

PART 6

CODES AND PROTOCOLS

MEMBERS CODE OF CONDUCT

BASSETLAW DISTRICT COUNCIL

Definitions

For the purposes of this Code of Conduct, a “Councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority,
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a Councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of Councillor and local government.

General principles of Councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of Councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person

- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a Councillor.

This Code of Conduct applies to you when you are acting in your capacity as a Councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a Councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

Standards of Councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a Councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's Councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have

written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a) **given to me in confidence by anyone**
- b) **acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - I. **I have received the consent of a person authorised to give it;**
 - II. **I am required by law to do so;**
 - III. **the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - IV. **the disclosure is:**
 1. **reasonable and in the public interest; and**
 2. **made in good faith and in compliance with the reasonable requirements of the local authority; and**
 3. **I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a) **act in accordance with the local authority's requirements; and**
- b) **ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor. Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- Access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority. You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality

As a councillor:

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a Councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a Councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendices

Appendix A

The Seven Principles of Public Life

The principles are:

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

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

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

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

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

Honesty Holders of public office should be truthful.

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

Appendix B

Registering interests Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

"Disclosable Pecuniary Interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which affects
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a relative or close associate; or
 - c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in Table 2

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) affects the financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
 - b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and

must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

Table 1: Disclosable Pecuniary Interests This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the Councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a Councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her spouse or civil partner or the

	<p>person with whom the Councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
Corporate Tenancies	<p>Any tenancy where (to the Councillor's knowledge)—</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that the Councillor, or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.</p>
Securities	<p>body where—</p> <p>(a) that body (to the Councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i)) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the Councillor, or his/ her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

* 'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society

Table 2: Other Registrable Interests

<p>You must register as an Other Registerable Interest :</p> <p>a) any unpaid directorships</p> <p>b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority</p> <p>c) any body</p> <p>(i) exercising functions of a public nature</p> <p>(ii) directed to charitable purposes or</p> <p>(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</p> <p>of which you are a member or in a position of general control or management</p>

Appendix C – the Committee on Standards in Public Life

The Local Government Association (“LGA”) has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on Local Government Ethical Standards. If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when the Code of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to Disclosable Pecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practice recommendations. These are:

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority’s code should be readily accessible to both councillors and

the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish Councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

OFFICERS CODE OF CONDUCT

INTRODUCTION

The public is entitled to expect the highest standards of conduct from all employees who work for local government. This Code outlines existing laws, regulations and conditions of service and provides further guidance to assist local authorities and their employees in their day-to-day work. The Code is produced in the light of the challenges that employees face in the new and more commercially orientated environment.

STATUS OF THE CODE

The aim of the Code is to lay down guidelines for local government employees which will help maintain and improve standards and protect employees from misunderstanding or criticism.

WHO THE CODE IS AIMED AT

The Code applies to all Bassetlaw District Council employees. Inevitably some of the issues covered by the Code will affect senior, managerial and professional employees more than it will others. The Code is intended to cover all employees under a contract of employment within the Council. Activities carried out by employees acting as members of companies or voluntary organisations will be subject to the minimum standards contained within this Code.

1. STANDARDS

- 1.1 Local Government employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality. Employees will be expected, through agreed procedures and without fear of recrimination to bring to the attention of the appropriate level of management any deficiency in the provision of service.

Employees must report to the appropriate manager any impropriety or breach of procedure.

2. DISCLOSURE OF INFORMATION

- 2.1 It is generally accepted that open government is best. The law requires that certain types of information must be available to Members, Auditors, Government departments, service users and the public. The Authority itself may decide to be open about other types of information. Employees must be aware of which information their Authority is and is not open about, and act accordingly.
- 2.2 Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Authority should not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

3. POLITICAL NEUTRALITY

- 3.1 Employees serve the Authority as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.
- 3.2 Subject to the Authority's conventions, employees may also be required to advise political groups. They must do so in ways which do not compromise their political neutrality.
- 3.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Authority and must not allow their own personal or political opinions to interfere with their work.

4. RELATIONSHIPS

4.1 Councillors

Employees are responsible to the Authority through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the Authority's work. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the relationship and prove embarrassing to other employees and Councillors and should therefore be avoided. Where a relationship does exist efforts should be made to keep contact during work time to the absolute minimum.

4.2 The Local Community and Service Users

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Authority.

4.3 Contractors

All relationships of a business or private nature with external contractors, or potential contracts, should be made known to the appropriate manager. Orders and contracts must be awarded on merit, by fair competition against other tenderers, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process. No part of the local community should be discriminated against.

- 4.4 Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to the Council Solicitor and desist from taking part in any tendering process or contractual supervision where such a contractor is involved.

- 4.5 In certain stances officers will be related to other officers employed by the council. where a relationship does exist efforts should be made to keep a professional approach to any relationship during work time.

5. APPOINTMENT AND OTHER EMPLOYMENT MATTERS

- 5.1 Employees involved in appointments should ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees should not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.
- 5.2 Similarly, employees should not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner, etc.

5. OUTSIDE COMMITMENTS

- 6.1 Some employees have conditions of service which require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the Authority's interests.
- 6.2 The Authority has ownership of all written material or computer data created during their employment. Such property should not be used for purposes other than in the course of their employment unless first obtaining the prior written approval of the relevant Director or Chief Executive.

6. PERSONAL INTERESTS

- 7.1 Employees must declare to the Council Solicitor any non-financial interests that they consider could bring about conflict with the Authority's interests.
- 7.2 Employees must declare to the Council Solicitor any financial interests which could conflict with the Authority's interests.
- 7.3 Employees should declare to the Council Solicitor membership of any organisation which is not open to the public without formal membership and has a commitment of allegiance and which has secrecy about rules or membership or conduct.

7. EQUALITY ISSUES

- 8.1 All local government employees should ensure that policies relating to equality issues as agreed by the Authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

8. SEPARATION OF ROLES DURING TENDERING

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

- 9.3 Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
- 9.4 Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform the Council Solicitor and withdraw from the contract awarding processes.
- 9.5 Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

10. CORRUPTION

- 10.1 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

11. USE OF FINANCIAL RESOURCES

- 11.1 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Authority.

12. HOSPITALITY

- 12.1 Employees should only accept offers of hospitality if there is a genuine need to attend the function to impart information or represent the local authority in the community. Offers to attend purely social or sporting functions should be accepted only when these are part of the life of the community or where the Authority should be seen to be represented. They should be properly authorised and recorded in the Council's hospitality register kept by the Council Solicitor.
- 12.2 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Authority.
- 12.3 Employees should not accept significant personal gifts from contractors and outside suppliers, although employees may keep insignificant items of token value such as pens, diaries, etc.
- 12.4 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the authority may be taking, affecting those providing the hospitality.
- 12.5 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable, where it is clear the hospitality is corporate rather than personal, where the Authority gives consent in advance and where the Authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment etc. are required, employees should ensure that Authorities meet the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.

13. SPONSORSHIP - GIVING AND RECEIVING

- 13.1 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- 13.2 Where the Authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to the Council Solicitor of any such interest. Similarly, where the Authority through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

PROTOCOL ON MEMBER/OFFICER RELATIONS AND RELATED PROCEDURES

1. Introduction

- 1.1 The purpose of this protocol is to guide members and employees of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, this protocol does not seek to be either prescriptive or comprehensive. It seeks simply to offer guidance on some of the issues which most commonly arise. It is hoped however that the approach which it adopts to these issues will serve as a guide to dealing with other issues.
- 1.3 This protocol also seeks to reflect the principles underlying the respective Codes of Conduct which apply to members and employees. The shared object of these codes is to enhance and maintain the integrity of local government and they therefore demand very high standards of personal conduct.
- 1.4 A relevant extract from the Code of Conduct for members is reproduced below:-

“23 Both councillors and employees are servants of the public and they are indispensable to one another.

24 Mutual respect between councillors and employees is essential to good local government. Close personal familiarity between individual councillors and employees can damage this relationship and prove embarrassing to other councillors and employees.”
- 1.5 In line with the Code’s reference to “mutual respect”, it is important that any dealings between members and employees should observe reasonable standards of courtesy and that neither party should seek to take unfair advantage of their position.

2. Roles and Responsibilities

Members

- 2.1 The role of the Councillor is defined by the Local Government Act 1982 and the Local Government and Housing Act 1989. In law, all Councillors are equal and have the responsibilities of trustees. No decisions on behalf of the Council can be taken by individual Councillors.
- 2.2 All Councillors are required by law to:-
 - a) be guided by the Code of Conduct;
 - b) comply with the Council’s Standing Orders and Financial Regulations;
 - c) ensure that any facilities provided by the Council for Members’ use in undertaking their duties are used strictly for those duties and for no other purposes; and
 - d) to comply with all relevant statutory provisions.

Note: It is the responsibility of Members themselves to ensure that they have proper

advice. If Members are ever in any doubt in terms of the law, any Council Code, Standing Orders, general propriety, conflicts of interest, etc. then the Council Solicitor or the Chief Executive should be consulted. Similarly, the Director of Support Services or Head of Finance & Property Services should be consulted in respect of financial advice.

Employees

- 2.3 Employees are employed by, and serve, the whole Council. They advise the Council and its Committees, and are responsible for ensuring that the decisions of the Council, either directly or through its Committees or Sub-Committees or employees themselves where decision-making has been formally delegated to them, are effectively implemented. All are legally required to be politically neutral in the manner in which they carry out their duties, and for senior employees this is enforced through the political restrictions of the Local Government and Housing Act 1989. All are required to abide by any Codes of Conduct for Employees introduced by the Council.
- 2.4 Employees are responsible to their Line Manager, Unit Manager, Head of Service and ultimately their Director. Directors have professional responsibilities and accountabilities to the Council and to the Chief Executive who has responsibilities for the proper management of the Authority' staff. Some Senior Employees also have specific statutory responsibilities as statutory office holders as well, which may at times require them to give Members unpalatable and unwelcome advice.

2.5 Respect and Courtesy

For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and employees. This plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Members and employees remember their respective obligations to enhance the Council's reputation and avoid criticism of employees or Members in public forums and situations within the Council where embarrassment might be caused.

- 2.6 If a Member or Employee considers that he/she has not been treated with proper respect or courtesy he/she may raise it, if they fail to resolve it through direct discussion, with the employee's line manager, Head of Service or Director without delay. If an employee is in breach of this requirement some form of disciplinary action will result. If a Member is in breach then the matter will be pursued under the Council's elected member complaints procedure

2.7 Under Pressure

In their dealings with employees (especially at junior level) Members need to be aware that it is easy for employees to be overawed and feel at a disadvantage. Such feelings can be intensified where Members hold official and/or political office.

- 2.8 A Member should not apply undue pressure on an employee either to do anything that he/she is not empowered to do or to undertake work outside normal duties or outside normal hours. In particular a member should not directly instruct a junior employee to carry out any work but should discuss such matters with the relevant Head of Service or Director. Particular care needs to be taken in connection with the use of Council property and services.

2.9 Similarly, an employee must neither seek to use undue influence on an individual Member to make a decision in their favour nor raise personal matters to do with their job nor make claims or allegations about other staff. The Council has formal procedures for consultation, grievance, whistleblowing and discipline.

3.0 Officer Advice to Party Groups

3.1 There is now statutory recognition for party groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior Officers may properly be called upon to support and contribute to such deliberations by party groups.

3.2 The support provided by such Officers can take many forms, ranging from a briefing meeting with a Chairman or Spokesperson prior to a Committee meeting, to a presentation to a full party group meeting. Whilst in practice such Officer support is likely to be in most demand from whichever party group is for the time being in control of the Council, such support is available to all party groups.

3.3 Certain points must however be clearly understood by all those participating in this type of process, members and Officers alike. In particular:-

a) Officer support in these circumstances must not extend beyond providing information and objective advice in relation to matters of *Council* business. Officers must not be involved in advising on matters of party business. Officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed.

b) Party group meetings, whilst they form part of the preliminaries to Council decision making, are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such; and

c) Similarly, where Officers provide information and advice to a party group meeting in relation to a matter of Council business, this cannot act as a substitute for providing all necessary information and advice to the relevant Committee or Sub-Committee when the matter in questions is considered.

3.4 Special care needs to be exercised whenever Officers are involved in providing information and advice to a party group meeting which includes persons who are not Members of the Council. Such persons will not be bound by the Code of Conduct (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons Officers may not be able to provide the same level of information and advice as they would to a Members only meeting.

3.5 Officers must respect the confidentiality of any party group discussions at which they are present in the sense that they should not relay the content of any such discussion to another party group.

3.6 Any particular cases of difficulty or uncertainty in this area of Officer advice to party groups should be raised with the Chief Executive who will discuss them with the relevant group leader(s).

4.0 Support Services to Members and Party Groups

- 4.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, typing, printing, photo-copying, transport, etc.) to Members is to assist them in discharging their role as Members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes. Nor should employees be asked to arrange for substitute Members to be present at meetings.

5.0 Members Access to Information and to Council Documents

- 5.1 Members are free to approach any Council Service to provide them with such information, explanation and advice (about that Service's functions) as they may reasonably need in order to assist them in discharging their role as Members of the Council. This can range from a request for general information about some aspect of a Service's activities to a request for specific information on behalf of a constituent. Such approaches should normally be directed to the relevant Unit Manager, Head of Service or a Director.
- 5.2 The legal rights of Members to inspect Council documents are covered partly by statute and partly by the common law.
- 5.3 Members have a statutory right to inspect any Council documents *which contains material relating to any business which is to be transacted at a Council, Committee or Sub-Committee meeting*. This right applies irrespective of whether the Member is a Member of the Committee or Sub-Committee concerned and extends not only to reports which are to be submitted to the meeting, but also to any relevant background papers. **This right does not however apply to documents relating to certain items which may appear on the confidential agenda for meetings.** The items in question are those which contain exempt information relating to employees, occupiers of Council property, applicants for grants and other services, contract and industrial relations negotiations, advice from Counsel and criminal investigations.
- 5.4 The common law right of Members to inspect Council documents is much broader and is based on the principle that any Member has a *prima facie* right to inspect Council documents *so far as his/her access to the documents is reasonably necessary to enable the Member properly to perform his/her duties as a Member of the Council*. This principle is commonly referred to as the 'need to know' principle.
- 5.5 The exercise of this common law right depends therefore upon the Member's ability to demonstrate that he/she has the necessary 'need to know'. In this respect a Member has no right to 'a roving commission' to examine documents of the Council. Mere curiosity is not sufficient. The crucial question is the determination of the 'need to know'. This question must initially be determined by the Chief Executive after consultation with the Monitoring Officer.
- 5.6 In some circumstances (e.g. a Committee Member wishing to inspect documents relating to the functions of that Committee) a Member's "need to know" will normally be presumed. In other circumstances (e.g. a Member wishing to inspect documents which contain personal information about third parties) a Member will normally be expected to justify the request in specific terms.

- 5.7 Whilst the term “Council document” is very broad and includes for example, any document produced with Council resources, it is accepted by convention that a Member of one party group will not have a “need to know”, and therefore a right to inspect, a document which forms part of the internal workings of another party group. The Statutory Code of Conduct restricts the disclosure of information by Members which they have gained as Councillors when the information is confidential. Such information should not therefore be made available by the Member to the public nor should it be passed on to another Councillor who cannot demonstrate a similar “need to know”.
- 5.8 Finally, any Council information provided to a Member must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member’s duties as a Member of the Council. This point is emphasised in the Code of Conduct.
- 5.9 Further and more detailed advice regarding Members’ rights to inspect Council documents may be obtained from the Council Solicitor or the Chief Executive.

6.0 Employee/Chairman Relationships

- 6.1 The role of a Committee Chairman is only legally recognised for procedural purposes (e.g. in conducting meetings and exercising a casting vote). In practice, Chairmen are recognised as the lead Member on individual service areas, undertaking the following roles:-
- a) Liaising closely with the relevant Senior Officer in developing policy and service plans;
 - b) Responding to the press and making public statements on behalf of the Council; and
 - c) Responding to questions at Council Meetings.
- 6.2 It is clearly important that there should be a close working relationship between the Chairman of a Committee and the Director and other senior Officers of any Directorate which reports to that Committee. However, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question the Officers’ ability to deal impartially with other Members and other party groups.
- 6.3 Whilst the Chairman of a Committee (or Sub-Committee) will routinely be consulted as part of the process of drawing up the agenda for a forthcoming meeting, it must be recognised that in some situations a Director/Head of Service will be under a duty to submit a report and recommendations on a particular matter. Similarly, an Officer will always be fully responsible for the contents of any report submitted in his/her name. Any issues arising between a Chairman and an Officer in this area should be referred to the Chief Executive for resolution in conjunction with the Leader of the Council.
- 6.4 In relation to action between meetings, it is important to remember that the law only allows for decisions relating to the discharge of any of the Council’s functions to be taken by a Committee, or Sub-Committee or an Officer. The law does not allow for such decisions to be taken by a Chairman or indeed by any other single Member.
- 6.5 The Council has put in place a delegation scheme which in particular

instances authorises named Officers to take action in consultation with the Chairman and Vice-Chairman of a particular Committee. Whilst such action is sometimes (incorrectly) referred to as “Chairman’s action”, it is the Officer, rather than the Chairman, who takes the action and it is the Officer who is accountable for it.

- 6.6 Finally, it must be remembered that Officers within a Directorate are accountable to their Head of Services and Director and that whilst Officers should always seek to assist a Chairman (or indeed any Member), they must not, in so doing, go beyond the bounds of whatever authority they have been given by their Director or Head of Service.

7.0 Correspondence

- 7.1 Correspondence between an individual Member and an Officer should not normally be copied by the Officer to any other Member. Where exceptionally it is necessary to copy the correspondence to another Member, this should be made clear to the original Member.

- 7.2 Official letters on behalf of the Council should normally be sent out in the name of the appropriate Officer, rather than in the name of a Member. It may be appropriate in certain circumstances (e.g. representations to a Government Minister) for a letter to appear in the name of a Member, but this should be the exception rather than the norm. Letters which for example create obligations or give instructions on behalf of the Council should never be sent out in the name of a Member.

8.0 Involvement of Ward Councillors

- 8.1 Whenever a public meeting is organised by the Council to consider a local issue, all the Members representing the Ward or Wards affected should as a matter of course, be invited to attend the meeting. Similarly, whenever the Council undertakes any form of consultative exercise on a local issue, the Ward Members should be notified at the outset of the exercise.

- 8.2 Where an issue is to be discussed by a Committee on which the local Member does not serve, by convention, in consultation with the appropriate Committee Chairman, a local Member who wishes to do so, should be invited to attend the Committee for consideration and to speak on it if they wish to do so.

- 8.3 Where matters of particular sensitivity arise the relevant Ward Member should be notified in writing.

