

# **PART 5**

## **CODES AND PROTOCOLS**



## **5.1 Introduction**

In this Part of the Constitution we set out our Codes and Protocols which govern how members and officers should conduct themselves when exercising their roles within the Council and what they can expect from the Council.

## **5.2 MEMBERS' CODE OF CONDUCT**

Notes:-

This is the code of conduct that regulates the conduct of councillors and voting co-optees when they are acting in that capacity.

The Council is required to have a code by s.27 Localism Act 2011.

Statutory Sources

Localism Act 2011, s.27

# **TUNBRIDGE WELLS BOROUGH COUNCIL CODE OF CONDUCT FOR MEMBERS**

## **Preamble**

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
  - (i) Fail to notify the Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member.
  - (ii) Fail to disclose the interest at meetings where the interest is not entered in the Authority's register.
  - (iii) Fail to notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the Authority's register and is not the subject of a pending notification.
  - (iv) Take part in discussion or votes, or further discussions or votes, at meetings on matters in which you have the interest which are being considered at the meeting.

- (v) Fail to notify the Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority.
  - (vi) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
  - (vii) Knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

## THE CODE OF CONDUCT

### 1. Interpretation

In this Code:

**“Associated Person”** means (either in the singular or in the plural):

- (a) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by this Authority; or
- (e) any body in respect of which you are in a position of general control or management:
  - (i) exercising functions of a public nature; or
  - (ii) directed to charitable purposes; or
  - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

**“Authority”** means Tunbridge Wells Borough Council.

**“Authority Function”** means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;

- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

**“Code”** means this Code of Conduct.

**“Co-opted Member”** means a person who is not an elected member of the Authority but who is a member of:

- (a) any committee or sub-committee of the Authority, or
- (b) represents the Authority on any joint committee or joint sub-committee of the Authority; and
- (c) who is entitled to vote on any question that falls to be decided at any meeting.

**“Disclosable Pecuniary Interest”** means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

- (a) your interest or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

**“Interests”** means Disclosable Pecuniary Interests and Other Significant Interests.

**“Meeting”** means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

**“Member”** means a person who is an elected member of the Authority and includes a Co-opted Member.

**“Other Significant Interest”** means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

- (a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than: -
  - i. other council tax payers, ratepayers or inhabitants of the ward, as the case may be, affected by the decision; or
  - ii. (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; affects the financial position of yourself and/or an Associated Person; or
- (b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.

**“Register of Members’ Interests”** means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

**"Sensitive Interest"** means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

### Scope

2. You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority.

### General obligations

3. (a) You must, when using or authorising the use by others of the resources of the Authority:

- i. act in accordance with the Authority's reasonable requirements; and
- ii. ensure that such resources are not used improperly for political purposes (including party political purposes).

- (b) You must not:

- i. bully any person;
- ii. intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
- iii. do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
- iv. 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:
  - you have the written consent of a person authorised to give it; or
  - you are required by law to do so; or
  - the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
  - the disclosure is:
    - reasonable and in the public interest; and
    - made in good faith and in compliance with the reasonable requirements of the Authority;
- v. prevent another person from gaining access to information to which that person is entitled by law;
- vi. conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- vii. use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

### Registering Disclosable Pecuniary Interests

4. (a) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- (b) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.
- (c) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

### Declaring Interests

5. (a) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (b) Where you are present at a meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the meeting, you must:
- i. disclose the Interest; and
  - ii. explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under para 5(4):
  - iii. not participate in any discussion of, or vote taken on, the matter at the meeting; and
  - iv. withdraw from the meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
  - v. not seek improperly to influence a decision about that business.
- (c) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
- i. notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
  - ii. not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
  - iii. not seek improperly to influence a decision about the matter.
- (d) Where you have an Other Significant Interest in any business of the Authority, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Having made your representations, given evidence or answered questions you must:

- i. not participate in any discussion of, or vote taken on, the matter at the meeting; and
- ii. withdraw from the meeting room in accordance with the Authority's Procedure Rules.

### **Sensitive Interests**

6. (a) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (b) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
- (c) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

### **Gifts and Hospitality**

7. (a) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.
- (b) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a meeting, you must disclose at the commencement of the meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
- (c) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant meeting, for 3 years from the date you first registered the gift, benefit or hospitality.
- (d) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

### **Dispensations**

- 8.(a) The Audit and Governance Committee, or any sub-committee of the Audit and Governance Committee, or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the

receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).

