

AGENDA SUPPLEMENT (1)

Meeting: Standards Committee

Place: Kennet Committee Room, County Hall, Bythesea Road, Trowbridge,
BA14 8JN

Date: Wednesday 26 June 2019

Time: 10.00 am

The Agenda for the above meeting was published on **18 June 2019**. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

7 **Recommendations from the Constitution Focus Group (Pages 3 - 96)**

A report from the Monitoring Officer is attached.

DATE OF PUBLICATION: 19 June 2019

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Wiltshire Council

Standards Committee

26 June 2019

Recommendations of the Constitution Focus Group

Purpose of Report

1. This report asks the Standards Committee to consider recommendations of the Constitution Focus Group in relation to the following:
 - Protocol 12 of the Constitution: Arrangements for dealing with Code of Conduct Complaints and Part 3B of the Constitution: Responsibility for Functions
 - Protocol 4 of the Constitution: Planning Code of Good Practice
 - Part 3C of the Constitution: Scheme of Delegation (Executive)

Background

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist in carrying out this function.
3. The Focus Group met on 5 September 2018, 20 March 2019, 10 April 2019, 24 May 2019 and 14 June 2019 to review sections of the constitution, including those as detailed in paragraph 1.
4. The relevant minutes of the Focus Group meeting listed in paragraph 3 can be found at **Appendix 1**.

Main Considerations

Protocol 12 of the Constitution and Part 3B of the Constitution

5. At its meeting on 23 January 2019 the Standards Committee requested the Constitution Focus Group to oversee a review of the procedures relating to code of conduct complaints in response to concerns expressed to the Committee regarding the timeliness of dealing with complaints under the process. This also followed a review of the processes adopted by other local authorities in handling of code of conduct complaints. The arrangements operated by Wiltshire Council were last reviewed in February 2017.
6. Following a meeting between officers, the Chairman and Vice-Chairman and the council's Independent Persons on 12 March 2019, and initial meetings of the Focus Group, an update on the proposed new procedure was considered by the Standards Committee on 1 May 2019.
7. In reviewing the arrangements there was a focus on streamlining the complaints process to make it more efficient and effective, as well as reduce the risk of delays. The Focus Group noted the purpose of the multiple stages of review in the existing

procedure to ensure member involvement in the process of officers determining complaints made against elected members.

8. The Focus Group noted arrangements in other authorities where assessments of complaints were determined by a member sub-committee. The advantage of such an approach was it was felt to enhance the role of members in the process by ensuring involvement for all complaints, not merely those which were requested for review, and would therefore obviate the need for a review stage.
9. Such an approach was also felt to be more administratively efficient, as rather than a series of ad hoc sub-committees a standing assessment sub-committee would be regularly scheduled and known in advance to all members of the committee and supporting officers. At present, the uncertainty of whether reviews may be received leads to clusters of complaints being reviewed that must be dealt with on separate dates at short notice, which can result in delays due to availability constraints of members, officers and Independent Persons. It would also provide greater certainty to complainants and subject members as to when their complaint would be determined.
10. The Focus Group therefore recommends that the Review Sub-Committee becomes an Assessment Sub-Committee. This sub-committee would meet on a monthly basis and receive a report and recommendation from the Monitoring Officer on all complaints that have been received. As the Monitoring Officer is already responsible for preparing a decision notice for all complaints, this should not add to the workload of the team.
11. The Sub-Committee would consist of five elected members to be appointed by the Standards Committee on an annual basis, with all members and substitute members of the Standards Committee being able to serve as substitutes for the Sub-Committee. It is proposed the sub-committee comprises five members because, with monthly meetings considering all complaints, the possibility of conflicts of interest or absence would be higher. A membership of five would ensure a core group of experienced members, while allowing for regular substitution to enable all members and substitute members of the Standards Committee to contribute from time to time, as well as leaving sufficient members to sit on any Hearing Sub-Committee that may be required. The Sub-Committee may also include up to 2 non-voting co-opted members.
12. In terms of participation from subject members and complainants, the Focus Group recommends retaining the procedure as exists for the Review Sub-Committee where each party may make a three-minute statement before the determining sub-committee. The procedure would require parties relating to one complaint to be heard separately from any other complaint.
13. It was also recommended that any investigation report finding no breach should be taken before the Assessment Sub-Committee to formally confirm no further action, rather than this being a determination of the Monitoring Officer.
14. Additional changes to the Protocol are proposed:
 - to emphasise the requirement of complainants to provide sufficient information for a complaint to be taken forward
 - to slightly increase the length of time for an investigation;

- to provide that only in exceptional circumstances should a complaint against a member who has subsequently resigned be taken forward; and
 - to provide greater clarity in the interpretation of some provisions.
15. For the avoidance of doubt, the existing sub-committees of the Standards Committee are not subject to the requirements of political balance. This would also apply to the Assessment Sub-Committee.
 16. Overall, the Focus Group considers that the proposed changes will enhance member involvement; improve administrative efficiency; be more open and transparent; and provide greater clarity.
 17. To implement these changes there would need to be amendments to Protocol 12 of the Constitution, which sets out the arrangements for dealing with Code of Conduct complaints, and Part 3B of the Constitution, which contains the terms of reference of the Standards Committee and its sub-committees.
 18. The proposed changes to Protocol 12 are listed at **Appendix 2**. The proposed changes to Part 3B are listed at **Appendix 3**. Both may be reformatted and renumbered in accordance with the Standard Committee's request for standardisation of presentation of the Constitution.
 19. Additionally, it would be necessary to amend the Assessment Criteria by which complaints are assessed, and the procedure for the Assessment Sub-Committee. Both of these documents can be approved by the Standards Committee.
 20. The proposed changes to the Assessment Criteria are listed at **Appendix 4**. The proposed changes to the Assessment Sub-Committee Procedure are listed at **Appendix 5**.
 21. In order to allow sufficient time to organise any new meetings within the council's committee calendar, and to advise Parish and Town Councils of the changes, if agreed, it is recommended that the revised approach should take effect from January 2020, with the Standards Committee appointing membership to the Sub-Committee in late 2019, and thereafter following the Annual Meeting of Full Council.

Protocol 4 of the Constitution

22. Following the final report of the Planning Committee Systems Task Group, the Overview and Scrutiny Management Committee resolved at its meeting on 5 June 2018 to endorse a series of recommendations relating to the operation of the council's planning committees and associated matters.
23. One of those recommendations was that the arrangements in place for site visits by the Southern Area Planning Committee should be adopted across all the planning committees. This arrangement was not consistent with the arrangements as set out in Protocol 4 of the Constitution, and the matter was referred to the Focus Group, with proposed wording to give effect to the recommendation agreed with the Chairman of the Planning Committee Systems Task Group and the Cabinet Member for Spatial Planning, Development Management and Property.

24. At its meeting on 5 September 2018 the Focus Group considered the proposal and were broadly content with the wording., However it was felt that sections of the main protocol needed revision , and that ,therefore, any change should await a wider review of the protocol as a whole to ensure it was comprehensive, consistent and cohesive.
25. The Focus Group therefore met on 24 May 2019 and 14 June 2019 to discuss a proposed revision of the Protocol. The Chairmen of all Area Planning Committees and the Strategic Planning Committee, and the Cabinet Member for Spatial Planning, Development Management and Property, were invited to attend the meeting to discuss any proposals.
26. The proposed changes include:
- updates to reflect legislative and procedural changes;
 - enhancing guidance to support and assist members in discharging their planning responsibilities; ,
 - updating the site visit rules;
 - simplifying the public participation arrangements; and
 - providing greater emphasis on matters that must be considered when making determinations.
27. The Focus Group over its meetings asked for a series of changes including:
- to provide greater clarity on the applicability of the Code in relation to member involvement in enforcement matters;
 - consistent referencing;
 - clarity in relation to what constituted a material interest and relevant non-pecuniary interests;
 - advice to be taken by members before participating in a personal capacity;
 - strengthening of sections on predetermination and bias, and how this related to meetings with parties to the development,; and
 - highlighting that a refusal by a member to attend relevant planning training could render decisions of a committee open to potential successful legal challenge.
28. As a great deal of the Protocol has been retained but re-ordered, a schedule of the proposed changes is set out at **Appendix 6**. The protocol itself may be reformatted and renumbered in accordance with the Standards Committee's request for standardisation of presentation of the Constitution. The public speaking note would not form part of the main Protocol.

Part 3C of the Constitution: Executive Arrangements

29. The Joint Strategic Economic Committee (JSEC) is a joint committee of Swindon Borough Council and Wiltshire Council comprising members of and delegated authority from each Executive. It was established to provide local democratic and financial accountability for the Strategic Economic Plan and use of Local Growth

Fund and other funding streams by the Swindon and Wiltshire Local Enterprise Partnership (SWLEP).

30. At the time of the JSEC being constituted the SWLEP Board, which included the Leaders of each unitary council, did not meet in public. Since that time there have been various changes to the governance of the SWLEP, culminating in it being incorporated as a company limited by guarantee in January 2019. This change of legal status changed the nature of the relationship between the SWLEP, Wiltshire Council as the Accountable Body, and Swindon Borough Council and necessitated a review of the governance framework between these parties, which was the subject of a report to Cabinet on 26 March 2019. The report envisaged the dissolution of the JSEC under the new governance arrangements.
31. In accordance with Part 7 of the Constitution, Cabinet Procedure Rules, the Leader of the Council may amend the Scheme of Delegation relating to cabinet functions at any time during the year by informing the Proper Officer. This would then be reported to the next ordinary meeting of the council. As a result of the changes to the governance framework supporting the SWLEP, therefore, it is anticipated that the Leader will report to Full Council on 9 July that the JSEC is dissolved and its terms of reference removed from the Constitution. .
32. The work of the SWLEP will continue to be scrutinised by a joint task group of both councils, and the Cabinet Member for Economic Development and Salisbury Recovery will sit on its Board of Directors.

Article 15.3.2 Changes

33. Under Article 15.3.2 of Part 2 of the Constitution the Monitoring Officer has delegated authority to amend the constitution to reflect decisions of Full Council, changes in the law, to correct errors or clarify ambiguities where to do so does not alter (but gives effect to) the executive arrangements or the principles enshrined in the Constitution.
34. As agreed by the Standards Committee at its meeting on 17 January 2018 work has been ongoing in updating the terminology and formatting of the Constitution, with the updated documents reported to the Focus Group. To date, Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 16, and Protocol 1 have had their formatting and numbering updated to be consistent.

Safeguarding Implications

35. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

36. There are no equalities impacts arising from this report.

Risk Assessment

37. There are no risk issues arising from this report.

Financial Implications

38. There are no financial implications arising from this report.

Legal Implications

39. The recommendations in this report are consistent with the council's duties under relevant legislation.

Public Health Impact of the Proposals

40. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

41. There are no environmental impacts arising from this report.

Proposal

42. **To recommend Full Council approve the revisions to Protocol 12 and Part 3B of the Constitution in relation to the arrangements for dealing with Code of Conduct complaints, such revised arrangements to take effect from 1 January 2020 after town and parish councils have been informed of the changes.**
43. **That, subject to Council's approval of the revised arrangements, the Standards Committee adopt the proposed revisions to the Assessment Criteria and Assessment Sub-Committee procedure.**
44. **To recommend Full Council approve the revisions to Protocol 4 of the Constitution.**
45. **To note the changes to Part 3C of the Constitution which are expected to be reported to the next meeting of Full Council in relation to the Joint Strategic Economic Committee.**
46. **To note the ongoing updates to the Constitution by the Monitoring Officer under the Article 15.3.2 of Part 2 delegated authority.**

Ian Gibbons, Director, Legal, Electoral and Registration Services (and Monitoring Officer)

Report Author: Kieran Elliott, Senior Democratic Services Officer, 01225 718504, kieran.elliott@wiltshire.gov.uk

Background Papers

[Overview and Scrutiny Management Committee 5 June 2018](#)
[Part 7 of the Constitution – Cabinet Procedure Rules](#)

Appendices

Appendix 1 - Minutes of the Constitution Focus Group: 5 September 2018, 20 March 2019, 10 April 2019, 24 May 2019 and 14 June 2019
Appendix 2 – Revised Protocol 12
Appendix 3 – Revised Part 3B
Appendix 4 – Revised Assessment Criteria
Appendix 5 – Revised Sub-Committee Procedure
Appendix 6– Schedule of Protocol 4 Changes

CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 5 SEPTEMBER 2018 AT THE RUDMAN ROOM - COUNTY HALL, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Jon Hubbard

Also Present:

Cllr Christopher Newbury

30 **Apologies**

Apologies were received from Councillor Paul Oatway QPM

31 **Minutes of the Previous Meeting**

The minutes of the meeting held on 17 July 2018 were presented for consideration and it was,

Resolved:

To approve and sign the minutes as a true and correct record.

32 **Part 4: Council Rules of Procedure**

The Focus Group received the revised Part 4 following their comments and consideration at their meetings on 5 June and 17 July 2018. The section relating to substitution arrangements were discussed, and it was agreed additional guidance was required on the requirements when a member was to be absent and wished to arrange substitution. Wording changes were requested to clarify that the committee member should be the one to indicate their own absence, or a designated group representative where this was not possible or in a case of urgency.

The Focus Group also discussed Closure Motions and how they applied to amendments, in particular a motion to proceed to the next item of business. After discussion it was agreed that all references to such a Closure Motion should be removed as they were unnecessary given a motion that the question be now put was available, and it could prevent a decision being reached on an amendment.

Subject to final checks to ensure number references were correct and incorporation of changes noted above, it was,

Resolved:

To request Standards recommend Council adopt the revised Part 4.

33 **Protocol 4: Planning Code of Good Practice**

The Focus Group considered a report detailing proposed changes to Protocol 4 in relation to Site Visits, following a recommendation endorsed at Overview and Scrutiny Management Committee, accepted by the Cabinet Member. The Cabinet Member and the Chairman of the Planning Committee Systems Task Group, who had proposed the change in procedure to allow site visits to be arranged prior to a committee meeting, had both approved the proposed wording.

