NORTH HERTFORDSHIRE DISTRICT COUNCIL

MANAGING ORGANISATIONAL CONFLICTS IN COUNCIL ROLES & DUTIES

1. **Introduction:**

1.1 This Guidance deals with situations where the various services/ or projects within the Council can come into conflict (due to their organisational duties, interests or obligations).

1.2 As the National Audit Office identified in its report on 'Conflicts of Interest'[1] "***often the perception of a conflict is enough to cause concern..***" (to Officers, Members and public alike), as it can create uncertainty on which interest prevails and can undermine public confidence that principles of public life – such as integrity, objectivity and openness are being followed. It can lead to damage to the reputation of an individual Member or Officer, or the Council. If these conflicts are not recognised and dealt with effectively, it will damage the decision-making process and possibly lead to complaints, disruption or legal challenges (and if successful, potentially damages/ and or costs being paid and decisions overturned).

1.3 Having an organisational conflict is not always avoidable nor does it mean that the Council, the relevant Officer or Member has done anything wrong. However, once identified, the conflicting duty/ interest must be managed. The aim of this Guidance is therefore to provide a helpful framework for how this can be achieved through an Identify, Discuss it, Deal with it and Document process. This is set out in more detail below.

2. **IDENTIFY it and the risks of failing to identify conflicts/ potential conflicts:**

2.1 Conflicts occur where the Council has multiple roles or interests which affect the Council's ability or perceived ability to come to an independent decision.

2.2 As the Council's decisions and services are undertaken by Members or Officers, the conflicts can be:
- personal versus work (which are dealt with separately under the "Code of Conduct for Members" or "Employee Conflicts of Interest Policy" respectively);
- (*thankfully reportedly rare*[2]) where corruption or bribery plays a part; or
- where the Council has one organisational function – and the aims/ legal obligations or duties conflict with another.

There may be a cross over of issues, but this Guidance deals with the last point and aims to raise awareness of general service/ project conflicts. It does not duplicate the Member Code / Employee Conflicts of Interest Policy; nor is it geared towards identifying personal conflicts of interest or the intentional misuse of public funds or assets (as the Council has other anti-fraud / corruption policies in place to cover that activity).

2.3 Conflicting roles and/ or duties may be less obvious and some examples (between or within teams or projects) are set out below that may assist Officers or Members to identify issues in future:

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[1] National Audit Office, Report of the Comptroller and Auditor General, Cross-government "Conflicts of interest" 27 January 2015
[2] See Transparency International UK Corruption in the UK October 2013.

- **Trusts/ corporate body:** Where the Council has an arms length Company or Trust and the interests of that Trust or body conflict with the aims or interest of the Council (e.g. the Trust requires grant funding for a project and seek this funding from the Council). A senior Officer or Member may be a Trustee or Director and their legal fiduciary duty to that body may compete with their duty to the Council or residents within the District.

- **Land:** As a result of the Council owning land that they want to develop. A decision will be made by one arm of the Council to develop the land and an application will have to be made to itself as the Local Planning Authority (LPA) for planning permission. The strategic decision may conflict with the statutory role that the LPA Officers have to undertake when assessing the application.

- **Partnership:** Where the Council is working in partnership with other bodies (for example other local authorities). The Council may have shared service arrangements within the partnership. Each body will have their own interests to protect and will be competing for use of resources, trying to influence it for the benefit of their body whilst potentially affecting/ damaging the aim of the Partnership. Transferred/ joint staff may have conflicting demands placed upon them.

- **Transferring, right to challenge or procuring services:** If/ when the Council receives a community right to challenge request to transfer a service – and that service area is obliged to provide information to the relevant body/ persons requesting the transfer, then there are conflicting issues for dealing with this and being seen as objective. It could be an application to list Council property or land as an Asset of Community Value, thereby potentially affecting its value and sale options – and the conflict of having to consider that request, whilst the Council has the responsibility for maximising the use or price obtained for that asset. It could be contracting a service – and trying to obtain the cheapest bid, and potentially compromising on the service that is to be provided.