- (b) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Audit and Governance Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:
- i. without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
  - ii. 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; or
  - iii. granting the dispensation is in the interests of persons living in the Authority's area; or
  - iv. 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
  - v. it is otherwise appropriate to grant a dispensation.
- (c) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (d) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

The **Tunbridge Wells Area Arrangements for dealing with Code of Conduct complaints** are set out at Annex 3.

## THE SEVEN PRINCIPLES OF PUBLIC LIFE

In accordance with the Localism Act 2011, and in order to help maintain public confidence in this Authority, you are committed to behaving in a manner that is consistent with the following principles.

**SELFLESSNESS:** You should act solely in terms of the public interest and 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.

**INTEGRITY:** You should exercise independent judgment and not compromise your position by placing yourself under obligations to outside individuals or organisations who might seek to influence you in the performance of your official duties. You should behave in accordance with all legal obligations, alongside any requirements contained within this Authority's policies, protocols and procedures, including on the use of the Authority's resources. You should value your colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government. You should treat people with respect, including the organisations and public you engage with and those you work alongside.

**OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, you should make choices on merit. You should deal with representations or enquiries from residents, members of the communities and visitors fairly, appropriately and impartially. You should champion the needs of the whole community and especially your constituents, including those who did not vote for you.

**ACCOUNTABILITY:** You are accountable to the public for your decisions and actions and should fully co-operate with whatever scrutiny is appropriate to your office.

**OPENNESS:** You should be as open and as transparent as possible about all the decisions and actions that you take to enable residents to understand the reasoning behind those decisions and to be informed when holding you and other Members to account. You should give reasons for your decisions and restrict information only when the wider public interest or the law clearly demands it. You should listen to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.

**HONESTY:** You have a duty to declare interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. You should not allow other pressures, including the financial interests of yourself or others connected to you, to deter you from pursuing constituents' casework, the interests of the Authority's area or the good governance of the Authority in a proper manner.

**LEADERSHIP:** Through leadership and example you should promote and support high standards of conduct when serving in your public post. You should provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority.

**Disclosable Pecuniary Interests, as prescribed by regulations, are as follows:**

The descriptions on Disclosable Pecuniary Interests 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 the relevant authority

**“member”** includes a co-opted member

**“relevant authority”** means the authority of which M is 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), as the case may be, of the Act

**“relevant person”** means M or any other person referred to in section 30(3)(b) of the Act (the Member’s spouse, civil partner, or somebody with whom they are living as a husband or wife, or as if they were civil partners).

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

<b>Interest</b>	<b>Description</b>
Employment, office, trade, profession or vacation	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.
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:

	<p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
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.
Corporate tenancies	Any tenancy where (to M's knowledge): <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	Any beneficial interest in securities of a body where: <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

**ANNEX 3 – TUNBRIDGE WELLS AREA ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS**

**1. Context**

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that the Borough Council has adopted for dealing with complaints that an elected, co-opted member or parish/town councillor has failed to comply with the Code of Conduct.

**2. Interpretation**

- 2.1 'Borough Council' means the Tunbridge Wells Borough Council.
- 2.2 'Code of Conduct' means the Code of Conduct, which the Borough, Parish or Town Council has adopted under section 27(2) of the Localism Act 2011.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Code of Conduct.
- 2.5 'Hearing Panel' means the panel appointed by the Borough Council to determine the outcome of any complaint alleging a breach of the Code of Conduct by a Subject Member in accordance with these Arrangements.
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the Borough Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member; and
  - (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Monitoring Officer' is a senior officer of the Borough Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf.
- 2.9 'Parish/Town Council' means the relevant parish/town council within the Borough of Tunbridge Wells.

- 2.10 'Parties' means the Complainant, Subject Member and the Investigating Officer, as appropriate.
- 2.11 'Subject Member' means an elected member or co-opted member of the Borough or Parish/Town Council against whom a complaint has been made alleging a breach the Code of Conduct.