The Focus Group considered the proposal, and after discussion were happy with the proposed wording subject to removing references to site visits being made 'very exceptionally'. However, it was also felt that sections of the wider protocol were in contradiction with each other, and therefore any proposed changes to the section on site visits should await a wider review of the whole protocol to ensure all parts were consistent.

Resolved:

To request that a review of the entirety of Protocol 4 take place before any changes to the Site Visit arrangements be recommended.

34 **Protocol 1: Councillor-Officer Relations**

The Focus Group received the revised Protocol 1 following consideration at their meetings on 5 June and 17 July 2018. It was explained that the guidance appendix on Part II papers access had not yet been drafted, and would be circulated as soon as could be arranged. The Focus Group also emphasised that ensuring Protocol 1 was followed would need to be monitored.

Resolved:

Subject to approval of the Part II guidance, and consideration by Group Leaders, to request that Standards recommend Council adopt the revised Protocol 1.

35 **Part 11A: Corporate Parenting Panel**

The Focus Group received the revised Part 11A, to comprise only the procedural terms of reference for the Corporate Parenting Panel.

Resolved:

To request Standards recommend to Council to adopt the revised Part 11A.

36 **Forward Work Plan Updates**

The Focus Group agreed the proposed future items, also to include the wider review of Protocol 4.

37 **Urgent Items**

There were no urgent items.

(Duration of meeting: 1.00 - 2.40 pm)

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 20 MARCH 2019 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Graham Wright, Cllr Stuart Wheeler and Mr Richard Baxter

Also Present:

Cllr Christopher Newbury

7 **Apologies**

Apologies were received from Councillors Richard Britton and Jon Hubbard

8 **Notes of the Previous Meeting**

The notes of the meeting held on 9 January 2019 were presented for consideration and it was,

Resolved:

To approve and sign as a true and correct record.

9 **Protocol 12: Arrangements for dealing with Code of Conduct complaints**

As requested by the Standards Committee the Focus Group discussed the arrangements for dealing with Code of Conduct complaints, in particular in relation to delays in processing complaints and the extent to which these were resourcing issues or a consequence of the process itself and if a more efficient and effective arrangement was possible and preferred.

After a lengthy discussion it was agreed to explore proposal to replace the two opportunities for review sub-committees in the process with standing, regularly scheduled assessment sub-committees. This would enhance the role of members in determining the outcome of all complaints, not only those which were requested to be reviewed, would provide clarity for public and members on dates for decisions, and be administratively simpler.

It was requested these and other amendments in relation to strengthening the requirement to submit details by certain timescales or else a complaint should fall, should be brought back for consideration at a future meeting.

10 **Part 4: Petitions Scheme**

The Focus Group discussed Part 4A of the Constitution in relation to the Petitions Scheme. In considering issues of length and structure of any debate on petitions, as well as clarity for members and the public as to deadlines for submission or verification of any petition, the combination of similar petitions and other issues, it was agreed that significant revisions were necessary.

It was requested that officers examine and report on arrangements in other authorities for ideas of best practice, and bring back proposals at a future meeting.

11 **Monitoring Officer Changes**

The Focus Group received revised Parts 9 and 13 of the Constitution. It was confirmed the changes were only in relation to correction of errors and reformatting, and therefore it was agreed that the changes should be made by the Monitoring Officer using his delegated powers under Article 15.3.2 of the Constitution.

12 **Forward Plan and Date of Next Meeting**

The date of the next meeting was confirmed as 10 April 2019.

13 **Urgent Items**

There were no urgent items.

(Duration of meeting: 2.30 - 4.30 pm)

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 10 APRIL 2019 AT SALISBURY ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Stuart Wheeler

Also Present:

Cllr Tony Jackson

14 **Apologies**

Apologies were received from Councillors Jon Hubbard and Graham Wright.

15 **Minutes of the Previous Meeting**

The notes of the meeting held on 20 March 2019 were received and it was,

Resolved:

To approve and sign as a true and correct record the notes of the meeting held on 20 March 2019.

16 **Assessment Sub-Committees**

The Focus Group discussed proposals raised at the last meeting to replace the existing review sub-committee procedure with assessment sub-committees, which would determine all code of conduct complaints after receiving and considering a recommendation from the Monitoring Officer, rather than the Monitoring Officer making the decision, which could be reviewed.

The Focus Group discussed potential aspects to the new procedure with a view to receiving revised drafts of all relevant documentation at its next meeting. Issues discussed involved pre-assessment management and screening of complaints against jurisdictional matters outlined in the arrangements such as a complaint being out of time, how these should be reported to the Assessment Sub-Committee for decision, and the stages and time frames for any investigation.

It was agreed that complainants and subject members should receive the opportunity to make a statement at any Assessment Sub-Committee on initial assessment, but that they should not when the Sub-Committee received the outcome of an investigation report upheld by the Monitoring Officer, on the grounds that all parties at that point had received ample opportunity for comment.

Other matters agreed were that Independent Persons would attend the Sub-Committee and not be required to consult with the Monitoring Officer as the latter formed their recommendation, that the membership of the Sub-Committee would be appointed by the Standards Committee and that timeframes for responses to various stages should be adhered to as rigidly as was practicable and reasonable.

Resolved:

To receive draft revisions to appropriate documentation implementing the proposed changes at the next meeting.

17 **Petitions Scheme**

The Focus Group considered information relating to the petitions schemes of other authorities and made a series of proposals to form the basis of a redrafted petitions scheme to be considered at the next meeting.

It was confirmed that the Focus Group believed the period for debate on a petition at Council should be extended to 30 minutes and members limited to contributions of 3 minutes each, and that this time should not include the response of the Cabinet Member or group leaders. It was considered that permitting three public speakers for any petition being presented was reasonable, and that a deadline for submission of any petition for presentation or debate be set to coincide with the deadline for motions on notice to Council.

The Focus Group considered that thresholds for petitions to be debated at area boards were unnecessary and that this should be at the Chairman's discretion, as was already the case should a petition not meet the threshold. Additionally, the threshold for a debate at Full Council should be a set number agreed at the beginning of each Council term in line with the present number, but without the need to reassess it as a percentage of the council area population.

The Focus Group also discussed further details and clarifications that could be included in any scheme, such as the chairman moving a motion for debate on any petition, guidance for members and the public on what actions could be taken with petitions on particular subjects depending on the decision maker and status of the matter in question, and expectations for petition organisers.

Resolved:

To receive a draft revised petitions scheme at the next meeting.

18 **Part 10: Procurement and Contract Regulations**

The Focus Group received details of proposed changes to Part 10 of the Constitution, correcting out of date information and seeking to simplify and clarify the processes for procurement within the Council alongside work to improve the existing procurement manual for officers.

Details were sought on the level of responsibility the wording placed on the Head of Procurement rather than the defunct Procurement Board, how procurement and other risks were being identified, reported and actioned between the procurement team and the services and the existing rules in relation to extraordinary exemptions. In particular it was requested that additional drafting be considered if necessary to ensure processes in relation to extraordinary exemption were sufficient.

Resolved:

Taking account of the comments made at the meeting, that the Standards Committee recommend Council approve the proposed changes.

19 **Protocol Updates**

The Focus Group noted that the Audit Committee would be considering proposals in relation to partnership working and corporate governance, which would replace Protocol 8 and update Protocol 10 respectively.

Resolved:

Subject to the decision of the Audit Committee, that the Standards Committee recommend Council remove Protocol 8 of the Constitution and update the number of other protocols accordingly, and approve the changes to Protocol 10.

20 **Urgent Items**

There were no urgent items.

(Duration of meeting: 12.30 - 2.15 pm)

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 24 MAY 2019 AT NORTH WILTSHIRE ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton and Cllr Stuart Wheeler

Also Present:

Cllr Fleur de Rhé-Philippe, Cllr Fred Westmoreland and Cllr Toby Sturgis

21 **Apologies**

There were no apologies.

Cllr Graham Wright attended the meeting by phone.

22 **Notes of the Previous Meeting**

The notes of the meeting held on 10 April 2019 were presented for consideration and it was,

Resolved:

To approve and sign the notes as a true and correct record.

23 **Protocol 4 of the Constitution**

The Focus Group considered proposed revisions to Protocol 4 of the Constitution, the Planning Code of Good Practice, to improve clarity, enhance procedures and provide improved guidance and protection for members.

The Cabinet Member for Spatial Planning, Development Management and Property had been invited to the meeting, along with the Chairmen of the Strategic Planning Committee and all Area Planning Committees.

The Focus Group considered all the changes in turn, and made comments including but not limited to the following:

- The need for clarity on the applicability of the Code in relation to member involvement with enforcement matters, and a separate procedure for enforcement for the assistance of members;
- Consistent use of 'material' interest rather than 'significant' interest, which was not clear;
- Consistent wording in relation to interests and relevant non-spousal persons;
- It was requested further wording on members speaking in a personal capacity be drafted, in respect of seeking advice before doing so, noting the legal position, and potential contradiction with government guidance;
- Additional wording for nominated stand in for planning call-in and other matters in relation to death or incapacity;
- Requested redrafting on predetermination and bias to strengthen and clarify the position;
- Requested redrafting on sections relating to members meeting parties and referral of any information to planning officers;
- That the Scheme of delegation would need to be reassessed to ensure it aligns with Protocol 4 where necessary;
- Further wording in relation to training, recognising it was not legally possible to prevent someone being appointed to a committee without training, even though this would render decisions of that committee open to potential challenge.
- To ensure substitute members are also invited on site visits

It was agreed these and further changes would be circulated to the Focus Group and planning committee chairmen, and considered at the next meeting.

Resolved:

To consider a further draft of Protocol 4 electronically and at the next meeting.

24 **Protocol 12 of the Constitution**

The Focus Group considered proposed changes to Protocol 12 of the Constitution, arrangements for dealing with Code of Conduct complaints, and associated documents such as the procedure for sub-committees and assessment criteria. Further to previous meetings these changes would establish an assessment sub-committee to undertake decisions in respect of complaints rather than the present system of ad hoc review sub-committees.

The Focus Group agreed that all investigation reports would receive a recommendation from the Monitoring Officer to the Assessment Sub-Committee to determine. Other wording changes were agreed, subject to that amendment.

Resolved:

To request the Standards Committee recommend the proposed changes to Full Council.

25 **Other Items**

The meeting concluded after Minute 24.

26 **Date of Next Meeting**

The next meeting was scheduled for 14 June 2019.

27 **Urgent Items**

There were no urgent items.

(Duration of meeting: 12.00 - 2.00 pm)

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CONSTITUTION FOCUS GROUP

MINUTES OF THE CONSTITUTION FOCUS GROUP MEETING HELD ON 14 JUNE 2019 AT SALISBURY ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Clewer (Chairman), Cllr Richard Britton, Cllr Stuart Wheeler and Mr Michael Lockhart

Also Present:

Cllr Fleur de Rhé-Philippe MBE, Cllr Toby Sturgis and Cllr Fred Westmoreland

28 Apologies

An apology was received from Councillor Graham Wright.

29 Notes of the Previous Meeting

The notes of the meeting held on 24 May 2019 were received and it was,

Resolved:

To approve and sign the notes as a true and correct record.

30 Protocol 4: Planning Code of Good Practice

The Focus Group received a revised version of Protocol 4 following their consideration and comments at the meeting on 24 May 2019. The Cabinet Member and Chairmen of the planning committees had been invited to attend the meeting.

The Focus Group made additional comments requesting that ongoing training also be stated to be mandatory within the constitution along with initial training as currently stated. It was noted that Full Council could appoint any member to a committee, but that the lack of proper training of a member could open the council up to legal challenge, and the Monitoring Officer would need to consider the matter carefully in such a situation, and that Group leaders needed to bear this in mind.

Changes were also sought to avoid confusion between discussions between members and others before an application was submitted, and formal pre-application discussions with planning officers. There were also clarifications sought on when members should seek guidance from the Monitoring Officer, how to draw attention to rules on pecuniary or other relevant interests and the need to provide policy reasons when refusing applications.

The Focus Group agreed a briefing should be made available to all members on the proposals.

Resolved:

To recommend Standards Committee endorse the proposed changes to Protocol 4 to Full Council.

31 **Protocol 12: Arrangements for dealing with Code of Conduct complaints**

The Focus Group considered the final version of the revised Protocol 12 and associated documentation to give effect to the new assessment sub-committee process that had been agreed previously. Further amendments were suggested in relation to requests of extension to the process being unnecessary as this was already possible under the arrangements, and there were other changes to make clear that comments would be received by the investigating officer on their report, who would make changes or incorporate them, prior to providing the report to the monitoring officer.

Resolved:

To recommend Standards endorse the proposals to Full Council.

32 **Part 3B and Protocol 2: Pension Fund Terms of Reference and Pension Board Terms of Reference**

Andy Cunningham, Head of Pensions Administration and Relations presented proposed changes to the terms of reference of the Pension Fund Committee and the Pension Board. It was explained these were intended to bring greater clarity to the expectations for members of each body and the roles they should undertake. This had been prepared following consultation with the Chairman of each body.

The Focus Group members noted the changes and in principle felt the proposals to provide clarity were helpful, although there were concerns regarding overlap in practice between the two bodies, and the limitations on who could nominate employer body representatives to the Pension Board. It was also suggested the expanded Pension Fund terms of reference could be included within Protocol 2, in a separate document, so that terms of reference for both pensions bodies were located in the same areas of the constitution.

It was agreed for there to be further discussions with the Pensions Team before recommending the changes onward.

33 **Part 4: Council Rules of Procedure**

Following queries it was established that there was no legal or constitutional requirement for Full Council to receive a minutes book at each ordinary council meeting. No comments had been raised on the minutes for several years and committees would still be able to report to council, or committee chairmen make an announcement, if they so wished, should the minutes book not be taken to the meetings.

It was agreed to seek the view of Group Leaders as to whether it was necessary to continue to bring the minutes book to Full Council.