THE BASSETLAW CODE OF CONDUCT RELATING TO PLANNING MATTERS

Background

- (i) The Third Report of the Committee on Standards in Public Life (the Nolan Committee) in Chapter 6 looked in detail at the Planning System and recommended that a Local Planning Code of Conduct should be drawn up by local authorities. Following this and subsequent advice from the Local Government Association, a Code of Practice has been agreed by the Council.
- (ii) *The Code sets out a framework for good practice by members with the overall aim of ensuring that the consideration of planning applications and development plan policy is undertaken in a manner which is open, transparent and fair.*
- (iii) The adopted Code is set out below.

1. Introduction

- 1.1 This Code offers guidance to councillors about good practice in the planning process. It supplements the Council's Code of Conduct for members and aims to ensure that the Council is seen to make planning decisions properly, openly, impartially, and for justifiable reasons.
- 1.2 The performance of the Council's planning function is largely delegated to the Planning Committee and officers of the Council pursuant to arrangements made under Section 101 of the Local Government Act 1972. The Planning Committee deals with planning applications and certificates of lawful established use and development or proposed development.
- 1.3 Most planning decisions are made by Council Senior Officers who can also make decisions in respect of Certificates of Lawful Use under powers delegated to him/her by the Council. The Council's Cabinet deals with issues of Planning Policy e.g. The Local Development Framework.
- 1.4 Planning is not an exact science. Rather, it relies on informed judgment within a firm policy context. It is also highly contentious because its decisions affect the daily lives of everyone and the private interest of individuals, landowners, and developers. This is heightened by the openness of the system (it actively invites public opinion before taking decisions) and the legal nature of development plans and decision notices. It is important therefore, that the process is characterised by open and transparent decision-making.
- 1.5 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of land holdings and the quality of their settings. It is important, therefore, that the Council should make planning decisions affecting these interests openly, impartially, with sound judgment, and for justifiable reasons. The process should have no grounds for suggesting, with any justification, that a decision has been partial, biased, or not well-founded.
- 1.6 Thus the successful operation of the planning system depends upon the Council always acting in a way which is clearly seen to be fair and impartial. This requires a shared understanding of the respective roles of members and officers

and trust between these parties. The following quotation from the Local Government Association serves to illustrate the point:-

“The role of an elected member on a planning committee involves a balance between representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals. It is this dual role which, as the Nolan Committee in its recent report acknowledges, can give rise to great tensions”.

(Source: Probity in Planning 1997).

- 1.7 The aim of this Code of Practice is to ensure that the Council operates an open and fair system. Failure to follow this Code of Practice, without good reason, could be taken into account during investigations by the Local Government Ombudsman could place the Council at risk of legal challenge.
- 1.8 Members are encouraged to read this Code thoroughly and practice it consistently. The Code will be reviewed regularly and considered for appropriate amendment as and when necessary.

2. Development Proposals and Interests under the Members’ Code

- 2.1 If you have a Code of Conduct interest in any matter, you must disclose the existence and nature of your interest at the beginning of any relevant meeting, including informal meetings or discussions with officers and other members. Your interest should be disclosed at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- 2.2 However, in the event that you overlook the making of a declaration at the beginning of the meeting you should do so as soon as you become aware of the need to do so.
- 2.3 The Members Code of Conduct sets out the circumstances which give rise to a personal interest.
- 2.4 If your interest is personal and prejudicial you must not participate in making the decision, either formally or informally. You should also avoid giving any impression of participation, as it is important to maintain public confidence in the impartiality of councillors in decision-making. A personal interest is classed as

“prejudicial” if it is “one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant it is likely to prejudice that member’s judgment of the public interest.”

- 2.5 There are other things you should avoid if you have a personal and prejudicial interest including, you must
 - Not try to represent ward or local views on a matter in which you have a prejudicial interest. In these circumstances it is appropriate to ask another ward councillor to take on this role;
 - Not get involved in the processing of the application by using your position as a councillor to get access to officers or papers;
 - Not lobby other members of the Council, including the circulation of letters or emails, or by raising the matter in group or similar meetings;

- Withdraw from meetings (formal or informal) at which the matter is under consideration. Not sit in at the meeting, even as a member of the public, and you may not vote. This is the position even if you are not a member of the Committee which is making the decision;
- Be particularly careful to avoid any impression of either seeking or receiving special treatment. If you are submitting your own planning application, or have a personal and prejudicial interest in a planning application, you should also make sure that the appropriate Senior Council Officer (eg Planning Officer or Monitoring Officer) is aware of the interest. You may wish to consider employing an agent to act on your behalf in dealing with officers and/or addressing the Committee.

3. Making decisions with a “closed mind” and the issue of bias

3.1 It is important that councillors approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If you make it clear that you have made up your mind to vote for or against an application before the meeting, regardless of the officer’s presentation and evidence and arguments on both sides, this could well leave the eventual decision open to legal challenge and/or a finding of maladministration.

3.2 You must be careful to avoid the following, where you are likely to be a decision-maker:

- Making statements in advance of the meeting on how you are going to vote;
- Taking up a campaigning role for or against an application;
- Acting as an advocate or spokesperson for groups opposed to or supporting any particular application;
- Taking part in prior consideration of the application, for instance through membership of organisations such as residents’ groups, lobby groups, civic societies etc. which are consulted on the application.

3.3 This does not mean that you have to remain silent about applications before a decision is made. You are entitled to express legitimate concerns about an application, for instance when approached by constituents. Although care needs to be taken, you will not be approaching a decision with a closed mind if you express concerns about the application but make it clear that you will not decide how you will vote until you have considered all the evidence at the Planning Committee.

3.4 If you have made a firm commitment to support or to oppose a planning application, you must not speak as a member of the Committee or vote. However, provided that you do not also have a prejudicial interest, you may, subject to the Committee’s procedural rules, seek to address the Committee as a ward councillor.

3.5 You must not participate in the consideration of a planning application if to do so would give the appearance of bias. The test for bias is:

“Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?”

If you believe that your participation would lead a fair-minded observer to consider

that there is a real possibility of bias, you must not participate in making the decision and should withdraw. The crucial point is to avoid the danger of an appearance of bias and not whether, in practice, you would approach the decision in a fair-minded manner.

3.6 In practice, there will often be an overlap between the circumstances in which bias is an issue and a member having a prejudicial interest. But the bias rule will apply, even where you do not have a prejudicial interest. It is difficult to advise on all circumstances in which bias may be an issue but they might include the following:

- Where you are associated in the public mind with an organisation which is expressing a view on an application. Mere membership of, say, a campaigning group which is objecting to an application, may be sufficient to give rise to an appearance of bias.
- Where you are associated in the public mind with promoting a development which leads to a planning application. This could, for instance, arise through a community campaign for facilities, or a strong association with a club or society which is developing its facilities. It could also arise in respect of applications submitted by the Council.
- Mere membership of a Council Committee which is associated with an application is unlikely to give rise to an appearance of bias but you should avoid considering an application if you are the Cabinet member or relevant portfolio holder who has approved its submission or have some other strong personal association with the proposal which is the subject of the application.

4. Contact with Applicants, Developers and Objectors ('Lobbying')

4.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process and is important to local democracy; those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or a member of the Planning Committee. As the Nolan Committee's Third Report states:

"It is essential for the proper operation of the planning system that local concerns are adequately ventilated".

Further, in *Positive Engagement* [a Guide for Planning Councillors] Planning Advisory Service advice in November 2005 is:

"Councillors should involve themselves in discussions with developers, their constituents and others about planning matters."

4.2 Members may choose however, whether to participate in any lobbying process for matters within their ward or which can be demonstrably shown to affect their ward. It is generally not considered appropriate for members to participate in any lobbying elsewhere.

4.3 In any event, irrespective of the level of participation the member must:

- (a) Immediately notify in writing (on the standard forms provided) to the Head of Planning and Place of the fact that such an approach has been made:
- Identifying the site;
 - Nature of the approach;

- By whom it was made; and
 - The action taken by the member concerned
- (b) Keep a written record to enable the member to disclose the fact of such an approach if and when the application or proposal is considered for decision.
- (c) Disclose the fact and nature of such an approach at any relevant meeting of the Planning Committee.
- (d) Have proper regard to the provisions of Clause 4.7 relating to meetings
- 4.4 However, unless care is taken, lobbying can lead to the impartiality of a member being called into question and to difficulties in the member participating in the decision.
- 4.5 When being lobbied, members should pay heed to the dangers of appearing to approach a decision with a “closed mind”. However, unless you have a personal and prejudicial interest, you may:
- Listen to/receive viewpoints from residents or other interested parties
 - Engage in measured dialogue with residents, interested parties, other members or appropriate officers, provided this clearly does not indicate that you are approaching the merits of the application with a “closed mind”.
 - Give general but non-technical advice on planning procedures, including suggesting to those who are lobbying, that they should speak or write to the planning officer, in order that their opinions can be included in the officers report to Committee
 - Alert the appropriate Council Officer and if necessary the Planning Committee to issues and concerns that have been drawn to your attention.
- 4.6 If you are approached by applicants or others seeking specific planning, procedural or technical advice, they should be referred to officers. If any approach gives you cause to feel uneasy or you are concerned, then the Council’s Monitoring officer should be approached.
- 4.7 If you accept any invitation to attend, or are asked to arrange any meeting with applicants, developers or groups of objectors (for instance Residents Associations) or supporters then extreme care must be exercised. In particular it is incumbent upon you that:
- you inform the Planning Officer of the details of the proposed meeting and have proper regard to any advice given
 - ensure that where any proposal or application is considered by the Planning Officer as being major, significant or of a particular sensitive nature [as to warrant attendance by legal or planning officers] appropriate arrangements must be made for officer attendance before the meeting proceeds. A full note will be taken at the meeting by officers.
 - in any event you follow the standard procedure (as set out in paragraphs 4.2 and 4.3 above)

- 4.8 You must endeavour to ensure that you make an early full disclosure before the application is considered of any issue or fact which other members may not be aware of. You should not rely on any information which is not in the public arena in making a decision.
- 4.9 In personal dealings with applicants, objectors etc, you should;
- Be mindful of the need to avoid giving a firm commitment to support/oppose the application if you are to participate in the decision.
 - Also bear in mind that your overriding duty is to the whole community not just to the people in your ward.
 - Recognise that planning decisions need to be taken on planning grounds
 - Avoid the appearance of improperly favouring any person, company, group or locality.
- 4.10 You must not accept gifts or hospitality from developers or from any person involved in, or affected by, a planning proposal including pre-application proposals. If acceptance of some hospitality is unavoidable, it should be kept to a minimum and should be declared and recorded in the Council's register. Further advice on gifts and hospitality is available in the Members Code of Conduct and from the Monitoring Officer.

5. Site Visits

- 5.1 Certain applications to be considered by the Planning Committee will be included as part of the formal programme for site visits prior to decision. However, individual members may wish to personally visit a site. If you decide to visit a site, you should avoid putting yourself in a position where you could be accused of partiality by any interested party to the application. It is better to visit a site unaccompanied by the applicant or by objectors. If a site visit is carried out in the presence of the applicant and/or their agent, or of residents/objectors, then care should be exercised to observe the guidance service in paragraph 4 of the Code. It is always better to be accompanied by a Council officer if possible.
- 5.2 You should:
- Bear in mind the advice given in paragraphs 3.2 and 3.3 of this Code
 - Only seek factual information to help familiarise yourself with the site and surroundings
 - Avoid being put under undue pressure from any party to visit a site
- 5.3 You should not enter onto private land or premises without first obtaining the permission of the owner. Where possible, you should seek to familiarise yourself with the site from a public viewpoint. If you go onto a site, you should only do so if satisfied that it is quite safe to do so. You should not, for instance, enter a site where excavations or building works are in progress unless guided by a responsible site manager. If you anticipate a need to ask to enter onto land, you should attempt to make arrangements in advance and should carry (and produce) your Council identity card.

- 5.4 Any information which you gain from the site visit should be reported back to the relevant Planning Officer and to the Committee, so that all members have the same information.
- 5.5 In certain circumstances the decision making process may be aided by a presentation from applicants [or the holding of an ad hoc meeting] from applicants or potential applicants. If such a request is made and to ensure that the process is seen in a positive and impartial manner, the following will be observed:
- The Chair/Vice Chair of the Planning Committee will decide whether the request is to be granted and the manner in which the presentation/meeting will take place. The meeting will be chaired by the Chair/Vice Chair.
 - Should significant or potentially contentious matters be involved the presentation/meeting should be open to the public.
 - Consideration should be given to appropriate publicity arrangements and whether third parties should attend and be given the right of audience.
 - The basis of the presentation/meeting - namely “non-prejudicial to the outcome of any application” - must be clearly established at the outset of the presentation/meeting and a full record kept by officers.

6. Relationships with Officers

- 6.1 Relevant officers will be available to meet with the Chairman and Vice-Chairman of the Planning Committee between the time when a report to Committee is circulated and the time of the meeting. The Chairman and Vice-Chairman will forewarn officers of any cases where they are aware that the recommendation is likely to be challenged and the reasons why.
- 6.2 Whilst members may at any time contact the relevant Planning Officer in relation to any planning application, they must not attempt in any way either directly or indirectly to influence the contents of the officer’s report or the recommendation made on any matter.
- 6.3 Any criticism by members of Planning Officers shall be made in writing to the Executive Director of Regeneration and not to the officer concerned. Members must avoid any public criticism of officers.
- 6.4 Members shall, in accordance with the Members Code of Conduct treat others with respect and, in relation to planning applications, avoid mention of party political matters during meetings of the Committee.

7. Development Proposals Submitted by Councillors and Officers; and Council Development

- 7.1 Proposals to their own authority by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council’s own development. Proposals can take the form of either planning applications or development plan proposals. It is perfectly legitimate for such proposals to be submitted. To avoid any grounds for accusations of favouritism or bias, regard will be had to the following matters.

- Serving councillors who act as agents for people pursuing planning matters within the authority must play no part in the decision making processing for those proposals. Similarly should they submit their own proposal to the authority on which they serve, they should play no part in its processing.
- Proposals for a Council's own development or development of Council land should be treated in the same way as those of private developers in accordance with DOE Circular 19/92, particularly in relation to officers' advice. Particular care must be exercised to ensure that the proposal is dealt with in an open, unbiased and transparent manner.

8. Decisions Contrary to Officers' Recommendations

- 8.1 Members will, from time to time, make decisions contrary to officers' professional advice. It is important that on these occasions the Committee make their decision on clear reasons, having regard to any statutory or other appropriate requirements. Reasons, which can be substantiated, must be given in the case of a refusal and clear conditions imposed in the case of approval of an application.
- 8.2 Before overturning an officer's recommendation, the Committee should give the officer concerned an opportunity to explain the implications of a contrary decision, including the possibility of an appeal being lodged and/or costs being awarded.
- 8.3 The Committee minutes should always include a detailed explanation stating why an officer's recommendation was rejected and a copy of this should be placed on the planning application file.

9. Sanctions

- 9.1 The purpose of this Bassetlaw Code of Good Practice relating to Planning matters is to provide guidance to members, and members of the Planning Committee in particular, in relation to the performance of the Council's planning function. The application of an adherence to the Code is intended to build public confidence in the Council's planning system and to produce a strong platform for planning decision making. The Code does not remove the responsibility of members to exercise their statutory discretion to determine the merits of individual applications or proposals.
- 9.2 Failure to comply with the Members Code of Conduct relating to Planning matters gives rise to a range of potential consequences to the Council, and individual members, especially if this results in a pattern of inconsistency. The normal sanction of the democratic process is through the ballot box. Councillors may make a reputation in this community not only for their beliefs but also for their general conduct. Consistency and fairness are important qualities in the public eye and they are vital to the conduct of a Planning Committee. Beyond the normal democratic process, a number of specific consequences can be identified.
- Failure to comply with the Members of Code of Conduct which has been adopted by the Council can result in complaints being made.
- 9.3 Although the Local Government Ombudsman will not investigate the balance of argument in any planning decision, she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found that injustice has been caused by maladministration in the light of statutory or established Council procedures, she/he will recommend redress which may take the form of compensation. Where the Local Government Ombudsman makes a finding of

maladministration on the basis of a breach of the Bassetlaw Code of Good Practice relating to planning matters and the Members Code of Conduct, then the report may name the individual Member and give particulars of the breach.

- 9.4 An applicant who has been refused planning permission has a right of appeal to the Secretary of State. If an appeal is successful and it is shown that the Council's conduct in dealing with the matter was unreasonable, the appellant's costs may be awarded against the Council.
- 9.5 If objectors are convinced that the Council, in determining to grant an application, did not observe their statutory obligations to carry out all necessary procedures; comply with the Code of Conduct; or base their decision on the Development Plan and take into account all representations, they may apply for judicial review of the decision, which might result in it being quashed. In such circumstances it would be normal for the costs of an applicant to be awarded against the Council.
- 9.6 The Secretary of State possesses a range of powers which could be exercised where a local planning authority appears to be making inconsistent decisions, or decisions which are seriously in conflict with national and development plan policies. This could involve a greater use of the power to "call in" applications, whereby an application would be determined by the Secretary of State following a public inquiry. Where permission has already been granted by the Council, powers exist to revoke or modify permissions, or to require discontinuance of a land use, which if exercised would give rise to a liability to compensate on the part of the Council.

10. Training

All members of the Planning Committee must undertake the annual external Introductory Planning training arranged by the Council before they can sit as a member of the Planning Committee and speak and vote at Planning Committee.

11. Golden Rule

If any points in this Code are unclear or there is doubt as to what to do, then members should contact the Council's Monitoring Officer. Advice should be sought early, preferably well in advance of any meeting.

ANTI-FRAUD & ANTI-BRIBERY STRATEGY AND POLICY

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INTRODUCTION

1. Introduction

This document sets out the Council's Strategy in relation to fraud and bribery. It has the full support of the Council's Elected Members and the Corporate Management Team.

Bassetlaw District Council employs approximately 425 staff and has a revenue and capital budget of over £85M. As with other large organisations, the size and nature of our services puts us at risk to loss due to fraud and bribery both from within the Council and outside it.

The Council is committed to the eradication of fraud, bribery and misappropriation and to the promotion of high standards of conduct. Our desire is to be a model of public probity, affording maximum protection to the funds we administer. To deliver the Council's corporate Strategy we need to maximise the financial resources available to us. In order to do this we must reduce fraud and misappropriation to an absolute minimum.

Furthermore, the Council recognises its responsibility to protect public funds and we will therefore, endeavour to implement secure systems and high standards of conduct.

We will take the strongest possible action against those who seek to defraud the Council. This includes our own Members, Officers, contracting partners and external individuals and organisations.

2. What is Theft?

Theft is stealing any property belonging to the Council or which has been entrusted to it (i.e. client funds), including cash, equipment, vehicles, data.

Theft does not necessarily require fraud to be committed. Theft can also include the stealing of property belonging to our staff or Members whilst on Council premises.

A person is guilty of theft under the Theft Act 1968 if:

- Section 1 – 'they dishonestly appropriate property belonging to another with the intent of permanently depriving the other of it'; or
- Section 24A - 'they dishonestly retain a wrongful credit' e.g. where they do not report and repay an overpayment of salary or advance.