### **3. Appointment of Independent Person**

- 3.1 The Borough Council will appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon such terms as to remuneration and expenses as may be determined by the Borough Council from time to time.
- 3.2 The Independent Person (and any substitute) will be treated as if they were a member of the Borough Council for the purposes of the Borough Council's arrangements for indemnifying and insuring its Members.

### **4. Making a complaint**

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form at Annex A to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will be informed of the identity of the Complainant and details of the complaint made against them.
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receiving it. At the same time the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with paragraph 2 of Annex B to these Arrangements.

### **5. Criminal conduct**

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, you:
- (a) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - (b) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
  - (c) fail to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (d) fail to notify the Monitoring Officer of a Disclosable Pecuniary Interest before the end of 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (e) take part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;

(f) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with paragraph 4.4 of Annex B to these Arrangements.

## **6. Role of Independent Person**

6.1 The Independent Person must be consulted and have their views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **7. Preliminary tests**

7.1 The Monitoring Officer will put the complaint through a number of preliminary tests, in accordance with paragraph 1 of Annex B to these Arrangements.

## **8. Informal resolution**

8.1 The Monitoring Officer may consider that the complaint can be resolved informally at any stage in accordance with paragraph 5 of Annex B to these Arrangements.

## **9. Investigation**

9.1 If the Monitoring Officer decides that the complaint merits formal investigation, they will, within 10 working days of receiving it, appoint an Investigating Officer to undertake the investigation, and inform the Parties of the appointment.

9.2 The Investigating Officer will investigate the complaint in accordance with Annex C to these Arrangements.

## **10. Hearing**

10.1 If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate or is unlikely to be achieved, then they will convene a meeting of the Hearing Panel to determine the outcome of the complaint in accordance with Annex D to these Arrangements.

## **11. Sanctions**

11.1 Where a Subject Member has been found by the Hearing Panel to have breached the Code of Conduct, the Hearing Panel may apply any one or more sanctions in accordance with paragraph 4 of Annex D to these Arrangements.

## **12. Appeal**

12.1 There is no right of appeal for the Complainant or the Subject Member against decisions of either the Monitoring Officer or the Hearing Panel.

## **13. Revision of these Arrangements**

- 13.1 The Borough Council may by resolution agree to amend these Arrangements and has delegated to the Monitoring Officer and the Hearing Panel the right to depart from these Arrangements, where considered expedient to do so in order to secure the effective and fair consideration of any matter.

**Annex A****Complaint Form****Your Details**

1. Please provide us with your name and contact details.

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the Audit and Governance Committee
- Member of Parliament
- Local authority Monitoring Officer
- Other council officer or authority employee
- Other (please give details)
- 

3. Please provide us with the name of the councillor(s) you believe has breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he (acting in consultation with the Independent Person) decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor has conducted himself in a manner which could reasonably be regarded as bringing his office or the Authority into disrepute, you should state what it was they said or did.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint and the relevant paragraph(s) of the Code that may have been breached. Continue on a separate sheet if there is not enough space on this form.

Please provide details of the outcome(s) you are seeking. Continue on a separate sheet if there is not enough space on this form.

Signed:

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Date:

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Return Address:     The Monitoring Officer  
                          Tunbridge Wells Borough Council  
                          Town Hall  
                          Tunbridge Wells  
                          Kent  
                          TN1 1RS

Email address: [monitoring.officer@tunbridgewells.gov.uk](mailto:monitoring.officer@tunbridgewells.gov.uk)

## Complaints Form – Monitoring Information

In order to ensure we target our services in the most effective way for our community, we would appreciate if it you would give answers to the following questions:

### Q1. Ethnic Group

- White:**
- British
- Irish
- Any other white background

- Black or black British:**
- Caribbean
- African
- Any other black background

- Asian or Asian British:**
- Indian
- Pakistani
- Bangladeshi
- Any other Asian background

### Q2. Sex

- Male
- Female

### Q3. Partnership Status

- Single
- Married/Civil Partner
- Separated
- Divorced
- Widow/Widower

### Q4. Age Group

- Under 16
- 16-19
- 20-24
- 25-59
- 60-64
- 65 and above

Q5. Do you have a disability?

Yes

No

Q6. What is the nature of your disability?

Difficulty getting around

Mental health problems

Learning difficulty

Difficulty seeing

Hearing difficulty

Other

Q7. To help us monitor issues for different sections of our community, we would appreciate it if you would tell us which faith group, if any, you belong to. If lack of faith is an issue in itself we would also like to know.