34 **Part 3C: Scheme of Delegation (Executive)**

The Focus Group noted the report that it was intended by the Leaders of Swindon Borough Council and Wiltshire Council to disband the Joint Strategic Economic Committee in the light of the new legal status of the Swindon and Wiltshire Local Enterprise Partnership. It was noted that the Leader would make changes to the scheme of delegation accordingly, and that this would be reported to Full Council.

35 **Part 11: Roles and Responsibility of Members**

The Focus Group noted the proposed formatting and numbering changes, and corrections, and accepted the Monitoring Officer making the changes.

36 **Part 11B: Safeguarding Children and Young People Panel**

The Focus Group noted the proposed formatting and numbering changes, and corrections, and accepted the Monitoring Officer making the changes.

37 **Part 12: Members Code of Conduct**

The Focus Group noted the proposed formatting and numbering changes, and corrections, and accepted the Monitoring Officer making the changes.

38 **Part 15: HR Code of Conduct**

The Focus Group noted the proposed formatting and numbering changes, and corrections, and accepted the Monitoring Officer making the changes.

39 **Part 16: Management Structure**

The Focus Group noted the proposed formatting and numbering changes, and corrections, and accepted the Monitoring Officer making the changes.

40 **Urgent Items**

There were no urgent items.

(Duration of meeting: 11.00 am - 12.50 pm)

The Officer who has produced these minutes is Kieran Elliott, of Democratic & Members' Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

Protocol 12

Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

1 Context

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- 1.2 ~~An overview~~ ~~A flowchart~~ of the complaints process is attached at ~~Annex Schedule 2~~.
- 1.3 These arrangements are subject to the Council's Procedure for dealing with vexatious complainants ~~(link)~~.
- 1.4 The Monitoring Officer will determine as a preliminary issue whether a complaint relates to the Code of Conduct and is to be dealt with under these arrangements.
- 1.5 The Monitoring Officer will encourage complainants to explore whether the matter can be resolved without the need to submit a formal complaint under this process.

Commented [EK1]: More appropriate description

Commented [EK2]: For consistent referencing

Commented [EK3]: For ease of access

2 Interpretation

- 2.1 'Member' means a member or a co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
- 2.2 ~~'Complainant' means the individual who has submitted a complaint against a Member.~~ ~~'Complainant' does not include a body/corporate.~~
- 2.3 'Council' means Wiltshire Council.
- 2.4 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Member.
- 2.5 'The Monitoring Officer' is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.

Commented [EK4]: Was not previously defined

Commented [EK5]: Moved to be next to definition of complainant

- 2.6 'Independent Person' means a person appointed under Section 28(7) of the Localism Act:
- a. whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b. who may be consulted by the Member about the complaint.
- 2.7 In order to avoid any conflict of interest at least two Independent Persons will be allocated to each complaint, one to advise and assist the Monitoring Officer or the Assessment Sub-Committee and the Hearing Sub-Committee (as appropriate), and the other to be available for consultation by the Member.
- 2.8 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 2.9 'Code of Conduct' means the code of conduct for members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- 2.10 'Days' means working days.
- 2.11 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.12 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under these arrangements.
- 2.13 The 'ReviewAssessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the initial assessment of complaints and consideration of investigation reports review a decision of the Monitoring Officer under sections 4 and 6 of these arrangements respectively. The sub-committee shall operate in accordance with procedural arrangements agreed by the Standards Committee.
- 2.14 'Valid receipt' means formal receipt of complaint and any information required from the Council, if any, for processing of that complaint.
- 2.15 The 'assessment criteria' means the criteria approved by Standards Committee and Council for the assessment of complaints by officers or members, and which is attached with guidance to the code of conduct at this link.
- 2.16 Where a complaint is made against a member of a Parish Council the Clerk to the Parish Council will be notified of the complaint and kept informed of the progress and outcome of the matter.
- 2.17 Documents sent by post will be deemed to have been received by the Parties on the seventhsecond day after the date of posting.

Commented [EK6]: IP to be involved for Assessment Sub-Committee, MO consideration of Investigation report and Hearing

Commented [EK7]: To reflect that Assessment Sub now making the determination to investigate

Commented [EK8]: To ensure any complaint is properly logged

Commented [EK9]: Not previously defined

Commented [EK10]: In line with court procedure rules

3 Making a Complaint

3.1 A complaint against a Member under the Code of Conduct should be made in writing on the Council's standard form (available from the Council's web-site [at this link](#) and from council offices) and addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN / governance@wiltshire.gov.uk) and must be made within 20 days of the date on which the complainant became or ought reasonably to have become aware of the matter giving rise to the complaint. Any timescales for processing the complaint will run from valid receipt by council officers.

Commented [EK11]: For ease of access

3.2 ~~If the complaint does not meet the requirements of the assessment criteria eg the complaint is out of time or insufficient evidence has been provided, then the complaint will be not be taken forward for assessment.~~

Commented [EK12]: To ensure complaint is properly logged. Read in conjunction with 3.2

3.3 The Monitoring Officer will acknowledge receipt of the complaint within 5 days of receiving it, and will send a copy to the Member.

Commented [EK13]: To ensure complainants submit necessary information with their complaint

3.4 The Member will be invited to submit a written response to the complaint within 10 days of the date on which it is sent to them. ~~No adverse inference should be drawn from a lack of response as there is no statutory requirement to respond, although this is recommended to assist the process and assessment.~~

Commented [EK14]: To recognise not all subject members will respond

3.5 At any time during the complaints process the Member may seek advice and assistance in connection with the complaint from a friend or professional legal adviser, in confidence, and/or consult the Independent Person designated for that purpose.

3.6 Anonymous complaints will not be accepted for assessment unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the Complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

4. Initial Assessment

4.1 The Monitoring Officer will review the complaint within 5 days of receiving the Member's response and, ~~after consultation with the Independent Person, will decide whether it merits formal investigation prepare a recommendation for the Assessment Sub-Committee.~~

Commented [EK16R15]: MO no longer undertaking assessment

4.2 In reaching this ~~decision recommendation~~ the Monitoring Officer will have regard to the Standards Committee's assessment criteria.

~~4.3 The Monitoring Officer will inform the Parties of his or her decision and the reasons for it in writing.~~

Commented [EK17]: As above

4.3 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal ~~investigation decision by the Assessment Sub-committee~~. This may involve mediation or other suitable action, including training or an apology by the Member.

Commented [EK18]: As above

4.4 ~~When the matter is referred informally for informal resolution the Monitoring Officer will identify the time the complaint will be suspended for under paragraph 4.1~~

Commented [EK19]: To ensure that departure from standard arrangements under paragraph 11 is for a set period and not open ended

4.5 Where the Member or the Council make a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether the complaint requires formal ~~investigation-determination~~.

Commented [EK20]: MO deciding if to progress the complaint to assessment sub, not for inv

4.6 If the complaint identifies potential criminal conduct by any person, the Monitoring Officer may notify the Police or other regulatory agencies. ~~The usual timescales for accepting a complaint may be disapplied in such cases.~~

Commented [EK21]: To recognise necessary time delays in this situation

4.7 ~~If the complaint is not determined by alternative resolution or referral to the police or other regulatory agencies, the recommendation of the Monitoring Officer on whether the complaint merits formal investigation shall be taken to a meeting of the Assessment Sub-Committee.~~

4.8 ~~The Complainant or the Member may request a review of the Monitoring Officer's decision at the initial assessment stage.~~

4.9 ~~A review will be determined by a Review Sub-Committee who The Assessment Sub-committee may decide:~~

- a. to dismiss the complaint or take no further action on the complaint;
- b. to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

5 Investigation

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer within ~~25~~ days of the decision to investigate and inform the Parties of the appointment.

Commented [EK22]: More realistic timescale. Agreed at last meeting

5.2 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer. They will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within ~~30~~~~35~~ days of the notification of the Investigating Officer's appointment.

Commented [EK23]: As above

~~5.3~~ The Parties will be invited to submit any written comments on the report to the ~~Monitoring Investigating~~ Officer within 10 days of the date on which the report is sent to them. ~~The Member may request an extension, of this timescale. This provides a total of 45 days from the beginning of the investigation in paragraph 5.2 to receipt of any comments on the investigation report. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.~~

Commented [EK1]: Unnecessary as covered under para 11

Consideration of Investigating Officer's Report

6.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report ~~and any comments submitted by the Parties~~, in consultation with the Independent Person.

Commented [EK2]: Comments incorporated into report

6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report and findings.

Commented [EK3]: Moved from 6.3

6.3 Where the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct and the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will ~~after consultation with the Independent Person, inform the parties report prepare a recommendation to the Assessment Sub-Committee with a recommendation~~ that no further action is required.

6.4 The Assessment Sub-committee may decide:

a) to dismiss the complaint or take no further action on the complaint, as recommended;

b) to refer the complaint to the Hearing Sub-Committee or seek alternative resolution.

6.5 The decision of the Assessment Sub-Committee at this stage shall be final.

~~6.5 The Complainant may request a review of a decision by the Monitoring Officer, following consideration of the Investigating Officer's report, to dismiss the complaint.~~

~~6.6 A review will be determined by the Review Sub-Committee who may decide:~~

~~a. To dismiss the complaint;~~

~~b. To refer the complaint for hearing by the hearing sub-committee~~

~~c. To refer the complaint to the Monitoring Officer to seek alternative resolution~~

Commented [EK26]: No longer any reviews

6.6 Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct the Monitoring Officer will, after consulting the Independent Person, either refer the matter for hearing before the Hearing Sub-Committee or seek an alternative resolution.

Moved from 6.4

7. Alternative Resolution

7.1 Following receipt of an investigation report, where the Monitoring Officer, in consultation with the Independent Person, considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Parties to seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.

Commented [EK28]: To make clear this section applies post investigation

7.2 Alternative resolution may involve mediation and may include the Member

accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council or the Parish Council as the case may be. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the ~~Standards Committee~~ Assessment Sub-Committee, and the relevant Parish Council where appropriate, for information, but will take no further action.

7.3 The Member may elect to proceed to a hearing rather than accept alternative resolution.

8. Hearing

8.1 If the Monitoring Officer, after consultation with the Independent Person, considers that alternative resolution is not appropriate or, after exploring the possibility, concludes that it is unlikely to be achieved they will refer the matter to the Hearing Sub-Committee to conduct a local hearing to determine the complaint. A hearing will be held within 20 days of the date on which the Monitoring Officer refers the matter to the Hearing Sub-Committee for determination, subject to the Member's right to request an extension of time.

8.2 The Member may be represented at the hearing by a friend or legal representative.

8.3 The Hearing Sub-Committee, supported by the Monitoring Officer, will conduct a pre-hearing review to identify the issues, areas of agreement and disagreement, and to give directions for the efficient conduct of the hearing. This may either be conducted in writing or by a meeting with the Parties.

8.4 The Monitoring Officer will notify the Parties in writing of the directions for the hearing.

8.5 The Sub-Committee may exclude the press and public from the hearing where it appears likely that confidential or exempt information will be disclosed and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

8.6 At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct.

8.7 The Complainant will have the right to make a statement in support of their complaint.

8.8 The Members of the Hearing Sub-Committee and the Member may ask questions of the Investigating Officer and any witnesses called.

8.9 The Member will have an opportunity to give their evidence, to call witnesses and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.

8.10 The Members of the Hearing Sub-Committee and the Investigating Officer will have the opportunity to ask questions of the Member and any witnesses called.

Commented [EK29]: More appropriate to refer to Assessment sub

- 8.11 The Parties may each make a concluding statement.
- 8.12 The Members of the Hearing Sub-Committee will then withdraw, with the Independent Person, to consider the case, taking advice from the Independent Person and, where necessary, from the Monitoring Officer on law and procedure.
- 8.13 The Hearing Sub-Committee may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 8.14 If the Hearing Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Parties of this finding and the Hearing Sub-Committee will then consider what action, if any, should be taken as a result of the breach.
- 8.15 The Investigating Officer and the Member will be invited to make representations on the question of sanctions.
- 8.16 The Hearing Sub-Committee will, after consulting the Independent Person, determine what action, if any, to take (or recommend in the case of a parish councillor) in respect of the matter.

9. Sanctions

- 9.1 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in [Annex Schedule 1](#).

Commented [EK30]: For consistency

10. Decision

- 10.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.
- 10.2 The Monitoring Officer will send the Parties, and where appropriate the relevant Parish Council, a formal decision notice, which will be published on the Council's web-site and made available for public inspection.

11. Revision of and departure from these arrangements

11.1 The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, ~~the Review Assessment~~ Sub- Committee and the Hearing Sub-Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

Commented [EK31]: New procedure

Reviews

~~12.1 Any request for a review must be made in writing to the Monitoring Officer within 5 days of the receipt of his/her decision and must set out the grounds for the review.~~

~~12.2 A review request will be determined by the Review Sub-Committee after consulting the Independent Person, within 14 days of receipt of the request.~~

Commented [EK32]: As above

12. Appeals

12.1 There is no right of appeal for the Complainant or the Member against a decision of the Assessment or Hearing Sub-Committees.

13. Confidentiality

13.1 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring Officer, ~~ReviewAssessment~~ Sub- Committee or Hearing Sub-Committee.

Commented [EK33]: As above

Schedule Annex 1

Commented [EK34]: For consistency

Sanctions

Censure

- Censure and report to the Council or relevant Parish Council; and/or

Removal from Committees, Sub-Committees, Cabinet and Outside Bodies

- Recommend to the Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
- Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
- Remove the Member from any or all outside appointments to which they has been appointed or nominated by the Council or relevant Parish Council.

Training

- Instruct the Monitoring Officer to arrange training for the Member.