3. What is Fraud?

The Fraud Act 2006 introduced the first legal definitions of fraud. These legal definitions are used for the criminal prosecution of fraud offences.

For the purposes of this Strategy, fraud is considered to be any action taken by an individual, group or organisation which is designed to facilitate dishonest gain at the expense of, (or loss to) the Council, the residents of Bassetlaw or the wider national community.

Offences can include:

- Fraud by false representation – for example by knowingly submitting overtime claims for work that has not been undertaken;

- Fraud by failure to declare – for example failing to declare previous convictions when required to secure employment with BDC;
- Fraud by abuse of position – for example by awarding a contract that cannot be evidenced as being in the best interests of BDC.

4. What is Bribery?

Bribery is an inducement for an action which is illegal, unethical, or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages.

5. What is Financial Malpractice/Irregularity?

This term is used to describe any actions which represent a deliberate serious breach of accounting principles, Financial Procedure Rules, Contract Procedure Rules, or any of the Council's financial governance arrangements. They do not have to result in personal gain. They will include situations where undisclosed conflicts of interest result in some form of benefit.

ANTI-FRAUD AND ANTI-BRIBERY POLICY

6. Introduction

The Council is responsible for the proper administration of its finances. This not only includes direct income and expenditure but also monies that we administer on behalf of the Government, on behalf of our clients, and that for which we are the responsible accountable body. Anyone committing fraud, both inside and outside the organisation, attack all of these sources of income and expenditure and our valuable assets.

This Policy encompasses any action taken by an individual, group or organisation which is designed to facilitate dishonest gain (or a loss) at the expense of the Council, the residents of Bassetlaw, or the wider national community. It, therefore, includes theft, fraud, bribery and any financial irregularity or malpractice.

The Council will be vigilant in all of these areas and will apply the same principles of deterrence, prevention, detection, investigation and resolution across all its services. The Council will not be afraid to tackle difficult or uncomfortable cases and will take a robust line and seek the maximum appropriate sanction in all areas of operation.

7. The Fraud Threats

The key threats of fraudulent and corrupt activity occurring within the Council are from:

- Members;
- Officers;
- Contractors and Partners;
- Public.

8. Members

Our Elected Members are expected to act in a manner which sets an example to the

community whom they represent and to the Officers of the Council who implement their Policy objectives. They are expected to conduct themselves in ways which are beyond reproach, above suspicion and fully accountable. Members should be particularly careful to ensure that all relevant circumstances are properly declared in any and all of their financial dealings. No financial malpractice will be tolerated and where evidence indicates such malpractice has taken place, a report will be made to the relevant body.

9. Officers

It is recognised that the vast majority of Officers are hardworking and conscientious who conduct themselves in ways which are beyond reproach, above suspicion and fully accountable. However, theft, fraud, bribery and financial malpractice/irregularity will not be tolerated and where evidence indicates such activity has taken place, action will be taken under the Council's Disciplinary Policy and Procedure that may lead to dismissal. Criminal and/or Civil proceedings will also be pursued if appropriate.

There is a special responsibility on our Corporate Management to lead their Officers by example. The Council expects these Officers to set the standard by their own behaviour. This includes placing the Council's interests above their own and the whole-hearted promotion of the *Ten Principles of Public Life* as laid down by the Committee on Standards in Public Life.

It is the responsibility of Directors and Managers to be aware of the appropriate financial and other anti-fraud regulations and to be responsible for ensuring conformance to them by the Officers for whom they are responsible.

10. Contractors and Partners

The increase in partnership arrangements to deliver services places an additional burden on the Council to ensure that public money invested in these services is appropriately used.

Those organisations undertaking work on behalf of the Council are expected to maintain strong anti-fraud principles. We are happy to work with such organisations and to provide advice on anti-fraud measures. Through contract documentation we will ensure that our service providers and partners take the issue of fraud seriously, and it is expected that all partners/contractors sign up to the principles of the Council's Anti-Fraud and Anti-Bribery Strategy and Policy, including anti-money laundering.

The Council has adopted a Partnership Toolkit that, amongst other things, sets out the standards of conduct expected of the Council's partners. This includes the promotion of the *Ten Principles of Public Life*.

In an era of increasing emphasis on partnership working, it is vitally important that our key partners, led by the Bassetlaw Community Partnership, advocate and promote the principles of good governance, accountability for decisions, effective risk management and the appropriate stewardship of public funds.

11. The Public

Members of the public receive financial assistance and benefits from the Council through a variety of sources. These include:

- Housing Benefit and Council Tax Reduction;
- Temporary accommodation;
- Renovation and other housing related grants;
- Parking concessions;
- Business refurbishment schemes and grants;
- Voluntary sector grants.
- Discretionary Housing Payments

All of these areas have been the subject of attack by people committing fraud. This means less money is available for those in genuine need. Our fraud effort will be balanced against our desire to ensure genuine claimants receive their full entitlement.

Because of the scale of expenditure, Housing Benefit fraud receives significant attention from Central Government and is now managed by the Department of Work and Pensions, Single Fraud Investigation Service. A number of initiatives have been implemented which are fully supported by the Council. These include:

- National Fraud Initiative;
- Singer Person Discount reviews;
- Targeted reviews of Council Tax Reduction claims;
- Fraud and Error Reduction Incentive Scheme (FERIS).

The Council will participate in these schemes to the fullest extent.

Our seven key themes of Anti-Fraud Culture, Deterrence, Prevention, Detection, Investigation, Sanction and Redress run through all of the fraud threats as set out below.

12. Identifying the Specific Threats

Each Service will be challenged to identify the risk of fraud and/or bribery occurring in their area. Where risks are identified, they will be responsible for ensuring they are placed on the Risk Register and that actions are undertaken to address those risks.

Internal Audit, through its programme of work will test the control environment within Services and compile reports on its findings, highlighting any weaknesses in controls. Services will be required to act upon those recommendations and Internal Audit will monitor progress.

The Corporate Investigation Team/Internal Audit will highlight any system weaknesses that are identified as a result of an investigation. These will be addressed through an agreed Action Plan. The relevant Service Manager is responsible for implementing the Action Plan and Internal Audit will monitor implementation. From 1st November 2015, the Fraud Investigation Team transferred to the Single Fraud Investigation Service operated by the Department for Work & Pensions with regard to Housing Benefit fraud. Council Tax and other fraud activity will still be undertaken by the Council's Corporate Investigation Officer.

The Council will develop tools to identify and quantify the amount of fraud to inform decision making on the resourcing of anti-fraud activity and how and where that resource is deployed.

THE COUNCIL'S APPROACH

13. Introduction

The corporate framework, which underpins the operation of the Council, has a number of facets that exist to fortify the Council against fraud and bribery. The Anti-Fraud and Anti-Bribery Strategy underpins this framework.

Our Strategy to combat fraud, bribery and misappropriation is built upon seven key themes:

- Anti-fraud Culture;
- Deterrence;
- Prevention;
- Detection;
- Investigation;
- Sanction, and;
- Redress.

The themes exist within the overall context of an anti-fraud culture promoted by the Council through its leadership, governance arrangements and general approach to fraud.

The Council's Anti-Fraud and Anti-Bribery Policy provide details of the ways in which these themes will be developed and executed to embed the anti-fraud culture as part of the good governance of the Council.

Everyone in the Council has a duty to protect the public purse and should be aware of the potential for fraud and bribery in their area of work. However, to ensure the successful implementation of this Strategy, specific responsibilities are detailed in Appendix 2 – Roles and Responsibilities.

14. The Anti-Fraud Culture

The Council must have a strong and recognised anti-fraud culture. One where the Council's leadership, both elected and employed, uphold the highest standards of conduct both in their duties and in their own personal financial dealings.

Leadership is a cornerstone of any organisation. Leaders set the example that the rest of the organisation follows. The Elected Members in this organisation are expected to set an example to each other, our Officers and the community that we serve. To this end the Council fully endorses the Members Code of Conduct as adopted in our own Constitution.

Similarly, there is a special onus upon the Chief Executive, Corporate Management Team and Senior Officers to lead by example in their financial dealings, which are beyond reproach and fully accountable. This includes financial dealings away from the workplace. For example, it is difficult to set a good example if you are making false or misleading tax returns.

The message must be clear and simple that the Council will not tolerate any fraudulent or corrupt activity. Every pound lost through fraudulent acts is a pound stolen from the residents of Bassetlaw.

All new employees will receive Anti-Fraud and Anti-Bribery Awareness training as part of their induction into the Council. In addition, all employees will be required to participate in refresher programmes. These will be in various formats (for example the Council now has an e-awareness anti-fraud training package).

All Directorates will be required to address the risk of loss due to fraud and/or bribery through

the Council's Corporate Risk Strategy and appropriate Directorate Risk Action Plans.

This Anti-Fraud and Anti-Bribery Strategy and Policy will be available to all employees, contractors and partners and will link into other relevant policies and guidance, such as the:

- Disciplinary Policy and Procedure;
- Code of Conduct for Employees;
- Employee/Member Protocol; and
- Partnership Governance Strategy.

15. Deterrence

We recognise that our systems are vulnerable from attack, particularly by those who gain inside knowledge of control weaknesses. The most effective way to minimise fraud entering into any system is to deter those who may consider defrauding from committing the offence in the first place.

The Council will ensure that this Policy and other supporting policies are publicised to the widest possible audience, including staff, partners and the public. We will actively promote the anti-fraud culture and the consequences for those found to have committed such offences.

The Council will seek the most appropriate sanction and redress against all those who commit fraud against the Council. We will publicise details of criminal convictions and provide statistical information in relation to disciplinary action to deter others who may have considered committing such offences themselves.

All Managers have a responsibility for ensuring that control measures are in place to minimise the risk of fraud. They must consider these risks whenever new guidance or procedures are written or existing ones revised.

Managers must ensure that all staff are aware of these procedures and of the controls in place. Where effective controls are in place, there is less opportunity to commit fraud and therefore, this may act as a deterrent.

16. Prevention

Fraud, theft and bribery are costly, both in terms of reputational risk and financial losses. To reduce the risk of loss we must aim to prevent it from happening in the first place. There are a number of key processes, which can assist in the prevention of fraud and bribery, including:

- Internal Control systems;
- Employee Recruitment and Conduct;
- Councillors Roles and Conduct;
- Joint working to prevent and combat fraud;
- The work of the Audit & Risk Scrutiny Committee;
- Risk-based verification for benefit claims.

17. Internal Control Systems

The Council takes ultimate responsibility for the protection of our finances and those that are

administered on behalf of the Government or the Community. In turn, our Managers have a duty to protect their service area from losses due to fraud and irregularity, and are responsible for implementing proper internal controls. Our Managers are expected to be fully familiar with the services they provide and must be cognisant of the fraud risks in their service area. Some services will be at particular risk of attack from external sources, for example:

- Housing Benefit;
- Renovation Grants;
- Homelessness and Housing;
- Council Tax.

In fact any service which pays money directly, reduces a liability or gives a service of value where there is some sort of claim or application made, is at a high risk of fraud. In addition, all Council services are susceptible to internal fraud through false pay, allowance or sickness claims and abuse of their position by Officers for private gain or the gain of relatives or friends.

Internal controls are only effective if they are properly conducted. Therefore, it is the responsibility of all Managers to establish and maintain systems of internal control and to assure themselves that those controls are properly applied and on the activities intended. This includes responsibility for the prevention and detection of fraud, bribery and financial malpractice.

We will implement strong systems of verification of all claims for all types of financial assistance. We will utilise all data available to corroborate information given by applicants for the purposes of prevention and detection of fraud. We will also monitor and review grants and assistance given to external organisations to ensure applications are genuine.

We will also expect our partners to have adequate controls in place to minimise fraud. We will provide Fraud Awareness training to our partners either face-to-face or by electronic means as required. We will also provide support and training to our community partners to help them implement proper controls and protect the funds they administer.

Our partners will be expected to have adequate recruitment procedures and controls when they are handling finance on behalf of the Council. This expectation will be written into all contract terms and agreements.

Our partners are expected to have adequate Whistle-blowing Procedures and the Council's own procedure will be promoted to contractor staff working on behalf of the Council.

Internal Audit will ensure that an adequate and effective audit is undertaken of the Council's systems and processes. The Fraud Investigation Team and Corporate Investigation Team will investigate allegations of fraud and bribery. Any system weaknesses that are identified as a result of these investigations will be reported to the relevant Head of Service/Service Manager. These will be addressed through an agreed Action Plan. The relevant Service Manager is responsible for implementing the Action Plan and Internal Audit will monitor implementation.

Failure to implement adequate system controls following a loss to fraud will be the subject of a report to the relevant Director and/or Audit and Governance Committee. The Audit and Governance Committee will receive regular reports from Internal Audit regarding system failures, proposals for action and feedback on the implementation of Action Plans.

18. Employee Recruitment and Conduct

All employees must abide by the Council's rules as contained in relevant policies and procedures. This expectation forms part of each employee's contract of employment. Employees of the Council are also expected to follow any additional Codes of Conduct, either related to any professional body to which they are registered, or additional Council Codes of Conduct relevant to their post, and immediately notify the Council if they come into conflict with any such Code.

Where agency staff are being employed in positions where they have access to finance, personal data or other assets, their references will be checked direct with their previous employer. The Council will not rely only on references supplied by staffing agencies. Guidance on the use of agency workers can be found on the intranet.

The Fraud Investigation Team and Corporate Investigation Team/Internal Audit will be proactive in raising awareness of the Council's Anti-Fraud and Anti-Bribery culture to staff through regular Fraud Awareness sessions at all levels. Fraud and Bribery awareness will also form part of the new entrants' induction package.

19. Members Roles and Conduct

All Members are bound to comply with the Members Code of Conduct and any ancillary Codes that we implement. We will provide Fraud Awareness training and/or e-awareness anti-fraud training to our Members and encourage an open and honest dialogue between Members and Officers.

We will ensure that the processes that are particularly vulnerable, such as planning, licensing, disposals and tendering are adequately protected through internal control mechanisms and proactive reviews of Member interests.

20. Joint Working to Prevent and Combat Fraud

The Fraud Investigation Team and Corporate Investigation Team/Internal Audit are responsible for investigating all allegations of fraud. The teams will work with other local authorities and public sector bodies including:

- Department of Health;
- Department for Work and Pensions (DWP);
- Police;
- Her Majesty's Revenue & Customs (HMRC);
- Border & Immigration Agency.

Where appropriate, we will participate in data-matching exercises and will share information using legislation or legal gateways available to us and our partners. The Audit Commission has drawn up a Code of Data Matching Practice for its National Fraud Initiative (NFI), which is recognised by the Information Commissioner as complying with Data Protection legislation.

The Council will make full use of its statutory powers to obtain information, and will utilise the services of the National Anti-Fraud Network (NAFN) to support such information gathering.

21. Detection

Whilst it is possible to reduce the potential for fraud and bribery within the Council, it is important to remember that it is not possible to eradicate it. Therefore, it is essential that Officers are aware of what to do should they detect or suspect a fraud has or is taking place.

All Members of staff, the public and Members are encouraged to contact the Fraud Investigation Team/Head of Finance & Property/RSM with any suspicion of fraud, bribery, financial malpractice or the misuse of official position. In addition, the Council operates a Whistle-blowing procedure for those employees who wish to utilise the protection offered by the Public Interest Disclosure Act 1998.

Officers have a duty to assist the Council with any matter under investigation. Failure to assist with an investigation may be considered as a breach of conduct or failure to comply with the Financial and/or Contract Procedure Rules. This could lead to disciplinary action being taken. Where Officers are being interviewed in connection with alleged fraud they will have the right to have a Trade Union representative present or to be accompanied by a work colleague. Alternatively, Officers may wish to provide information under the Whistle-blowing procedures.

The Fraud Response Plan provides guidance on what to do should an individual suspect fraud or bribery and can be found at Appendix 3 of this Strategy.

Alternatively, where benefit fraud is suspected we encourage the public to make use of our fraud hotline 01909 533731 to report any suspected fraud or to report fraud through our web site at <http://www.bassetlaw.gov.uk/everything-else/benefits-information/benefit-fraud/how-to-report-benefit-fraud.aspx> We will evaluate all referrals received from members of the public and commence investigation into all appropriate cases.

Internal Audit reviews will have regard to the possibility of fraud. Auditors and investigators will receive reciprocal training to ensure that both have a full understanding of system controls and potential fraud areas.

We will utilise all methods available to detect fraud. This includes data matching, open source research, surveillance and intelligence led investigations where appropriate. We will participate fully in the Audit Commission's National Fraud Initiative.

We will analyse fraud trends in order to identify high risk areas and undertake pro-active anti-fraud exercises based on that analysis. Where our partners are involved with the administration of our finances, or those for which we have responsibility, we will conduct pro-active anti-fraud exercises as we would for our own service areas.

22. Investigation

BDC has a Corporate Fraud Investigation Team which is charged with leading the Council's fight against fraud. This currently comprises of 1.5 fte and investigates irregularity on benefit, discounts and exemptions which can result in overpayments and sanctions i.e. fines and prosecutions. With effect from the 1st November 2015 this Investigation Officer (Corporate Fraud), will expand into targeted reviews in other areas such as tenancy fraud in conjunction with A1 Housing and our other departments.

The team works for the Head of Finance & Property Services and Director of Corporate Resources. We are in the process of developing resources to tackle more corporate fraud i.e. allegations of theft, fraud, financial misconduct, bribery and other behaviour affecting the

finances or integrity of the Council, its Members and employees.

In the first instance the Corporate Investigation Officer or internal audit service will provide an overview, and will then advise the Head of Finance & Property whether to engage our specialist investigation staff to carry out the work until its natural conclusion.

Both teams will be fully trained in criminal investigation and will be required to work within the parameters of the relevant Criminal Law and within the Council's Code of Conduct for Investigation Officers.

The teams will investigate any allegation that may have a direct, or indirect, impact on the finances for which we are responsible. This will include cases where Officers may have financial information relating to organisations which are, or have been, funded by the Council or with whom the Council have a contract.

The teams will utilise the specific expertise of other units including Internal Audit, Human Resources and Legal Services in all cases where appropriate to progress investigations. The teams will also conduct joint investigations with other agencies to uncover the fullest extent of any offence.

We will utilise the Police in cases where their additional powers are required to secure evidence or recovery of funds, or where the matter cannot be pursued in-house.

Where an investigation involves an employee of the Council, Corporate Investigation Team/Internal Audit will have regard to the possibility of both disciplinary and criminal action being taken. To ensure the specific actions are taken at the correct time, the Corporate Investigation Team will ensure that Internal Audit, Human Resources and Legal Services are notified of all investigations involving employees in line with agreed procedures. Through this interface the Corporate Investigation Team will ensure that the Council's Disciplinary Policy and Procedure is fully complied with in managing cases that involve employees of the Council.

If an allegation of fraud or bribery against a Member also results in a complaint of misconduct under the Members' Code of Conduct, the complaint will be dealt with in accordance with the requirements set out in the Localism Act 2011 and as defined within the Council's approved arrangements.