## PROCEDURE ON RECEIPT OF A COMPLAINT

### 1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer in consultation with the Independent Person against the legal jurisdiction test in paragraph 1.2 and, if applicable, the local assessment criteria test in paragraph 1.4 below.

### 1.2 Legal jurisdiction criteria test:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the Borough or Parish/Town Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the Borough or Parish/Town Council's decisions, policies and priorities, etc.

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons, within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

### 1.4 Local assessment criteria test:

If the complaint satisfies the jurisdiction test, the Monitoring Officer will then apply the following local assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (c) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (d) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (e) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (f) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (g) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (h) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter or the alleged misconduct took place so long ago that the complaint should not be pursued;
- (i) The complaint is about a deceased person;
- (j) The complaint is about a person who is no longer a Borough or Parish/Town Councillor or Co-opted Member.

- 1.5 If one or more of the local assessment criteria applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

## **2. Notification of complaint to Subject Member**

- 2.1 The Monitoring Officer will notify the Subject Member (and, if applicable, the Parish/Town Council Clerk).
- 2.2 The Monitoring Officer may invite the Subject Member (and, if applicable, the Parish/Town Council Clerk) to submit initial views on the complaint within 10 working days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member (and/or Parish/Town Council Clerk) after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the Monitoring Officer issues their written decision on how the complaint will be dealt with.

## **3. Asking for additional information**

- 3.1 The Monitoring Officer may ask the Complainant and the Subject Member (and, if applicable, the Parish/Town Council Clerk) for additional information before deciding how to deal with the complaint.

## **4. What process to apply - informal resolution or investigation and/or no action?**

- 4.1 The Monitoring Officer may at any stage seek to resolve the complaint informally in accordance with paragraph 5 below. Where the Subject Member or the Monitoring Officer or the Borough or Parish/Town Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 The Monitoring Officer in consultation with the Independent Person may refer the complaint for investigation when:
- (a) it is serious enough, if proven, to justify the range of sanctions available to the Audit and Governance Committee (see paragraph 4 of Annex D to these Arrangements);
  - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish/Town Council and there is no other avenue left to deal with it short of investigation and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.3 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Annex C to these Arrangements.

- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.4 above;
  - (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
  - (c) the investigation might prejudice another investigation or court proceedings;
  - (d) on-going investigation by another prosecuting or regulatory authority;
  - (e) genuine long term (3 months or more) unavailability of a key party;
  - (f) serious illness of a key party.
- 4.6 Within 20 working days of receipt of the complaint, the Monitoring Officer will notify the Complainant, Subject Member (and, if applicable, the Parish/Town Council Clerk) of their decision and reasons for applying one of the following processes in the format of the Decision Notice template (appended to this Annex B):
- (a) not to refer the complaint for investigation; or
  - (b) to refer the complaint for investigation; or
  - (c) to apply the informal resolution process either before or after an investigation; or
  - (d) following investigation, to refer the complaint to the Hearing Panel; or
  - (e) to take no action and close the matter; or
  - (f) to refer the complaint to the relevant political group leader for action.
- 4.7 The decision notice will be published on the Borough Council's website. There is no right of appeal against the Monitoring Officer's decision. However, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## 5. Informal resolution

- 5.1 The overriding objective of these Arrangements is for the Monitoring Officer in consultation with the Independent Person to resolve complaints informally, either before or after investigation. The Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.
- 5.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:
- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish/Town Council procedures; or
  - (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
  - (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
  - (d) The conduct complained of appears common to a number of members of the Borough or Parish/Town Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough or Parish/Town Council procedures, etc; or
  - (e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
  - (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish/Town Council; or
  - (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
  - (h) The complaint consists of allegations and retaliatory allegations between councillors; or
  - (i) The complaint consists of allegations about how formal meetings are conducted; or
  - (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.
- 5.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough or Parish/Town Council where it may be useful to address systemic behaviour:
- (a) training;
  - (b) conciliation/mediation;
  - (c) mentoring;
  - (d) apology;
  - (e) instituting changes to the Borough or Parish/Town Council's procedures;
  - (f) conflict management;
  - (g) development of the Borough or Parish/Town Council's protocols;
  - (h) other remedial action by the Borough or Parish/Town Council;
  - (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.
- 5.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Audit and Governance Committee (and, if applicable, the Parish/Town Council) for information, but will take no further action.

