

APPENDIX 1

COUNCIL CONSTITUTION PARTS 6 & 7

This appendix covers Parts 6 and 7 of the Royal Borough of Windsor & Maidenhead's 'Council Constitution' as it relates to the role of Scheme Manager and Administering Authority to the Royal County of Berkshire Pension Fund. Part 6 (Section D) of the Constitution, sets out the terms of reference for the Pension Fund Panel, Pension Fund Advisory Panel and Pension Board. Part 7 (Section A) sets out the code of conduct for members of the Pension Fund Panel and Pension Fund Advisory Panel.

The code of conduct for members of the Pension Board is dealt with in Appendix 2.

PART 6 – Terms of reference of all other committees, panels and other bodies of the Council

SECTION D1 – BERKSHIRE PENSION FUND PANEL

D1.1 Purpose

To exercise the general powers and duties of an Administering Authority in the maintenance of such Superannuation funds as may be required in accordance with the Superannuation Act 1972 and Regulations existing under that Act including, but not restricted to the following:

- i) Determination of the investment policies of the Administering Authority in the light of professional officer advice and other suitably qualified independent advice, legislative constraints and Codes of Practice;
- ii) Responsibility for the administration of all superannuation funds maintained by the Administering Authority and including, specifically, custodianship arrangements;
- iii) The appointment of External Fund Managers;
- iv) Determination of the arrangements for obtaining appropriate investment advice including the appointment of a suitably qualified independent person or persons to give expert advice on superannuation fund investment and management arrangements;
- v) The periodic review and monitoring of the Funds' investment performance;
- vi) Determination of applications for admitted body status in accordance with the appropriate legislative provisions;
- vii) To consider the Annual Report on the Fund.

D1.2 Membership

5 RBWM Councillors.

N.B. A Cabinet member may be a member of the Berkshire Pension Fund Panel and of the Berkshire Pension Fund Advisory Panel.

D1.3 Quorum

2 RBWM Councillors.

D1.4 Frequency

Quarterly

SECTION D2 - BERKSHIRE PENSION FUND ADVISORY PANEL

D2.1 Purpose

To consider and make recommendations to the Berkshire Pension Fund Panel on investment and actuarial issues relating to the Fund as follows:

- i) The investment policies of the Administering Authority, in the light of professional officer advice and other suitable qualified independent advice, legislative constraints and Codes of Practice;
- ii) The administration of all superannuation funds maintained by the Administering Authority, including specifically, custodianship arrangements;
- iii) The appointment of External Fund Managers;
- iv) The arrangement of obtaining appropriate investment advice, including the appointment of suitably qualified person or persons to give expert advice on Superannuation fund investment and management arrangements;
- v) The periodic review and monitoring of the Fund's investment performance;
- vi) The Annual Report on the Fund.

D2.2 Membership

16 comprising the five Members of the Pension Panel and one elected representative from each of Reading Borough Council, Slough Borough Council, West Berkshire Council Bracknell Forest Council and Wokingham Borough Council, two trade union representatives, two representatives from employer bodies with the Fund as selected by the Pension Panel after consultation with the Advisory Panel, one member drawn from the active membership and one member drawn from the deferred/pensioner membership.

D2.3 Quorum

4 members

D2.4 Frequency

As per the Pension Fund Panel schedule.

SECTION D9 – LOCAL PENSION BOARD

D9.1 Purpose

To assist the administering authority of The Royal County of Berkshire Pension Fund in securing compliance with the Local Government Pension Scheme Regulations, any other legislation relating to governance and administration of the Scheme and the requirements imposed by The Pensions Regulator including but not limited to:

- i) Challenge any failure to comply with the Scheme rules and associated legislation and any failure to meet the requirements and expectations of the Pensions Regulator;
- ii) Challenge any advice and guidance provided and to understand how that advice and guidance impacts on any decision for which the Pension Board is legally responsible;

