of lobby groups and being a dual-hatted member.

Membership of Lobby Groups

You should act in accordance with the general principles which underpin the code and in particular:

- You should serve the public interest only;
- You should not place yourself in a situation where your honesty and integrity may be questioned;
- You should reach your own conclusions on the issues before you;
- You should take decisions fairly on the merits of the issue;
- You may take into account the views of others, including your political group, but should reach your own conclusions on the issues before you act in accordance with those conclusions.

Personal interests

- The Code of Conduct requires you to declare a personal interest in any matter relating to an interest you must include in your register of interests.
- You are required to declare a personal interest if you are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision at your authority.
- You should declare the existence and nature of your interest at the meeting so that members of the public are informed about interests that may relate to your decisions.
- You can continue to participate unless the interest is also prejudicial (see the section on prejudicial interests below).
- You may not have a personal interest in a related discussion or decision of your authority if you merely campaigned on an issue as an individual and not as member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign. However, you should still consider the general test for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision, including the possibility of bias.
- You may want to discuss your circumstances with your monitoring officer.

For further information on bias and predetermination, see the Standards Board's occasional paper, which is available from their website - www.standardsboard.gov.uk.

Prejudicial interests

Under the Code of Conduct, you only have to withdraw from a meeting where your personal interest is also prejudicial.

Exceptions:

You cannot have a prejudicial interest in a matter if:

- a) The matter falls within one of the exempt categories of decisions under paragraph 10(2)(c), for example, any ceremonial honour given to members. A full list of exempt categories can be found in the Standards Board's code of conduct guidance, which is available on their website - www.standardsboard.gov.uk.
- b) The matter does not affect your financial interests or does not relate to a licensing or regulatory matter brought by you or a person or body in which you have a personal interest.

For example, you will not have a prejudicial interest in a developer's planning proposal which you and your lobby group have campaigned against, if you, any person, or any body you have a personal interest in is not financially affected by the proposal. The planning proposal might indirectly affect your lobby or campaign group since it relates to things it campaigns for or has expressed public opinions about. However, in this context, it will not be relevant for the purposes of the Code.

Nevertheless, you may have a prejudicial interest where the matter is an application for a grant for funding for a body on your register of interests, or a planning or licensing application made by you, a person or a body on your register of interests.

If your personal interest in a matter falls outside the exempt categories mentioned in a) above, and does affect your financial or regulatory interests, you will then have to consider the following test:

General test for prejudicial interests:

Would a member of the public, who knows the relevant facts, reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest?

If the answer is 'yes' then you would have a prejudicial interest.

If you have a prejudicial interest, what you can do depends on whether your authority has adopted paragraph 12(2) of the code of conduct. If it has not you must withdraw from the chamber. If it has, it will depend on whether the public are also allowed to attend the meeting for the same purpose.

If you merely campaigned on an issue as an individual and not as a member of a relevant lobby group - for example, if you tackled an issue as part of your election campaign then you may not have a personal interest in a related discussion or decision of your authority. However, you should still consider the general test (see below) for personal and prejudicial interests and whether there is any other reason why you should not participate in the decision. You should also consider the possibility of bias.

In conclusion, if the matter to be discussed will have a direct impact on a lobby campaign group of which you are a member, e.g. grant of funding or approval of planning application, it is likely to be prejudicial.

You will also need to consider:

Am I biased or have I predetermined a matter?

PRIMARY TEST:

Whether an informed member of the public would think that there is a real possibility that you could be biased.

Have I made up my mind about the issue?

You should not make your mind up about an issue before you come to take a decision on it. You can still form a provisional view but you must be willing to consider all arguments presented at the meeting and you must be genuinely open to persuasion on the merits of the case.

If you do not have a genuinely open mind about a matter, this will potentially leave the decision susceptible to legal challenge because of the common law concept of predetermination. Predetermination is a legal concept that predates the code of conduct. Further guidance on predetermination has been published by the Standards Board and can be found on their website.

Dual-hatted members

Where you have interests arising from service on other authorities and public bodies e.g. as governor on a school board or as trustee of a village hall, you need to balance three principles:

1. You should withdraw from consideration of issues where these interests conflict with your public duties, to such an extent that you have a prejudicial interest. You need to think carefully about what is the business of the meeting you are attending.
2. The rules on interests should not obstruct Members who are involved in other forms of public service, such as another tier of local government.
3. The rules on interests are not intended to interfere with the proper conduct of council business.

As above, the primary test should be: would a reasonable member of the public, who knew all the relevant facts, think that your interest was so significant that your judgement of the public interest would be prejudiced?

You can participate on the same issue at more than one tier of local government e.g. parish or district/unitary but you should:

- To avoid allegations of pre-determination at parish level, make it clear that you will reconsider the matter at the other body taking into account all relevant evidence and representations there
- At district/unitary level declare a personal (not prejudicial) interest arising from membership of the parish council which has already expressed a view on the matter, but make it clear you are considering the matter afresh, taking all the evidence and representations presented to that meeting into account.