Our partners will provide full access to their financial records, as they relate to our finances, and their Officers will be required to assist fully with any investigation. These conditions will be included in any contract terms or agreements. Personnel records of any person suspected of being involved in fraud will be made available to the Fraud Investigation Team and Corporate Investigation Team/Internal Audit.

23. Sanction

We will seek the strongest available sanctions against all who commit fraud against the Council, its clients or the public purse. This may include disciplinary action, prosecution, civil proceedings, financial penalties (where allowed) or a combination of all. Where the fraud is committed by an employee of a contractor or partner organisation, we will request that the organisation takes appropriate disciplinary action against the individual and/or we will require that they are removed from the Bassetlaw account. The ability to request removal of staff will be written into contract terms.

The decision to recommend any or all of the above sanctions will be made on a case by case basis, having regard to the Disciplinary Policy and Procedure and Prosecution Policy in place

at the time.

24. Disciplinary Action

At the conclusion of each investigation, the Corporate Investigation Team/Internal Audit will produce a report. The Manager whose responsibility encompasses the area of that investigation will then decide whether or not to formally accept the report and take the appropriate action (disciplinary, sanction or other).

In most cases, where there is objective evidence available to lead to a conclusion of fraud, theft, bribery, serious financial malpractice, or use of position for personal gain or for the gain of others, this is likely to constitute gross misconduct and may lead to summary dismissal.

This applies to employees who improperly benefit from the Council as a corporate body, and not just those who steal funds from their own unit. It also applies to employees who defraud or steal from the Council's clients. We will also take disciplinary action against Officers who commit fraud against other Local Authorities, the Department of Work and Pensions or any other agency administering public funds.

Any case of fraud involving a Councillor will be subject to the Local Assessment arrangements as required under the Localism Act 2011 and defined within the Council's Code of Conduct Complaints Procedure. This may involve a referral to the Police if there is potentially criminal conduct/breach of other regulations.

25. Criminal Sanctions

In addition to any disciplinary action, the Corporate Investigation Team will decide whether further action is appropriate in respect of any criminal offences. This decision will be made on a case by case basis and within the Prosecution Policy in force at the time. Further action may include a recommendation of prosecution, or in Council Tax Reduction fraud cases, the offer of an internal Caution or Administrative Penalty as an alternative.

We will use the Council's own Legal team, DWP Solicitors (in joint benefit cases) and the Crown Prosecution Service, through the Police, to bring offenders to justice. As a deterrent, we will also publicise our successful sanctions in the local press.

26. Redress

In all cases we will seek recovery of any fraudulently obtained amounts and we will utilise all means available to us to recover these amounts. This can include freezing assets, Compensation Orders, Confiscation Orders, Civil Litigation, recoup of monies paid through the Pension Fund, and general debt recovery.

The Council Debt Recovery Strategy provides clear guidance on the measures it will take to effectively recover monies owed to the Council.

Additionally, where a criminal conviction has been secured, we will utilise the power of the Courts to obtain Compensation Orders where appropriate. We will also consider the use of our partners' specialist skills in financial investigation to recover losses using the Proceeds of Crime Act 2002.

All partners and contractors will be responsible for any losses affecting Council funds

attributable to their employees. This will be written into contract terms.

REVIEW AND REPORTING

27. Updates

This Strategy will be the subject of continuous review to ensure it supports the strategic objectives of the Council. It will be formally reviewed on a bi-annual basis.

Internal audit will also conduct a periodic review of the Council's operation against the Strategy to ensure the Anti-Fraud and Anti-Bribery culture is embedded within Council services.

A report on the Council's activity in relation to cases of fraud and irregularities will be submitted to the Audit & Risk Scrutiny Committee on an annual basis.

APPENDIX 1 – THE CORPORATE FRAMEWORK

- The Constitution (including Financial Procedure Rules, Contract Procedure Rules and the Scheme of Delegation);
- An established Audit Committee (Audit & Risk Scrutiny Committee);
- An established Standards sub-committee and an adopted Code of Conduct for Members;
- Members formally signing a declaration accepting the terms of the Code of Conduct;
- Employee rules of conduct contained within the relevant policies and procedures;
- Employees Conditions of Service;
- An Officer appointed under Section 151 of the Local Government Act 1972, with statutory responsibility for the oversight of all financial affairs;
- An Officer, appointed as Monitoring Officer under section 5 of the Local Government and Housing Act 1989, with statutory responsibility for monitoring the legality of the Council's affairs;
- Register of Interests, Gifts and Hospitality procedures for Members and Officers;
- Effective employee vetting procedures (recruitment checks and DBS where appropriate) and a detailed Officer Code of Conduct;
- A Corporate Induction programme for all Officers which includes expected standards of probity;
- Effective Disciplinary Policy and Procedures;
- An Internal Audit function with a responsibility for assessing and testing the Council's control environment;
- A Whistle-blowing Policy;
- An Anti-Fraud and Anti-Bribery Policy;
- A Complaints procedure available to the public;
- Public inspection of accounts and questions to the External Auditor;
- An External Audit function;
- Dedicated internal Corporate Investigation Team/Internal Audit whose work programmes includes proactive work determined by a formal risk assessment;
- Participation in National anti-fraud initiatives;
- The promotion of awareness of anti-fraud and bribery issues, reinforced by training and publicity;
- A proactive IT security function.
- Risk-based Verification policy (benefits)

APPENDIX 2 – ROLES AND RESPONSIBILITIES

Role	Responsibility
Council	<ul style="list-style-type: none"> Facilitating an Anti-Fraud and Anti-Bribery culture. Demonstrate a commitment to this Strategy and ensure it has the appropriate profile within the Council.
Cabinet	<ul style="list-style-type: none"> Ensure the Strategy is effectively implemented across the Council.
Audit & Risk Scrutiny Committee	<ul style="list-style-type: none"> To approve the Anti-Fraud and Anti-Bribery Strategy. To monitor and review the effectiveness of the Council's risk management arrangements, internal controls and related Anti-Fraud and Anti-Bribery arrangements.
Chief Executive	<ul style="list-style-type: none"> Ensure that there is strong political and executive support for work to counter fraud and bribery. Ensure consistency across Directorates in the implementation of this Strategy.
Monitoring Officer	<ul style="list-style-type: none"> Ensure that a programme of work is undertaken that is designed to publicise expected standards of ethical conduct. Ensure that the progress in raising standards will be communicated to stakeholders. Ensure that effective Whistle-blowing arrangements are established. Ensure Registers of Interests, Gifts & Hospitality are maintained. Ensure Members and Officers are fully aware of their obligations in relation to probity.
Section 151 Officer	<ul style="list-style-type: none"> Ensure that those working to counter fraud and bribery are undertaking this work in accordance with a clear ethical framework and standards of personal conduct. Ensure that those working to counter fraud and bribery are professionally trained and accredited for their role and attend regular refresher courses to ensure they are up to date with new developments and legislation. Ensure that there is a level of financial investment in counter fraud and bribery work that is proportionate to the risk that has been identified. Ensure that reports on investigations include a section on identified Policy and system weaknesses that allowed the fraud/bribery to take place where appropriate.
Human Resources	<ul style="list-style-type: none"> Ensure that there is an effective propriety checking system (i.e. safe recruitment) implemented by appropriately trained Officers in place; Provide advice to promote consistency; Ensure employment policies support the Anti-Fraud and Anti-Bribery Strategy; Advise on and monitor that effective and appropriate sanctions are applied in all appropriate cases.
Council Solicitor	<ul style="list-style-type: none"> Ensure resources are available to pursue appropriate criminal and civil proceedings.
Directors	<ul style="list-style-type: none"> Ensure the risks of fraud and bribery are identified, entered on the Risk Register and Action Plans implemented to reduce the risk to an acceptable level.

	<ul style="list-style-type: none"> • Ensure the Anti-Fraud and Anti-Bribery Strategy is implemented within their Directorate. • Ensure the risk of fraud and bribery is considered in all new processes.
Heads of Service	<ul style="list-style-type: none"> • Ensure the Anti-Fraud and Anti-Bribery Strategy is implemented within their service. • Ensure that as part of the risk management process the Council attempts to identify accurately the nature and scale of losses to fraud and bribery, and also takes into account fraud and bribery risks in relation to significant partnerships. • Ensure that there are framework agreements in place to facilitate working with other organisations and agencies. • Ensure that there are regular meetings to implement and update these agreements. • Consider fraud and bribery risks within all new Policies and systems, and to revise existing ones to remove possible weaknesses.
Managers	<ul style="list-style-type: none"> • Ensure all employees are aware of their responsibilities under the Anti-Fraud and Anti-Bribery Strategy. • Ensure all employees have read the Council's Constitution in respect of all employee rules of conduct and understand their responsibilities. • Ensure all employees understand the Whistle-blowing Policy and reporting arrangements. • Ensure employees are aware of the process for reporting allegations of fraud. • Ensure accurate and timely reporting of gifts and hospitality.
Employees	<ul style="list-style-type: none"> • Ensure understanding of and compliance with the Council's Anti-Fraud and Anti-Bribery Policy and Strategy. • Report suspected fraud or bribery and take responsibility for understanding the appropriate methods to do so. • Report gifts and hospitality and take responsibility for understanding the process to do so. • Declare interests and take responsibility for understanding the process to do so.
Risk Management Group	<ul style="list-style-type: none"> • Ensure any risks identified due to potential fraud or bribery are properly mitigated.
Internal Audit	<ul style="list-style-type: none"> • Support Heads of Service and their Managers in identifying and mitigating risks for fraud and bribery. • To undertake initial investigation into allegations of fraud and bribery to identify weaknesses in controls. • Work closely with the Fraud Investigation Team and Corporate Investigation Team to conduct criminal investigations. • Make recommendations where weaknesses are identified, and ensure Action Plans are implemented to prevent reoccurrences.
Corporate Investigation Team	<ul style="list-style-type: none"> • Ensure all allegations are recorded and risk assessed. • Conduct investigations in line with legislation. • Notify Section 151 Officer, Human Resources, Internal Audit & Legal Services at the outset of investigations into employees and at the conclusion of investigation, and liaise as appropriate during the investigation.

	<ul style="list-style-type: none">• Pursue the most appropriate criminal/ disciplinary sanction including prosecution.
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APPENDIX 3 – FRAUD RESPONSE PLAN

1. Introduction

Bassetlaw District Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to embed a culture of honesty and opposition to fraud and bribery in the conduct of all our business and decision making.

In line with that commitment, the Council's Anti-Fraud and Anti-Bribery Policy outlines the principles we are committed to in relation to preventing, reporting and managing fraud and bribery.

This Fraud Response Plan reinforces the Council's robust approach by setting out the ways in which employees or members of the public can voice their concerns about suspected fraud or bribery. It also outlines how the Council will deal with such complaints.

2. What do we want to know about?

This plan is intended to be implemented where suspicions of fraud or bribery have been raised.

Fraudulent or bribery acts may include:

- Systems issues - for example, abuse of a process/system by either employees, Members, or the public such as planning applications;
- Financial Issues – for example, where individuals or companies have fraudulently obtained money from the Council such as invoicing for work that was not undertaken, or false Housing Benefit claims;
- Equipment Issues – for example, where Council equipment is used for personal use, such as Council vehicles;
- Resource Issues – for example, where there is a misuse of resources such as theft of building materials, or using Council equipment to run a private business;
- Other Issues - Activities undertaken by Officers of the Council which may be:
 - Unlawful;
 - Against the Council's Financial and Contract Procedure Rules or Policies;
 - Fall below established standards or practices; or
 - Amount to improper conduct – for example, receiving hospitality.

This is not an exhaustive list.

3. What Should an Employee do if they Suspect Fraud or Bribery?

Employees are often the first to realise that there is something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, they may feel that it would be easier for them to ignore the concern rather than report what may just be a suspicion of malpractice.

The Council's Whistle-blowing Policy is intended to encourage and enable Officers to raise serious concerns within the Council rather than overlooking a problem, informing the media, or other external bodies.

Employees should report their concerns in accordance with the Whistle-blowing Policy. The

nature of the complaint will determine the Council's course of action.

The employee must **not**:

- Approach the person, people or organisation they suspect;
- Attempt to collect evidence or question anybody, (but if they have documents etc which they think are relevant, they should where possible secure them safely);
- Attempt to investigate on their own.

If an employee is unsure about what they have seen or heard, they should seek advice in confidence in accordance with the Whistle-blowing Policy.

4. What Should a Member of the Public do if they Suspect Fraud or Bribery?

The Council encourages members of the public who suspect fraud or bribery to contact the Corporate Investigation Team/Head of Finance & Property/RSM in the first instance. Allegations of fraud and/or bribery can be made on-line at <http://www.bassetlaw.gov.uk/everything-else/benefits-information/benefit-fraud/how-to-report-benefit-fraud.aspx> or via the confidential hotline number 01909 533731.

5. Safeguards

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect those who raise a concern in good faith.

The Council will not disclose information regarding the identity of the complainant without their prior consent, and they cannot be compelled to give evidence. However, it must be appreciated that in some situations the investigation process may not be concluded unless the source of the information and a statement by the individual can be produced as part of the evidence.

Allegations of fraud or bribery can be made anonymously. However, concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising this discretion, the factors to be taken into account would include:

- The seriousness of the issues raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation from attributable sources.

If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the originator. If, however, individuals make malicious or vexatious allegations, action may be considered against the individual making the allegation. In the case of an employee making malicious or vexatious allegations, this may include disciplinary action or dismissal.

6. How will Allegations of Fraud or Bribery be dealt with by the Council?

The Corporate Investigation Team /Internal Audit operate independently of all other Council Services. Their work includes establishing procedures with the following aims:

- To develop and embed an Anti-Fraud culture;
- To deter, prevent, detect and investigate fraud and bribery;

- To seek appropriate action against those who commit or seek to commit some sort of fraud or bribery;
- To obtain compensation in respect of any losses to the Council; and
- To recommend system and control improvements to reduce the Council's exposure to fraudulent activity.
- To work collaboratively with other departments of the Council

To this end, the Corporate Investigation Team will work with other stakeholders such as Internal Audit to provide a joined up approach to prevention, detection, investigation and prosecution of fraud and bribery within the Council.

When allegations are received from employees or Members of the public, the action taken by the Council will depend on the nature of the concern. The matters raised may be investigated internally or alternatively referred to the Police.

Within 10 working days of a concern being received, the Corporate Investigation Team/Head of Finance & Property/Director of Corporate Resources will write to the complainant:

- Acknowledging that the concern has been received;
- Indicating how it proposes to deal with the matter;
- Giving an estimate of how long it will take to provide a final response;
- Telling them whether any initial enquiries have been made; and
- Telling them whether any further investigations will take place, and if not, why not.

The Council accepts that those people who reported the alleged fraud or bribery need to be assured that the matter has been properly addressed. Thus, subject to legal constraints including Data Protection, they will receive information about the outcomes of any investigation.

The media will not be notified throughout the investigation, but all successful prosecutions for fraud and bribery will be publicised at the appropriate time.

Responses to requests for information on disciplinary matters contained in reference requests from prospective employers will accurately reflect the known position in relation to employees currently suspended, or ex-employees dismissed for reason of fraud.

7. Alternative Methods for Taking a Complaint Forward

If either a member of the public or an employee feels that it is right to take the matter outside these processes, the following organisations can be contacted:

- If you live within the Bassetlaw District Council boundary, your local Councillor can be contacted. If you are unsure how to contact them, call the Council on 01909 533533 for advice;
- The Council's external auditors: KPMG;
- Employees may invite their Trade Union to raise a matter on their behalf;
- The Police;
- The Local Government Ombudsman, an independent body set up by the Government to deal with complaints against Councils in the United Kingdom;
- Public Concern at Work, a charity that provides free and strictly confidential legal help to anyone concerned about a malpractice which threatens the public interest. They operate a helpline on 0207 404 6609 or can be e-mailed to helpline@pcaw.co.uk.

APPENDIX 4 – PROSECUTION POLICY

1. Introduction

The Council's Anti-Fraud and Anti-Bribery Policy sets out our aims and objectives with regard to tackling fraud and bribery and includes the Council's Prosecution Policy Statement. It states that we will seek the strongest possible sanction against any individual or organisation that defrauds, or seeks to defraud the Council. The use of prosecution will be governed by the following Policy, and the principles of the Policy shall apply equally to any fraud against the Council, or against funds for which the Council has responsibility.

The objectives of the Prosecution Policy is to ensure that:

- The Council considers a full range of sanctions, including criminal proceedings, in a just and consistent manner;
- Sanctions are applied in an effective and cost efficient manner;
- The decision to prosecute is robust and transparent.

This Policy is designed to provide a framework to ensure that the most appropriate resolution to a case is reached. The decision to prosecute will have regard at all times to the Council's Anti-Fraud and Anti-Bribery Policy objectives, the individual circumstances of each person concerned and the overall impact of the punishment to both the individual and the community.

A range of sanctions are available to the Council. These include:

- Disciplinary action;
- Civil proceedings;
- Criminal proceedings (prosecution);
- Formal caution;
- Internal caution (CTR cases)
- Administrative penalties.

In appropriate cases we will take more than one form of action. For example, where Officers have defrauded the Council we may take disciplinary, prosecution and civil recovery action.

The decision to take disciplinary action will be made with regard to the Council's Disciplinary Policy and Procedure and is independent of any decision to prosecute.

2. Criminal Prosecution

One sanction available to the Council is criminal prosecution. We recognise that this is a serious step to take and the decision to refer cases for prosecution will not be taken lightly.

The ultimate decision on prosecution will be taken by the prosecuting body. In some cases this will be the Council's Legal Services. In these cases the decision to refer cases to the prosecuting authority will be taken by the Corporate Investigation Team and approved by the Senior Revenues & Benefits Manager.

Where an investigation has been passed to the Police to investigate, they will liaise with the Crown Prosecution Service to make the ultimate decision on whether or not to prosecute.

When considering a case for prosecution it is generally accepted that there are two "tests" to

be applied - the Evidential Stage test and the Public Interest test. These are currently set out in the Code for Crown Prosecutors 2004. The Evidential Stage test must be considered prior to the Public Interest Test.

3. Evidential Stage Test

Is there the required level of evidence to support a prosecution? Without this the case cannot go ahead no matter how important the case or how strong the public interest is in favour of prosecution.

The evidence must be acquired in a form which can be used by the Court and be admissible, and there must be enough evidence to form a realistic prospect of conviction. In order to ensure that a “realistic prospect of conviction” exists, Officers of the Corporate Investigation Team will at all times ensure that investigations are conducted in accordance with relevant legislation and in line with published Codes of Practice and Guidance with regard to evidence gathering, interviewing and rules of disclosure.

The evidence gathered will be examined in the first instance by the investigator and their Manager. When both are satisfied that sufficient evidence exists to successfully prosecute and that the Public Interest Stage is also satisfied, the case file will be passed on to either the Council’s Legal team

or the Crown Prosecution Service via the Police, with signed authority from a senior officer with delegated authority. All prosecutors will then apply their own inspection of the evidence to ensure that both tests are met.