- iii) Monitor levels of performance of the administering authority and Scheme employers, review notices of unsatisfactory performance and determine what, if any, costs should be recovered by the Pension Fund where a failure to meet certain levels of performance have not been met;
- iv) Report breaches of the law to the Pensions Regulator where there is a reasonable cause to believe that a legal duty, which is relevant to the administration of the Scheme, has not been, or is not being, complied with as a result of which there is a likely material significance to the Pensions Regulator;
- v) Determine under what circumstances Scheme employers should be reported to the Pensions Regulator;
- vi) Keep under review the administering authority's communication policy with regard to Pension Scheme stakeholders;

D9.2 Membership

- Independent Chair
- 3 Employer Representatives
- 3 Scheme Member Representatives

N.B. A Member of the Berkshire Pension Fund Panel or Berkshire Pension Fund Advisory Panel is not eligible for membership of the Pension Board neither are Royal Borough Officers who are involved with the administration or management of the Pension Fund.

D9.3 Quorum

4 Members

D9.4 Frequency

Not less than bi-annually

PART 7 – THE CODES, PROTOCOLS AND ADVICE

SECTION A – MEMBERS' CODE OF CONDUCT

Royal Borough of Windsor & Maidenhead Code of Conduct

Conduct expected of members and co-opted members of the authority when acting in that capacity.

You, as a member of the Royal Borough of Windsor & Maidenhead shall have regard to the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

When acting in your capacity as a Member of co-opted Member:

- i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate;

- ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
- iii) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards and benefits, on merit;
- iv) You are accountable for your decisions to the public and must co-operate fully with whatever scrutiny is appropriate to your office;
- v) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions;
- vi) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the points below.
- vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

This Code of Conduct is supplemented by the provisions of Appendix 1 to 5.

Appendix 1 – Registering and declaring pecuniary and personal interests (s.30 Localism Act 2011)

You must, within 28 days of taking office as a Member or co-opted Member, notify your authority's Monitoring Officer of any disclosable pecuniary interest ('DPIs') as defined by regulations made by the Secretary of State, 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. The definition of DPIs is in Appendix 5.

In addition, you must, within 28 days of taking office as a Member or co-opted Member, notify your authority's Monitoring Officer of any Personal Interest as defined in Appendix 5.

If any DPI OR Personal Interest has not been entered onto the authority's Register of Interests, then the Member must disclose the interest to any meeting of the authority at which they are present, where they have an interest in any matter being considered and where the matter is not a Sensitive Interest as defined in Appendix 5.

Following disclosure of any interest not on the authority's Register of Interest or the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure in order that it may be placed on the Register of Interests.

You must, within 28 days of receipt, notifying the Monitoring Officer, in writing, of any gift, benefit or hospitality, with a value in excess of £25, which will then be entered on the public register of gifts and hospitality.

A copy of the register will be available for public inspection and will be published on the authority's website.

Appendix 2 - Disclosure of interests and participation in meetings (s.31 Localism Act 2011)

Disclosure at meetings

You are required to disclose interests at meetings when you are aware that you have either:

- (a) A DPI or a Personal Interest which is relevant to the matter being considered; or
- (b) A Personal Interest or a DPI which is not on your Register of Interests.

You are not required to (but can do so if you wish) disclose any other type of interest that you may have. If in doubt, it is always better to disclose an interest than not do so as the Council places a high value upon its public reputation for integrity.

Participation for Decision makers at Meetings

If you attend a meeting as a decision maker and have:

- (a) DPI which is relevant to the matter under discussion; or
- (b) A Prejudicial Interest,

then you must not participate in any debate of the matter and/or participate in any vote at the meeting, unless you have obtained a Dispensation.

Please see Appendix 5 for guidance on these terms. Appendix 3 states how you can obtain a Dispensation.

If you have a DPI or Prejudicial Interest (and do not have a Dispensation) as described then you must:

- (a) Declare the interest at the start of the meeting when the Chairman asks if there are any interests to declare; and
- (b) Before the item is to be discussed, you may make representations before there is a debate on the matter but, when finished, you must move to the public area or leave the room and take no further part in the discussion or vote.