BUT:

- You should not make decisions on planning and licensing relating to an authority on which you also serve or participate in direct negotiations between two authorities
- There is more likelihood of being able to participate if you are acting in an advisory rather than a decision-making capacity.

If you have a prejudicial interest

You can still:

- Make written representations to officers in a private capacity provided you disclose the existence and nature of your interest and don't seek preferential consideration
- Use a professional representative (e.g. for the submission of a planning application)
- Arrange for another Member to represent the view of constituents
- If your council has adopted paragraph 12(2) of the 2007 model code of conduct you can attend to speak and give evidence, and once you have spoken or are requested to you must leave the room. This depends on the public being permitted to attend for the same purpose.

You cannot:

- Be present in the public gallery or speak as a member of the public
- Make written representations to Members of the relevant Committee
- Discuss the matter with other Members (even to ask the Ward Councillor to represent your own views – as opposed to the views of constituents)
- Lobby Committee Members or try to get officers to change their decisions or recommendation.

6. Guidance on Appointments to Outside Bodies

This guidance draws attention to the main issues which you, as a Councillor, should consider when appointed to serve on an outside body. In the context of this guidance, an outside body is a non-statutory organisation which may be a charity, an incorporated company (either limited by shares or guarantee), a friendly society or an unincorporated association.

Service on outside bodies has always been an established part of a councillor's role. An appointed member on an external body will be able to use their knowledge and skills as a council member to assist the organisation to which they are appointed.

Councils are increasingly working in partnership with external organisations and greater clarity is needed as to the role of Councillors appointed to these bodies. Questions of accountability and governance are likely to arise as funding streams that are of benefit to outside bodies may be channelled through the council as the accountable body

Membership of an outside body brings into play different considerations to those which relate to council membership. As a member of an outside body you will have different duties, obligations and liabilities depending upon the type of organisation involved.

Matters to consider before appointment

Appointment to membership of outside bodies can take various forms, and before taking up active membership it would be prudent to establish the capacity in which you are appointed. This may be either:

- As a member of the management committee, board of directors or committee of trustees of the outside body. Here you will not only be representing the interests of the council but you will also have duties to the outside body and a role in its governance. You will have detailed responsibilities which are outlined further in this guidance (See section on Directors Duties); or
- As a member of an outside body where you represent the council's position as a 'member' of the outside body but take no part in its management or governance other than to attend and vote at annual or general meetings. Here you will be mainly concerned with representing the council and will not have responsibilities for governance of the body.

The main issues:

- The application of the council's code of conduct;
- The primary duty to act in the interests of the outside body;
- Duties as a charity trustee (if applicable);
- Duties as a company director (if applicable);
- Liabilities in respect of unincorporated organisations;
- Conflict with the Member's role as a Councillor.

Code of Conduct – Register of Interests

The code of conduct requires that:

“13 (2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest ..., register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

You must register a personal interest in:

“8 (1)(a) (i) 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 Authority”

Matters to Check – Questions to Ask

Councillors are advised that in the event of being appointed to an outside body and taking up the position you should be clear about the answers to the following questions:

1. What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
2. In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
3. Do I have a copy of the body’s governing instrument (this may be a trust deed, a constitution or memorandum and articles of association)?
4. Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body?
5. Am I aware of the identity of other directors, trustees or committee members?
6. Is there an officer of the body such as a Secretary or Clerk to whom I can refer?
7. Are written minutes kept of meetings and have I seen these minutes?
8. Are meetings being conducted in accordance with the governing instrument?
9. Am I aware of the financial position of the organisation to which I have been appointed?
10. Am I aware of any contracts between the body and the council?
11. Does the governing body of the organisation receive regular reports on the financial position?
12. Have I seen the last annual report and accounts?
13. Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?
14. Have I been informed of the main insurances held by the body?

Council’s Code of Conduct

The council code of conduct requires that a member must observe the code of conduct whenever the member is acting as a representative of the authority.

The code of conduct also states:

“2(5) Where you are act as a representative of the authority:

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or*
- (b) on any other body, you must, when acting for that other body, comply with the authority’s code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.”*

Directors Duties

If the body is a limited company, it is likely that you will be appointed as a company director. You will need to complete a form giving your details for filing in the Register of Companies at Companies House. The secretary of the body should assist you with this.

Duties of company directors are not the same as your responsibilities as a Councillor.