Publish

- Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

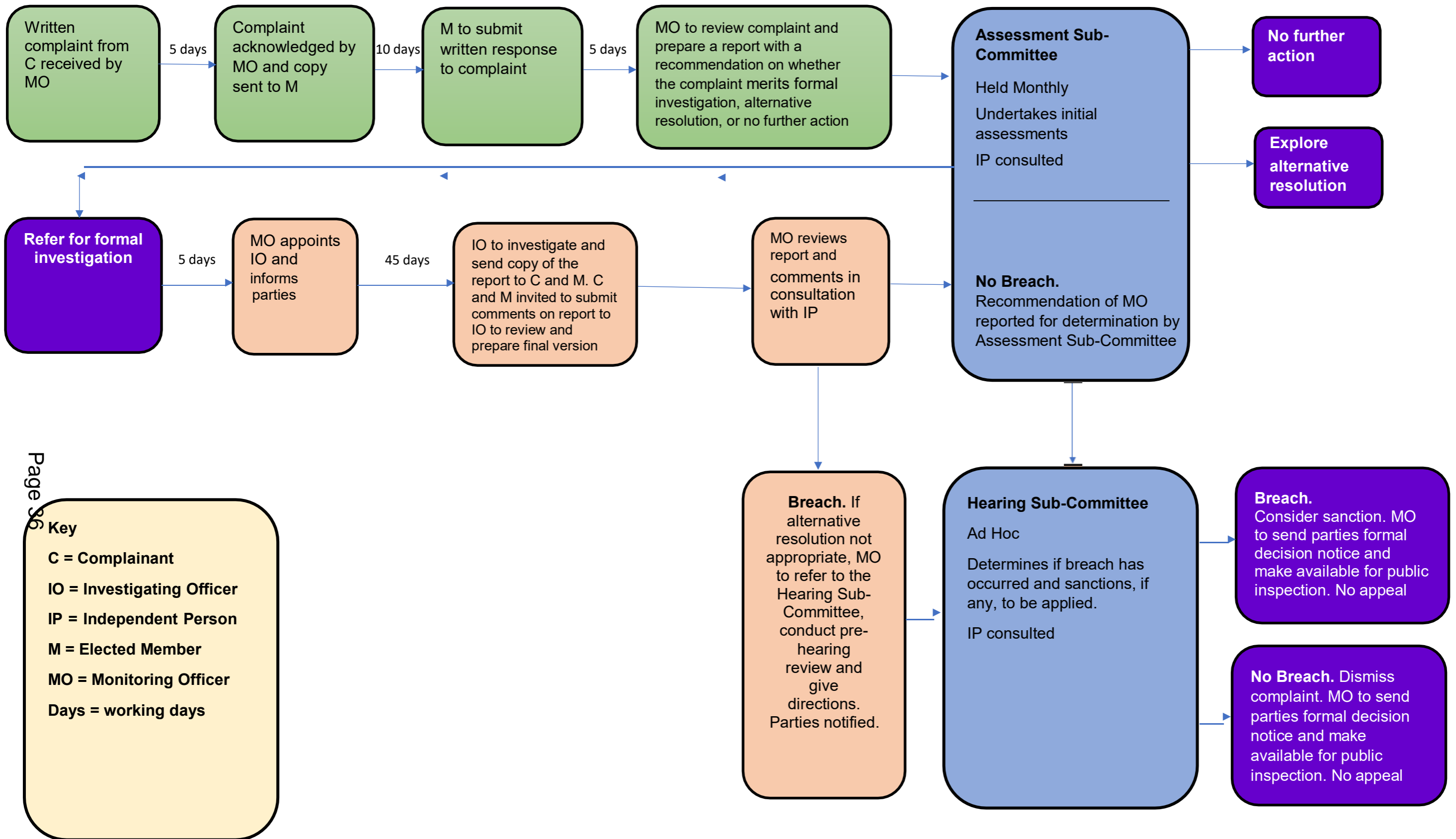
Note:

In the case of R v Broadland District Council ex parte Lashley the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

Protocol 12 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011



Key
C = Complainant
IO = Investigating Officer
IP = Independent Person
M = Elected Member
MO = Monitoring Officer
Days = working days

Standards Committee Terms of Reference

Composition

- 2.5.1 This Committee will comprise up to 13 elected Members, other than the Leader or any other Member of the Cabinet, and up to 8 co-opted non-voting Members, 50% of whom shall be serving town, parish or city Members from within the Council's area who are not Members or officers of the Council.
- 2.5.2 Appointments to the Committee will be made annually by the Council having regard to the rules on political proportionality.
- 2.5.3 The term of office for co-opted non-voting Members will normally be 4 years.
- 2.5.4 Co-opted non-voting Members will be eligible for re-appointment for additional terms.
- 2.5.5 Substitutes will be permitted in accordance with Part 4 of the Constitution.

Roles and Function

- 2.5.6 The Standards Committee is responsible for:
- promoting and maintaining high standards of conduct by elected and co-opted Members and officers;
 - assisting the elected and co-opted Members to observe the Members' code of conduct;
 - advising the Council on the adoption or revision of the Members' code of conduct and the arrangements for dealing with Member complaints of misconduct which the Council is required to make under Section 28 of the Localism Act 2011;
 - monitoring and advising the Council about the operation of its code of conduct in the light of best practice and any changes in the law;
 - advising, and, through the Member Development Group, arranging to train elected and co-opted Members on matters relating to the Members' code of conduct and ensuring that Members are aware of the standards expected of them under the code;
 - granting dispensations to elected and co-opted Members from requirements relating to interests;
 - overseeing the operation of the Council's arrangements for dealing with misconduct complaints against Members and co-opted Members of Wiltshire Council, and parish, town and city Members in Wiltshire;
 - overview of the whistle blowing policy;
 - overview of corporate complaints handling and Ombudsman investigations;
 - reviewing the implementation of recommendations made by the Ombudsman;
 - oversight of the Constitution.

Standards Sub-Committees

- 2.5.7 The Standards Committee has the power to appoint such sub-committees as may from time to time be necessary for the efficient discharge of its functions. In particular, the Committee will appoint:

- An Assessment Sub-Committee to determine what action to take in respect of Member complaints under the Council's arrangements;
- A Hearing Sub-Committee to determine what action to take where an investigation into a Member's conduct requested by the Assessment Sub-Committee has indicated a breach of the Code of Conduct has occurred;
- ~~A Review Sub-Committee to determine requests for review under the Council's arrangements;~~
- A Dispensation Sub-Committee to determine requests for dispensation from the requirements relating to interests.

Commented [EK1]: New procedure

2.5.8 For the avoidance of doubt decisions of all Sub-Committees will be made by a simple majority of the elected Wiltshire Council Members present.

Commented [EK2]: Moved from further below as it applies to all three

Assessment Sub-Committee

2.5.9 As it shall consider multiple complaints this Sub-Committee shall comprise 5 elected Members from among the Standards Committee and its substitutes, in case of conflicts arising. The Standards Committee will appoint the members annually, along with a Chairman and Vice-Chairman for the Sub-Committee. The Sub-Committee may include up to 2 non-voting co-opted Members of the Standards Committee on an ad-hoc basis. All other members and substitutes of the Standards Committee will serve as substitutes for the Sub-Committee.

Commented [EK3]: Enables all members to participate as conflicts will be more common, while retaining administrative efficient of known membership and dates of meetings

2.5.10 The above Sub-Committee is not subject to the requirements of political balance, but is subject to a requirement of a maximum of 4 elected Members from any political group. The co-opted members serving on the Sub-Committee will be determined by the proper officer, who in this instance would be a Democratic Services Officer on behalf of the Monitoring Officer.

Commented [EK4]: Max of four to recognise if those subbed out due to conflicts or unavailability can be subbed by members of any political group, and do not inadvertently lead to all five being from the same group

2.5.11 The above Sub-Committee shall meet on a monthly basis and make decisions on all Code of Conduct complaints in accordance with the Council's arrangements under Protocol 12(link).

2.5.12 Members, including co-opted members, may not serve on the Hearing Sub-Committee for a complaint they have previously considered on the Assessment Sub-Committee.

Commented [EK5]: Which means if a standing member of assess sub committee is subbed, as should be common, they could serve on such a hearing

Hearing Sub-Committee and Dispensation Sub-Committee

2.5.13 In each case the above Sub-Committees shall comprise 3 elected Members from whom a chairman will be elected. The Sub-Committees may include up to 2 non-voting co-opted Members of the Standards Committee, one of whom shall be a parish, town or city council representative where the complaint concerns a parish, town or city.

Commented [EK6]: Moved as only applies to these two, not assess

Commented [EK7]: To not restrict use of co-opted members

2.5.14 The above Sub-Committees are not subject to the requirements of political balance, but are subject to the requirement of a maximum of 2 elected Members from any political group. The composition of any sub-committee will be determined by the proper officer, who in this instance would be a Democratic Services Officer on

behalf of the Monitoring Officer on the basis of Member availability, drawing from the Membership of the Committee and its substitutes.

Commented [EK8]: Moved as relates specifically to these two subs

2.5.15 The Hearing Sub-Committee shall make decisions where an investigation into a Code of Conduct Complaint makes a finding of a breach, in accordance with the Council's arrangements under Protocol 12.

Commented [EK9]: For clarity

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STANDARDS COMPLAINTS ASSESSMENT CRITERIA

The Monitoring Officer and Assessment Sub-Committee will adopt the approach and apply the criteria set out below in the assessment of complaints under locally adopted Codes of Conduct for Members.

~~The Review Sub-Committee will use the same approach and criteria.~~

1. Relevance

1.1 The criteria and procedures set out in this document only apply to complaints made against individual members that fall within the relevant code of conduct. It is likely that complaints will be received by the Monitoring Officer which do not relate to local codes of conduct for members. These might include complaints relating to the provision of services by ~~local~~ councils; matters relating to the ~~local~~ council as a corporate body; (including decisions made by the council); or matters which should be dealt with under a council's complaints procedure. -They may be ~~matters~~complaints relating to council employees, other authorities or matters relating to a member's private life which do not fall within the remit of the Standards Committee.

Commented [EK1]: For clarity

~~The~~1.2 Where complaints are received that are outside the scope of these procedures, the Monitoring Officer will advise the complainant in such matters that they cannot proceed under local codes of conduct, but that the complainant should contact the relevant council in order to bring a complaint under the appropriate alternative complaints procedure, where available.

Commented [EK2]: For clarity

2. Alternative resolution

2.1 The Monitoring Officer or Assessment Sub-Committee will always consider whether an alternative means of resolving the complaint would be appropriate.

3. Initial Tests

3.1 Before the assessment of a complaint begins, the Monitoring Officer~~Assessment Sub-Committee~~ should be satisfied that:

- a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
- b) That the member was a member at the time of the incident giving rise to the complaint;
- c) That the member remains a member of the relevant council, or, if not, that there are exceptional circumstances to justify a decision

that it is in the public interest to continue to consider the complaint;

Commented [EK3]: For emphasis

- d) That a Code of Conduct for the relevant council is in force and has been provided;
- e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

3.2 If the complaint fails one or more of these tests it cannot be investigated and no further action will be taken.

4. Sufficiency of information

~~The complainant must~~ **4.1** As any assessment will be conducted solely on the papers provided, it is essential that the complainant provide sufficient information to enable the subject member and those responsible for assessing the complaint to understand the substance of the complaint. -If insufficient information is provided, the Monitoring Officer will not normally proceed with assessment/consideration of the complaint. It is the responsibility of the complainant to provide any supporting evidence for their complaint to justify a full investigation.

Commented [EK4]: For clarity

Commented [EK5]: To ensure sufficient info is provided

4.2 If the complaint meets the criteria set out in 3. a-e above, and the complainant has provided sufficient information to enable the issues complained of to be understood, the Monitoring Officer will send a copy of the complaint to the subject member and ask for the subject member's comments. When these have been received, the Monitoring Officer will ~~assess the complaint, after consulting the Independent Person~~ consider the complaint and provide a report and recommendation on it to the Assessment Sub-Committee, together with copies of the original complaint (and any supporting documentation) and the Subject Member's response.

Commented [EK6]: New procedure

4.3 At this ~~initial~~ assessment stage, the ~~Monitoring Officer~~ Assessment Sub-Committee will not normally consider any further representations or correspondence from either the complainant or subject member.

5. Seriousness of the Complaint

5.1 A complaint will not be referred for investigation if, on the available information, it appears to the Assessment Sub-Committee to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.

5.2 A complaint will not normally be referred for investigation if the subject member has offered an apology, a reasonable explanation of the issues, or if the ~~Monitoring Officer~~ Assessment Sub-Committee takes the view that the complaint can reasonably be addressed by other means.

5.3 Bearing in mind the public interest in the efficient use of resources, referral for investigation is generally reserved for serious complaints where alternative options for resolution are not considered by the Monitoring Officer ~~to be appropriate~~ Assessment Sub-Committee to be appropriate, particularly in cases where a subject member is no longer a member of a relevant council.

Commented [EK7]: For emphasis

6. Length of Time Elapsed

6.1 A complaint will not be referred for ~~investigation~~ assessment when it is made more than 20 working days from the date upon which the complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint. Any such complaint will be dismissed by the Monitoring Officer, and will not be referred to the Assessment Sub-Committee, although the Monitoring Officer retains the discretion to refer a complaint for assessment that would otherwise be out of time, in exceptional circumstances.

Commented [EK8]: To ensure timescales are adhered to

6.2 In any event, the ~~Monitoring Officer~~ Assessment Sub-Committee may decide not to refer a complaint for investigation where, in ~~his~~ their opinion, the length of time that has elapsed since the matter giving rise to the complaint means that it would not be in the ~~interest~~ interests of justice to proceed.