4. Public Interest Test

In order to ensure consistency and correctness when considering a case for Sanction/Prosecution, the guidelines applied by the Crown Prosecution Service - as detailed in Section 10 of the Prosecution of Offences Act 1985, will be followed by Officers of the Corporate Investigation Team. Aggravating and mitigating factors will be taken into consideration when deciding on the appropriate sanction.

5. Formal Caution/ Internal Caution

A Formal Caution or internal caution in the case of CTR discounts is an oral warning given to a person who it is believed has committed an offence, the seriousness and circumstances of which do not appear to be serious enough to warrant Prosecution. This would normally apply to low value benefit fraud, or possibly short term failure to notify changes in circumstances.

In order to offer a Caution the Council must be satisfied that sufficient evidence exists to justify Criminal Proceedings. The person must have admitted to the offence and must make a written admission of the offence acknowledging that they are willing to receive a Caution. If a person accepts the Caution, the Council will not pursue Criminal Proceedings in respect of that offence.

If the Caution is not accepted the matter should normally then be referred for prosecution on the basis of the original facts.

6. Administrative Penalty

The Council will consider financial penalties, as an alternative to a Criminal Prosecution, in cases where the criteria for prosecution have been fulfilled but the offenders personal circumstances indicate that a financial penalty would be a suitable solution.

This provision is in accordance with the The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 which allows the Council to administer a penalty (currently 50% of the amount of the excess reduction fraudulently obtained). The Council will recoup the Administrative Penalty payments in addition to any repayments of the excess reduction.

If the financial penalty is not accepted by the offender as the alternative remedy, then the matter will be referred back for pursuit of a Criminal Prosecution, as will any case where a claimant had agreed to pay an Administrative Penalty, but subsequently withdraws their agreement within a specified time. More detailed information on Formal Cautions and Administrative Penalties can be found in the Council's Counter Fraud Sanction Policy.

7. Fraud Loss of Benefit (LOB) penalties

Part of the joint strategy between the Department for Work and Pensions (DWP), local authorities (LAs) and Her Majesty's Revenue and Customs to tackle fraud and error in the benefits and tax credits system was to introduce new LOB penalties from 1 April 2013. These new penalties supplement the existing One/Two strike LOB regime for offences that occur wholly on or after 1 April 2013.

APPENDIX 5 – COUNTER FRAUD SANCTION POLICY

1. Policy Statement

We are committed to eradicating fraud throughout the Bassetlaw district to ensure that our resources are directed to those who genuinely need them.

Bassetlaw District Council's Prosecution and Sanction Policy has been developed with the aim of providing a rational and consistent approach to the use of formal sanctions. Whenever fraud is proven the local authority will determine, based on the circumstances of each case, whether it is right to bring a formal sanction against the perpetrator.

The Council will not discriminate (positively or negatively) against any claimant or group of claimants.

This Policy is not intended to be prescriptive but refers to criteria relating to the offence, the offender and the value of the fraud that has to be taken into account before considering the sanction that may apply.

A person involved in fraud may commit offences contrary to a number of acts of Parliament. These include The Theft Act 1968, The Fraud Act 2006, The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations and the Welfare Reform Act 2007 and 2012. (Not an exhaustive list)

When the Council is able to prove beyond reasonable doubt that a criminal offence has been committed there are a number of options it has to consider:

- **Recover any excess amount paid but take no formal action;**
- **Issue a Formal Caution or informal caution;**
- **Invoke an Administrative Penalty;**
- **Prosecute.**

There can be no "blanket" approach, as each case must be considered on its own merits. These guidelines set out what the Council will normally do in a particular situation rather than define an absolute course of action. Relevant matters for consideration should include the following:

The case passes the public Interest test;

The case passes the evidential test and there are no serious errors in the Council Tax Reduction assessment, Council Tax discount awarded or investigation;

The amount defrauded;

The offence has continued for some time;

The offence involved some pre-thought and planning;

There is evidence of a previous fraud;

There is evidence of collusion;

An Authorised Officer has been obstructed in the course of their duties;

The Perpetrator held a position of trust.

N.B. At all stages recovery of the overpayment will be made.

2. The Initial Assessment of Cases Identified

All fraud referrals will be subject to a risk assessment to determine if:

- There is evidence upon which there are grounds to suspect an offence, or
- Information is held that indicates an offence may have been committed, but evidence has yet to be obtained.

The Senior Benefits Officer will review cases on a regular basis to ensure consistency, legality and quality. This officer will agree the sanction recommended and this will be approved by the Senior Revenues & Benefits Manager (in conjunction with advice from legal services in the case of a prosecution being recommended).

3. Conducting a Criminal Investigation

Whether there is evidence of an offence or information is held which indicates an offence may have been committed, the standards of a criminal investigation will be maintained. The principles of PACE (Police and Criminal Evidence Act), CPIA (Criminal Procedures and Investigations Act), HRA (Human Rights Act), Equality Act, Data Protection and RIPA (Regulation of Investigatory Powers Act) will be adhered to.

The objective of the investigation is to establish the facts. Where sufficient evidence of an offence or offences is found, the application of a sanction will be considered.

4. Identification of Offences

At the initial stages of the investigation, the Investigating Officer must establish what offences may have been committed. This is to ensure that cases that are subject to legislative “time bars” are given priority. The procurement of additional evidence, if required, should then be relevant to those offences. However, the suspicion of additional or other offences may arise during the course of an investigation.

Where an Investigation Officer finds evidence that Council Tax Reduction or Council Tax discount is being paid incorrectly, the matter must be referred to a Benefits Assessment Officer or Council Tax Officer. The Benefit Assessment Officer/Council Tax Officer will then make a decision as to whether the discount should be suspended until it can be determined if the correct amount has been, or is being paid.

5. Interviewing

Interviews, undertaken by Counter-Fraud Officers, may take place when all the required evidence has been obtained. However, in many instances it could be necessary to interview earlier. In both cases, if an Officer has grounds to suspect an offence (PACE 10.1) the interview must be conducted in accordance with PACE (Police and Criminal Evidence Act) and the interviewee cautioned.

Where an interview is being conducted, but a caution has not been administered, a caution shall be administered as soon as the interviewing Officer has grounds to suspect an offence (again PACE 10.1 applies).

Where there are reasons why an interview should not be undertaken i.e. medical grounds, a decision (the investigator in conjunction with the Investigations Manager) will then be made about whether to proceed with an interview under caution.

Consideration will be given to the gender, cultural, religious, sexual orientation, age, and disability needs of claimants prior to any interview.

6. The Decision to Sanction

Once the investigation has been concluded, the investigation Officer will present the case in a written format with a recommendation to the Senior Benefits Officer, about whether a sanction is appropriate. The Senior Benefits Officer will apply the evidential test and the public interest test. Should the Senior Benefits Officer decide that the case **IS** suitable for a sanction, it will be passed to the Senior Revenues and Benefits Manager who will make the final decision.

It should be noted that where there has been a decision to prosecute a case, in accordance with the Council's Policy, the final decision regarding whether a case is presented in Court rests with the prosecuting authority.

7. Sanctions

In all cases prosecution must be the first consideration.

When considering a case for prosecution there are two tests to be applied – the 'evidential test' and the 'public interest test'. It is only when *both* of these tests are satisfied that a case can be considered for prosecution.

The first test to be considered is the "evidential test". If the case does not pass the "evidential test" then it cannot be considered for prosecution regardless of the seriousness of the alleged offence.

7.1 Evidential Test

In order for the Council to consider sanction action the case must meet the evidential criteria. In other words is there sufficient evidence for a realistic prospect of a conviction?

In making this decision the following factors must be considered:

- ❖ How clear is the evidence, is it reliable and can it be used in Court;
- ❖ If there has been any failure in the investigation;
- ❖ If there has been any failure in the administration.

7.2 Public Interest Test

The test of public interest is concerned with balancing the need for prosecution against the individual circumstances surrounding the alleged fraud and the potential outcomes. In making this decision certain factors must be considered which include:

- ❖ Medical conditions;
- ❖ Social factors.

Guidance is given in the Code for Crown Prosecutors to ensure consistency and correctness.

7.3 Consideration Factors for a Prosecution

- The defendant was in a position of authority or trust;
- The evidence shows that the individual was instrumental in the offence;
- There is evidence that the offence was premeditated and whereby there was a calculated and deliberate attempt to defraud the Authority;
- The individual's previous convictions, cautions or administrative penalties are relevant to the present offence;

- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or the offence, although not serious in itself, is widespread in the area where it was committed;
- The period of time over which the alleged offence took place;
- There has been a clear attempt to defraud.

7.4 Consideration Factors Against a Prosecution

- A prosecution is likely to have a detrimental effect on the individual's physical or mental health;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- There were unnecessary and unaccountable delays in the investigation. The Courts look very critically at the time it takes to bring cases to Court or the time a customer has been left with the case unresolved;
- Poor administration (either by the Council, DWP or Inland Revenue).

Only when the case has met the evidential and public interest test can alternative sanctions be considered.

7.5 Formal Caution/Internal Caution

A formal caution or internal caution is an oral warning given to a person who has committed an offence and who is then required to make a written admission to the offence acknowledging that they have received a caution in return for not being prosecuted through the criminal courts.

In order to offer a caution the individual must have admitted the offence during the interview under caution.

If the caution is not accepted the matter should be referred for prosecution. Where a prosecution is brought, the Court will be informed that the case was before them because the individual refused to accept a formal caution.

7.6 Administrative Penalties

The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations allows a financial penalty, equivalent to 50% of the excess reduction, to be offered to an individual, this is known as an Administrative Penalty.

In order to offer an Administrative Penalty it is not necessary for the individual to have admitted an offence. The loss to the Council should exceed £50.

If the Administrative Penalty is accepted the individual undertakes to repay the original overpayment and the Administrative Penalty in return for not being prosecuted through the criminal courts.

Consideration should be given as to the customer's financial circumstances in deciding the appropriateness of offering an Administrative Penalty.

If the Administrative Penalty were not accepted the matter should be referred for prosecution. Where a prosecution is brought, the court will be informed that the case was before them because the individual refused to accept an administrative penalty.

7.7 No Action Taken

Should the overpayment total less than £50 the Senior Benefits Officer will consider not issuing

a formal sanction (unless intent to defraud has been proven). They may chose instead to issue a warning letter advising the claimant of the importance of reporting changes. The letter should also reinforce the point that future failures could result in prosecution.

7.8 Failure to co-operate

There is no legal requirement for someone who has been the subject of a fraud investigation to attend an Interview Under Caution and Investigation Officers do not have the power of arrest. Investigating suspicions of fraud can involve the employment of costly resources and if a suspect continually fails to attend for interview or refuses to provide information to assist the Investigation Officer than the work of the team is seriously undermined.

Bassetlaw District Council needs to be seen to act decisively in these instances.

Customers that have been investigated for alleged fraud should be given at least two opportunities, over a three-week period, to attend for interview under caution. This could become a two-week period if alleged offences are subject to time bars.

In cases where the customer fails to respond to two pre-scheduled interviews under caution then the Senior Benefits Officer and the Senior Revenues and Benefits Manager should consider the details of the case, whether there are sufficient grounds to prosecute, and advise the prosecuting authority to issue the customer with a summons to Court.

In high level or multiple fraud, the Senior Benefits Officer in liaison with the Senior Revenues and Benefits Manager and legal, should consider referring the case to the Police, who do have the power of arrest and can prosecute under the Theft Act.

7.9 One and Two Strike Sanction Action

In April 2010, Section 24/Schedule 4 of the Welfare Reform Act 2009 and the Social Security (Loss of Benefit) Amendment Regulations 2010 introduced a new four week loss/reduction of benefit sanction (One Strike). This sanction applies to benefit fraud offences committed on or after 1st April 2010 but before 2013 that result in a caution, administrative penalty or first conviction.

The application of a Loss of Benefit sanction, results in a reduction in standard housing benefit and/or Council tax benefit during the disqualifying period by an amount of the single person's personal allowance for housing benefit equivalent of 40% or 20% if the offender, their partner, or a family member, is seriously ill or pregnant.

The Two-strike sanction, which came into force in 2002, applies to cases where someone is convicted of benefit fraud twice in a 5-year period.

Part of the joint strategy between the Department for Work and Pensions (DWP), local authorities (LAs) and Her Majesty's Revenue and Customs to tackle fraud and error in the benefits and tax credits system was to introduce new LOB penalties from 1 April 2013. These new penalties supplement the existing One/Two strike LOB regime for offences that occur wholly on or after 1 April 2013 and vary the reduction now depending on the claimant's applicable amount.

8. Closer Working

The Corporate Fraud Team are committed to successful joint working with the counter fraud sections of the Department of Work and Pensions (DWP), Job Centre Plus (JCP) and Inland Revenue Special Compliance (IRSC).

- Where HB/CTB and DWP/JCP administered benefits are in payment we will work jointly with the DWP/JCP and will assist the DWP in any sanction recommendations they may make
- We encourage closer liaison with the DWP/JCP/HMRC/Police to ensure that correct documentation and evidence is provided.

9. Overpayment Recovery

The Corporate Fraud Team cannot actively pursue overpayments and therefore the Officer responsible for Debt Recovery should administer recovery of such debt.

We always aim to identify the full extent of proven fraud so that, where appropriate, overpayments/excess reductions/discounts can be recovered from fraudsters.

We will use all available methods to achieve this, including:

- Making deductions from future payments of HB/CTB or DWP/JCP benefits;
- Issuing invoices and recovering debt via the County Court if necessary.
- Use of modern tracing services
- Direct Earnings Attachment

We will rigorously recover fraud overpayments/excess reduction/discounts to enforce our commitment to tackling fraud seriously.

10. Fraud Publicity Strategy

We will seek to maximise publicity as a deterrent to others who might consider defrauding the Authority by:

- Publishing the Fraud Hotline ;
- Issuing press releases to the local media at the conclusion of a successful prosecution. Reporting on the number of sanctions, the overpayments identified and the type of fraud uncovered;
- Providing regular feedback to staff in the form of a newsletter to highlight the types of fraud referred, successes and general points to help raise fraud awareness;
- Reporting the work of the Corporate Fraud Team activity to Members on a regular basis;
- Publishing an abridged version of the Council Tax Reduction Scheme Counter Fraud Policy on the Council's website.
- Use of social media deterrent messages

APPENDIX 6 – ANTI-MONEY LAUNDERING POLICY

1. Introduction

- 1.1 Money Laundering can be defined as “a process that makes money with an illegal origin appear legal so that they may be used”. Legislation concerning Money Laundering (Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 and 2007) have broadened the definition of Money Laundering and increased the range of activities caught by the statutory framework. As a result, the obligations impact on areas of local authority business although the Council is not directly covered by Money Laundering Regulations.

However under the CIPFA Treasury Code of Practice local authorities are required to establish internal procedures to prevent the use of their services for Money Laundering (Treasury Management Practice 9).

2. The Scope of this Policy

- 2.1 This Policy applies to all employees of Bassetlaw District Council and its Elected Members and aims to maintain the high standards of conduct which currently exist within the Council by preventing criminal activity through Money Laundering. The Policy sets out the procedures that must be followed to enable the Council to comply with its legal obligations.

- 2.2 Anti-Money Laundering legislation places a responsibility upon Council employees and Elected Members to combat Money Laundering and covers a very wide area of financial transactions, including possessing, or in any way dealing with, or concealing, the proceeds of any crime. It applies to all employees/Elected Members involved with monetary transactions. In this context, monetary transactions includes any business of the Council which involves any transfer of assets or obligations to or from the Council and where there is opportunity for the other party to receive or divert cash or convert assets or obligations into cash. Many types of criminal activity would fall under the scope of Money Laundering (for instance falsely claiming benefits and tax evasion etc.).

- 2.3 It is a criminal offence to:-

- Assist a money launderer;
- “Tip off” a person suspected to be involved in Money Laundering, that they are the subject of Police investigations;
- Fail to report a suspicion of Money Laundering, and
- Acquire, use or possess criminal property.

3. Purpose and Intent

- 3.1 The statutory requirements concerning Anti-Money Laundering procedures are extensive and complex. The purpose for this Policy is to enable the Council to meet its legal obligations in a way that is proportionate to the low risk to the Council of contravening the legislative framework.

- 3.2 It is necessary to make all employees and Elected Members aware of their responsibilities and the consequences of non-compliance with the Policy.

- 3.3 Whilst the risk to the Council of contravening the legislation is minimal, it is vitally

important that all employees and Elected Members are familiar with their responsibilities.

- 3.4 The consequences of a member of staff failing to comply with the Anti-Money Laundering Policy will result in disciplinary (usually gross misconduct) and potentially criminal action being taken against that person.

4. When this Policy Applies

- 4.1 When the Council is carrying out relevant business and:

- (a) Forming a business relationship, or
- (b) Considering undertaking a one-off transaction.

Relevant business is defined by the legislation to include, but is not restricted to, investments, accountancy and audit services, and the financial, company and property transactions undertaken by Legal and Finance & Property Services.

5. Client Identification Procedures

- 5.1 Any employee or Member involved in relevant business should ensure the client provides satisfactory evidence of their identity personally, through a passport or photo driving licence plus one other document with their name and address e.g. utility bill, mortgage/building society/bank documents, pension/benefits book, or corporate identity – through company formation documents or business rates.

- 5.2 In any circumstances where the client cannot be physically identified the employee should be aware:-

- (a) That there is greater potential for Money Laundering where the client is not physically present when being identified;
- (b) If satisfactory evidence is not obtained the relationship or transaction should not proceed;
- (c) If the client acts or appears to act for another person, reasonable measures must be taken for the purposes of identifying that person.

6. Record Keeping

- 6.1 The Council and contractors working for the Council conducting relevant business must maintain records of:-

- (a) Client identification evidence obtained, which must be kept for 5 years after the end of the transaction or relationship;
- (b) Details of all relevant business transactions carried out for clients for at least 5 years from the completion of the transaction. This is so that they may be used as evidence in any subsequent investigation by the relevant authorities into Money Laundering.

- 6.2 The Section 151 Officer/Director of Corporate Resources must be informed of the existence and location of such records.

7. The Money Laundering Reporting Officer (MLRO)

- 7.1 The Officers nominated to receive disclosures about Money Laundering activity within the Council are the Finance Manager(s) and Head of Finance & Property.

8. Reporting Requirements

- 8.1 Where an employee or Elected Member is aware, or has sound and valid suspicions that Money Laundering may have taken place (or may be taking place), he or she must contact the MLRO for guidance as soon as possible regardless of the amount being offered. In such circumstances, no money may be taken by anyone until this has been done. If money has been received this should be held and kept separate from Council monies.
- 8.2 Any person knowing or suspecting Money Laundering, fraud or use of the proceeds of crime, must report this to the MLRO on the forms attached. When in doubt it is best to report any suspicions.
- 8.3 Upon receipt of receiving the report the MLRO will consider all of the admissible information in order to determine whether there are grounds to suspect Money Laundering.
- 8.4 If the MLRO determines that the information on matters should be disclosed it will be reported to the National Criminal Intelligence Service (NCIS).
- 8.5 At no time and under no circumstances should any employee or Elected Member voice any suspicions to the person(s) suspected of Money Laundering, even if the NCIS has given consent to a particular transaction proceeding, otherwise the employee/Elected Member may be committing the offence of "tipping off". The MLRO will keep the appropriate records in a confidential manner.
- 8.6 This Anti-Money Laundering Policy should be read in conjunction with the Council's Fraud Response Plan (Appendix 3) and Anti-Bribery Policy (Appendix 7).
- 8.7 The legislation under which the Anti-Money Laundering Policy applies is the Fraud Act 2006 and the Bribery Act 2010.