These duties can be summarised as follows:

- A fiduciary duty to the company, not to the individual shareholders or Members, to act honestly and in good faith and in the best interests of the company as a whole. Directors are, therefore, in a similar position to trustees who must take proper care of the assets of the company.
- 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.
- Like a Councillor in respect of council decisions, the director is under a duty to exercise independent judgement, though it is permissible for him to take into account the interests of the third party which he represents (such as the council). In such a case, the director must disclose that position and tread a fine line between the interests of the company and the party represented. The director cannot vote simply in accordance with the council mandate: to do so would be a breach of duty.
- There may be actual or potential conflicts between the interests of the council and the interests of the company. For example, the company might be inflating a bid for a council grant. In such rare circumstances, the only proper way for the conflict to be resolved is for the Councillor to resign either from the company or from the council.
- Directors are not allowed to make a private profit from their position. They must therefore disclose any interests they or their family have in relation to the company's contracts. Whether they are then allowed to vote will depend upon the company's Articles of Association.
- 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.
- They should also ensure compliance with other legislation such as health and safety and equalities legislation if the company employs staff or employs contractors to undertake works.

Charitable Trustees

Those who are responsible for the control and administration of a charity are referred to as trustees, even where the organisation is a company limited by guarantee, though they are not strictly trustees. A number of publications are available on the Charity Commission's Website at: www.charitycommission.gov.uk. See Publication CC3 - "Responsibility of Charity Trustees" which is a useful reference document.

A charity may also be unincorporated (see below).

The duties of charity trustees can be summarised as follows:

- Trustees must take care to act in accordance with the charity's trust deed or governing document and to protect the charity's assets i.e. act to ensure that the people the trust is held for benefit. They are also responsible for compliance with the Charities' Acts and the Trustee Act 2000.
- Trustees must not make a private profit from their position. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals and in relation to investment matters.
- Charitable trustees must ensure that the information relating to the trust and trustees is registered with the Charity Commissioners and that annual accounts and returns are completed and sent.
- If charitable income exceeds £10,000, the letters, adverts, cheques etc must bear a statement that the organisation is a registered charity.
- Trustees are under a duty to ensure compliance with all relevant legislation, for example, in relation to tax and health and safety.

Unincorporated Organisations

Groups that are not limited companies may be "unincorporated associations" which have no separate identity from their Members. The rules governing the Members' duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between 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. Management Committee members must act within the constitution and must take reasonable care when exercising their powers.

Members who are involved in the administration of an unincorporated body will need to be aware that as the body has no separate corporate status, any liabilities will fall upon the members personally.

Members need to assess the risk of personal liability and the extent to which this has been covered by insurance arrangements.

Conflicts of interests and bias

Councillors appointed to an outside body will have a personal interest in that body and will need to consider their position when they sit on cabinet, a council committee or other decision-making body which is considering a matter which relates to the outside body.

A personal interest will always need to be declared and the Councillor will need to consider whether or not they also have a prejudicial interest arising from that membership.

Having prejudicial interest rules apply, regardless of whether or not the Councillor was appointed onto the outside body by the council. The rules simplify what were quite complex rules about overriding duties to a company or as a trustee that were applicable under the previous code of conduct.

What may happen in relation to that item of business depends on whether that Councillor has a "prejudicial interest" under the code of conduct and the meeting rules.

If the council has adopted paragraph 12(2) of the code of conduct, a Councillor has a prejudicial interest in an item of business arising from their membership of an outside body they must still leave the Chamber, but only after they have attended the meeting for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

Involvement and Reporting

Councillors appointed to an outside body should ensure that they take a proper role in the management and governance of that body. This will include attending meetings regularly and being familiar with issues relating to that body.

It is recommended that a Councillor appointed as the council's representative should consider the need to make reports to the council on the progress being made by that body and on any issues which the council should consider.

Further Advice

Relationships between the council, outside bodies and the council's representative can be complex. In any case of dispute or difficulty, advice should be sought from the Clerk, who can then take advice from professional advisors where necessary.

7. Guide to Probity and Planning

Under the relevant planning legislation, parish councils are entitled to be notified of every planning application unless they have waived the requirement. The district/unitary council have to inform the parish council in writing of the application, indicating the nature of the development and identifying the land to which it relates. If the parish council wishes to make any representations it must do so within 14 days of the notification made to it. However, local protocols may exist and it is always advisable to check with the relevant district council what arrangements have been put in place.

Many of the complaints considered by the Standards Board for England relate to members' involvement in planning applications and it is therefore very important that members are scrupulous in their adherence to the code of conduct, for example in declaring personal interests (paragraphs 8 and 9 of the code); leaving the room if the interest is prejudicial (paragraph 12) and not using their position as a member to improperly confer on themselves or any other person, an advantage or disadvantage (paragraph 6).

If a member of the parish council is also a member of the district council planning committee which is considering a planning application, the member will need to be careful that they have not pre-determined an application as a result of any prior involvement of the parish council. If in doubt, the Councillor should consult their Monitoring Officer.

What is a Material Planning Consideration?