7.1 Anonymous complaints will not be ~~considered~~ accepted for consideration unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

8. Multiple Complaints

8.1 A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the ~~Monitoring Officer~~ Assessment Sub-Committee at the same time. Each complaint will, however, be considered separately. - If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

9. Confidentiality

9.1 All information regarding the complaint will remain confidential to the parties until determined otherwise by the Monitoring Officer, ~~Review~~ Assessment Sub-Committee or Hearing Sub-Committee.

| **10. Withdrawing Complaints**

| **A10.1A** complainant may ask to withdraw their complaint before it has been assessed.

| **10.2** In deciding whether to agree the request the Monitoring Officer will consider:

- a) the complainant's reasons for withdrawal;
 - b) whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
 - ~~e)~~ whether action, such as an investigation, may be taken without the complainant's participation.
- |

STANDARDS COMMITTEE

~~PROCEDURAL RULES FOR REVIEWS OF INITIAL THE ASSESSMENT DECISIONS OF CODE OF CONDUCT COMPLAINTS SUB-COMMITTEE~~

1 Purpose

- 1.1. These rules have been prepared to facilitate proper consideration by the Standards Committee's ~~ReviewAssessment~~ Sub-Committee, when ~~conducting a review of initial making~~ assessment decisions ~~by the Monitoring Officer~~ in respect of Code of Conduct complaints ('the ~~Review~~-Assessment') ~~and receiving details of completed investigations.~~
- 1.2. The rules set out a framework for how ~~ReviewsAssessments~~ are to be conducted and explain the role of the participants at the ~~ReviewAssessment~~.

Commented [EK1]: New purpose of committee

2. Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Review:

- **'Subject Member/Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire Local Authority area, against whom a complaint has been made under the Code of Conduct.
- **'Complainant'** means the person(s) who have lodged a complaint against the conduct of a Member
- **'Council'** means Wiltshire Council.
- **'The Monitoring Officer'** is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
- **'Democratic Services Officer'** means the Council's Officer who is present at a ~~Reviewan Assessment~~ Sub-Committee meeting to take minutes and advise on procedure.
- **'Independent Person'** means a person appointed under Section 28(7) of the Localism Act:
 - a) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b) who may be consulted by the Member about the complaint.
- **Initial Assessment** means a review of the complaint and any written response by the subject member to consider whether on the papers the complaint merits a formal investigation as set out in paragraph 4.1 and the following provisions of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **'Code of Conduct'** means the code of conduct for members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- **'Local Assessment Criteria'** are the arrangements made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- **'Party'** means the Subject Member and the Complainant
- The **'Hearing Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under the arrangements in Protocol 12 of the Constitution..
- The **'ReviewAssessment Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to ~~review a decision of the Monitoring Officer~~ **make determinations** under sections 4 and 6 of ~~the arrangements~~ **the arrangements** in Protocol 12 of the Constitution.. This can include voting and co-opted non-voting members of the Standards Committee.
- The **'Constitution'** means the Constitution of Wiltshire Council, which includes rules on public participation at committees and the code of conduct complaints procedure.

3. The **ReviewAssessment**

3.1. The **ReviewAssessment** is dealt with on the papers and is not to be treated as a hearing of the complaint itself, which can only be convened after an investigation has been concluded and a decision has been made under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing.

~~Information submitted in a request for a review should be focused solely upon the substantive allegations of the original complaint.. If new allegations are raised in the review request, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:-~~

4. Attendance at Meetings

4.1. The **ReviewAssessment** Sub-Committee is a committee of the Council and as such the meeting shall take place in public, However, the Sub-Committee may exclude the public from all or part of the **ReviewAssessment**, by passing a resolution in accordance with Section 100A(4) of the Local Government Act 1972, where it considers that there is likely to be disclosure of exempt information and that it is in the public interest to do so . Given the nature of the issues to be considered by the Sub-Committee it is **very** likely that such a resolution would normally be appropriate at this stage in the process.

Commented [EK3]: For emphasis

4.2. The Complainant and the Subject Member, as parties to the Review, would not be covered by such a resolution to exclude the public and press and may attend the **ReviewAssessment** Sub-Committee. However, the Sub-Committee will normally retire to consider their decision and return to inform the parties of their decision.

- 4.3. If a party has informed the Council that they do not intend to attend the Sub-Committee meeting, or have not given any indication as to whether or not they intend to attend, the ReviewAssessment will proceed in their absence. As it is a reviewan assessment on the papers, no adverse inference will be drawn from any parties' non-attendance at a meeting.
- 4.4. If a party has indicated an intention to attend the meeting, but is not present at the start of the meeting, the ReviewAssessment will proceed in the absence of that party, unless the Sub-Committee considers it necessary to adjourn the meeting to enable the party to attend and make their representations.
- 4.5. If a party does not intend to attend and speak to the meeting, they may submit a short written ~~representations~~representation that will be taken into account by the Sub-Committee in reaching their decision.
- 4.6. In addition to the Sub-Committee members and any co-opted member, the meeting may be attended by one or more Independent Persons, Democratic Services Officer(s) and the Monitoring Officer, ~~being someone other than the officer who made the initial assessment under review.~~

Commented [EK4]: No longer part of the procedure

5. Procedure

- ~~5.1. Prior to the Review commencing, the Chairman shall introduce the persons present and explain the procedure to be followed at the Review~~
- 5.2. The Complainant and the Subject Member (or their representative) will be permitted up to three minutes to make any statement. If there is more than one complainant or subject member present, then, subject to the discretion of the Chairman, the maximum total time for statements by all complainants shall be three minutes. Any statements made should relate to the specific issues being considered by the Assessment Sub-Committee and should not raise any new issues or allegations.
- ~~5.3. Complainants and subject members for each complaint will be brought before the sub-committee to make a statement separate from any other complaint, except in the case of the same complaint submitted against multiple members~~
- ~~5.4. The Monitoring Officer will provide reports on any complaint that is to be assessed.~~
- ~~5.5. The report shall contain a summary of the complaint, supporting evidence, and response of the subject member, which aspects of a relevant code are alleged to have been breached, and a recommendation on whether to refer the complaint for investigation, dismiss the complaint, refer for alternative resolution, with reasoning for any recommended outcome.~~
- ~~5.6. The reports will also include in full any relevant material and supporting evidence provided by the complainant or subject member~~
- ~~5.4-5.7.~~ No new documentation is to be introduced at the Sub-Committee meeting without the agreement of the Sub-Committee. New documentation should only be admitted if is considered by the Sub-Committee to be essential to its consideration of the issues in the ReviewAssessment

Commented [EK5]: For confidentiality

Commented [EK6]: New procedure

~~5.5.5.8.~~ The Sub-Committee may take into account written representations made by, correspondence from, a party that have been received since the publication of the agenda, where it is considered that this will assist the ReviewAssessment.

~~5.6.5.9.~~ No questioning of the parties will be permitted, other than by the Sub-Committee with the agreement of the Chairman, to seek clarification of any point that has been made

~~5.7.5.10.~~ Following any statements by the parties, the ReviewAssessment Sub-Committee will normally withdraw, with the Independent Person(s), if in attendance, and relevant officers, to consider the case.

~~5.8.5.11.~~ Taking into consideration the documents provided, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will apply the tests required under paragraph 3 of the local assessment criteria, namely whether:

- a) the complaint is about the conduct of a member of a council within the area of Wiltshire Council;
- b) the member was a member at the time of the incident giving rise to the complaint;
- c) the member remains a member of the relevant council; or, if not, that there are exceptional circumstances to justify a decision that it is in the public interest to continue to consider the complaint;.
- d) a Code of Conduct is in force for the relevant council and provided;
- e) the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

~~5.9.5.12.~~ If the Sub-Committee are not satisfied that the criteria in a-e above are met, the complaint will be assessed as requiring no further action.

~~5.10.5.13.~~ If the Sub -Committee are satisfied that a-e in para 5.7 above are met, they shall consider whether, under the rest of the local assessment criteria, the complaint should proceed to investigation. The Sub-Committee may also recommend any other suitable action, including mediation.

~~5.14.~~ In reaching its~~Before making any decision, the Sub-Committee~~sub-committee will have regard to the initial assessment reasoning and decision-views of an Independent Person. The Independent Person, if in attendance, may contribute to the discussion of the Sub-Committee at any time

~~5.11.5.15.~~

6. Decision

6.1. The parties will be informed of the Sub-Committee's decision once it has been made and a full decision with written reasons shall be sent to the Complainant and Subject Member as soon as practicable thereafter.

7. ReviewPost-Investigation

7.1 If , following an investigation, the outcome of that investigation is a finding of no breach, the Monitoring Officer will prepare a report and recommendation to the

Commented [EK7]: No longer relevant

Commented [EK8]: To reflect updated assessment criteria

Commented [EK9]: So that the views of the IP may be made available even if they are not in attendance

Commented [EK10]: To report all outcomes to the committee.

Assessment Sub-Committee. This will be considered using the same procedure as detailed above.

Assessment Sub-Committee Meeting Procedure Summary

~~7. The Democratic Services Officer will request nominations for a Chairman for the Review.~~

Commented [EK11]: Standing chair/vicechair appointed annually

~~The Chairman welcomes all those present and introduces the Review.~~

1. ~~If appropriate, the Chairman invites the Sub-Committee Members, Council Officers, the complainant (if present), and the Subject Member (if present) to those present to introduce themselves.~~

Commented [EK12]: For simplicity

2. The Chairman outlines the ~~Review~~Assessment Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.

3. The Sub-Committee determines whether to pass a resolution to exclude the press and the public from the rest of the meeting.

4. ~~The Complainant and Subject Member are~~Each complainant and subject member will be given the opportunity to make a statement to the Sub-Committee of up to three minutes for each party. ~~In the interests of confidentiality the subject members and complainants for separate complaints will be brought before the assessment sub committee separately. A complaint made multiple members may be considered together.~~

Commented [EK13]: To allow all parties to speak, while preserving confidentiality

~~5. The Sub-Committee retires to consider their decision.~~

~~5. The Monitoring Officer presents a report for each complaint requiring assessment.~~

Commented [EK14]: New procedure

6. Taking into consideration the evidence, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:

- a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
- b) That the member was a member at the time of the incident giving rise to the complaint;
- c) That the member remains a member of the relevant council, or, if not, that ~~there are exceptional circumstances to justify a decision that~~ it is in the public interest to continue to consider the complaint;.
- d) That a Code of Conduct for the relevant council is in force and has been provided;
- e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

Commented [EK15]: To reflect assessment criteria

7. If the criteria in 8 a) to e) are met, the Sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or other suitable action, including mediation, or whether the complaint should be dismissed or no further action should be taken.

~~In~~Before reaching their decision the Sub-Committee will ~~have regard to~~request and receive the ~~initial assessment~~views of the ~~Monitoring Officer~~an Independent person in person or in writing.

Commented [EK16]: To ensure views of IP are known whether present or not

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Protocol 4 – Schedule of proposed amendments

Original Wording	Proposed Wording	Comment
<p>1. Why a ‘Code of Good Practice’ is required</p> <p>1.1. As a local councillor you will inevitably be involved in planning matters; as a councillor representing your division’s constituents; as a councillor responsible for overseeing the planning framework for Wiltshire, or as a councillor responsible for deciding planning applications at an area or strategic planning committee. You will have a crucial role to play in both making the planning system work and ensuring the best possible outcomes for the community, both now and in the future.</p> <p>1.2. The key purpose of planning is to manage development in the public interest. However, concerns are sometimes expressed about the probity of councillors meeting developers, applicants and interest groups and then taking decisions on an impartial basis. The aim of this code of good practice is to ensure that in the planning process in</p>	<p>1. The purpose of this Code of Good Practice is to give advice to Members that will preserve the integrity of the Planning system as open and fair to all parties, whilst avoiding rigid and overbearing procedural rules</p>	<p>Excess wording removed to make the point more succinct</p>

<p>Wiltshire there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way. Your role as a member of the council is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. This Code of Good Practice has been prepared to help and guide you in this task.</p> <p>2. When the Code of Good Practice applies</p> <p>2.1. This code applies to councillors at all times when involving themselves in the planning process. This includes not just the taking part in the planning committee meetings of the council, but on less formal occasions, such as meetings with officers, the public, parish/town/city councils and preapplication and consultation meetings. It applies equally to planning enforcement matters or site-specific policy issues as it does to planning applications.</p> <p>2.2. If you have any doubts about the application of this Code or Wiltshire Council's Code of Conduct for</p>	<p>2. When the Code of Good Practice applies</p> <p>2.1 This code applies at all times when Members are involved in the planning process, including</p> <ul style="list-style-type: none"> • As a Member representing your division's constituents • As a Member responsible for overseeing the planning framework for Wiltshire; or • As a Member responsible for 	<p>Bullet points added for ease of reference</p>
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Members to your own circumstances, and in particular where you may have a disclosable pecuniary interest in any planning matter, you should seek advice early, from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.

2.3. This code is based upon the 'Model Members Planning Code' adopted by the Association of Council Secretaries and Solicitors in 2003 (updated in 2007). The Model Code was produced following consultation with the Standards for England, the Local Government Ombudsman and the Audit Commission but has been updated to take account of the clarification of the predetermination rules and the new standards regime introduced by the Localism Act 2011.