9. Related Procedures

- 9.1 The Council will establish other procedures for internal control and communication as may be appropriate for the purpose of the prevention of Money Laundering:
 - (i) Regular receipts – the Council in the normal operation of its business accepts payments from individuals and organisations in respect of a range of activities. For all transactions under £2,000 the Money Laundering Regulations do not apply but if an employee/Member has reasonable grounds to suspect Money Laundering activity or proceeds of crime or is simply suspicious, the matter should still be reported to the MLRO.
 - (ii) Cash receipts – if the money offered in cash is £2,000 or more then payment must not be accepted until the employee has received guidance from the MLRO or the Deputy MLRO.
 - (iii) Refunds – any significant overpayment that results in a repayment will need to be properly investigated and authorised before payment.

10. Training

- 10.1 All Finance Managers and other staff that handle cash are to be appropriately trained

in Anti-Money Laundering procedures on a periodic basis.

11. **Effectiveness**

- 11.1 The impact and effect of this Policy shall be reviewed at least annually by the Head of Finance and Property and the Audit and Governance Committee.

MONEY LAUNDERING REPORTING OFFICER
DISCLOSURE FORM

Date of Disclosure:

Officer making disclosure (inc. Job Title):

Contact Details:

Subject Details:

Title:

Surname:

Forename:

Date of Birth:

In the case of a legal entity (company):

Name:

Address:

Company No. (if known):

Type of Business:

VAT No. (If known):

Reason for disclosure:

Receipt: MLRO or Deputy MLRO will confirm receipt of a completed Disclosure Form within 3 working days.

APPENDIX 7 – ANTI BRIBERY POLICY AND PROCEDURES

1. POLICY STATEMENT

Bribery is a criminal offence. The Council does not and will not pay bribes or offer improper inducements to anyone for any purpose. It also does not or will not accept bribes or improper inducements.

To use a third party as a conduit to channel bribes to others is a criminal offence. The Council does not and will not engage indirectly in or otherwise encourage bribery.

The Council has zero-tolerance towards bribery and aims to maintain anti-bribery compliance as “business as usual” rather than as a one-off exercise.

1.1 Objective of the Policy

This Policy provides a coherent and consistent framework to enable the Council’s employees to understand and implement arrangements enabling compliance. In conjunction with related policies and key documents it will also enable employees to identify and effectively report a potential breach.

The Council requires that all personnel, including those permanently employed, temporary staff and contractors:

- Act honestly and with integrity at all times and to safeguard the Council’s resources for which they are responsible;
- Comply with the spirit, as well as the letter, of the laws and regulations of all jurisdictions in which the Council operates, in respect of the lawful and responsible conduct of activities.

1.2 Scope of the Policy

This Policy applies to all of the Council’s activities. For partners, joint ventures and suppliers, the Council will seek to promote the adoption of policies consistent with the principles set out in this Policy.

Within the Council, the responsibility to control the risk of bribery occurring resides at all levels of the organisation. It does not rest solely within assurance functions, but in all service areas and corporate functions.

This Policy covers all personnel, including all levels and grades, those permanently employed, temporary staff, contractors, agents, Members (including non-elected independent Members), volunteers, community organisations and consultants.

1.3 The Council’s Commitment to Action

The Council commits to:

- Setting out a clear Anti-Bribery Policy and keeping it up to date;
- Making all employees aware of their responsibilities to adhere strictly to this Policy at all times;

- Training key employees so that they can recognise and avoid the use of bribery by themselves and others;
- Encouraging its employees to be vigilant and to report any suspicions of bribery, providing them with suitable channels of communication and ensuring sensitive information is treated appropriately;
- Rigorously investigating instances of alleged bribery and assisting Police and other appropriate authorities in any resultant prosecution;
- Taking firm and vigorous action against any individual(s) involved in bribery;
- Provide information to all employees to report breaches and suspected breaches of this Policy;
- Include appropriate clauses in contracts and tender documents to prevent bribery.

1.4 Definition of Bribery

Bribery is the giving or receiving of a financial or other advantage in connection with the improper performance of a position of trust, or a function that is expected to be performed impartially or in good faith (Bribery Act 2010).

1.5 The Bribery Act 2010

There are four key offences under the Act:

- Bribery of another person (Section 1);
- Accepting a bribe (Section 2);
- Bribing a foreign official (Section 6);
- Failing to prevent bribery (Section 7).

The Bribery Act 2010 (http://www.opsi.gov.uk/acts/acts2010/ukpga_2010/23) makes it an offence to offer, promise or give a bribe (Section 1). It also makes it an offence to request, agree to receive, or accept a bribe (Section 2).

Section 6 of the Act creates a separate offence of bribing a foreign public official with the intention of obtaining or retaining business or an advantage in the conduct of business.

There is also a corporate offence under Section 7 of failure by a commercial organisation to prevent bribery that is intended to obtain or retain business, or an advantage in the conduct of business, for the organisation. This is what is known as a “strict liability” offence which means that there is no need to prove negligence or management complicity. An organisation will have a defence to this corporate offence if it can show that it had in place adequate procedures designed to prevent bribery by or of persons associated with the organisation.

1.6 Is the Council a “Commercial Organisation”?

The Act defines a “commercial organisation” as a body or partnership incorporated or formed in the United Kingdom irrespective of where it carries on a business, or an incorporated body or partnership which carries on a business, or part of a business, in the United Kingdom irrespective of the place of incorporation or formation.

Whilst the public sector is not a commercial organisation and technically not covered by the Act, the guidance states that a “commercial organisation” is anybody formed in the United Kingdom and “...it does not matter if it pursues primarily charitable or educational aims or purely public functions. It will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made.” Therefore, there are circumstances in which the Council will be a commercial organisation for the purposes of Section 7. This Policy is intended to ensure that the Council has in place the necessary procedures to act as a defence to a Section 7 offence.

2. ANTI BRIBERY PROCEDURES

2.1 The Six Principles

The guidance sets out six principles, and the Council is committed to the proportional implementation of the following principles:

Proportionality

The Council has procedures in place to prevent bribery by persons associated with it. These are proportionate to the bribery risks faced by the Council and to the nature, scale and complexity of the Council’s activities. They are also clear, practical, accessible, effectively implemented and enforced.

Top Level Commitment

The Council’s Corporate Management Team (CMT) and Councillors are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.

Risk Assessment

The Council assesses the nature and extent of its exposure to potential external and internal risk of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented. It includes financial risks but also other risks such as reputational damage and is carried out as part of the Council’s risk management process.

Due Diligence

The Council applies due diligence procedures, taking a proportionate and risk based approach in respect of persons who perform or will perform services for or on behalf of the Council, in order to mitigate identified bribery risks.

Communication (including training)

The Council seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training that is proportionate to the risks it faces.

Monitoring and review

Procedures designed to prevent bribery are monitored and reviewed and improvements are made where necessary.

2.2 Penalties

An individual guilty of an offence under Sections 1, 2 or 6 of the Bribery Act 2010 is liable to a term of imprisonment, a fine, or both depending on the offence and whether the party prosecuted

is an individual or a commercial organisation.

2.3 Zero Tolerance

It is unacceptable to:

- Give, promise to give, or offer a payment, gift or hospitality with the expectation or hope that a business advantage will be received, or to reward a business advantage already given;
- Give, promise to give, or offer a payment, gift or hospitality to a government official, agent or representative to “facilitate” or expedite a routine procedure;
- Accept payment from a third party that you know or suspect is offered with the expectation that it will obtain a business advantage for them;
- Accept a gift or hospitality from a third party if you know or suspect that it is offered or provided with an expectation that a business advantage will be provided by us in return;
- To induce a person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity;
- Retaliate against or threaten a person who has refused to commit a bribery offence or who has raised concerns under this Policy;
- Engage in activity in breach of this Policy and/or the law.

2.4 Facilitation Payments

Facilitation payments are not tolerated and are illegal. They are unofficial payments made to public officials to secure or expedite actions.

2.5 Gifts and Hospitality

The Council’s policy regarding the requirements for gifts and hospitality is set out within its Codes of Conduct and the Gifts and Hospitality Protocol. All gifts, payments or any other contribution, whether in cash or in kind, shall be documented, regularly reviewed, and properly accounted for.

2.6 Public Contracts and Failure to Prevent Bribery

Under the Public Contracts Regulations 2006 (which gives effect to EU law in the UK), a company is automatically and perpetually debarred from competing for public contracts where it is convicted of a bribery offence. There are no plans to amend the 2006 Regulations for this to include the crime of failure to prevent bribery. Organisations that are convicted of failing to prevent bribery are not automatically barred from participating in tenders for public contracts. This Council has the discretion to exclude organisations convicted of this offence.

The Council has an adopted *Corporate Procurement Policy and Strategy*, and it states that:

“All procurement activity must be undertaken to the highest standards of ethics and probity. The Council insists on ethical standards from its suppliers, and in turn it must exhibit the highest ethical standards itself. Officers and Members must not only be fair and above board in all business dealings, but should also avoid any conduct that is capable of having an adverse interpretation put on it.”

The Council will, therefore, ensure good governance, transparency, and adopt best practice when dealing with all suppliers and contractors, and this will include thorough due diligence checks on all prospective suppliers.

2.7 Employee Responsibilities

The prevention, detection and reporting of bribery are the responsibility of all those working for the Council or under its control. All employees are required to avoid activity that breaches this Policy.

Employees must:

- Ensure that they read, understand and comply with this Policy;
- Raise concerns as soon as possible if they believe or suspect that a conflict with this Policy has occurred or may occur in the future.

As well as the possibility of civil or criminal prosecution, employees that breach this Policy will face action in line with the Council's Disciplinary Rules which could result in dismissal for gross misconduct.

2.8 Management Responsibilities

The primary responsibility for maintaining sound arrangements to prevent and detect fraud and bribery rests with management. Any breach of those arrangements should be reported via the mechanisms outlined in section 2.9 of this Policy.

Section 151 of the Local Government Act 1972 requires every local authority to make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs. At Bassetlaw the Head of Finance & Property is the responsible officer.

Under the Accounts and Audit Regulations 2003 (amended 2006) the Council has the responsibility for reviewing, appraising and reporting upon the extent to which the Council's assets and interests are safeguarded from losses due to fraud and other offences. This function is carried out by the Internal Audit Service supported by our partners RSM.

The Council's Monitoring Officer (Director of Corporate Resources) is responsible under Section 5 of the Local Government and Housing Act 1989, to guard against, inter alia, illegality, impropriety and maladministration in the Council's affairs.

The Council's Financial and Contract Procedure Rules support this Policy and detail the individual officer responsibilities in respect of the prevention of fraud and bribery. The Corporate Management Team has specific responsibilities in relation to upholding standards of conduct.

2.9 Raising a Concern

The Council is committed to ensuring that there is a safe, reliable and confidential way of reporting any suspicious activity. The Council wants all employees to know how to raise concerns.

All employees have a responsibility to help detect, prevent and report instances of bribery.

If you have a concern regarding a suspected instance of bribery or bribery then please raise your concern as detailed in the Council's Whistleblowing Policy & Procedure, or alternatively contact the Chief Executive, the Director of Corporate Resources, the Head of Finance & Property, the Council Solicitor, or the Head of Internal Audit (RSM).

3. MAINTENANCE OF THE POLICY

The Policy will be reviewed by the Corporate Governance Working Group and updated in line with current legislation and best practice on a periodic basis (usually 2 years).

4. OTHER RELEVANT POLICIES

- Anti-Fraud and Anti-Bribery Strategy & Policy
- Anti- Money Laundering Policy
- Whistleblowing Policy & Procedure
- The Public Interest Disclosure Act 1998 (PIDA). (This offers a framework of protection against victimisation or dismissal for workers who blow the whistle on criminal behaviour or other wrongdoing.)
- Gifts and Hospitality Protocol
- Risk Management Strategy
- Codes of Conduct
- Human Resources Policies re disciplinary proceedings
- Financial & Contract Procedure Rules (The Council conducts its procurement process with transparency and that thorough due diligence checks will be undertaken on all prospective suppliers.)

5. DISTRIBUTION LIST

- Website
- All staff and Members
- All Council Partners
- All Council Suppliers (via website)

APPENDIX 8 – WHISTLEBLOWING POLICY AND PROCEDURE

1. INTRODUCTION

- 1.1 Bassetlaw District Council is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, honesty and accountability.
- 1.2 The term whistleblowing has a specific legal definition, i.e. a disclosure or allegation of serious wrongdoing made by an employee, and a wider public definition, i.e. any disclosure or allegation of serious wrongdoing made by anyone.
- 1.3 This policy seeks to cover both disclosures and allegations of serious wrongdoing made by employees and members of the public, and to this end, where this policy makes reference to a whistleblower; it refers to any individual (including Bassetlaw District Council employees and/or members of the public) who is making a disclosure or allegation of serious wrongdoing.
- 1.4 Where any individual, irrespective of whether that individual is either a Bassetlaw District Council employee, a worker for a Council contractor (including seconded Council employees) or a member of the public, is aware of any serious wrongdoing, such as:
- Breach of a legal obligation;
 - Any criminal activity, including incitement to commit a criminal act;
 - Bribery or fraud;
 - A miscarriage of justice;
 - A danger to the health or safety of any individual or damage to the environment;
 - Abuse of power or authority;
 - Failure to comply with professional standards, Council policies or codes of practice/conduct;

committed by or related to the actions of:

- Bassetlaw District Council employees;
- Councillors; and/or
- Contractors, agency staff, suppliers or consultants of Bassetlaw District Council in the course of their work for the Council;

and reports it, the Council will investigate any such allegations and, where appropriate, take action. The Council is also committed to preventing any harassment, victimisation or unfair treatment of any person arising from their whistleblowing, and where appropriate, take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a whistleblower.

- 1.5 This policy seeks to set out how the Council will handle and respond to any such allegations, made either by Council staff or members of the public.
- 1.6 Whilst the whistleblowing legislation offers protection to employees, the Council considers that any such allegations of serious wrongdoing should be investigated,

whether they are made by an employee, a user of Bassetlaw District Council services, or any member of the public.

1.6.1 This policy seeks to:

- a) encourage employees and members of the public and/or their representatives to feel confident in raising concerns or allegations in the public interest about suspected serious wrongdoing in the Council and its services without fear of reprisals or victimisation even where the concern or allegations are not subsequently confirmed by the investigation;
- b) give a clear message that allegations of serious wrongdoing or impropriety are taken seriously;
- c) ensure that where the disclosure proves to be well founded, the individuals responsible for such serious wrongdoing will be held accountable for their actions;
- d) set out what employees and members of the public can expect by way of confidentiality and protection when making a whistleblowing disclosure; and
- e) identify independent support for employees who wish to make a whistleblowing disclosure.

1.7 This policy is not designed to be used:

- a) for raising or reconsideration of matters that come under existing internal Bassetlaw District Council procedures e.g. Grievance, Disciplinary, Capability, Dignity at Work or Bassetlaw District Council's general complaints procedure; or
- b) for allegations that fall within the scope of specific procedures (for example child or vulnerable adult protection) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or
- c) as an appeal process from any complaint or grievance handled under any of the above procedures.

1.8 Where a complaint made under this policy falls outside the scope of the policy, e.g. where the complaint falls outside the scope of "serious wrongdoing", Bassetlaw District Council will advise the whistleblower of this and consult with the whistleblower in respect of taking the complaint further. Wherever possible, the Council will comply with the views of the whistleblower, but there are situations where the Council is legally required to pass on details of allegations, without the consent of the whistleblower, such as in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the Council.

1.9 Likewise, if an allegation made under either of the other above complaints processes falls under the remit of a "serious wrongdoing", the Council will notify the whistleblower of this and investigate the allegation under this process.

- 1.10 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.11 An employee's concerns about malpractice may in this context include concerns about possible bribery, dangerous procedures risking health and safety, abuse of clients, evasion of statutory responsibilities, damage to the environment or other unethical conduct. The overriding concern should be that it would be in the public interest for the malpractice to be corrected and, if appropriate, sanctions applied.
- 1.12 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis. This procedure makes it clear that staff can do so without fear of reprisals. This Whistleblowing Code is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle outside.

It is in the interests of all concerned - Council, staff and anybody accused of failure, that such disclosures are dealt with properly, quickly and where appropriate.

- 1.13 The Code of Practice is complementary to the Code of Conduct for Local Government Employees.
- 1.14 This policy is aligned to other Council policies as follows:
- Anti-Fraud & Anti-Bribery Strategy and Policy
 - Declarations of Interest
 - Fraud Response Plan
 - Gifts and Hospitality Protocol
 - Financial Procedure Rules

2. AIMS AND SCOPE OF THIS POLICY

- 2.1 Employees will be expected through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedure.
- 2.2 This code aims to explain how the Council will put that policy into practice.

It provides –

- avenues for you to raise concerns and receive feedback on any action taken
- allows you to take the matter further if you are dissatisfied with the Council's response, and
- reassures you that you will be protected from reprisals or victimisation for whistleblowing in good faith

2.3 There are existing procedures in place to enable you to lodge a grievance relating to your own employment. This whistleblowing policy is intended to cover concerns that fall outside the scope of other procedures.

2.4 A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach of any other legal obligation; or
- concealment of any of the above;

is being, has been, or is likely to be, committed.

2.4.1 That concern may relate to the actions of an officer or Member of the Council or an external contractor carrying out work on the Council's behalf for the Council.

3. SAFEGUARDS

3.1 The Public Interest Disclosure Act 1998 makes it unlawful for the Authority to dismiss anyone (or carry out any other form of reprisal) on the basis that they have made a protected disclosure.

3.2 The Act has rules for making a protected disclosure:

- the disclosure must be in good faith
- the Whistleblower must believe an allegation to be substantially true
- the Whistleblower must not act maliciously or make false allegations
- the Whistleblower must not seek any personal gain

3.3 Harassment or Victimisation

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect you when you raise a concern in good faith.

This does not mean that if you are already the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of your whistleblowing

3.4 Confidentiality

The Council will do its best to protect your identity when you raise a concern and do not want your name to be disclosed. It must be appreciated that the investigation process may reveal the source of the information and a statement by you may be required as part of the evidence. However strenuous efforts will be made to obtain independent evidence which will either excuse you from getting involved further, or where that is not possible corroborate your evidence.

In order for the disclosure to be protected, the officer must show that he/she reasonably believed that the malpractice falls within the matters for which the person is prescribed

and that the information disclosed, and any allegation contained within it, are substantially true.