5.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Audit and Governance Committee.

*EXAMPLE TEMPLATE – COMPLAINT FORM***EXAMPLE TEMPLATE - DECISION NOTICE (of the Monitoring Officer): e.g. REFERRAL FOR INVESTIGATION**

Parties should take care when passing on information that is in the notice or about the notice. For example, some details such as names and addresses may be confidential or private in nature, or may be personal information.

**Complaint No:***Complaint*

On [insert date], the Monitoring Officer considered a complaint from [insert name of complainant] concerning the alleged conduct of [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

**Complaint summary**

[Summarise complaint in numbered paragraphs]

**Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

**Decision**

Having consulted and taken into account the views of the Independent Person, the Monitoring Officer decided to refer the complaint for investigation.

**Potential breaches of the Code of Conduct identified**

At this stage, the Monitoring Officer is not required to decide if the Code of Conduct has been breached. They are only considering if there is enough information which shows a potential breach of the Code of Conduct that warrants referral for investigation.

The Monitoring Officer considers that the alleged conduct, if proven, may amount to a breach of the following paragraphs of the Code of Conduct. The Monitoring Officer has appointed [insert name] as the Investigating Officer.

Please note that it will be for the Investigating Officer to determine which paragraphs are relevant, during the course of the investigation.

[detail relevant Code of Conduct paragraphs]

**Notification of decision**

This decision notice is sent to the:

- Complainant
- Member against whom the complaint was made

- Clerk to the relevant Parish or Town Council
- Kent County Council's Monitoring Officer (*applicable only where the Subject Member is serving at both Borough and County level*)

### **What happens now**

The complaint will now be investigated under the Borough Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

### **Appeal**

There is no right of appeal against the Monitoring Officer's decision.

### **Additional Help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language. Please contact Wendy Newton-May, Democratic Services Officer on 01892 554007 or email [wendy.newton-may@tunbridgewells.gov.uk](mailto:wendy.newton-may@tunbridgewells.gov.uk) for further information.

**Signed:**

**Date**

**Print name:**

Monitoring Officer of Tunbridge Wells Borough Council

Town Hall, Tunbridge Wells, Kent TN1 1RS

Tel: 01892 554257

Email: [monitoring.officer@tunbridgewells.gov.uk](mailto:monitoring.officer@tunbridgewells.gov.uk)

## PROCEDURE FOR INVESTIGATING THE COMPLAINT

### 1. Preliminaries

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.
- 1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.5 The Investigating Officer will not make recommendations on sanctions.
- 1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:
  - (a) provide details of the complaint to the Subject Member;
  - (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
  - (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
  - (d) request contact details of any potential witnesses;
  - (e) require that confidentiality is maintained and that the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation - the fact that an investigation is being conducted does not need to remain confidential.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

### 2. The draft report

- 2.1 On the conclusion of their investigation and/or when the Investigating Officer is satisfied that they have sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT) to the Monitoring Officer for review.
- 2.2 Following review of the draft report by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'Confidential - Not for Publication' and will detail:
  - (a) the relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
  - (b) a summary of the complaint;

- (c) the Subject Member's response to the complaint;
- (d) relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
- (e) a list of any documents relevant to the matter;
- (f) a list of those persons/organisations who have been interviewed;
- (g) a statement of the Investigating Officer's draft findings of fact and reasons;
- (h) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
- (i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.

2.3 Once the Investigating Officer has determined that the responses received from the Subject Member and/or the Complainant add nothing of substance to the investigation, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled FINAL REPORT and marked 'Confidential - Not for Publication'.

### **3. Consideration of Investigating Officer's final report**

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the parties, in consultation with the Independent Person.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, they will either take no action or seek informal resolution or refer the matter for consideration by the Hearing Panel in accordance with the relevant procedure detailed in this Annex D to these Arrangements.

