

**DRAFT REVISED CODE
MARCH 2015**

New Text highlighted green

**Optional text for Members guidance
highlighted yellow**

Test Valley Borough Council

MEMBERS' CODE OF CONDUCT

Part 1: General Provisions

1. This Code is adopted pursuant to the Council's statutory duty to promote and maintain high standards of Conduct by members of the Council. It complies with the requirements of Section 28 of the Localism Act 2011 and is consistent with the principles set out in that section and which are listed in paragraph 5 below.
2. This Code applies to **you** being a holder of public office as a member of Test Valley Borough Council ("the Council") when acting in your role as a member.
3. This Code is not intended to be an exhaustive list of all the legal and constitutional obligations placed on Members of this Council. It is your responsibility to comply with the following provisions of this Code as well as other legal obligations beyond the scope of this Code.
4. In the interests of transparency and openness and in accordance with the requirements of the Localism Act 2011, a copy of the Register of Members' Interests is published on the Council's website, and is available for public inspection at the Council's offices at all reasonable hours¹.
5. This Code is based on and consistent with the following principles:

SELFLESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

¹ This is the requirement of the legislation. "All reasonable hours" is the wording of the legislation and appears to provide an effective degree of discretion. At present there is no reference to these statutory requirements in our published material. It is appropriate to include such matters which are directly relevant to the Code within the Code itself.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

Part 2: General obligations for members

- 2.1 When acting in your role as a member of the Council:
 - 2.1.1 **Do** treat others with respect.
 - 2.1.2 **Do** ensure that you are aware of and comply with the requirements which the Bribery Act 2010 places on you in your role as a Member and on the Council as a whole.
 - 2.1.3 **Do ensure that you behave in accordance with all the Council's legal obligations, policies, protocols and procedures as they relate to your conduct.**²
 - 2.1.4 **Do not** do anything which may cause your Council to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2006(a)).
 - 2.1.5 **Do not** bully any person (bullying is offensive, intimidating, malicious, insulting or humiliating behaviour that is directed at someone over whom you have some actual or potential influence).
 - 2.1.6 **Do not** intimidate or try to intimidate, anyone who has complained about you or who may be involved with a complaint about you.
 - 2.1.7 **Do not** do anything which compromises, or is likely to compromise the impartiality of those who work for, or on behalf of, your Council.

² There are protocols and codes that relate to the members role in planning, the relationship with officers, as well as policies regarding electronic communications and occasional guidance on conduct during the pre-election period. All these and those others which will be required from time to time are captured here.

- 2.1.8 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
- 2.1.8.1 you have the consent of a person authorised to give it;
 - 2.1.8.2 you are required by law to do so;
 - 2.1.8.3 the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
 - 2.1.8.4 the disclosure is—
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the Council
- 2.1.9 **Do not** prevent another person from gaining access to information to which that person is entitled by law.
- 2.1.10 **Do not** use or try to use your position improperly to obtain an advantage or disadvantage for yourself or any other person or body.

2.2 When making decisions on behalf of or as part of the Council:

- 2.2.1 **Do exercise independent judgement and do not compromise your position by placing yourself under any obligations to outside individuals or organisations who might seek to influence your decision.**³
- 2.2.2 **Do** have regard to any relevant advice provided to you by the Council's Chief Financial Officer and Monitoring Officer where such advice is offered pursuant to his or her statutory duties.
- 2.2.3 **Do** give reasons for the decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council.

2.3 When using or authorising the use by others of the resources of the Council—

- 2.3.1 **Do** act in accordance with the Council's reasonable requirements including the requirements of the Council's Electronic Communications Policy for Members which you are deemed to have read;
- 2.3.2 **Do** make sure that such resources are not used improperly or improperly⁴ for political purposes (including party political purposes); and

³ This captures one of the fundamental principles at the heart of any decision-making process. Adherence to this principle goes some considerable way to excluding bias in decision-making.