- **Regulatory arm of the Council policing its services:** This could occur when one arm of the Council deals with, for example a Leisure pool and following an accident, an investigation is required by the Council's Officers into the alleged breaches of Health and Safety. It could be licensing activities that the Council wishes to run.

2.4 *This is not a comprehensive list* and if Members or Officers are unsure they should seek advice – as the consequences of not identifying (and then discussing and dealing with the issue) can be a significant risk to the Council, of being seen to have: - prejudged, be biased or unreasonable - subject to challenge by way of complaints, avenues of appeal or court proceedings. The higher end of legal challenge will have an impact on resources (Member and Officer time) and if successful may also lead to costs and damages against the Council, and/ or an overturned decision.

3. **So DISCUSS IT:**
3.1 If a member of staff is concerned about a potential organisational conflict, then it should be discussed with an employee's line Manager and in the case of a new project, should be part of the initial project assessment (see 3.6 below).

3.2   The line Manager will try to resolve any concerns through informal resolution if possible.

3.3   If this is a conflict in what organisational areas/ projects a Member is covering then the Member can and is encouraged to discuss this issue directly with the Monitoring Officer or Lead Officer for the project, or senior Manager for the service concerned.

3.4   If these concerns cannot be alleviated and it is **appropriate** (in terms of ongoing risk to the Officer, Council or Member), then the discussion should progress to the next phase.

3.5   In that case SMART[3] **proportionate** mitigation measures that are suitable for the size of the task and the potential risk to the Council, should be agreed (i.e. see "**Deal with it**" options below). ***This does not mean all of the measures under 4.1, just what is appropriate.***

3.6   As indicated, if this is a project-based issue, then consideration should be given as to whether any conflicts will arise – before a project[4] is commenced as part of the   project mandate/ Business case evaluation *or in any event, as soon as the risk is identified*. This assessment should record whether there is a perceived conflict as a project risk and if significant (i.e. a score of 7 and above is recorded on the risk assessment), then the Risk Manager should then be notified and measures considered/ implemented to mitigate the risk confirmed (i.e. using some of the measures below set out under "**Deal with it"**).

3.7   If the Manager or Member would like the Monitoring Officer or Risk Managers' in-put into the agreed measures, they should seek their advice as soon as possible.

4.   (If applicable) DEAL WITH IT:
4.1   Organisational conflicts can be managed through various mitigation tools. This approach is unlikely to eliminate all problems and risk, but it should minimise them. They include internal controls and (where significant may include) independent oversight such as:

- **General awareness, communication and training:** Ensure that all individuals in the conflicting areas within the Council are aware of the rules concerning the organisational conflict and confidentiality. Consider issuing project specific guidelines/ or advice.

- **A central role for the Monitoring Officer and Risk Manager** in implementation and interpretation of conflicts and this Guidance. If required their early involvement in a potential service issue or project conflict will reduce or remove undesirable outcomes. *Whilst not purely related to organisational risk*, it is worth remembering that projects or issues with a significant risk rating will be put on the Covalent system. Quarterly updates of the top risks are provided to Senior Management and Members. Heads of Service and Corporate Managers will also be asked to confirm whether any organisational conflicts have been identified during the preceding year (and how these have been managed) as part of the Annual Assurance Statement provided to the Risk Manager. These last two processes will assist with measuring and monitoring organisational conflicts.

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[3] Specific, measurable, attainable, realistic and timely.
[4] As per the Project Categorisation Scoring Template

- **An Information Barrier**: There are various other terms for this, such as an Ethical or Chinese Wall, but in practice it is a term that covers arrangements to prevent inadvertent spread of confidential information between conflicted parties, such as:

  - **Supervision**: On the Council employee side, where an Officer and his/her line Manager are on different sides of an organisational conflict, consideration should be given to identifying another line Manager for the conflicting role/ project. This could either be supervision limited to the affected decision / project, or supervision of the Officer's whole role. Consideration has to be given to the long term implications of an Officer's involvement on one side of the Barrier and potential limitations on future activities.