The primacy of the development plan has been with us for some time. This is currently expounded through S38 of The Planning and Compulsory Purchase Act 2004, which states

'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination is to be made in accordance with the plan unless material considerations indicate otherwise.'

Policy documents within the plan change from time to time. Current advice is that if a policy in the development plan conflicts with any other policy in the development plan the conflict must be resolved in favour of the document most recently adopted, approved, or published.

So what is a material planning consideration that has the ability to overturn the development plan? In short, it is relevant elements of policy (national, regional and local), the views of consultees and factors on the ground.

In terms of consultees, there are statutory and non-statutory consultees. The council is a non-statutory consultee but its views and those of local residents are always considered, but local opposition or support on its own is not a reason for refusing or granting planning permission. Opposition or support must be backed up by valid planning reasons.

Whether or not a factor is capable of being a material planning consideration is a matter of law. Beyond that, it is a matter of fact whether a factor *capable* of being a material consideration *is* a material consideration in any particular case. Once the existence of the material consideration is established, the "weight" given to it in the eventual decision is a matter of judgement for the local planning authority.

In responding to planning applications submitted in the council's area, it is important to differentiate between material and non-material considerations. In short, the former can legitimately be considered and the latter cannot.

Examples of issues the local planning authority can normally consider as a material planning consideration:

- Overshadowing;
- Overlooking and loss of privacy;

- Adequate parking and servicing;
- Overbearing nature of proposal;
- Loss of trees;
- Loss of ecological habitats;
- Design and appearance;
- Layout and density of buildings;
- Effect on listed building(s) and conservation areas;
- Access and highways safety;
- Traffic generation;
- Noise and disturbance from the scheme;
- Disturbance from smells;
- Public visual amenity (not loss of private individual's view);
- Flood risk.

Examples of issues the local planning authority cannot normally consider as a material planning consideration:

- Loss of value to private individual property;
- Loss of view;
- Boundary disputes including encroachment of foundations or gutters;
- Private covenants or agreements;
- The applicant's personal conduct or history;
- The applicant's motives;
- Potential profit for the applicant or from the application;
- Private rights to light;
- Private rights of way;
- Damage to property;
- Disruption during any construction phase;
- Loss of trade and competitors;
- Age, health, status, background and work patterns of objector;
- Time taken to do the work;
- Capacity of private drains;
- Building and structural techniques;
- Alcohol or gaming licences.

PART SIX
ELECTIONS

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1. Guide to filling a Casual Vacancy in the Office of Parish Councillor

Procedure

In the event of a casual vacancy occurring in the office of Parish Councillor, public notice must be given by the parish council in accordance with Section 87(2) of the Local Government Act 1972.

In a case where the parish council declares the office to be vacant in accordance with Section 86 of the 1972 Act (i.e. through the disqualification or non-attendance of a member) the vacancy must be publicly advertised *immediately*.

In all other cases, public notice of the vacancy must be given as soon as practical after the vacancy has occurred.

NOTE:

It is possible that the district or unitary council has local arrangements with parish councils to advertise vacancies. It is therefore sensible to contact them first normally through their elections unit.

Notice of Vacancy

Section 232 of the Local Government Act 1972 requires that a public notice required to be given by a local authority shall be given by posting the notice in some conspicuous place or places within the area of the local authority and in such other manner, if any, as appears to the local authority to be desirable for giving publicity to the notice.

A template form of notice for when a casual vacancy occurs is attached to these notes. In order to be as helpful as possible to the public, the template provides for the date by which an election must be requested and the last possible date for a poll to be held to be inserted, rather than referring to the somewhat obscure computation of time periods. These dates should be checked with the elections officer at the local district or unitary council prior to publishing the notice.

The date on which the notice is posted should be inserted at the bottom of the notice and a copy of the notice should be forwarded to the Elections Officer at the local district or unitary council immediately.

Claiming a Poll

Proper notification of the vacancy is essential because, on such vacancy occurring in the office of Parish Councillor, an election to fill the vacancy shall be held if, within fourteen days (this is calculated by excluding Saturdays, Sundays, Christmas Eve, Christmas Day, Good Friday, bank holidays and days appointed for public thanksgiving or mourning – Local Elections (Parishes and Communities) (England and Wales) Rules 2006) after public notice of the vacancy has been given, notice in writing of a request for such an election has been given to the returning officer by ten electors for the area. If the parish council is warded, the request must come from ten electors within the relevant ward.

If no such request is received within the time stipulated, the parish council must fill the vacancy by co-option as soon as practicable (see below).

Once an election has been requested, however, the vacancy must be filled by election and the Council cannot fill it by co-option, even if there are insufficient candidates. An election must be held within sixty days (calculated as above) of the date of the public notice of the vacancy.

Where a casual vacancy occurs within six months before the day on which the Councillor

whose office is vacant would normally have retired, an election to fill the vacancy shall not be held. The parish council nevertheless may fill the vacancy by co-option if it wishes.