3.5 Anonymous Allegations

This policy encourages you to put your name to your allegation. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council.

3.6 In exercising the discretion, the factors to be taken into account would include:

- the seriousness of the issues raised
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

3.7 Untrue Allegations

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make malicious or vexatious allegations, disciplinary action may be taken against you.

4. HOW TO RAISE A CONCERN - EMPLOYEE

4.1 As a first step, you should normally raise concerns with your immediate manager or their superior. You may also wish to seek advice and guidance from a member of the HR team. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. For example, if you believe that management is involved, you should approach the Chief Executive, Head of Finance & Property, Monitoring Officer or Council Solicitor or HR Service Manager.

4.2 Concerns are better raised in writing. However, regardless of the form in which you decide to raise concerns you should set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation. If you do not feel able to put your concern in writing, you can telephone or meet the appropriate officer.

4.3 The earlier you express the concern, the easier it is to take action.

4.4 Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.

4.5 Advice and guidance on how matters of concern may be pursued can be obtained from any of the following members of the Corporate Management Team:

Chief Executive
Council Solicitor/Monitoring Officer
Director of Corporate Resources/ Chief Financial Officer (S151)
Director of Regeneration and Neighbourhoods
Head of People and Culture

4.6 You may invite your trade union or other representative of your choice to raise a matter on your behalf.

4.7 Members of staff may also contact their trade union or Public Concerns at Work (www.pcaaw.co.uk) at any stage for free and confidential advice, if they are unsure how to raise a concern.

5. HOW TO RAISE A CONCERN – MEMBERS OF THE PUBLIC

5.1 Unlike disclosures by employees, the Public Interest Disclosure Act does not cover disclosures by members of the public.

5.2 However, the Council considers that any disclosures or allegations made by members of the public in respect of serious wrongdoing should be handled in the same way as disclosures made by employees.

5.3 Once a disclosure from a member of the public has been received by the Council, it will be handled in the same way as a disclosure made by an employee under the Public Interest Disclosure Act.

6. ACTION TO BE TAKEN BY AN OFFICER RECEIVING A WHISTLEBLOWING ALLEGATION.

6.1 Any officer who is informed of a potential problem through the Whistleblowing policy or suspects any irregularity must record the following:

- Date Discovered
- Discovery Method
- Names of contacts
- Nature of Irregularity

6.2 Where any officer receives such a report, they must not embark on an investigation. The officer must immediately report details of the suspected irregularity to the Monitoring Officer who will convene a meeting to include the S151 Officer, the Council Solicitor and the HR Service Manager to determine how the complaint will be handled.

6.3 The Fraud Response Plan sets out the actions the Council will follow when investigating Whistleblowing allegations if applicable.

7. HOW THE COUNCIL WILL RESPOND

7.1 The action taken by the Council will depend on the nature of the concern. The matters raised may:

- be investigated internally
- be referred to the Police
- be referred to the external Auditor
- form the subject of an independent inquiry

7.2 In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fail within the scope of specific procedures will normally be referred for consideration under those procedures.

7.3 Some concerns may be resolved by agreed action without the need for investigation.

7.4 Within ten working days of a concern being received, the Council will write to you:

- acknowledging that the concern has been received
- indicating how it proposes to deal with the matter
- giving an estimate of how long it will take to provide a final response
- telling you whether any initial enquiries have been made, and
- telling you whether further investigations will take place, and if not, why not.

7.5 The amount of contact between the officer considering the issues and you, will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from you.

7.6 When any meeting is arranged, you have the right, if you so wish, to be accompanied by a Union or professional association representative who is not involved in the area of work to which the concern relates.

7.7 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will advise you about the procedure. Should you so wish you may also request an officer of the Council of your choosing to provide you with advice and support. In any consequent proceedings in which you are required to give evidence that person's role will be recognised by the Council.

7.8 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, you will receive information about the outcomes of any investigations.

7.9 All responsible staff for investigating whistleblowing allegations will be fully and suitably trained in interview techniques and evidence handling before undertaking investigations.

8. HOW TO RAISE A CONCERN EXTERNALLY

8.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied. If having pursued your complaint using the procedure outlined you believe the appropriate action has not been taken you may report the matter to the proper authority.

8.2 The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- HM Revenue & Customs;
- the Financial Services Authority;
- the Office of Fair Trading;
- the Health and Safety Executive;
- the Environment Agency;
- the Director of Public Prosecutions; and
- the Serious Fraud Office.

If you do take the matter outside the Council, you need to ensure that you do not disclose confidential information or that disclosure would be privileged. Check with the contact point about that.

9. RESPONSIBLE OFFICERS

9.1 Officers referred to in paragraph 6.2 have a responsibility for:

- Ensuring that all concerns raised under the Whistleblowing Policy are given initial consideration to determine (a) whether they fall within the remit of the Whistleblowing Policy; (b) if the concerns do fall within the remit of the Whistleblowing Policy, undertaking initial enquiries to determine whether an investigation is appropriate and if so what form it should take; (c) if the concerns do not fall within the remit of the Whistleblowing Policy, ensuring that the complainant is informed of the correct policy/procedure that applies and provided with advice in accordance with that policy/procedure;
- Ensuring that all matters relevant to the complaint are given full and proper consideration before any decisions are made;
- Ensuring that the rights of employees making a protected disclosure are observed and that a fair and proportionate process is followed;
- Appointing an appropriate Senior Officer to oversee the investigation process (where applicable).

9.2 In addition, members of the Corporate Whistleblowing Team have specific responsibilities as follows:

Monitoring Officer - overall responsibility for the process of managing the complaint in accordance with the Policy and for providing guidance and advice to the Team on:

- Compliance issues related to the complaint and measures that are required to rectify/ensure compliance.

Section 151 Officer – to consider the financial implications of any allegations contained within a whistleblowing complaint, and provide guidance and advice to the receiving manager and Monitoring Officer on:

- Measures to avoid or minimise loss or risk to the Council in both the immediate and longer term;
- Whether the allegations are a matter for investigation by external audit and the sourcing of an appropriate external auditor;
- The allocation of appropriate financial resources to fund any associated costs arising from the whistleblowing complaint.

HR Service Manager – to consider the human resources implications contained within a whistleblowing complaint, and provide guidance and advice to the receiving manager and Monitoring Officer on:

- Implications in terms of matters of discipline, suspension and/or capability;
- The appointment of an appropriate internal or external investigator (unless it is a matter for audit investigation);
- Appropriate communication with the complainant and subject of the complaint.

Council Solicitor & Monitoring Officer – to consider the legal implications of any allegations contained within a whistleblowing complaint, and provide guidance and advice to the receiving manager on:

- Measures to ensure legal compliance for the Council in both the immediate and longer term;
- Legal consequences of the complaint if proven.

9.3 Although a number of officers have been identified as appropriate to approach, the Monitoring Officer has overall responsibility for the maintenance and operation of this policy. A record of concerns raised and the outcomes will be maintained by the Monitoring Officer but in a form that does not endanger your confidentiality and will report as necessary to the Council.

10. MAINTENANCE OF THE POLICY

The Policy will be reviewed by the Corporate Governance Working Group and updated in line with current legislation and best practice procedure.

APPENDIX 9 – GIFTS AND HOSPITALITY PROTOCOL

1. Introduction

1.1 The purpose of this guidance note is to provide a guide to employees and Councillors about

- The legal rules on gifts and hospitality and what may happen if they are breached;
- When gifts and hospitality may be accepted;
- The procedure to follow if you are offered a gift or hospitality;
- What to do if you think an employee or a Councillor has acted inappropriately.

Title of rule	Applies to	What the rule says	Consequences of breach
The Public Bodies Corrupt Practices Act 1889	Councillors and employees	Councillors and employees must not corruptly receive or agree to receive any gift, loan, fee, reward or advantage for doing or not doing something in connection with the work of the Council.	Criminal offence – prosecution – on conviction you can be sentenced to up to 7 years in prison
Local Government Act 1972	Employees only	S117 Local Government Act 1972 states that an employee of a local authority shall not, under colour of their office or employment, accept any fee or reward whatsoever other than their proper remuneration	Criminal offence - prosecution
Local Authority Employees Conditions of Service (“the Green Book”)	Employees only	Employees will maintain conduct of the highest standard such that public confidence in their integrity is maintained.	Breach of contract of employment – disciplinary action/dismissal
Proceeds of Crime Act 2002 (Part 7) supported by Money Laundering Regulations 2007	Councillors and Employees	Part 7 states that “..any person committing an acquisitive crime (i.e. one where he obtains some benefit in the form of money or an asset of any description) in the UK will inevitably also commit a money laundering offence under UK legislation.	Criminal offence – Prosecution – The principal money laundering offence carries a maximum penalty of 14 years imprisonment
Localism Act 2011 including Code of Conduct for Councillors	Councillors and co-opted members only	Councillors must act in the public interest and never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, a friend or close associate. Councillors must register with the Monitoring Officer the name of any person from whom they	Breach of the Code of Conduct – Potential criminal conduct/breach of other regulations or sanctions as defined in the Code of Conduct arrangements adopted by Council

		have received a gift or hospitality with an estimated value of at least £25.	
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1.2 Persons in public service (both employees and elected members) are expected to act in the interest of the public and to act impartially – and be seen to act impartially. Moreover, they should avoid putting themselves in a position where their integrity is called into question because of any financial or other obligation. As well as avoiding actual impropriety, the appearance of it should also be avoided. Council employees should not benefit personally in any way from their position as paid employees of the Council.

1.3 To quote from the judgment in a 1970’s case:

“People who take you to Wimbledon or to watch the Rugby are not doing it because they like you, it is because they want you to like them, It is because when you go to make a decision on a contract it is going to be based on friendship”.

2. The Legal Rules on Gifts and Hospitality

3. The Bribery Act 2010

3.1 The Bribery Act 2010, which repeals existing legislation, has introduced the offences of giving (or offering) and receiving (or requesting) a bribe. It also places specific responsibility on organisations to have in place sufficient and adequate procedures to prevent bribery taking place. Under the Act, bribery is defined as “Inducement for an action which is illegal unethical or a breach of trust. Inducements can take the form of gifts loans, fees rewards or other privileges”.

3.2 To demonstrate that the Council has in place sufficient and adequate procedures and to show openness and transparency all staff are required to comply with the requirements of the Gifts & Hospitality Protocol. For a more detailed explanation see the Anti-Fraud and Anti-Bribery Strategy and Policy. Should members of staff wish to report any concerns or allegations they should refer to the Whistleblowing Policy.

4. When gifts and hospitality may be accepted

4.1 The legal rules, and the potentially severe penalties for breaking them, mean that Councillors and employees must be cautious about accepting gifts or hospitality in the course of their duties.

Gifts

4.2 Employees and Councillors should usually refuse gifts offered to them or to a member of their immediate family by any person or body who has or seeks to have dealings with the Authority. Councillors must record all gifts and hospitality received with a value of £25 or more. Employees must inform their Director or Head of Service of all offers of gifts and hospitality regardless of value or whether accepted or not and seek advice as to whether the offer should be recorded.

4.3 However, the following gifts may generally be accepted, although employees must obtain the permission of a Director or Head of Service.

- (i) A modest gift of a promotional/advertising character given to a wide range of people and not uniquely to the employee. The gifts would normally bear the Company's name and/or trademark/logo and would be the sort of item that would be useful in the everyday working environment eg pens, calendars, diaries, note pads, desk sets, tape measures etc;
 - (ii) from time to time, as part of a sales promotion drive, firms offer gifts or vouchers exchangeable for gifts, or ordering excess of certain targets. When this happens Value for Money and the best interests of the Authority should always be uppermost in an employee's mind. Employees should not over order, over stock, or purchase items not forming part of the Authority's normal requirements;
 - (iii) Modest gifts given in a lottery at Exhibitions, Conferences, Seminars etc, as part of a free raffle or draw;
 - (iv) Modest gifts of alcohol or non-perishable foodstuffs (which must be donated to the Chairman's Charity or other charity); and
 - (v) Modest gifts of perishable foodstuffs and non-foodstuffs.
- 4.4 Where a gift is accepted with the permission of a Director or Head of Service but the gift is of no direct use to the Council, e.g. chocolates, alcohol, gift vouchers etc, it should be forwarded to the Chairman's Officer in order that it can either be the subject of a raffle with the proceeds going to a charitable fund of the Chairman's choosing or donated to a suitable charity. Where this happens, the employee who initially received the gift must complete a form to record the gift having been accepted and donated to the Chairman's charity or another charity.
- 4.5 The Chairman's Officer will write to the donor to thank them for the gift and tell them that, as employees cannot accept gifts, their gift has been donated to the Chairman's Charity. A copy of this letter will be sent to the employee who accepted or received the gift.
- 4.6 Where perishable gifts e.g. cakes, biscuits, flowers are received or accepted, whilst these remain the property of the Council and not the individual, they may be accepted and shared amongst the Service/Officer(s) as appropriate. Where this occurs the employee who initially received the gift must complete a form to record the gift having been accepted and shared around the relevant office.

Hospitality

- 4.7 Hospitality should in general be declined. Employees should never accept any hospitality without the consent of a Director or Head of Service.
- 4.8 The following are examples of what is generally ACCEPTABLE:
- (i) A working meal provided to allow the parties to discuss or continue to discuss business. Employees are reminded they must not claim subsistence unless money has actually been expended by them on paying for their share of the meal or purchase of drinks. Employees should endeavour to pay their share of the cost where practicable: for example where the meal is taken in a café/restaurant;

- (ii) An invitation from an established or prospective trading partner to a function that is part of a wider gathering e.g. conference lunches or dinners, where other local government employees connected with the service provided by the trading partner are also invited. However these should always be registered.

4.9 The following would never be acceptable:

- (i) Holidays or free accommodation;
- (ii) Offers or hotel vouchers, theatre tickets, free travel etc (this should be treated as a gift);
- (iii) Tickets for football matches or other sporting events; and
- (iv) Use of a company flat or hotel suite.

4.10 If you are unsure then you should contact the Council Solicitor or (in the case of employees) the Director or Head responsible for your service.

4.11 When a firm is participating in a tendering exercise or in a dispute with the Council about an existing contract then clearly offers of hospitality should be refused even if in normal times they could be acceptable.

4.12 Where a payment is received for speaking at an event e.g. conference in Council time then the fee should be paid to the Council and not retained by the individual. This is because the honorarium could potentially be seen as a bribe or as a conflict of interest, and be subject to a disciplinary and/or criminal investigation.

5. The procedure for responding to offers of gifts or hospitality

5.1 The form must be completed as soon as the offer has been received. Employees must complete the form even if the offer is rejected.

5.2 Councillors must return the form to the Council Solicitor within 28 days from accepting the gift or hospitality.

5.3 Employees must not accept the gift or hospitality without the written permission of a Director or Head of Service. They must therefore complete the form and give it to the Director or Head responsible for their service. Once the Director or Head of Service has made a decision he or she will send copies of the form to the Council Solicitor and employee.

5.4 The Council Solicitor will ensure that everyone who offers a gift or hospitality will receive a letter drawing their attention to this policy.

5.5 The register of gifts and hospitality will be open to inspection by Audit & Risk Scrutiny Committee and by internal Audit.

6. What should I do if I think that someone isn't following this procedure?

6.1 If you have a concern that any gifts or hospitality are being inappropriately accepted then you should raise it with the Council Solicitor or Internal Audit.

REGISTRATION OF OFFERS OF GIFTS AND HOSPITALITY – COUNCILLORS

Councillors are required to register all hospitality received where the gift or hospitality:

- has an estimated value of £25 or more; and
- is received in connection with the carrying out of the councillor or officer’s duties (including whilst representing the council on an outside body)

Registration must be completed within 28 days of receiving the gift or hospitality.

Councillors are also encouraged to voluntarily register all offers of gifts and hospitality – whether or not accepted.

Advice about what has to be registered is available from the Council Solicitor or one of the legal team.

Name of Councillor receiving offer of gift or hospitality:

Details of hospitality or gift received/or offered

Date hospitality or gift received	Name of person or body giving the hospitality	Description of what was received	Estimated value	Have you or will you accept this gift or hospitality?*

Information given on this form will be used for the purpose of promoting and maintaining good standards of probity and will be placed on the register of interests which is available to the public.

Declaration

The information on this form is true and complete to the best of my knowledge.

Signed _____

Dated _____

Once complete this form should be sent to the Council Solicitor.

REGISTRATION OF OFFERS OF GIFTS AND HOSPITALITY – EMPLOYEES

Council employees must not accept gifts or hospitality without the prior permission of a Director or Head of Service.

All offers of gifts and hospitality must be recorded on this form following receipt of advice from the Director or Head of Service, even if an employee has refused the offer or does not want to accept it.

The form must be completed before any gift or hospitality can be accepted.

Advice about what has to be registered is available from the Council Solicitor or one of the legal team.

Name of Employee receiving offer of gift or hospitality:

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Details of hospitality or gift received/or offered

Date hospitality or gift received	
Name of person or body making the offer	
Description of what has been offered	
Estimated value	
Reason for offer	
The current situation is:	<ul style="list-style-type: none"> • This form is for information only because the offer has already been refused • The offer is of non-perishable food/drink/vouchers and I seek authority to donate it to the Chairman’s Charity or another charity • I request guidance on how to respond to the offer

Information given on this form will be used for the purpose of promoting and maintaining good standards of probity and may be made available to the public.

Declaration

The information on this form is true and complete to the best of my knowledge.

Signed _____ **Dated** _____

Once complete this form should be sent to the Council Solicitor.

THIS SECTION HAS TO BE COMPLETED BY THE DIRECTOR OR HEAD OF SERVICE RESPONSIBLE FOR THE EMPLOYEE'S SERVICE.

This section does not apply to gifts/hospitality being registered by a Councillor.

Permission to accept the gift/hospitality granted	YES/NO	
Name _____	Signed _____	Date _____
Date gift returned unaccepted		
Name of persons notified of non-acceptance of gift or hospitality		
Date gift returned unaccepted If gift donated to Chairman's Charity or another charity, date on which passed to Chairman's Officer		
Date on which the Chairman's Officer sent a thank you letter informing person offering gift that it was being donated to charity (and sent a copy to the employee who was offered the gift)		
Date form returned to officer notifying them of decision		

The Director or Head of Service should send:

- 1 copy to employee
- 1 copy to the Council Solicitor
- 1 copy to Chairman's Officer (if donated to Chairman's Charity)

PROTOCOL FOR SCRUTINY PANELS

1. To undertake reviews as may be requested by the Overview & Scrutiny Committee.
2. To undertake scrutiny of health related matters as agreed by the Overview and Scrutiny Committee or delegated to the Council by the County Council.
3. To appoint a Chair for each review, and if considered appropriate, Vice Chair.
4. Identify the scope, timetable and method of review and submit this to the Overview & Scrutiny Committee for approval.
5. To refer completed reports to the Overview & Scrutiny Committee from the Scrutiny Panel. The Select Panel retains the right to submit 2 reports which will allow for alternative Panel views to be reflected.
6. A Panel will be deemed to have completed a review once approved by Overview & Scrutiny Committee.
7. The object of the role of a scrutiny panel is to operate on an informal basis, therefore there will be no requirement for formal agenda and minutes.
8. Meetings will not need to be held in public. The public could be invited to attend specific meetings at the discretion of panel members.
9. The Chairman or nominated Panel Member will report back to the Overview and Scrutiny Committee.