  - **Location of staff**: It may be necessary to locate Officers from different sides of the organisational conflict to different locations, in order to ensure that information is not accidentally shared; for example by overhearing a telephone conversation, or seeing correspondence or files. This may (very rarely) include measures to log or restrict movements of individuals, for example, by security passwords for entry into restricted access areas.

  - **Communication:** Limits may be placed on the style of communication between different parties – specifically if information is confidential. For example:
    - ✓ requiring all communication to be in writing, and/ or
    - ✓ any verbal communication to be confirmed in writing, and/ or
    - ✓ any verbal communication to be limited to formal meetings, and/ or
    - ✓ records of all communication to be kept on file.

  That does not mean Officers or Members cannot provide basic information or deal with simple queries or related issue. The key point will be acting professionally and ensuring that confidential information is not disclosed.

  If it is unclear whether something is confidential or not, it will be a matter for the Lead Officer, and if still unsure then this can be discussed with the Monitoring Officer. Information may be confidential for a number of reasons. The Council legally refers to this (in the context of Council meetings) as "exempt" information – and that covers information that may, for example, be commercially sensitive, or contains sensitive personal data. It may not *always* be confidential – for example commercial pricing or valuations are time critical issues – which a few years later are unlikely to be sensitive. Therefore, measures put in place at one stage may not always be appropriate.

  As the Council is a public body it will be subject to the various information regimes (Freedom of Information/ Environmental Information Regulations or Data Protection), so requests may still be made to one side or another and have to be dealt with under those mechanisms if requests are made. However, as a more general rule, if information on one project/ role is confidential –then an Officer or Member should not disclose it or take improper advantage of it without due legal cause. Disclosing confidential Council information in one role to another may be a breach of the Members Code of Conduct or Employees Conflict of Interest Policy. Disclosing

confidential information about, for example, an outside body that an Officer or Member sits on, may be an actionable breach of the duties s/he owes to that body. *Therefore if unsure, seek advice.*

- **Meetings:** If held between Officer(s) and Member(s) on the same side of a conflicting project or role, then they should be held in meeting rooms, to ensure they are not accidentally overheard. Meetings held between Officer(s) and Member(s) on different sides of the organisational conflict, should be minuted and content agreed by all those present.

- **IT Systems:**
  ✓ All files, correspondence and documents stored electronically should be password protected and/or access limited through systems access control. This includes email folders, case management systems (Information@Work) and the Service/ or group folders.
  ✓ The data should be stored in folders where access is only available to those entitled to view the data. If necessary, a request may need to be made to IT to set up a new folder or restrict access. As a general rule emails are only accessible by the owner of the email account unless they give proxy rights to someone else – and parties should be conscious of this and not allow inappropriate proxy delegations.

  NB Under the Information Security Policy authorised IT officers may monitor, intercept, access, inspect, record and disclose telephone call records, emails, internet/intranet use and any other electronic communications (data, voice or image) involving its employees or contractors, without consent, for legal compliance and business purposes. ***Notification should be given to IT if such access needs to be limited to an agreed IT individual for a particular project.***

- **Paper/ Files**:
  ✓ All sensitive or confidential information should be stored in a lockable cabinet, or if absolutely necessary, a physically separate location.
  ✓ All physical files should be clearly marked on the cover to show that they relate to a particular project and are restricted to those Officers/ Members working on that project or in that role.
  ✓ Instructions may need to be given on scanning (into Information@Work) and disseminating correspondence received externally by one party or another.

- **Use of Professional (external/ independent) advisors:** Where both sides of an organisational conflict require independent advice on the same subject it may be necessary to use external advisors (if the Council does not have two Officers of the equivalent expertise). In certain circumstances it may be appropriate to jointly instruct an independent advisor (whether internal or external advisor). Records should be kept of those who have provided advice and for which side of the Barrier.