Voting by Council on Casual Vacancy (“Co-Option”)

In the case of co-option the following procedure should be followed:-

- (a) Notice of the intention to co-opt to the vacancy should be given in the agenda for the meeting of the Parish Council;
- (b) When the item is reached, the Chair should call for nominations, which should be duly proposed and seconded;
- (c) When all the nominations have been received a vote should be taken. It is usual for the candidate's names to be put in alphabetical order;
- (d) The person co-opted must receive a majority of the votes of those Councillors present and voting at the meeting where the co-option takes place. Where there are more than two candidates for one vacancy, this rule means that a person must get a majority of votes over all the other candidates. Thus where candidate A receives four votes, and candidates B and C each receive two, A is not elected because he has the same number of votes as B and C put together and does not have a majority over their combined votes. Where there are more than two candidates it is desirable to eliminate the candidate with the least number of votes, so that the final vote is between two candidates only;
- (e) After the vote has been taken, the Chair should declare the candidate who received the highest number of votes duly elected;
- (f) The person elected must make a declaration of acceptance of office before, or at, the first meeting of the Parish Council following his election in the presence of a member of the Parish Council or the Proper Officer of the Parish Council. The declaration is then retained in the parish records. The person elected will need also to undertake to abide by the Parish Council's Code of Conduct.

NOTE:

There is nothing preventing Councillors from approaching persons to offer themselves for co-option or even advertising for applicants. Applicants might also be invited to provide a written “application” or invited to speak to the council prior to any voting. If such arrangements are to be applied, they should be carefully drafted and provided to applicants. It is imperative that all applicants are treated alike in order that the arrangements are seen as fair. Applicants under such arrangements must not undertake any lobbying.

2. Model Notice of Vacancy

(..... **WARD of the)**

PARISH of

**NOTICE OF VACANCY
IN THE OFFICE OF PARISH COUNCILLOR**

NOTICE IS HEREBY GIVEN pursuant to Section 87(2) of the Local Government Act 1972 that

formerly a Member of the above Parish Council has ceased to be a Member and that a casual vacancy exists in the office of Councillor for the said Parish.

On receipt of a request in writing from any ten local government electors for the said Parish/Parish Ward, an election to fill the vacancy will be held not later than..... If no such request is made the vacancy will be filled by co-option by the Parish Council.

Requests for such an election should be addressed to **The Returning Officer, (at the office of the local district or unitary council)** to arrive not later than.....

DATE

SIGNED

DESIGNATION

(Clerk to the Council, the Proper Officer for this purpose)

PART SEVEN

FORMATION OF NEW PARISH AND TOWN COUNCILS

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1. Formation, Abolition and Alterations of Parish Councils

New arrangements for the formation of new parish councils and the abolition or alteration of existing parish councils are contained in the Local Government and Public Involvement in Health Act 2007. These arrangements devolve responsibility to principal councils (district councils including metropolitan districts, unitary councils and London Borough councils). The arrangements came into force in February 2008. The following is a brief summary of the detailed legislation and persons considering calling for the formation of a new parish council are urged to study the reference documents listed below.

Community Governance Review

Recommendations for the formation, abolition or alteration of a parish council arise from a community governance review. The principal council may undertake a review of its own volition. However, it must respond if it receives a petition calling for a community governance review (see below) unless a review involving the subject of the petition has been conducted in the past two years.

The terms of reference for a review can include the whole or part of the area of the principal council. The council can modify an ongoing review (i.e. in response to a petition). Reviews must be concluded within 12 months. The council must consult the electors of the review area and have regard to the responses received. The council must have regard to the need to secure that community governance within the area under review (a) reflects the identities and interests of the community in that area, and (b) is effective and convenient.

Recommendations arising from a review are to cover abolition or otherwise, constituting a new parish and new parish council or not, grouping or de-grouping of parishes, area of new parish and area alterations, name of parish or name change, and electoral arrangements and changes. The recommendations must be published.

Community Governance Petition

A petition for a review to be undertaken must specify the area to which the review is to relate and specify the recommendations the petitioners are making (i.e. the constitution of a new parish or the variation of a parish area).

A petition must be signed by a minimum of electors within the petition area:

- At least 50% where there are fewer than 500 electors;
- At least 250 electors where there are between 500 and 2500 electors;
- 10% of the electors where there are more than 2500 electors.

Reorganisation Orders

The principal council must decide what to do in response to recommendations in a community governance review and give reasons for its decision. Decisions effecting changes to community governance will result on the making of reorganisation orders by the council. The Act provides for the publication of orders.

Orders may, as appropriate, make arrangements for the transfer, management or custody of property, transfer of staff and other staffing matters, and transfer of rights and liabilities. The Act also enables bodies affected by reorganisation orders to agree between themselves other incidental matters.