You cannot avoid disclosure of a DPI or Prejudicial Interest merely by withdrawing during that part of the meeting when the matter you have a DPI or Prejudicial Interest, is to be discussed. In respect of a DPI, failure to comply is a Criminal Offence.

If you remain in the room, you must not sit with the other members of the meeting and must move to the public area. You must not speak after making your representations. It is also important that you do not express your views in a non-verbal way, for example by using body language or expressing emotion.

Appendix 3 – How to obtain a Dispensation

If you seek a Dispensation, you must make a written request to the Relevant Officer of the Council.

The Council may grant a dispensation under this section only if, after having regard to all relevant circumstances, the authority:

- (a) considers that without the dispensation the number of persons from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of business;
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;
- (c) considers that granting the dispensation is in the interests of persons living in the Royal Borough of Windsor & Maidenhead;
- (d) if it is an Authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive; or
- (e) considers that it is otherwise appropriate to grant a dispensation.

A dispensation under this section must specify the period for which it has effect and the period specified may not exceed four years.

The Relevant Officer is the Managing Director or in substitute the officer clerking the meeting.

Appendix 4 – Arrangements for dealing with breaches of the Code of Conduct

Complaints in respect of this Code are made to the Managing Director.

When a complainant makes a complaint they will receive:

- An acknowledgement within 3 working days;
- A response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution.

When a complaint is made against you, you will be provided with a copy of the complaint and will be requested to provide your initial views and comments on the allegations. The Managing Director will consider this before making any decision whether to investigate the complaint.

The Council's arrangements for dealing with the breach will be determined by the Managing Director and will be proportionate to the complaint and will be timely and effective.

When a complaint is received, the Managing Director will decide on whether a complaint against you requires formal investigation or any other action, in consultation with the Independent Person, as appropriate.

If the Managing Director feels that it is inappropriate to take a decision on a complaint, the Managing Director will refer the particular complaint to a nominee. You are requested to communicate with any nominee on the facts under investigation.

The Managing Director must consult the Independent Person before making a decision on an allegation that the Managing Director has decided required investigation.

The Managing Director will inform you and the complainant of the decision in relation to the complaint.

Support to Members during an Investigation

The Council will support you during the complaint investigation process:

- (a) **Independent Person:** You can seek views of the second Independent Person (not the Independent Person who is consulted by the Managing Director) on the complaint;
- (b) **Legal Support:** The Council will provide financial support to allow you to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct.

Any criminal acts must occur in the course of your duties as a Councillor. You must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. You will be required to immediately repay back all monies to the Council if you are convicted of a criminal offence or have failed to comply with the Code of Conduct.

Appeals

You have no right of appeal under the Code and the decision of the Managing Director will be final. However, you will have an option after the decision has been made to make any further statement that you wish on the complaint and the findings.

This further statement shall be published on the Council's website for the period stated in Transparency below.

If the complainant is unhappy with this decision, there is no further right of appeal to the Council. They may write to the Local Government Ombudsman as they deem appropriate.

The Local Government Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

Transparency

The decision of the Managing Director will be sent to you and the complainant and also published on the Council's website for the following period:

- (a) No Breach of Code – 3 months
- (b) Breach of Code – 24 months (or when you are no longer a Member of the Council, if earlier).

Unless the Managing Director determines, only the decision notice and your statement will be published on the website.

Appendix 5 – Definitions used in the Code of Conduct

Criminal Offence (s.34 Localism Act 2011)

It is a criminal offence if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 of the Localism Act 2011 to register or declare DPs, or take part in council business at meetings or when acting alone.

If you breach the above, the Magistrates Court may, upon conviction, impose a fine of up to level 5 (currently £5,000.00) and an order disqualifying the person from being a Member of a relevant authority for up to five years.

The Council would consider that taking legal advice from the Monitoring Officer or their nominee (even if such advice was not upheld) would amount to 'reasonable excuse' for the purposes of s34(1) of the Act.