3. Relationship to Wiltshire Council's Members Code of Conduct

3.1. The Members' Code of Conduct must be complied with at all times when you are acting in your capacity as a member or co-opted member.

deciding planning applications at an area or strategic planning committee

- Planning enforcement matters
- Involvement in local and neighbourhood plans
- Occasional involvement in appeals

<https://www.local.gov.uk/Pas-probity-planning>

3. Relationship to Wiltshire Council's Members' Code of

Link added for ease of reference

<p>This Planning Code of Good Practice seeks to explain and supplement the Members' Code of Conduct for the purposes of planning. It provides helpful guidance for members. However, you are advised that if you do not abide by this Code of Good Practice, you may put the council at risk of proceedings on the legality of the related decision or a complaint of maladministration to the Local Government Ombudsman, and yourself at risk of a complaint under the Members' Code of Conduct.</p> <p>3.2. In the event of a conflict between this Planning Code of Good Practice and the Members' Code of Conduct the latter will prevail.</p>	<p>Conduct</p> <p>3.1 The Members' Code of Conduct must be complied with at all times when you are acting in your capacity as a Member. This Planning Code of Good Practice constitutes guidance for Members of Planning Committees. However, you are advised that if you do not abide by this Code of Good Practice, you may put the Council at risk of proceedings on the legality of any related decision or a complaint of maladministration to the Local Government Ombudsman, and yourself at risk of a complaint under the Members' Code of Conduct. http://www.wiltshire.gov.uk/complaints-members-code-of-conduct</p> <p>3.2 In the event of a conflict between this Planning Code of Good Practice and the Members' Code of Conduct the latter will prevail.</p> <p>If you have any doubts about the application of this Code or Wiltshire Council's Code of Conduct for Members to your</p>	<p>Emphasis on guidance status of protocol rather than a supplement to the code of conduct</p> <p>Link added for ease of reference</p> <p>Note re advice from Monitoring Officer. Link to note from PAS on member interests</p>
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	<p>own circumstances, and in particular where you may have a disclosable pecuniary interest in any planning matter, you should seek advice early from the Monitoring Officer or one of his/her staff, and preferably well before any meeting takes place.</p> <p>https://www.local.gov.uk/sites/default/files/documents/members-interests-bias-an-533.pdf</p>	
<p>4. Development proposals and interests under the Members' Code of Conduct</p> <p>4.1. It is a fundamental point of principle that those who have a significant interest in the outcome of a planning decision should not take part in the decision making process, for example, Members may wish to make their own planning proposals, such as extending their own property. Members should disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other</p>	<p>4. Development proposals and interests under the Members' Code of Conduct</p> <p>4.1 It is a fundamental point of principle that those who have a material interest in the outcome of a planning decision should not take part in the decision-making process. Members should disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Such interests should also be declared at the start of the meeting.</p>	<p>Wording about members' own planning applications removed as this is inserted at 4.4 below</p>

<p>members. Such interests should be declared at the start of the meeting.</p> <p>4.2 The requirements for the registration and declaration of interests are set out in Wiltshire Council's Members' Code of Conduct and in the underlying legislation contained in the Localism Act 2011, and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. You should be aware that failure to comply with the requirements relating to disclosable pecuniary interests without reasonable excuse could result in prosecution.</p> <p>4.3 If you have a disclosable pecuniary interest in any planning matter you must not participate in any discussion of the matter or vote on it at the meeting of the Committee unless you have obtained a dispensation from the Standards Dispensation Sub-Committee. In addition you should:</p> <ul style="list-style-type: none"> • Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee (although you may 	<p>In the event of a member having any material interest or the application concerns a property in the vicinity of their own property then the member should seek guidance from the Monitoring Officer</p> <p>4.2 The requirements for the registration and declaration of interests are set out in Wiltshire Council's Members' Code of Conduct and in the underlying legislation contained in the Localism Act 2011, and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. http://www.legislation.gov.uk/uksi/2012/1464/made</p> <p>4.3 If you have a disclosable pecuniary interest in any planning matter you must not participate in any discussion of the matter or vote on it at the meeting of the Committee unless you have obtained a dispensation from the Standards Dispensation Sub-Committee. In addition, you should:</p>	<p>Link to DPI regulations. Note that interests also apply to spouses, civil partners and people living together a husband and wife. In addition WC's own guidance in 3D of the Constitution goes further than the DPI regulations by also including other family members</p>
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<p>participate as and to the same extent as a member of the public);</p> <ul style="list-style-type: none"> • Ask another elected member to represent division views¹; • Not participate in the processing of the application or the making of any decision on the matter by the Council; • Not seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor • Withdraw from the meeting in your capacity as a councillor when business relating to your interest is being considered. <p>Your proposal will not be dealt with by officers under delegated powers if a valid planning objection to it is received. Where this happens it will be reported to a committee for a decision.</p> <p>¹ It is acceptable for councillors to nominate a substitute(s) to undertake their planning responsibilities, including</p>	<p>4.3.1 Consider employing an agent to act on your behalf in dealing with officers and any public speaking at Committee (although you may participate as and to the same extent as a member of the public);</p> <p>4.3.2 Ask another elected member to represent division views;</p> <p>4.3.3 Not participate in the processing of the application or the making of any decision on the matter by the Council;</p> <p>4.3.4 Not seek or accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a Member.</p> <p>4.3.5 Withdraw from the meeting in your capacity as a Member when business relating to your interest is being considered.</p> <p>http://www.wiltshire.gov.uk/part_03 <u>C -</u></p>	<p>Points reordered</p>
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application 'call-in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death, the Chairman will nominate a stand in.

[scheme of delegation planning . pdf](#)

4.4 It is acceptable for councillors to nominate an alternative member to undertake their planning responsibilities, including application 'call-in', if they have a conflict of interest or during periods of absence such as holidays or illness. In the case of death or incapacity the group leader will nominate a stand in in consultation with the relevant Chairman.

5. Your role as a Member of the Planning Authority [NB taken from para 1.2 of the existing code]

5.1 To ensure that planning decisions are made openly, impartially, with sound judgment and for justifiable planning reasons.

Link attached for ease of reference

Moved from a footnote.

		<p>Added as a standalone para</p>
<p>5. Bias and Predetermination [NB this has been moved to Section 9 in the amended document]</p> <p>5.1 A planning decision may be challenged and ruled unlawful on the ground of bias. The test is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the member was biased. In particular, under the Council's Code of Conduct for Members, bias would occur if you place yourself under a financial or other obligation to third parties that</p>	<p>6. The purpose of the Planning system [NB this is a new para]</p> <p>6.1 Planning has a positive and proactive role to play at the heart of local government in Wiltshire:</p> <ul style="list-style-type: none"> • It helps the Council to stimulate growth whilst looking after important environmental assets. • It can help translate goals into action • It balances social, 	<p>Added as a standalone para</p>

might seek to influence you in the performance of your official duties.

5.2 The integrity of and public support for the planning process relies on members of planning committees making decisions that are open, transparent and above board. To participate in decision-making on planning matters, it is essential that you do not have a closed mind and that you make your final decision only when you have seen and heard all the evidence and arguments presented, including the Officer's report and representations on both sides. The Localism Act has helpfully clarified the rules on predetermination. Predetermination occurs where someone has a closed mind so that they are unable to apply their judgment fully and properly to the issue requiring a decision. This can lead to legal challenges and decisions being set aside.

The Act makes it clear that a member is not deemed to have had a closed mind on an issue just because they have indicated what view they have taken or may take before the issue is decided. A

economic and environmental needs to achieve sustainable development.

6.2 Planning decisions are based on balancing many competing interests and making an informed judgement against a local policy (ie local plan and neighbourhood plan) and national policy framework. The decision-making process is open and transparent. Decisions can be controversial. The risk of controversy and conflict are heightened by:

- the openness of a system which invites public opinion before taking decisions and
- the legal nature of the development plan and decision notices.

In other words, members have to take into account not only relevant planning policy when making decisions but they also have to be aware of the

member is not, for example, prevented from participating in discussion of an issue or voting on it if they have campaigned on the issue or made public statements about their approach to it.

The general position, however, remains that, whatever their views, members must approach their decision-making with an open mind in the sense that they must have regard to all material considerations and must be prepared to change their views if persuaded that they should.

5.3 If you are a member of a Wiltshire Council planning committee and also a member of a parish, town or city council, you can still take part in debates on planning proposals at parish/town/city council meetings, provided that:

- You make it clear **at the meeting** that any views you express are based on the limited information before you only and that you will not in any way commit yourself as to how you or others may vote when the proposal comes before the

legal framework in which the planning system operates.

7. How the Planning system works [NB this is a new para]

- Planning applications registered by the Council are uploaded to the planning pages of the Council's web site, including details of the plans and reports submitted by applicants; representations received by the Council and consultation responses.
- Each week, a list of applications that have been registered by the Council in the week leading up to publication ('the weekly list') is sent to members. This contains a description of the proposal, including its location and the name of the Planning Officer handling the application.
- The Council receives over

Brief rundown of procedure

<p>Wiltshire Council Planning Committee;</p> <ul style="list-style-type: none"> You make it clear that you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that parish, as and when it comes before the Committee and you hear all of the relevant information; When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, you should disclose your interest regarding your membership or role at the town/city or parish council. <p>6. Contact with applicants, developers and objectors [NB see paragraph 10 of the amended document]</p> <p>6.1. As a community leader and local representative you will want to be involved in relevant public meetings, pre-application discussions and policy</p>	<p>5,000 planning applications each year. To deal with this workload as efficiently and effectively as possible, the vast majority of these are dealt with by planning officers under delegated powers.</p> <p>The Scheme of Delegation to Officers (Part D3 of the Constitution) http://www.wiltshire.gov.uk/p/art_03_c_-_scheme_of_delegation_planning.pdf is part of the Council's Constitution and sets out the remits of the Strategic Planning Committee and Area Planning Committees and the rules relating to referring applications to a planning committee.</p> <p>- However, as a Member, you can request that a planning application in your division be referred to a planning committee and not be dealt with under delegated powers. This is known as a 'call-in' and is dealt with in Section 12.2 –</p>	
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<p>development. You can involve yourself as a councillor in discussions with developers and others about planning matters provided you keep to the following guidelines:</p> <ul style="list-style-type: none"> • Where developers organise a public exhibition or display of their proposals, it is acceptable for you to visit to examine the proposals and ask questions of the developers to ensure that you are fully informed of the nature of the proposals. You may feed in your own and your local community's concerns and issues and engage in discussion. However, irrespective of any position adopted in advance of a planning meeting you must have and be seen to have an open mind at the point of decision-making and base your decision on the information available at that time. • Pre-application meetings with developers or prospective applicants may be a positive way of engaging the developer to seek to ensure that community needs are met. However, if approached, you should refer any requests for such a meeting to an officer of the 	<p>12.6 below. There are a few exceptions, such as tree applications, that cannot be called-in and these are set out the scheme of Delegation [link]</p> <p>8. Procedure if the application is decided at committee [link to committee procedure]</p> <p>9. Bias and Predetermination [NB this is para 5 in the existing protocol]</p> <p>9.1 Members of a planning committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. This is because a planning decision may be challenged and ruled unlawful on the ground of bias. The test is</p> <p><i>whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Member was biased.</i></p>	<p>Link to list of applications that can't be called in</p> <p>Rundown of order of procedure at committee,</p>
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Development Service. The officer(s) will then organise the meeting and ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action and that the meeting is properly recorded.

- Refer those who approach you for planning, procedural or technical advice to officers;
- Advise those looking for policy guidance to examine the policies in adopted local plans and the Local Development Framework;
- Avoid meeting developers alone or putting yourself in a position where you appear to favour a person, company or group.

7. Lobbying and councillors [NB see para 11 of proposed amendment]

7.1. Lobbying is recognised as a normal and proper part of the political process. However, it is important for members to protect their impartiality and integrity in planning matters. You will not breach this Code of Good Practice

In particular, under the Council's Code of Conduct for Members, bias would occur if you place yourself under a financial or other obligation to third parties that might seek to influence you in the performance of your official duties.

9.2 The integrity of and public support for the planning process relies on members of planning committees making decisions that are open, transparent and above board. To participate in decision-making on planning matters, it is essential that you ***do not have a closed mind and that you make your final decision only when you have seen and heard all the evidence and arguments presented, including the Officer's report and representations on both sides.***

9.3 The Localism Act sets out the rules on predetermination. <http://www.legislation.gov.uk/ukpga/2011/20/section/25/enacted>

Predetermination occurs where someone has a closed mind so that

Link to Section 25 Localism Act 2011

by listening to or receiving viewpoints from residents or other interested parties provided that you make it clear that your final position will be determined at the end of the planning process when you are aware of all of the material considerations. Councillor's attention is drawn to the following advice:

- Do not place yourself under a financial or other obligation to any person involved or affected by a planning proposal;
- Pass a copy of any lobbying correspondence that you receive to the relevant Development Control Area Team Manager or the case officer at the earliest opportunity;
- Do not pressurise or lobby officers for a particular recommendation;
- Promptly refer to the Development Control Area Team Manager any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise;

they are unable to apply their judgment fully and properly to the issue requiring a decision. This could, for example, occur where a member clearly expresses an intention to vote in a particular way before a meeting. This can lead to legal challenges and planning decisions being set aside.

9.4 The Act makes it clear that a member is not deemed to have had a closed mind on an issue where they make it clear that they are willing to listen to all considerations presented at the committee before deciding on how to vote. A member may not, for example, be automatically prevented from participating in discussion of an issue or voting on it if they have made public statements about their approach to it. Advice should be sought from the Monitoring Officer in these circumstances.

9.5 The general position, however, remains that, whatever their views, Members must approach their decision-making with an open mind in the sense that they must have regard to all **material**

<p>• Inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow the matter up.</p> <p>• Political Groups should never dictate how Members should vote on a planning issue and members should not excessively lobby fellow councillors regarding concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.</p> <p>7.2. Can I remain a member of an amenity society when it makes representations on planning matters? [NB – please see para 11.3 of the proposed guidance]</p> <p>There are many general interest groups who concentrate on issues beyond particular planning proposals. These include bodies such as the National Trust; CPRE; Wiltshire Archaeology and Natural History Society; Ramblers</p>	<p>considerations (a summary of these can be found at https://www.planningportal.co.uk/aqs/faq/4/what-are-material-considerations)</p> <p>and must be prepared to change their views in light of all the information presented at the meeting if persuaded that they should.</p> <p>9.6 If you are a Member of a Wiltshire Council planning committee and also a Member of a parish, town or city council, you can still take part in debates on planning proposals at parish/town/city council meetings, provided that:</p> <p>9.6.1 You make it clear at the parish/town or city council meeting that any views you express are based on the limited information before you only and that you will not in any way commit yourself as to how you or others may vote when</p>	<p>Link to short summary of what constitutes a material consideration</p>
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Association; local civic societies. It is acceptable to be members of these societies, provided that an interest is declared when that organisation has made representations on a particular proposal and you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal. However, if you become a member of or lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals, you will have to ensure that you still have an open mind and will again have regard to all material considerations at the time any decision is made.

8. The role of officers [NB – see para 14 of amended document]

8.1. Officers and members work together to deliver the outcomes that seek to deliver the outcomes that seek to deliver the right development at the right place at the right time, whilst protecting the built and natural environment. It is therefore essential that there is mutual trust and understanding

the proposal comes before a Wiltshire Council planning committee;

9.6.2 You make it clear that you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that parish, as and when it comes before the Committee and you hear all of the relevant information;

9.6.3 When the development proposal comes up for consideration at a Wiltshire Council Planning Committee, you should disclose your interest regarding your membership or role at the town/city or parish council.