Orders making new parish councils will come into effect on 1 April. Orders need to be made in the previous October in order to provide for the election arrangements to be made. The order will provide the name and style of the new parish council ('The Community/Neighbourhood/Parish/Village Council of X')

2. Forming a New Parish

If a recommendation of a community governance review is to establish a new parish and if the parish has 1,000 or more local government electors, the review must recommend that the parish should have a council.

If the parish has 150 or fewer local government electors, the review must recommend that the parish should not have a council (but it will have a parish meeting).

In parishes with 151 to 999 electors the principal council may recommend the creation of either a parish council or a parish meeting.

A new parish may be constituted by

- establishing an unparished area as a parish;
- aggregating one or more unparished areas with one or more parished areas;
- aggregating parts of parishes;
- amalgamating two or more parishes;
- separating part of a parish.

Grouping or De-Grouping

A community governance review may make recommendations as to whether or not a grouping or de-grouping provision should be made.

Grouping allows for parishes to be grouped together to have a single parish council. A de-grouping recommendation may be appropriate where a parish has grown in size (by number of electors) and now justifies its own parish council.

Electoral Arrangements

Where a community governance review makes recommendations for the formation of a parish council, the review must also make recommendations as to what electoral arrangements should apply to the council. This includes whether the parish is to be divided into wards and the number of councillors on the parish council.

Regulations

Regulations have been made dealing with the distribution of property, rights and liabilities of parish councils affected by a reorganisation order; the continuity of certain general and local matters; transitional issues including those affecting Councillors, staff and charter trustees; and other matters such as accounts and audit and the minutes of last meetings of parish councils which cease to exist in consequence of reorganisation orders.

Other regulations make transitional and consequential provisions in relation to a parish council or a Chair of the parish meeting for a new parish, and the financial year in which the new parish is constituted regarding calculation of the billing authority's and new parish council's or relevant Chair's budget requirements, and the anticipation, issue and payment of sums in respect of precepts.

Guidance

Guidance has been issued by the Secretary of State for Communities and Local Government to principal councils. The matters covered by the guidance include:

- duties and procedures in undertaking community governance reviews, including community governance petitions;
- guidance on a valid petition, and for the requirement for petitions to meet specific numerical or percentage thresholds signed by local electors;
- making and implementing decisions on community governance and the relevant considerations which influence judgements against the statutory criteria, including the

impact on community cohesion, and the size, population and boundaries of the proposed area;

- other forms of community governance not involving parishes for example, residents' associations, community forums, tenant management organisations, area committees;
- considerations on whether parish meetings and parish councils would be most appropriate, and electoral arrangements;
- consequential recommendations for related alterations to ward and division boundaries.

Financial Arrangements for New Parish Councils

A new parish council is unable to precept for the first financial year (1 April – 31 March) of its formation (as the parish council does not come into being until 1 April).

The Local Government Finance Act 1992 and the Local Government Finance (New Parishes) (England) Regulations 2008 No 626 enables the principal council to anticipate the financial needs of the new parish council and to collect the cost as if it were a precept.

The principal council is likely to want to discuss the new parish council's needs with any 'shadow' or perspective members of the council.

First Meeting of a New Parish Council

The principal council is responsible for arranging the first meeting of a new parish council, which must be within 14 days of the elections. It is suggested that, prior to the first meeting, an informal meeting of the new Councillors be arranged at which they can be provided with useful information and guidance (e.g. the NALC website, the local association of local councils details, Code of Conduct etc). The Officers of the principal council (Monitoring Officer, Planning Officer, Finance Officer, etc) that have involvement with the parish council can be introduced and explain any liaison arrangements. The agenda for the first meeting can be explained. The Members will need to consider who they wish to appoint as Chair and Vice Chair of the parish council.

The appropriate officer of the principal council (normally from the secretariat/democratic services office) will need to arrange a time and venue for the meeting and prepare and despatch an agenda. A form of agenda is included below. It is suggested that key issues such as the Code of Conduct are dealt with at the outset. Other agenda items will depend on local circumstances. If allotments transfer, it may be appropriate to provide a report about them and include an item on the agenda.

It is probable that new parish council members will be tentative about making decisions at first and it should be accepted that some agenda items may be deferred. A detailed first agenda does have the benefit of indicating the matters that do need to be dealt with early in the life of a new parish council.

In the event of there being vacancies on the parish council by reason of insufficient election candidates, the parish council can co-opt persons to become councillors. It is preferable that there is some formality to the selection process. All applicants should be treated in the same way and the decision made by formal vote.