## HEARING PANEL PROCEDURE

### 1. Rules of procedure

- 1.1 The Hearing Panel consists of 5 members, 3 voting elected Borough Members (one of whom shall be elected as Chairman), 1 Parish/Town Councillor and 1 Independent Member drawn from the Audit and Governance Committee. The Parish/Town Council representative and the Independent Member are present in an advisory capacity only with no voting rights. The Parish/Town Council Representative and the Independent Member will be present during the hearing and also the private deliberations.
- 1.2 The Independent Person's views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearing Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearing Panel in writing instead.
- 1.3 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearing Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearing Panel where it is likely that confidential or exempt information will be disclosed.
- 1.4 Once a hearing has started, the Borough Council's Rules of Substitution do not apply to the Hearing Panel's proceedings.
- 1.5 All matters/issues before the Hearing Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.6 Where the Subject Member fails to attend the Hearing Panel and where the Hearing Panel is not satisfied with their explanation for their absence from the hearing, the Hearing Panel may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Hearing Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.<sup>1</sup>

### 2. Right to be accompanied by a representative

The Subject Member may choose to be accompanied and/or represented at the Hearing Panel by a fellow councillor, friend, colleague or advisor.

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<sup>1</sup> Janik v Standards Board for England & Adjudication Panel for England (2007)

### **3. The conduct of the hearing**

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interest;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (paragraph 1.6 above);
- (e) introduction by the Chairman of members of the Hearing Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

3.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Hearing Panel may adjourn the hearing at any time.

#### **3.4 Presentation of the complaint**

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (c) The Hearing Panel may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

#### **3.5 Presentation of the Subject Member's case**

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Hearing Panel may question the Subject Member and any witnesses called by the Subject Member.

#### **3.6 Summing up**

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

#### **3.7 Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether they consider that on the facts presented to the Hearing Panel, there has been a breach of the Code of Conduct or no breach as the case may be.

### 3.8 **Deliberations of the Hearing Panel**

#### **Deliberation in private**

- (a) The Hearing Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Code of Conduct or not as the case may be.
- (b) The Hearing Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

### 3.9 **Announcing decision on facts found**

- (a) The Hearing Panel will reconvene the hearing in public and the Chairman will announce that on the facts found, the Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
- (b) Where the Hearing Panel considers that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether any sanctions (in accordance with paragraph 4 of this Annex D) should be applied and what form they should take.
- (c) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Hearing Panel will adjourn and deliberate in private.
- (d) If evidence presented to the Hearing Panel highlights other potential breaches of the Borough or Parish/Town Council's Code of Conduct, then the Chairman will outline the Hearing Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

### 3.10 **Final Decision**

- (a) Where the complaint has a number of aspects, the Hearing Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Hearing Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
- (c) Having taken into account the Independent Person, the Subject Member and the Monitoring Officer's representations on the application of sanctions, the Hearing Panel will reconvene the hearing in public and the Chairman will announce:
  - (i) the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
  - (ii) the sanctions (if any) to be applied;

- (iii) the recommendations (if any) to be made to the Borough or Parish/Town Council or Monitoring Officer;
- (iv) that there is no right of appeal against the Panel's decision and/or recommendations.

#### **4. Range of possible sanctions**

4.1 Subject to paragraph 4.4 below, where the Hearing Panel determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- (a) Recommending to the Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) Recommending to the Subject Member's Group Leader or Parish/Town Council, or in the case of a ungrouped Subject Member, to the Borough or Parish/Town Council that they be removed from committees or sub-committees of the Council;
- (c) Recommending to the Leader of the Borough Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (d) Instructing the Monitoring Officer (or recommendation to the Parish/Town Council) to arrange training for the Subject Member;
- (e) Recommending to the Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Borough or Parish/Town Council;
- (f) Recommending to the Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (g) Recommending to the Council the exclusion of the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council committee and sub-committee meetings;
- (h) Reporting the Panel's findings to the Council for information;
- (i) Instructing the Monitoring Officer to apply the informal resolution process;
- (j) Sending a formal letter to the Subject Member;
- (k) Recommending to the Council to issue a press release or other form of publicity;
- (l) Publishing its findings in respect of the Subject Member's conduct in such manner as the Panel considers appropriate.

4.2 The Hearing Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Hearing Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Hearing Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Hearing Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (a) What was the Subject Member's intention and did they know that they were failing to follow the Council's Code of Conduct?
- (b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- (c) Has there been a breach of trust?
- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the Council's Code of Conduct?

- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- (j) Has the Subject Member previously breached the Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?