- **Crossing the divide:** In exceptional circumstances it may be possible for an Officer or Member to cross the divide. This will be considered on a case by case and if this takes place the reasons should be clear and documented.

- **Training:** This may duplicate general awareness, but specifically affected Officers and Members should be briefed on the safeguards put in place on a project and provided with a written procedure summary. They should sign any record to show they have attended such briefing sessions.

- **Internal and external auditing arrangement:** Including a review of key projects and issues through the Shared Internal Audit Service –"SIAS" or the Shared Anti-Fraud & Finance Service "SAFS" (that may be identified on the Internal Audit Forward Plan), may help to review the organisational conflict arrangements and their success. External oversight of arrangements can give independent assurance that conflicts are suitably managed and arrangements for detecting breaches by external audit as part of the Annual Governance Review may be appropriate (for key/ large projects or systematic or re-occurring problems). If there are reoccurring problems it may be sensible to highlight this issue to the Chief Finance Officer for Annual Governance Review purposes.

- **Reporting systems**: Reports can be made to the Monitoring Officer or via the confidential Whistleblowing procedure or to the auditor. Such arrangements are already maintained and can be used to anonymously raise potential failures to follow agreed organisational conflict arrangements, this Guidance or other breaches of relevant policy. Additionally, as set out under 4.1 above, general organisational conflicts will be monitored via the Annual Assurance Statement route.

- **Sanctions for non-compliance**:
  - *Whilst there is no specific sanction for failing to follow this Guidance*, on a general level Officers and Members should be mindful that if there is a failure to abide by the procedures that have been agreed with the Line Manager or project Lead (to deal with the organisational conflict), that this could, **in serious situations**, result in disciplinary action, or dismissal for Officers (under and in accordance with the Council's normal employment policies); for Members, it could include a complaint, investigation and sanction for breaching the Member Code of Conduct.

    Note that in some situations, it could result in relevant authorities considering a referral of concerns to the police.

  - For the service/ project – be aware that if the Monitoring Officer (in consultation with the Chief Finance Officer and Chief Executive) considers that the Council has been compromised and non-compliance has resulted in illegal activity or contravention of legislation, then a statutory report may have to be issued. This has the effect of halting the decision or project/ process until further consideration is given to the matters by Members at Full Council (known as a "section 5 report"[5]).

5. DOCUMENT IT:

5.1 The Manager, Lead Officer for a project should retain all paperwork to show that the risk has been assessed and the mitigation measures that have/ will be put in place.

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[5] Section 5 of the Local Government & Housing Act 1989

5.2   Records should be kept of Officers/ Members that are affected by an organisational conflict and "which side" they are on. As indicated they should be asked to sign off this record to show they are aware of any requirements.

Guidance applicable to: ALL (X) Non – management ( ) Management ( ) Members ( )
Grades 1( ) 2 ( ) 3 ( ) 4 ( ) 5 ( ) 6 ( ) 7 ( ) 8 ( )

Links to relevant information: Policies: **Whistleblowing Policy:** http://intranet.north-herts.gov.uk/node/2061 **Anti-fraud & Corruption Policy:** http://intranet.north-herts.gov.uk/home/finance-and-procurement/anti-fraud-corruption-policy **Information Security Policy** http://intranet.north-herts.gov.uk/information-security-policy **Risk Management strategy:** http://intranet.north-herts.gov.uk/sites/northherts-intranet/files/Risk%20%26%20Opportunities%20Management%20Strategy%202014-17.doc **Project framework guidance:** http://intranet.north-herts.gov.uk/home/finance-and-procurement/corporate-governance/project-management/nhdc-project-management#Step 2 **Other related documents:** Constitution Employee Code of Conduct Member Code of Conduct	For further advice contact : **Corporate Legal Manager**
	Dated : **February 2015 V1** **April 2015 V2** **May 2015 V3** **July 2015 V4** **August 2015 V5** **September 2015 V6** To be reviewed no later than : **December 2018** Policy Sponsor : **Corporate Legal Manager /Monitoring Officer**