In the event of there being insufficient Councillors for the parish council to be able to act (i.e. if it is inquorate by having less than 3 elected members), the principal council has power under s91 Local Government Act 1972 to appoint temporary Councillors. The first meeting may have to be delayed until an appointment is made (Monitoring Officers might wish to take the precaution of obtaining authority to appoint in anticipation). One option would be to

appoint the principal council's Councillors for the ward in which the parish council is situated, who would have local knowledge and experience to move the parish council forward and eventually to co-opt Councillors for the expiration of the term of office.

The principal Council is responsible for producing the minutes of the first meeting. It would be helpful to the new parish council to produce them in a style, format and standard that can be followed by the clerk subsequently.

Developing the Relationship

Some principal councils may be prepared to offer support beyond the first meeting, for example by producing agendas and minutes until a Clerk is appointed. It is likely that the Monitoring Officer will want to arrange training for the new Councillors on the Code of Conduct. Planning Officers may want to provide advice on the consideration of planning applications. Finance Officers may provide guidance on the operation of a bank account and keeping proper accounts. Human Resource Officers may provide assistance in the appointment of a clerk. IT officers may assist the parish council in forming a website.

It is desirable that a positive relationship is developed at the earliest opportunity between the principal council and the new parish council. Formal arrangements can be developed subsequently, if required, where services are undertaken by the principal council for the parish council and vice versa.

Annual Meeting

Strictly speaking, the first meeting of a new parish council is also the annual meeting and the principal council should also make arrangements to call a parish meeting.

Form of Agenda for First Meeting

----- COUNCIL

**FIRST (ANNUAL) MEETING OF -----
COMMUNITY/NEIGHBOURHOOD/PARISH/VILLAGE COUNCIL TO BE HELD ON -----
--- ----- AT -----pm AT -----**

AGENDA

1. ELECTION OF CHAIR FOR 200-/200-

(The newly-elected Chair will make a declaration of acceptance of office in the prescribed form and will assume the Chair)

2. APPOINTMENT OF VICE CHAIR FOR 200-/200-

3. APOLOGIES FOR ABSENCE

4. ACCEPTANCE OF OFFICE

To note the completion of the declaration of acceptance of office forms by the parish councillors.

5 STYLE AND TITLE OF THE COUNCIL

to note the style and title of the Council ;

----- Community/Neighbourhood/Parish/Village Council

6. LOCAL GOVERNMENT ACT 2000 ETHICAL FRAMEWORK ARRANGEMENTS AND MEMBERS' CODE OF CONDUCT

The attached report of the Monitoring Officer (**Document "A"**) deals with the ethical framework for local government, including councils, established under the Local Government Act 2000.

Appendix 1 to the report sets out the principles which govern the conduct of Members and co-opted Members of local authorities. Appendix 2 is a draft Code of Conduct, based on these principles, which contains the requirements of a Model Code of Conduct issued by the Secretary of State.

All parish councils are under a duty to pass a resolution adopting a Code of Conduct for Members containing the requirements of the Model Code.

Recommended –

That In accordance with the requirements of the Local Government Act 2000, the Parish Council adopts as its Members Code of Conduct, the code of conduct set out as Appendix 2 to Document "A".

7. CO-OPTION OF MEMBERS

Section 21 of the Representation of the People Act 1985 gives the Parish Council the power of co-option to fill vacancies remaining unfilled following an ordinary election.

There are ----- vacancies –

----- Ward – -- vacancies

----- Ward – -- vacancies

Recommended –

- (1) That the Council believes that it is in the interests of the parish that the vacancies on the Council are filled, and that this be achieved by co-option.**
- (2) That persons eligible to become co-opted be encouraged to put their names forward to the Chair.**
- (3) That consideration be given to a process of selection at the next meeting.**

Note:

Eligibility for co-option, is as follows:

*(a) 21 years of age, **and***

*(b) **either:***

- Be a local government elector for the parish, or*
- Be an occupier (owner or tenant) of land or premises in the parish for the previous 12 months, or*
- Have their place of work in the parish for the previous 12 months, or*
- Have resided in the parish for the previous 12 months, or*
- Have resided within three miles of the parish boundary for the previous 12 months.*

8. POWERS, DUTIES AND RESPONSIBILITIES

The principal powers and duties of parish councils are set out in the previously circulated Good Councillor Guide published by the National Association of Local Councils.

Recommended –

That the powers, duties and responsibilities of parish and councils be noted.

9. CONSIDERATION OF PLANNING APPLICATIONS

One of the main areas of activity that the Parish Council will wish to become involved in is the planning function. The Council has the right to be consulted in respect of all planning applications within its area.

To facilitate this arrangement a Model Protocol between parish councils and the local planning authority has been introduced. The parish council is recommended to adopt the Model Protocol which is attached (**Document "B"**).

Recommended –

- (1) That the ----- District Council be advised that this Parish Council wishes to be consulted on all planning applications affecting its area.
- (2) That the Model Planning Protocol set out as Document "B" be adopted for this purpose.
- (3) That a Planning Committee be appointed to discharge the planning functions of the Parish Council within the Protocol comprising the following members:

(to be determined at the meeting)
- (4) That the Chair of the Planning Committee be the nominated lead contact with the District Council for all planning matters.