2.3.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

2.3.4 **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of your Disclosable Pecuniary Interests.

Part 3: Disclosable Pecuniary Interests⁵

Introduction

3.1 A disclosable pecuniary interest is an interest falling within the Schedule set out at Paragraph 3 below of:

3.1.1 Yourself; or

3.1.2 Your spouse or civil partner, or someone you are living with as if you were husband and wife or civil partners, where you are aware that that other person has the interest.

Interpretation

3.2 In the Schedule set out below, the following words or expressions mean as follows:

3.2.1 'the Act' means the Localism Act 2011;

3.2.2 'body in which the relevant person has a beneficial interest' means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

3.2.3 'director' includes a member of the committee of management of an industrial and provident society;

3.2.4 'land' excludes an easement, servitude, interest or right in or over

⁴ Such resources could be used "improperly" as noted in the Electronic Communications Policy, but also improperly for political purposes, such as TVBC email addresses being utilised by Members during election campaigns.

⁵ Whilst the explanation of Disclosable Pecuniary Interests is not incorrect, the style of presentation by which it has been attempted to weave together both DPIs and "Code of Conduct Interest" and all that follows, makes for difficult reading and accurate interpretation. It is proposed to adopt the clearer, rather more coherent style which is consistent with the presentation of the HIOWLA pan-Hampshire Code and upon which all Authorities were consulted.

land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

- 3.2.5 'M' means a member of a relevant authority;
- 3.2.6 'member' includes a co-opted member;
- 3.2.7 'relevant authority' means the Council of which M is a member;
- 3.2.8 'relevant period' means the period of 12 months ending with the day on which M gives a notification for the purposes of Section 30(1) or Section 31(7), as the case may be, of the Act;
- 3.2.9 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (2000 c. 8) and other securities of any description, other than money deposited with a building society.

Schedule of Disclosable Pecuniary Interests

Subject	Prescribed description
Employment, office, trade profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 (1992 c. 52).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

<p>Corporate tenancies</p>	<p>Any tenancy where (to M's knowledge):</p> <ul style="list-style-type: none">(a) the landlord is the relevant authority; and(b) the tenant is a body in which the relevant person has a beneficial interest.
<p>Securities</p>	<p>Any beneficial interest in securities of a body where:</p> <ul style="list-style-type: none">(a) that body (to M's knowledge) has a place of business or land in the the area of the relevant authority; and(b) either:<ul style="list-style-type: none">(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

Part 4: Registration and Disclosure of Disclosable Pecuniary Interests

Obligations

4.1. You must, within 28 days of taking office as a Member or Co-opted Member of the Council, notify the Council's Monitoring Officer of any disclosable pecuniary interests as defined by regulations made by the Secretary of State (as set out at Part 3 of this Code), where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

4.2. You must also, within 28 days of becoming aware of any new disclosable pecuniary interest, or change thereto, notify the Council's Monitoring Officer of such new or changed interest.

4.3. If you have a disclosable pecuniary interest included on the Register of Members' Interests in any matter to be considered⁶ at any meeting of the Council, its Cabinet or Committees, at which you are present (even though you are not a member of the committee and are seated with the public)⁷, you⁸ must disclose that interest. Such an interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. You do not need to disclose details of the interest itself⁹. Or (as the current Code says...) You must disclose

⁶ The HIOWLA/HCC Code appears to overlook any need for there to be some relevance of the dpi to the business in hand.

⁷ The Localism Act requires such declarations whenever the Member is "present" at a "meeting" of the council. Being "present" is interpreted as being within the room in other contexts, such as when we consider disqualification of Members for failure to attend the requisite number of meetings (s.85 of the Local Government Act 1972). Further, it is long established that a Member may be influential when merely an observer and to that end Members have under the previous Model Code and now under the Act, been required to leave the meeting room where they have a pecuniary interest. Whilst those who drafted the statute might have intended "present" to refer to being an active participant, that is not what the Act says and so I have not followed the County's interpretation which requires "participation" before an interest must be declared.