10. Discussions and contact with applicants, developers and

between officers and members. Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:

- Impartial and professional advice;
- Committee reports that include a clear and accurate analysis of the issues

in the context of the relevant development plan and other material considerations; the substance of the representations and views of those who have been consulted and a clear recommendation of action.

Officers will process and determine applications in accordance with the council's code of Conduct for Officers and the Royal Town Planning Institute's Code of Professional Conduct.

9. Decision making [NB – see para 12 of amended document]

9.1 By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate

objectors [NB this is para 6 of the existing protocol]

10.1 Discussions between a potential applicant and the Council can benefit both parties and are encouraged as a way of gathering information. They are not to be seen as a means of influencing members. Whilst potential applicants may seek the professional advice of planning officers in relation to relevant planning policies and material planning considerations, on major applications (sites of ten houses or developments of above 1000 square metres floorspace) officers will always encourage potential applicants to discuss their proposals with the local parish, town or city council before submitting a planning application. Members have an important role to play in such pre-application discussions, bringing your local knowledge and expertise along with an understanding of community views.

10.2 As a community leader and local representative, you may want to be involved in relevant public meetings

otherwise. The National Planning Policy Framework is a material planning consideration.

9.2. As a member, you can request that the relevant planning committee considers a planning application in your division and not be dealt with under delegated powers (although there are a few exceptions, such as tree applications, set out in the Scheme of Delegation). To call-in an application, you need to do this in writing, (an electronic proforma is available for electronic submission), and send it to the relevant area team manager or case officer handling the application. Requests must be received within 21

days of the circulation of the weekly list (but there are some exceptions set out in detail in the Scheme of Delegation to Officers – Part 3B of the Constitution). The proforma must record planning reasons why the committee should deal with the application. (It would be helpful if councillors would contact the case officer prior to call-in to discuss the planning issues involved and whether a call-in is necessary.)

and discussions to help make sure that issues of local concern don't come to light for the first time at a planning committee meeting. You can involve yourself as a Member in discussions with developers and others about planning matters provided you keep to the following guidelines, which also apply to officers:

10.2.1 Where developers organise a public exhibition, or display of their proposals, or arrange a meeting with a parish, town or city council to which you are invited

You can:

- visit/attend to examine the proposals
- ask questions of the developers to ensure that you are fully informed of the nature of the proposals.
- feed in your own and your local community's concerns and issues
- engage in discussion

Following receipt of a request, officers will confirm the action to be taken and keep the member informed when they are ready to make a recommendation.

9.3. While there is a strong presumption that the Division Member's views on call in should prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the Chairman of the committee. Having discussed the application and considered the possible impacts the Chairman will then have the ability to ask for the application to proceed to committee for determination. In the rare event that the application is in the Chairman's own division, the adjoining member can discuss the application with the Director of the service.

9.4 Councillors should arrive at meeting with an open mind and make a decision only after due

provided that you always make it clear that any views you express are personal and provisional and will not bind the Council to making a particular decision if an application is subsequently submitted.

Irrespective of any position adopted in advance of a planning committee meeting you must have and be seen to have an open mind at the point of decision-making and base your decision on the information available at that time

10.2.2 Where developers or prospective applicants approach you for an individual meeting.

You can attend an informal meeting subject to the following caveats:

- avoid giving separate advice on the development plan or material considerations
- avoid being drawn into

consideration of all the information reasonably required to make that decision including any matters reported at the meeting. If you feel that there is insufficient information before you, you should request that further information. If necessary, defer or, if the grounds are adequate, refuse the proposal.

9.5 Site Visits – Councillors will be expected to be familiar with the site and issues surrounding the decision when they arrive at a committee meeting. It is acceptable to visit the site and, if necessary, surrounding properties that may be affected by the proposal, as an individual councillor before the meeting, although councillors should not enter onto a site without the consent of the owner. On no account should councillors express a view on the merits of the application to anyone, including the applicant, owner or any third party. With regard to the Strategic Committee, for major and controversial applications arrangements will exceptionally be made for organised site visits where these are considered necessary.

- negotiations;
- refer those who approach you for planning, procedural or technical advice to officers;
- Advise those looking for policy guidance to examine the policies in adopted local plans, Neighbourhood Plans and the Local Development Framework. These are all available on the Council's [website](http://www.wiltshire.gov.uk/planning-policy) <http://www.wiltshire.gov.uk/planning-policy>
- Avoid putting yourself in a position where you appear to favour a person, company or group.

11 Lobbying and Members [NB – this is para 7 of the existing protocol]

11.1 Lobbying is a normal and proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their Division Member or to a member of the planning committee. However, it is important for Members to protect their impartiality and integrity in

Link to Council planning policy

The committee reports and officer presentations should provide ample information for councillors to determine applications. Very exceptionally, councillors at a committee may feel that a site visit is appropriate to assess the implications of the development. In these cases, reasons for the site visit will be provided and consideration of the application should be deferred pending the visit. (The site visit will be arranged by officers and although the owner's permission will be required, there should be no dialogue with members of the public or applicant/owner during the visit.) The application will then be re-listed on the following agenda.

9.6. Public Speaking at Meetings
 [NB see para 12.11 of amended document]

The council has an established procedure in respect of public participation at planning meetings. This should be complied with. In particular, it is not permissible during meetings for members of the public to communicate with councillors

planning matters. **This Code of Good Practice recognises the value of listening to or receiving viewpoints from residents or other interested parties provided that you make it clear that your final position will be determined at the end of the planning process when you are aware of all of the material considerations.**

11.2 Members' attention is drawn to the following advice:

- **Do not** place yourself under a financial or other obligation to any person involved or affected by a planning proposal.
- **Consider** referring any correspondence that you receive to the relevant Development Management Team Leader or the case officer at the earliest opportunity;
 - **Do not** put pressure on or lobby officers for a particular recommendation or decision
 - **Do not** do anything which compromises or is likely to compromise the officer's impartiality or professional integrity;

debating the proposal either orally or in writing, as this may give the appearance of bias.

Consultees and members of the public who wish to speak at a planning meeting, either in favour of or against an application will be asked to register with Democratic Services. Notification can be given in advance of the meeting, but not before the agenda has been published, by contacting the Democratic Services Officer identified on the agenda. However it should be noted that the Democratic Services Officer must receive registrations in person at least ten minutes prior to the meeting; registration will take place on a first come first served basis and if someone fails to register in person the opportunity to speak will be offered to someone else if appropriate. If a large number of speakers wish to speak on an application, Democratic Services will advise them to coordinate their speakers.

Town/parish/city councils will have an individual four minute

- **Do** promptly refer to the relevant Development Management Area Team Leader any offers made to you of planning gain or constraint of development, through a Section 106 Planning Obligation or otherwise; <https://www.gov.uk/guidance/planning-obligations>
- **Do** Inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will in turn advise the appropriate officers to follow the matter up.
- Planning decisions cannot be made on a party political basis. Political groups should never dictate how Members should vote on a planning issue and Members should not excessively lobby fellow Members regarding concerns or views, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Link to planning obligations section in National Planning Policy Guidance

representation slot should they wish to speak. Only one representative per council should speak and it is important that the spokesperson expresses the formal views of their council, and not their own individual thoughts. If an application is near the boundary with an adjacent parish, each affected council will have a four minute slot. Any additional time will be at the committee chairman's discretion.

There will be a maximum of three members of the public permitted to speak in objection to an application and three members of the public permitted to speak in support of an application. Where a committee member with a disclosable pecuniary interest wants to participate in their private capacity as a member of the public (as they are entitled to do) they will need to secure one of the 'public slots'.

Each speaker will be allotted 3 minutes to address the committee and an audible 30 second warning may sometimes be given before the end of the three minutes.

Can I remain a member of an amenity society when it makes representations on planning matters? [NB – this is 7.2 of the existing protocol]

11.3 There are many general interest groups who concentrate on issues beyond particular planning proposals. These include bodies such as the National Trust; CPRE; Wiltshire Archaeology and Natural History Society; Ramblers Association; local civic societies. It is acceptable to be members of these societies, provided that:

- an interest is declared when that organisation has made representations on a particular proposal
- you make it clear that you have reserved judgement and the independence to make up your own mind on each separate proposal

However, if you lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals, you should seek the advice of the

<p>In the case of particularly controversial or large scale applications the chairman of the committee will have discretion over these timings and will be able to allow more speakers. It is imperative, however, in the interests of natural justice that any increase in time allowance is applied equally between those speaking for and against.</p> <p>9.7 Decisions Contrary to Officer Recommendation</p> <p>There will be occasions when councillors wish to make a decision that conflicts with the planning officer's recommendation. In these circumstances, members proposing, seconding or supporting such a decision must clearly identify and understand the planning reasons leading to this decision and must give the planning officer an opportunity to explain the implications of it. The reasons for the decision must be given prior to the vote and be recorded. If an application is to be approved, councillors should set out any particular conditions they would like</p>	<p>Monitoring Officer about any decisions to be made affecting that organisation.</p> <p>12 Decision making</p> <p>12.1 By law, the council has to make decisions in accordance with the Development Plan unless material planning considerations indicate otherwise. The Development Plan includes the Wiltshire Core Strategy and any made Neighbourhood Plans. The National Planning Policy Framework (NPPF) sets out Government planning policy and is also a material planning consideration. https://www.gov.uk/government/publications/national-planning-policy-framework--2</p> <p>Call-in</p> <p>12.2 The Council receives over 5,000 planning applications each year. To deal with this workload as efficiently and effectively as possible, the vast majority of these</p>	<p>Difference between membership of an amenity group and leadership/representation of lobby group</p> <p>Link to NPPF</p>
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imposed which will be in addition to the 'standard' conditions for that type of development which will be added by officers. An opportunity must be given to the planning officer to comment on conditions suggested by members and if necessary, the application should be deferred to the next available meeting to enable proper consideration to be given to the wording needed to achieve members' objectives or members may delegate to the officers the imposition of suitable conditions.

Reasons for refusal against officer advice must be planning related, clear and convincing. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge or appeal. Where councillors think they could have concerns about any given recommendation at committee, officers will be happy to discuss the application beforehand to explore the options which may be open to the Members.

In cases where councillors have overturned a recommendation and

are dealt with by Planning Officers under delegated powers. However, as a Member, you can request that a planning application in your division be referred to a planning committee and not be dealt with under delegated powers. This is known as a 'call-in'. There are a few exceptions, such as tree applications, that cannot be called-in and these are set out in the Scheme of Delegation (Part 3D of the Constitution).
http://www.wiltshire.gov.uk/part_03_c_-_scheme_of_delegation_planning_.pdf

12.3 Before deciding whether to call-in any application, you should seek to discuss the matter with the Planning Officer handling the application, or in their absence, with one of the Area Team Leaders overseeing applications in your division. If you are in agreement with their likely course of action, it will seldom be necessary for the application to be placed before a planning committee. If you are not in agreement, then you will need to

[link to scheme of delegation](#)
NB check 3D

the applicant lodges an appeal with the Planning Inspectorate which will be dealt with by way of hearing or public inquiry, Members should be prepared to defend that decision. This defence should be made in person or, at the Member's discretion in writing. Where Members attend and give evidence as part of the council's 'official team,' e.g., they are supported by counsel (as opposed to turning up to speak on an individual basis,) a Rule 6 statement will be required which usually has to be submitted nine weeks before the appeal hearing/inquiry. (Members may of course also be called upon to support the council's case on appeal where the decision has been made in line with the officer recommendation.)

10. Training [NB See para 13 of the amended document]

Planning is a complex area, but one that generates a great deal of interest amongst local residents and is at the heart of much of the activity of the council. Great care needs to

activate the call-in procedure. While you may be requested by an agent, applicant or parish council to call an application to committee, it is important to carefully consider each request on its planning merits and discuss with the planning officer **before** agreeing to a call-in.

12.4 To call-in an application, you need to complete the on-line call-in form

<http://thewire.wiltshire.council/index/councillors-area/planning-app-to-be-considered-by-committee.htm>

The proforma must record the planning reasons why the committee should deal with the application. Link to call-in form

12.5 Requests to call-in an application **must be received within 21 days of the circulation of the weekly list** on which the application is recorded, although there are some very limited exceptions to this time limit detailed in the Scheme of Delegation, for example the time limit is 15 days for applications for

be taken over procedural matters and to ensure that consideration of applications takes place in a clear and open manner and that decisions are based on sound planning principles. For these reasons, it is mandatory for all elected councillors of Wiltshire Council to have training in planning matters prior to sitting on a planning committee. All elected councillors will be able to attend this training and it will be arranged immediately after each election. For those elected at by-elections, similar training will be made available.

11. The order of events at committee meetings

Meetings will normally commence at 6 p.m. and the applications will be determined in the order in which they appear in the agenda unless the chairman has valid reasons for changing the order. Officer will try and ensure that applications which are likely to attract large numbers of the public appear early in the agendas. If the order is changed, this will be announced at the start of each meeting.

Permissions in Principle [\[link\]](#). The reason for this is that the Government lays down strict time limits for the determination of planning applications, and if these are exceeded applicants may appeal to the Secretary of State, taking the matter out of the hands of the Council. As applications may be amended during the consultation process, often dealing with issues that have been raised, Members may withdraw their call-in at any time up until a committee agenda is published containing a report on the called-in application. Once a report on an application has been published on a committee agenda, the committee will proceed to determine the application (unless the application is withdrawn by the applicant or their agent before the meeting takes place). Members can request to be kept advised as to the date when the application will be put before a planning committee for determination.