10. FINANCIAL ARRANGEMENTS

The Finance Director, -----District Council will present two reports –

Document "C" – **setting out the funding arrangements for the new Parish Councils for 200/0.**

Document "D" – **detailing a financial support scheme between -----District Council and Parish Councils**

11. APPOINTMENT OF BANK

To appoint a Bank to be Bankers for the Parish Council.

12. APPOINTMENT OF SIGNATORIES

To appoint signatories to sign cheques on behalf of the Parish Council (*minimum of two*).

13. APPOINTMENT OF CLERK TO THE PARISH COUNCIL

- (1) To consider arrangements for the appointment of a Clerk to the Parish Council.

Attached as **Document "E"** are the roles and responsibilities normally applied to the Clerk. These have been supplied by the ----- Local Councils' Association.

- (2) To consider interim arrangements until a permanent appointment is made.

14. PARISH COUNCIL CONSULTATION MEETINGS

To consider the appointment of a representative to attend the parish councils consultation meetings with -----District Council.

A copy of the notes from the last meeting held on is attached for information.

3. References

The Act

[Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#)

Explanatory Notes to the Act

[Local Government And Public Involvement In Health Act 2007](#)

Regulations

[The Local Government \(Parishes and Parish Councils\) \(England\) Regulations 2008 No. 625](#)

[The Local Government Finance \(New Parishes\) \(England\) Regulations 2008 No. 626](#)

Statutory Guidance

<http://www.communities.gov.uk/documents/localgovernment/pdf/743628.pdf>

Model order (DCLG)

<http://www.communities.gov.uk/documents/localgovernment/doc/1139296.doc>

PART EIGHT
USEFUL SOURCE MATERIAL

| | Page Numbers |
|------------------------------------------------------------|-------------------------|
| Essential Source Material for Parish Council Clerks | 116-117 |

1. **Local Council Administration** by Charles Arnold-Baker
ISBN: 0-406-952981
Price: £50.00
Published by: Butterworths Law (www.butterworths.co.uk)

The Clerk's "Bible". If your Council only has one reference book, make sure it's this one!
2. A copy of your Council's **Standing Orders (model standing orders and financial regulations are available from NALC)**
3. "Governance and Accountability in Local Councils in England" The publication can be down loaded from the websites of the Audit Commission, NALC and SLCC. A printed version of the publication can be requested from SLCC.
4. Your **Job Description**.
5. Your **Contract of Employment**.
6. **The Good Councillor's Guide** (published by the National Association of Local Councils national training strategy for Town & Parish Councils).
7. A copy of your Council's adopted **Code of Conduct**.
8. Guidance for your Councillors on the Code of Conduct (contained in Toolkit).
9. Guidance Notes on the Powers and Functions of Parish and Town Councils and a Rough Guide to Who Does What (contained in Toolkit).
10. Guidance for consultees on planning applications – **What are "material planning considerations?"** (contained in Toolkit).
11. **Guidance on the Freedom of Information Act** (contained in Toolkit).
12. **A model Freedom of Information Publications Scheme** (downloadable from the Information Commissioners website at www.informationcommissioner.gov.uk Bespoke guidance available from NALC).
13. Guidance on holding the **Annual Parish Meeting (contained within the Toolkit)**.
14. Your Council's Auditor – find out who it is!
15. Your Council's Monitoring Officer – find out who it is! (Contact your District/Unitary Council).
16. Your County Association of local councils (contact details available from NALC).
17. Useful contact numbers – your District, Unitary and/or County Council may publish an A – Z Guide.
18. E-mail and Internet access.

19. Useful websites:
 - National Association of Local Councils (NALC):** www.nalc.gov.uk.
 - Association of Larger Local Councils (ALLC):** www.allc.gov.uk.
 - Society of Local Council Clerks (SLCC):** www.slcc.co.uk.
 - The Standards Board for England (SBE):** www.standardsboard.co.uk.
 - Commission for Rural Communities:** www.ruralcommunities.gov.uk. (Look out for the Rural Proofing Toolkit)
20. The NALC Direct Information Service (contact NALC for details).
21. A Guide to Becoming a Quality Parish Council – ODPM/DEFRA joint publication.
22. Danger Zones for Councillors and Officers – LGC information. ISBN 1904009085.
23. Local Council Finance – Shaw & Sons – ISBN 07219 1580 9.
24. The Local Council Clerk’s Guide – Paul Clayden –Shaw & Sons–ISBN 07219 1601 5.
25. The Parish Councillor’s Guide – Paul Clayden – Shaw & Sons ISBN 07219 0516 1.
26. This Governance Toolkit for Parish and Town Councils.