⁸ In order to avoid the occasional difficulties with making such declarations and those declarations relating to "personal interests" (see below), officers propose that Members complete a simple form, seeking assistance of officers if required, which is read out by the committee administrator. The form would cover not only DPIs but also personal interests, such as membership of charities and the nature of relationships with applicants for planning permission.

⁹ The current Code of Conduct requires that both the "existence and nature" of the interest is disclosed at the meeting. That provision exceeds what is required by law

the existence and nature of that interest to the meeting.

4.4. If a disclosable pecuniary interest has not been entered onto the Council's Register of Interests, then you must also disclose the interest to any meeting of the Council, its Committees or the Cabinet at which you are present where you have such an interest in any matter being considered. Such an interest should be disclosed at the commencement of consideration of the business or when the interest becomes apparent. You should disclose the existence and the nature of the interest to the meeting¹⁰. Following disclosure of a disclosable pecuniary interest not on the Council's Register or the

where the interest is recorded in the Member's Register of Interests, in which case only the existence of the interest need be declared. Neither is it clear whether a declaration of a dpi which has not been registered must necessarily include an explanation of the nature of the interest. In view of the overarching requirement that there shall be transparency in all Members do, guidance from Members is sought as to whether any further detail need be given to the meeting where the nature of that dpi is already recorded in the Register. Members have a choice: by law they are not required to disclose the nature of their interest, only the existence.

¹⁰ See fng . The words "existence and nature" are taken from Para 5 a of the current Code. Remember, in these circumstances the Member's interest has not been made public by entry on to the Register (which may in itself constitute a breach of the Code), so the first the public know of any relevant dpi is in the meeting. Would it be enough to simply declare a dpi without any explanation? To what extent would that provide for transparency and openness for the public? Without being able to refer to the Register, would a bald declaration simply raise more questions?

subject of pending notification, you must notify the Monitoring Officer of such interest within 28 days, beginning with the date of disclosure.

4.5. Unless a dispensation has been granted in respect of a matter in which you have a disclosable pecuniary interest, you may not:

4.5.1. participate in any discussion related to that matter,

4.5.2. vote on that matter

4.5.3. discharge any function related to that matter

4.6. As soon as it becomes apparent that you have such an interest you must withdraw from the room where the meeting considering the business is being held, and must not seek improperly to influence a decision about that business.

4.7. If acting as a single Portfolio Holder you may not take any further steps in relation to the matter other than for the purpose of arranging for the matter to be dealt with otherwise than by yourself.¹¹

Part 5: Personal Interests¹²

¹¹ The County permit Members who have declared a dpi to speak at a meeting in circumstances where the general public are permitted to speak. That is not what the legislation says. Neither does it reflect the Court's judgement albeit regarding the Model Code, but which nonetheless found the balance to weigh against the assertion of rights of a member as a private individual, in favour of the importance of maintaining high standards of conduct in public office.

¹² Counsel (advising in the context of Member interests and the Local plan) was critical of the "Code of Conduct Interests" which appeared to render all of our Members vulnerable and which arguably provided for even the slightest "affect" – being no more or less than experienced by the population of the ward or borough generally- to constitute an interest and so disentitle Members from voting. More frequently, Members are baffled by the apparent absence of any means to declare some association or "interest" arising from membership of charities or other organisations, whether as Council appointees, or in their private capacity. The discussions of the HIOWLA group led to the drafting of provisions to cover those interests which were not dpis, and which interests were termed "personal interests". Personal interests cover both pecuniary and non-pecuniary interests which are not dpis. The HIOWLA group noted: *"The Localism Act reduced the scope of interests legally required to be registered and disclosed, leaving the making of additional provision to local discretion. There is a feeling that some disclosure of personal interests remains appropriate in the handling of certain potentially sensitive types of business (e.g. planning applications, the award of grants and contracts), where reliance solely on the rules relating to DPis would not afford a sufficient level of transparency."*

5.1 You have a “personal interest” in an item of business where it relates to or is likely to affect any of the following bodies of which you are a member: a public or charitable body, any body to which the Member has been appointed by the authority, any political party, trade union or other body one of whose principal purposes is to influence public opinion or policy.