PRE-ELECTION PROTOCOL

- (a) The Local Government Act 1986 - S.2 states that:-

“Local Authorities shall not publish material which, in whole or in part, appears to be designed to affect public support for a political party.”

- (b) The Local Government Act 1986 - 5.4:-

- Allows for a code of practice on publicity
- The revised wording on elections is as follows:-

“The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an emergency or where there is a genuine need for a member level response to an important event outside the authority’s control. Proactive events arranged in this period should not involve members likely to be standing for election.”

- (c) This means that the Council’s resources must not be or even appear to an observer to be used for party political ends, including publicity, in this period of heightened political sensitivity.

- (d) In order to comply with this:-

- Press releases about any policy matter, service delivery, service developments or scrutiny should not include quotes from or mentions of individual Councillors or party groups.
- No press releases should be issued on local or other issues promoted by or involving individual members.
- Enquiries from the media will be directed towards appropriate officers only.
- No links be added from the Council’s web site to any site which may be construed as political.

EXCEPT that

- Where absolutely necessary for the purpose of responding to outside events or to a crisis, the appropriate councillor, committee chairman or Leader of the Council can be quoted, speaking on behalf of the Council.

- (e) At all times the following points must be considered:-

- Is there a valid reason for the Councillor concerned to represent the Council on this issue/at this event?
 - Is there a good reason why the event/announcement should be happening now, rather than after the elections?
- (f) This does not mean that party groups or individual members themselves may not issue press releases, as long as they are clearly identified as coming from them and not from the Council. It should be noted, though, that this is subject to the rules governing election expenses.
- (g) Use of Council property for public meetings
- There is provision within the Representation of the People Act 1983 for candidates in an election to have free use of certain rooms for holding public meetings, in the electoral division in which they are standing. This entitlement is from the last day for the publication of the notice of elections until the day preceding the day of elections.
- (h) A candidate is entitled - for purpose of holding public meetings in furtherance of her/his candidature - to the free use at reasonable times of a room in a school or other Council building. The person using the room must pay the costs of preparing the room, Heating, lighting and cleaning.
- (i) Permitting the use of these facilities does not breach this protocol provided the local authority does not publicise the meeting.
- (j) This provision does not allow a candidate to hold surgery-type meetings or to use such rooms as his/her committee rooms, which is illegal.
- (k) If any clarification is required or difficulties encountered, advice should be sought from the Monitoring Officer.
- (i) This guidance can be varied by the Returning Officer in consultation with the Monitoring Officer, according to circumstances.

MONITORING OFFICER PROTOCOL

A. GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

1. The Monitoring Officer is a statutory appointment pursuant to Section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Bassetlaw District Council.
2. The current responsibilities of the Monitoring Officer role rest with the Director of Corporate Services who undertakes to discharge his/her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, he/she will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
3. A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
 - (a) complying with the law of the land (including any relevant Codes of Conduct);
 - (b) complying with any General Guidance issued, from time to time, by the Standards Committee and the Monitoring Officer;
 - (c) making lawful and proportionate decisions; and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

B. WORKING ARRANGEMENTS

4. Having good working relations with Members and Officers will assist in the discharge of the statutory responsibilities on the Monitoring Officer and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages prior to any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.
5. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
 - (a) be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
 - (b) have advance notice (including receiving Agendas, Minutes, Reports and related papers) and right of attendance of all relevant meetings of the

Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Executive Management Team, Departmental Management Team and Corporate Management Team (or equivalent arrangements);

- (c) will attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings and/or Executive Management Team, Departmental Management Team and Corporate Management Team (or equivalent arrangements);
- (d) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions;
- (e) ensure the other statutory officers (Head of Paid Service and the Section 151 Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise. However, it is also the responsibility of the other statutory officers and/or Heads of Service to ensure that they are up-to-date with relevant information, legal or otherwise affecting their area of directorate or service responsibilities;
- (f) meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (g) report to the Council, by way of an annual review, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service, Section 151 Officer;
- (h) have a special relationship of respect and trust with the Council's Chairman, Vice-Chairman and the Chairs of the Cabinet, Licensing, Planning and Overview and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business;
- (i) develop effective working liaison and relationship with the Council's external Auditors and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council;
- (j) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- (k) give informal advice and undertake relevant enquiries into allegations of misconduct relating to Councillors Code of Conduct for Members.

- (l) in consultation, as necessary, with the Chairs of the Council, Cabinet, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
 - (m) have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions and report to the Council on any requirement for resources necessary to discharge the Monitoring Officer function;
 - (n) subject to the approval of the Standards Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues; and
 - (o) appoint a deputy and keep him or her briefed on any relevant issues that he/she may be required to deal with in the absence of the Monitoring Officer.
6. To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
7. The Monitoring Officer is also available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g. Council Procedure Rules, policy framework, terms of reference, scheme of delegations etc).
8. To ensure the effective and efficient discharge of this Protocol, the Section 151 Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

C SANCTIONS FOR BREACH OF BASSETLAW'S CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL

- (a) **This part has been intentionally left blank.**

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 Local Government and Housing Act 1989.
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 Local Government and Housing Act 1989.
3	Appointment of Deputy.	Section 5 Local Government and Housing Act 1989.
4	Report on resources.	Section 5 Local Government and Housing Act 1989.
5	Receive copies of whistleblowing allegations of misconduct.	Whistleblowing Policy and Procedure.
6	Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers.	LGA 2000 Section 66(1) + 66(6) and Regulations.
7	Conduct of investigations where Ethical Standards Officer not pursued investigation to conclusion but referred to MO for completion of investigation and adjudication by Standards Officer.	Regulations when made.
8	Compliance with Monitoring Officer Protocol	
9	Establish and maintain registers of member's interests and gifts and hospitality.	Section 81 LGA 2000 and Bassetlaw District Council Code (when made).
10	Advice to members on interpretation of Code.	Localism Act 2011
11	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.	Localism Act 2011
12	New ethical framework functions in relation to Parish Councils.	Section 83(12) LGA 2000.
13	Compensation for maladministration.	Section 92 LGA 2000.
14	Advice on vices issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members.	The Constitution and DCLG

ENFORCEMENT POLICY

1. INTRODUCTION

In March 1998 the Government's Better Regulation Unit published an enforcement Concordat which set out a blueprint for fair, practical and consistent enforcement across the country. The Concordat was developed jointly by representatives of businesses, local authorities and central government and has been circulated for adoption by enforcement agencies. The Concordat draws on good practice already operated by many local authorities and other agencies.

Bassetlaw District Council fully supports this initiative and has set out within this Enforcement Policy the principles to be adopted by all departments and officers exercising any enforcement function. In signing the Concordat and adopting this Enforcement Policy, the Council is stating its commitment to an enforcement which is courteous and helpful and which works with individuals and businesses, wherever possible, to help them comply with the law. The Council nevertheless acknowledges the need for firm action against those that flout the law and put consumers and others at risk.

2. ENFORCEMENT ACTIVITY

The Council has a duty to enforce a wide range of statutes relating to Public Health and Safety, quality of life, preservation of public and residential amenity, prevention of crime and disorder, maintenance of the environment and protection of public funds. All of these activities will be carried out, having regard to the general principles of good enforcement practice outlined in this policy document. The services falling within the scope of this policy include:-

Support Services

Licensing of taxis, Licensing Act 2003 requirements and Street Trading.

Revenues and Customer Services

Revenue recovery and the investigation of housing benefit, fraud Council tax and national non-domestic rate and sundry debts including Housing Benefit overpayments and fraud sanctions.

Environment and Housing Service

Pollution Control, Environmental Protection, Health and Safety, Public Health, Food Safety, House Conditions, Animal Welfare and Litter. Strategic Housing.

Community Services

Planning Control, Building Control.

Finance & Property

Unauthorised Encampments

Although primary responsibility for compliance with the law rests with individuals and businesses, the Council will provide free information to help them understand legal requirements and will seek to raise awareness about the need to comply.

3. DELEGATION OF AUTHORITY

The Council's Scheme of Delegation specifies the extent to which enforcement powers are delegated to officers. Whilst delegation may often be to officers, in certain circumstances the decision to take enforcement action lies with the relevant Council Committee or Panel, for example, in relation to matters following within the Licensing Act 2003.

4. PRINCIPLES OF ENFORCEMENT

The Council believes in firm but fair regulation. Underlying the policy are the principles of proportionality in the application of the law and in securing compliance; consistency of approach, openness about how the Council operates and what those customers may expect, and targeting of enforcement action.

(a) Proportionally

The enforcement action taken by the Council will be proportionate to the risks posed and to the seriousness of any breach of the law.

Some incidents or breaches of regulatory requirements have the potential to cause serious risks to public Health and Safety, environmental damage, crime and disorder or loss of public or residential amenity. The Council's first response is to protect the public and prevent harm to the environment from occurring or continuing. There may be occasions when the breach of regulations will justify statutory action.

(b) Consistency

The Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions on whether to prosecute.

However, the Council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of the breach, the attitude and actions of management, and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgment and the Council, through its officers, needs to exercise discretion. The Council will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

(c) Openness

Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all customers to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to or has taken enforcement action.

Openness is an integral part of the role of Council officers and the Council continues to train its staff, and to develop its procedures to ensure that:

Where remedial action is required, it is clearly explained (in writing if requested) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;

Opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect the environment, to prevent evidence being destroyed or in the course of an investigation into fraud which may lead to prosecution;

Where urgent action is required, a written explanation of the reason is provided as soon as practicable after the event;

Written explanation is given on any rights of appeal against formal enforcement action at the time the action is taken;

(d) Targeting

Targeting means making sure that regulatory effort is directed primarily towards those who are responsible for any risk to Health and Safety or whose activity gives rise to serious environmental damage, where the risks are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

The Council has systems for prioritising regulatory effort. They include the response to complaints from the public about regulated activities, the assessment of the risks posed by business operation and the gathering and acting on intelligence about illegal activity.

In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour or an inability to achieve sufficient control, and may require a review of the regulatory requirements, the actions of the operator and additional investment. A relatively low hazard site or activity, poorly managed, has potential for greater risk to the environment than a higher hazard site or activity where proper control measures are in place.

The Council will usually seek to recover the costs of investigation and Court proceedings.

5. ENFORCEMENT OPTIONS

The Council recognises the importance of achieving and maintaining consistency in its approach to enforcement. For many areas of enforcement activity, Government guidance already exists in the form of Codes of Practice, Planning Policy Guidance, Licensing Policies, Government Circulars etc. There may also be local or regional Codes of Practice such as the Charter and Codes of Practice for the collection of debts, which have been produced locally to promote consistency in our enforcement activity. When making enforcement decisions, officers must have regards to any relevant national or local guidance as well as this Enforcement Policy.

Enforcement decisions must be consistent, balanced, fair and relate to common standards that ensure the public or environment is adequately protected. They will have proper regard to the Crown Prosecution Service Code for Crown Prosecutors. The criteria to be considered will include:

- The seriousness of the offence;
- The history of the activity;
- Confidence in achieving compliance;
- Consequences of non-compliance; and
- Likely effectiveness of the various enforcement options.

Within this national framework the council may also set its own framework for action under Codes Of Practice and policies. E.g. the sanctions policies sets out the framework for punishing fraud.

The criteria are not exhaustive and those which apply will depend on the particular circumstances of each case. This does not mean that all factors must be in favour of enforcement action, rather that, on balance, the preponderance is in favour. Having considered the enforcement criteria the following options are available:

- To take no action; or
- To take informal action; or
- To serve statutory notices; or
- To issue formal cautions; or
- To suspend, revoke or refuse to renew a licence; or
- To impose an administrative penalty; or
- To prosecute or apply for a Court Order.

Where appropriate, a staged approach to enforcement should be adopted and in the first instance business should be given the opportunity to discuss and remedy problems before action is taken, unless immediate action is required.

Informal Action

Informal Action will be taken when:

- The act or omission is not serious enough to warrant formal action; or
- From the individual's or business's past history it can be reasonably expected that Informal action will achieve compliance; or
- The confidence in an individual or business proprietor is high; or
- The consequences of non-compliance will not pose a significant risk to public health, public safety or the environment.

When an informal approach is used to secure compliance with regulations, confirmation of what action is required will usually be confirmed in writing. All correspondence must clearly differentiate between legal requirements and recommendations of good practice and must indicate the legislation contravened and the measures, which will enable compliance.

Statutory Notices

Statutory Notices will be issued where one of the following criteria apply:

- Where there is a statutory duty to do so;

- There are significant contraventions of legislation;
- There is a lack of confidence in the proprietor or enterprise to respond to an informal approach;
- There is a history of non-compliance;
- Standards are generally poor, with little management awareness of statutory requirements;

The consequences of non-compliance could be potentially serious to public health; or cause public nuisance, or be irreversible; or

Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating, or where the service of a notice is needed to support a prosecution.

Failure to comply with a statutory notice will, in general and where relevant, result in prosecution and/or in default where appropriate.

Prohibition Notices

It will be necessary to consider the service of a Prohibition Notice, Stop Notice or injunction in one or more of the following circumstances:

- An imminent risk of injury to Health and Safety can be demonstrated
- An imminent risk of serious pollution to the environment can be demonstrated;
- The consequences of not taking immediate and decisive action to protect the public would not be acceptable;
- Where an unauthorised development is unacceptable and immediate remedial action is required because the breach is causing serious harm to public amenity in the neighbourhood of the site or where there has been breach of a condition notice;
- Where unauthorised development is unacceptable and continuing works are causing irreversible damage and remedial action is not a satisfactory option;
- The guidance criteria concerning the conditions when prohibited may be appropriate are fulfilled;
- There is no confidence in the integrity of an un-prompted offer made by a proprietor to voluntarily close premises or cease the use of any equipment, process or treatment associated with the imminent risk; or
- A proprietor is unwilling to confirm in writing his/her un-prompted offer of a voluntary prohibition.

Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences on the offender.

The final decision to undertake a prosecution will normally be taken by the relevant Director in consultation with the Council's Solicitor. The criteria for the issue of proceedings are:

- The alleged offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk or irreversible damage has resulted;
- There has been a reckless disregard for the environment;
- The alleged offence involves deception, which may or may not result in loss or potential loss of public funds;
- The integrity of the licensing framework is threatened;
- The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an unauthorised officer;
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice;
- There is a history of similar offences;
- The alleged offence causes public alarm and it is desirable to reassure the public and deter other offenders; or
- A prosecution is in the public interest, there is realistic prospect of conviction and sufficient evidence to support proceedings;

All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made.

Prosecution without Warning

As a general rule, a person or a company will be given a reasonable opportunity to comply with the law, although in some circumstances prosecution may be undertaken without giving prior warning, for example:

- The contravention is a particularly serious one;
- There has been a particularly blatant disregard of the law;
- A statutory notice has been previously issued for a similar offence; or
- The integrity of the licensing framework is threatened.

Formal Cautions

A formal caution may be issued as an alternative to a prosecution. Formal cautions will be issued to:

- Deal quickly and simply with less serious offences;
- Divert less serious offences away from the courts; or
- Reduce the chances of repeat offences.

To safeguard the suspected offender's interest, the following conditions will be fulfilled before a caution is administered:

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction; and
- The suspected offender must admit the offence; and
- The suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.

No pressure will be applied to a person to accept a formal caution. Should a person decline the offer of a formal caution a prosecution will be considered.

Non-compliance with a Policy

If any person is unhappy with the action taken, or information or advice given they will be given the opportunity of discussing the matter with the relevant line manager or Director. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.

6. TRAINING AND APPOINTMENT OF OFFICERS

All officers undertaking enforcement duties will be suitably trained and qualified so as to ensure that they are fully competent to undertake their enforcement activities.

All officers will be formally authorised by the relevant Council committee or delegated officer to exercise specific powers under relevant statutes. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. Authorisation will be given in writing and in a form which can be shown on request.

The Council support the principle of continuing professional development and will ensure that all officers are given additional in-post training to maintain up-to-date knowledge and skills.

7. MANAGEMENT SYSTEMS

Staff competency and the consistency of enforcement will be reviewed by each department on a regular basis.

The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach. Where local or nation coordinating bodies exist such as LACOTS and the Nottinghamshire Food Liaison Group, the Council will ensure that wherever possible its enforcement practices are consistent with best practice. The review of the enforcement services may involve any of the following activities:

- Review of enforcement standards by members of the Council;
- Quality Assurance systems such as ISO9002;
- Supervising officer for enforcement action;
- Monitoring visits by line managers;
- Shadowing visits by colleagues;
- Monitoring of correspondence and statutory notices;
- Peer review exercises;
- Internal training sessions and workshops on enforcement issues;
- Customer satisfaction surveys;
- Business focus groups;
- Quality assurance.

8. REVIEW OF THE POLICY

This policy document will be reviewed on a regular basis.

PROTOCOL ON WORKING ARRANGEMENTS FOR ASSISTANTS TO CABINET MEMBERS

1. INTRODUCTION

The Leader has created the role of Assistants to Cabinet Members. This protocol clarifies those activities that Assistant Cabinet Members are able/unable to undertake to comply with relevant legislation and Bassetlaw District Council's Constitution.

2. KEY PRINCIPLES

- (i) Assistants to Cabinet Members are not members of the Executive. They cannot deputise for Cabinet Members on the Cabinet or a Committee of Cabinet. They cannot make decisions delegated to individual portfolio holders.
- (ii) Assistants to Cabinet Members have a right of attendance at the formal decision making meetings of their portfolio holder.
- (iii) Assistants to Cabinet Members are not spokespersons for the Council on any Executive matter.
- (iv) Assistants to Cabinet Members are able to work on policy development research and in an advisory capacity to the Leader, Cabinet, individual Cabinet Members or Committees of the Cabinet.
- (v) Assistants to the Cabinet Member are able to accompany Cabinet Members to meetings of the Overview and Scrutiny Commission, but proper political accountability requires that the relevant Cabinet Member (or Deputy authorised for that purpose by the Leader) take the lead role in answering Members questions.
- (vi) Assistant Cabinet Members may be Members of the Health & Public Services Sub-Committee and the Standards Sub-Committee. However, they must consider the principles set out in the Constitution in relation to Scrutiny Procedure Rules.
- (vii) Assistants to Cabinet Members cannot answer Members' questions at Council in that capacity.
- (viii) Assistants to Cabinet Members can be appointed or dismissed by the Leader of the Council at his absolute discretion. Service in this capacity shall be deemed to have commenced or ceased immediately the Leader notifies the Chief Executive or Director of Corporate Services in writing.
- (ix) Any requests or instructions for research or other work on the part of Officers must be channelled through the Leader or Cabinet Portfolio holder.