Disclosable Pecuniary Interests (DPs)

Interests defined by regulations made under s30(3) of the Localism Act 2011 and described in the table below.

('M' means you and 'relevant person' means you and your partner) "Partner means a spouse or civil partner of M, or a person with whom M is living as husband or wife or a person with whom M is living as if they were civil partners.

Subject	Prescribed description
Employment, office, trade, profession or vocation	Any employment, office, trade profession or vocation carried out 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 (Consolidation) Act 1992.
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 license (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge): a) The landlord is the relevant authority; and b) The tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where: a) That body (to M's knowledge) has a place of business or land in the area of the relevant authority; and b) Either:

	<p>i) The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>ii) If the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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These descriptions on Disclosable Pecuniary Interests above are subject to the following definitions:

The Act	means the Localism Act 2011
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.
Director	includes a member of the committee of management of an industrial and provident society.
Land	excludes an easement, servitude, interest or right in or over 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.
M	Means a member of relevant authority.
Member	includes a co-opted member
Relevant authority	means the authority of which you are a member.
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) of the Act.
Relevant person	means M or any other person referred to in section 30(3)(b) of the Act.
Securities	means share, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Independent Person

The Independent Person is the person engaged by the Council who:

- must be consulted by the Managing Director before making a decision on an allegation that the Managing Director has decided should be formally investigated;
- may be consulted by the Managing Director in respect of a complaint at any other stage;
- may provide views to a Member or co-opted Member if that Member's behaviour is the subject of an allegation;
- may assist in granting dispensations to Members and co-opted Members from requirements relating to interests set out in the Code of Conduct;
- will exercise all of the above functions in respect of Parish Councils and members of those Parish Councils within the Council.

Personal Interests

A Personal Interest is:

- i) any body of which you are in a position of general control or management and to which you are elected appointed or nominated by the Council;
- ii) any body
 - exercising functions of a public nature; or
 - in receipt of any grant from the Council; or
 - directed to charitable purposes; or
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or have a close association or of which you are in a position of general control, influence of management;
- iii) membership of any private club, society or association operating within the Borough Council's area, where you hold a position of general control or management;
- iv) any other connection or association which a member of the public may reasonably think may influence you when you make a decision on Council matters and acting as a Councillor e.g. the decision relates to a close family member of friend and could have a substantial benefit to them.

You are not required to record any Personal Interest in point (iv) above on your Register of Interests (but may do so if you wish).

Predetermination

Predetermination means that you have a closed mind and do not make a decision impartially and solely on the basis of the relevant facts. You have not predetermined a matter just because you have expressed a particular opinion previously or hold a view prior to any meeting. It is proper for Councillors to play an active part in local discussions and the expression of a view on a particular matter or campaigning on a particular platform should not prevent you from participating in council business relating to such an issue. If you have an open mind, are willing to listen and are open to consider all the facts and arguments presented to you before making your decision, then you will not have predetermined a matter.

Predetermination should not be confused with Predisposition.

Predisposition

Any decision maker may have an initial view or opinion on a matter arising from personal experiences and preference. Simply holding an initial view or tendency in favour of a particular cause or matter does not preclude you from decision making. This is natural bearing in mind that Councillors are often elected upon their stated views and opinions. Having a strong view on a matter will amount to only legitimate predisposition.

Prejudicial Interest

This is Personal Interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it influences your judgement of the public interest. That is, your decision is influenced by your Personal Interest such that you are not able to impartially consider only relevant issues (you are biased). This would include where you have Predetermined a matter.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your Personal Interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections with the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Sensitive Interest

A Sensitive Interest occurs where you and the Monitoring Officer consider that disclosure of the details of a DPI or a Personal Interest could lead to you, or a person connected with you, being subject to violence or intimidation. If the interest is entered on the register, copies of the register will exclude details of the interest, but may state that you have a DPI or Personal Interest and that the details are withheld under Section 3(2).