5.2 You also have a “personal interest” (but which is not a disclosable pecuniary interest)¹³ in an item of business or decision affecting the well being or financial position of:

- a member of the your family, or their close associates or close friends;

- your close associates¹⁴;

where the affect upon them might reasonably be regarded as greater than that on other council tax payers, ratepayers or inhabitants of the authority’s area¹⁵.

5.3 Where you believe you have a “personal interest” under 5.1 or 5.2 you should also consider whether a reasonable person might think that your personal interest is so significant that it would impair your ability to judge the public interest. You should seek the advice of the Monitoring Officer in these circumstances before participating in the meeting or business of the Council.

5.4 Where you have¹⁶ a “personal interest” in any business of the Council you shall disclose that interest at any meeting of the authority, committee or sub-

¹³ The HIOWLA draft includes “well being or financial position” of the Member. Certainly the “financial position” of a Member would constitute a “disclosable pecuniary interest”, and “well being” is usually difficult to distinguish from the financial interest which underpins it, and so for that reason would put Members in a potentially vulnerable position were they to be challenged for failing to declare a dpi. Consequently I have excluded Members interests where they would, or might arguably, constitute dpis.

¹⁴ This is an option for Members to consider. The current Code doesn’t include close friends of your family members, only close friends of the member. “Close associate” means someone who you would be likely to favour/disfavour because of that relationship, not merely “close friends”. It is wider than close friend and goes to addressing allegations of bias. Could you reach an impartial judgement in respect of someone with whom there was some dispute or enmity?

¹⁵ The qualification included in this paragraph – “ more than...”- is one which I raised with Counsel and which Counsel opined could not be implied into our Code of Conduct Interest, and which consequently left all Members vulnerable to the unrestricted interpretation of “affect” with regard to any and all business of the Council.

¹⁶ I would propose that we provide Members with a form on which they note their interest, and which the committee admin officer then reads out to the meeting.

committee, where you consider that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting. The requirement to declare a personal interest only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

5.5 Disclosure of a personal interest does not affect your ability to participate in a discussion or vote on the relevant item.

5.6 Where you have a personal interest, if you consider, having taken advice, that you should not participate in the business being considered, you should leave the room where the business is being considered after exercising any right to speak which a member of the public would have (and subject to complying with any such requirements as to registration)¹⁷

Part 6: Sensitive Interests¹⁸

6.1 These are interests where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation.

6.2 A sensitive disclosable pecuniary interest or a change to such an interest must be notified to the Monitoring officer.

6.3 If the Monitoring Officer agrees, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest which shall be recorded as withheld under Section 32(2) of the Localism Act 2011.

6.4 The requirement to declare such an interest at meetings shall be discharged simply by stating that you have a disclosable pecuniary interest or a personal interest in the matter concerned. You are not required to disclose the detail of the interest.

Part 7: Offences

It is a criminal offence to

¹⁷ This paragraph really addresses the possibility of “bias”: would the personal interest lead a reasonable person to consider that there was a real risk of bias? If so, the Member should seek advice and should withdraw, save that the Member can speak as a member of the public provided s/he completes the requisite registration procedure. “Bias” is truly a legal argument for a court by way of judicial review and to which the code and the complaints process are unsuited as a means of adjudication.

¹⁸ We didn’t say in the last Code what a Member should do with a “sensitive interest”.

- a. fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election.
- b. fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register.
- c. fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting.
- d. participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest.
- e. as an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- f. knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.