12.6 While there is a strong presumption that the Division Member's views on call in should

The usual procedure will be:

- a) The planning officer will introduce each item and set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
- b) Committee Members will then ask the officer to clarify any points/ask technical questions.
- c) Members of the public who wish to make representations opposing the application will then be invited to do so. (up to 3 minutes each)
- d) Members of the public/applicant/agent (in this order) who wish to make representations in support of the application will then be invited to do so.
- e) Consultees who wish to make representations will be invited to do so. (up to 3 minutes each)

prevail, if another Member (i.e. one from a neighbouring division which is affected by the development) thinks an application should go to committee and this is contrary to the view of the local Division Member, it will be open to that member to discuss the application with the **Head of Development Management**

12.7 Members should arrive at meeting with an open mind and make a decision only after due consideration of all the information reasonably required to make that decision including any matters reported at the meeting.

12.8 Members should expect to receive officer reports that are accurate and include the substance of any objections and consultation responses. The reports should contain a clear assessment of the proposal against the relevant policies of the development plan and any other material planning considerations, with a written recommendation for

f) The town/city or parish council representative, if present, will then be invited to make representations. (up to 4 minutes each)

g) The division member will be invited to make representations².

h) The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised.

i) The chairman will then normally ask if anyone is prepared to move the officer recommendation or propose an alternative motion. Once a motion has been seconded it will be open to the councillors to debate it and ask further questions of officers if required and determine the issue. The rules of debate as detailed in Part 4 of the Constitution will apply.

² Any division member, be they a member of the committee or not is welcome to attend committee meetings and make representations on any application within their division. Councillors who are part of the committee will have voting rights but those who are not can speak, but are not eligible to vote. Division members who are not on the committee may be invited to

a decision to be made. If the report's recommendation is contrary to the provisions of the development plan, the material considerations that justify the departure must be clearly stated. If you feel that there is insufficient information before you to make an informed decision, you should request such further information. In the absence of such further information it may be necessary for the application to be deferred or even refused.

[Site Visits \(see Appendix 1 – Wiltshire Council Planning Site Visit Protocol\)](#)

12.9 Members will be expected to be familiar with the site and the issues surrounding the application when they arrive at a committee meeting. It is acceptable to visit the site and surrounding properties that may be affected by the proposal, as an individual Member before the meeting, although Members should not enter onto a site without the consent of the owner. **On no account should Members express a view on the**

participate in any debate at the chairman's discretion.

merits of the application to anyone, including the applicant, owner or any third party. The Head of Development Management may, after consultation with the chairman of the relevant committee, arrange for an organised site visit **before the committee meeting** by the committee where this is considered necessary for major and/or controversial applications, or other exceptional circumstances.

12.10 The committee reports and officer presentations should provide ample information for Members to determine applications. If there has been no organised site visit prior to the meeting, Members at a committee may, exceptionally, feel that a site visit is appropriate to assess the implications of the development. In these cases, Members must give reasons for the site visit before consideration of the application for deferral pending the visit. The site visit will be arranged by officers and although the owner's permission will be required, there

	<p>should be no dialogue with members of the public or applicant/owner during the visit. The application will then be re-listed on the following agenda.</p> <p>Public Speaking at Meetings</p> <p>https://cms.wiltshire.gov.uk/documents/s134074/Public%20Participation%20FAQ.pdf</p> <p>12.11 The council has an established procedure in respect of public participation at planning meetings. This should be complied with in the interests of equity. In particular, it is not permissible during meetings for members of the public to communicate with members either orally or in writing once debate has commenced, as it could be seen as seeking to influence a member improperly and may give the appearance of bias.</p> <p>Decisions Contrary to Officer Recommendation</p> <p>12.12 Planning committees can,</p>	
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	<p>and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions, or sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations.</p> <p>12.13 If a member is concerned about an officer recommendation, it may be helpful to discuss their areas of difference and the reasons for that with officers in advance of the committee meeting. A better mutual understanding of each other's reasons may avoid misunderstandings at the meeting.</p> <p>12.14 In circumstances where members are proposing a decision contrary to the officer recommendation, members should be prepared to give a full explanation of their planning reasons, including reference to relevant policies, for not agreeing with the officer's recommendation.</p>	
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	<p>This is because the applicant and members of the public should be clear about why a decision has been made. The reasons for the decision must be given prior to the vote and be recorded in the minutes.</p> <p>12.15 The Planning Officer should also be given an opportunity to explain the implications of any contrary decision, including an assessment of any reasons put forward for refusal, or conditions suggested for approval. Where a refusal is proposed, this may include an assessment of a likely appeal outcome and chances of a successful award of costs against the Council, should one be made. In exceptional circumstances, the application may be deferred to the next available meeting to enable proper consideration to be given to the wording needed to achieve members' objectives or members may delegate to the officers the imposition of suitable conditions. Reasons for refusal against officer advice must be:</p> <ul style="list-style-type: none">• planning related,	
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	<ul style="list-style-type: none">• clear• evidence based. <p>This is because at any subsequent appeal, should one be lodged, a Planning Inspector will carefully scrutinise the reasons and the evidence relied upon.</p> <p>12.16 In cases where members have overturned a recommendation and the applicant lodges an appeal, most appeals will be defended by the Planning Officers employed by the Council. However, there may be rare cases at hearings or public inquiries where planning officers are unable to defend the reasons put forward by members and no external professional can be called upon. In these circumstances, members may be required to defend that decision, appearing as the Council's witness. Officers will assist and support but may not be able to give evidence. This is because if they have taken a different stance on the application leading up to the decision, cross examination of them as witnesses at any subsequent appeal will weaken the Council's case.</p>	
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13 Training [NB this is para 10 of the existing protocol]

13.1 Planning is a complex area, but one that generates a great deal of interest amongst local residents and is at the heart of much of the activity of the Council. Great care needs to be taken over procedural matters and to ensure that consideration of applications takes place in a clear and open manner and that decisions are based on sound planning principles.

13.2 For these reasons, it is mandatory for all elected members of Wiltshire Council to undergo training in planning matters prior to sitting on a planning committee. All elected members will be able to attend this training and it will be arranged immediately after each election. For those elected at by-elections, similar training will be made available.

13.3 The legislation surrounding planning matters is often subject to change. Officers will provide ongoing training, which is also mandatory, including updates through written

	<p>briefings, e-learning and training events and will be happy to answer questions that members may raise on planning matters</p> <p>14 The role of officers [NB this is para 8 of the existing protocol]</p> <p>14.1 Officers and members work together to deliver the right development at the right place at the right time, whilst protecting the built and natural environment. It is therefore essential that there is mutual trust and understanding between officers and members. Officers will advise and assist members in their formulation of planning advice and the determination of applications and will provide:</p> <ul style="list-style-type: none">• Impartial and professional advice;• Committee reports that include a clear and accurate analysis of the issues in the	
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	<p>context of the relevant development plan and other material considerations</p> <ul style="list-style-type: none">• Details of the representations and views of those who have been consulted and• a clear recommendation of action.	
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APPENDIX 1 – SITE VISIT PROTOCOL

Appendix 1 to Protocol 4

Wiltshire Council Planning Site Visit Protocol – NB updated in accordance with current best practice

1. Arranging the visit

- 1.1 When members have decided in committee that they would like to visit a site, they will be asked to agree a time and date at the end of the meeting. If this is not possible, a schedule for the visit will be agreed between the chairman and officers.
- 1.2 Democratic services will then notify the applicant or their agent of the time and date of the site visit and seek authority for councillors and offices to visit the site. Where the application site is on private land, the applicant or agent will be requested to be in attendance only to facilitate access.
- 1.3 All members of the relevant committee (including any substitutes) will be invited to attend the site visit as will the local division member should he or she not be on the committee. Where a proposal would have a significant impact on an adjoining division, the adjoining division member will similarly be invited to attend.
- 1.4 On occasion, officers of other services such as highways or drainage may be invited (by the Head of Development Management or the relevant Area Team Leader) to attend a site visit to clarify factual matters.
- 1.5 Councillors are reminded that they have no right of entry to private land except by permission of the owner and that they and officers should not enter a private site until all are present and an officer has made contact with the landowner/operator/applicant.
- 1.6 In the unlikely event that the landowner will not give permission to enter a private site, the site will have to be viewed from public highway.

2. Conduct of the visit

- 2.1 The purpose of the site visit is to enable councillors to familiarise themselves with the site and its surroundings in order to understand the planning issues related to the proposal more clearly when considering the application at committee.
- 2.2 While it may be necessary for an applicant or his agent to be present on the site (e.g. to provide access or for safety reasons), discussions between members and the applicant or their agent or any third party should be avoided and they will be advised that lobbying of councillors is unacceptable.
- 2.3 At the request of the chairman, and after taking a note of the members present for the site visit, the planning officer will describe the proposal to councillors and will display and/or circulate appropriate plans or drawings of the proposal. (It is expected that councillors will already be familiar with the planning officer's report) The planning officer will indicate matters of fact in relation to the proposal and surrounding land which councillors should take into account when the application is brought back before them for determination.
- 2.4 Questions by councillors should be addressed to the planning officer and be of a factual nature, for example, distances to adjoining or objectors' properties; the landscape features to be retained; the status of any nearby heritage assets. If it is necessary to seek information from the applicant or agent on site this will be done by an officer.
- 2.5 At no time during the site visit should councillors debate or comment on the planning merits or otherwise of a proposal. The application will be debated in public at a subsequent planning committee meeting.

2.6 On occasion, it may be helpful to members to view the site from a neighbouring property. This should only be done where consent has been obtained by officers from the landowner concerned and again, at no time should councillors debate or comment on the planning merits of the proposal.

2.7 The role of the local division member at the site visit will be limited to drawing attention to features of the site and its surroundings that he/she considers relevant to the committee's understanding of the site, its surroundings and the proposal. The local member will not be permitted to make representations on the merits or otherwise of the application.

3. General

3.1 Councillors should avoid being separated; it is essential that they should not allow themselves to be lobbied at the site visit or enter into a debate about the application with any third party, including applicant, agent, supporters or objectors, as this could create a perception of bias.

3.2 Councillors should ensure that they have seen all aspects of the site suggested by the accompanying officer or the chairman during the visit.

3.3 Councillors will not make any decision at the site visit and individual members should keep an open mind about the merits or otherwise of the proposal to which the site visit relates.

3.4 The application will usually be the first item on the agenda of the following Planning Committee meeting where the decision will be made.

4. Record of the visit

4.1 A record of the visit will be retained on the planning application file. The record will include the timetable for the meeting, attendees and what matters were viewed on site.

5. Notes

5.1 Officers will identify relevant health and safety issues for all site visits. All health and safety instructions, as issued by the site owner/operator must be strictly followed.

5.2 Where appropriate, protective clothing e.g. visibility jackets, hard hats will be provided for councillors on arrival at the site. Councillors should, however, be aware of the need to wear appropriate footwear.

5.3 In the interests of sustainability and highway safety, it is recommended that car-sharing opportunities be used where practical to minimise travelling and parking.

Planning Committee Meeting Procedure and Public Speaking

Agenda Order

1. Applications will be determined in the order they appear on the agenda unless the Chairman, with the agreement of the Committee, has valid reasons for changing the order.
2. Officers will seek to ensure that applications which are likely to attract large numbers of attendees appear earlier in the agenda.
3. If the order is changed, this will be announced at the start of the meeting.

Meeting Procedure

4. In the interests of fairness, consistency and transparency, the procedure below should be complied with by each planning committee. Members of the public in particular should note that it is not permissible during meetings to communicate with members debating the proposal either orally or in writing, as this may give the appearance of bias. Any participation in the meeting should be as set out below.
5. For each application the planning officer will introduce the application and the key issues involved, as well as the reasoning behind the recommendation as set out in their report. They will also set out any representations, amended plans or material considerations which have been received or come to light in the period between the publication of the agenda and the committee meeting.
6. Committee Members may then ask the officer to clarify any points/ask technical questions.
7. Members of the public who wish to make representations opposing the application will then be invited to do so. Up to three speakers will be invited for up to three minutes each.
8. Members of the public who wish to make representations in support of the application will then be invited to do so. This section includes the applicant, the agent, and any other professionals employed by the applicant. Up to three speakers will be invited for up to three minutes each.
9. Statutory Consultees who wish to make representations will then be invited to do so for up to three minutes each, whether in support or in objection to the application.
10. The parish council representative for the area in which the applications sits, if present, will then be invited to make a representation of up to four minutes. This must be the formal view of the parish council, not an individual representation. If the application is on the edge of several parishes which are directly affected, the Chairman may allow other parishes, to a maximum of three total, to speak for up to four minutes each. Other members of a parish council may register to speak, but would need to utilise a public speaking slot.

11. The unitary division member for the application will then be invited to make a representation for up to five minutes at Chairman's discretion. The Chairman may allow a neighbouring or any other member of the council to make a representation at this time if they consider it appropriate.
12. The planning officer will then have an opportunity to respond to comments or provide clarification of any points raised by the public or members.
13. The Committee will then debate the application. The first member to speak will be expected to move a proposal for deliberation. The rules of debate as detailed in Part 4 of the Constitution will apply.

General Public Participation

14. In the case of all public speaking categories, speakers must register with Democratic Services no later than 10 minutes before the start of the meeting. Public are encouraged to contact Democratic Services sooner in order to register, but not prior to the publication of the agenda.
15. If more than three persons wish to speak on an application, they will be listed on a first come first served basis, and if at the registration deadline a speaker does not confirm their attendance in person, the opportunity to speak will be offered to someone else if appropriate. Prior to the meeting speakers will be advised to coordinate themselves and, regardless of order of registration, if they are in agreement any chosen three may speak in whichever order they wish. In the absence of agreement, the Chairman will take the speakers in the order as registered.
16. While the Chairman of a committee has discretion over the timings and number of speakers in the case of controversial or large-scale applications, in the interests of natural justice it is imperative that any increase is applied equally between those speaking for and against the application.
17. No contributions from the public will be accepted outside the public speaking slots detailed above.

Questions and Petitions

18. Submitted questions and petitions on non-determined planning applications are excluded from the usual council procedures at Part 4 of the Constitution. This means that any questions or petitions in relation to an agenda item at a meeting will be logged by planning officers as a representation and addressed in their introduction of the item.