## **5. Publication and notification of the Hearing Panel's decision and recommendations**

5.1 Within 10 working days of the Hearing Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Panel's decision and recommendations and reasons for the decision and recommendations on the Borough Council's website.

5.2 Within 10 working days of the announcement of the Hearing Panel's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, in the format of the Decision Notice template below to:

- (a) the Subject Member;
- (b) the Complainant;
- (c) the Clerk to the Parish/Town Council;
- (d) Kent County Council's appropriate Committee (*applicable only where the Subject Member is serving at both Borough and County level*);
- (e) the Borough Council's Audit and Governance Committee.

5.3 The Monitoring Officer will report the Hearing Panel's decision and recommendations to the next ordinary meeting of the Audit and Governance Committee for information.

*TEMPLATE - DECISION NOTICE (of Hearing Panel)***Complaint No: xxxx**

On [insert date], the Hearing Panel of the Tunbridge Wells Borough Council considered a report of an investigation into the alleged conduct of Councillor [insert name of councillor], a member of [insert authority name]. A general summary of the complaint is set out below.

**Complaint summary**

[Summarise complaint in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel]

**Consultation with Independent Person**

[Summarise the Independent Person's views in numbered paragraphs]

**Findings**

After considering the submissions of the parties to the hearing and the views of the Independent Person, the Hearing Panel reached the following decision(s):

[Summarise the finding of facts and the Hearing Panel's decision against each finding of fact in numbered paragraphs as set out in the Investigating Officer's report to the Hearing Panel, but substitute the Investigating Officer for the Hearing Panel. Please note that the Hearing Panel's findings may differ from that of the Investigating Officer]

The Hearing Panel also made the following recommendation(s)

[Detail recommendations]

**Sanctions applied**

The breach of the [insert authority name] Code of Conduct warrants a [detail sanctions applied].

**Appeal**

There is no right of appeal against the Hearing Panel's decision.

**Notification of decision**

This decision notice is sent to the:

- Councillor [name of councillor]
- Complainant
- [Clerk to the xxxx Parish/Town Council];
- Kent County Council's Monitoring Officer (*applicable only where the Councillor is serving at both Borough and County level*)

**Additional help**

If you need additional support in relation to this decision notice or future contact with the Borough Council, please let us know as soon as possible.

If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language.

Please contact Wendy Newton-May, Democratic Services Team Leader on 01892 554007 or email [wendy.newton-may@tunbridgewells.gov.uk](mailto:wendy.newton-may@tunbridgewells.gov.uk) for further information.

**Signed:****Date****Print name:**

Chairman of the Hearing Panel

Tunbridge Wells Borough Council

Town Hall

Tunbridge Wells

Kent TN1 1RS

## **ANNEX 4 TO CODE OF CONDUCT**

### **ASSOCIATED PROTOCOLS**

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members:

#### **5.3 - CODE OF CONDUCT FOR EMPLOYEES**

The public is entitled to expect the highest standards of conduct from all employees who work for the Council. This Code of Conduct outlines the existing rules and conditions of service which apply to you as a Council employee and is designed to provide clear guidance to assist you in your day-to-day work.

The Code sets out the standards which are expected of you and provides a framework which will help to promote best practice. Reference should also be made to Nolan's Seven Principles of Public Life in section 5.1. All employees of the Council are required to observe and uphold the standards of the Code and all policies and procedures of the Council. Failure to do so is a serious matter which could result in disciplinary action, including dismissal.

You should therefore read the document carefully, and if you are uncertain about any aspect of its contents, please contact your immediate manager or supervisor.

#### **1. STANDARDS AND ATTITUDE**

- 1.1 All employees of the Council are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to councillors and fellow employees with impartiality.
- 1.2 Your attitude in dealing with people reflects on the Council so it is important that you are helpful, polite and courteous.
- 1.3 All employees are expected to report, in the first instance, to their manager or supervisor any illegality, impropriety, breach of procedure or policy of the Council.
- 1.4 There are a number of mechanisms available to employees to do this including the Council's complaints procedure and also the Confidential Reporting Code.
- 1.5 In all cases, it is not enough to avoid actual impropriety, as public perceptions are very important. Employees should at all times avoid any appearance of improper conduct which may give rise to suspicion.

#### **2. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

- 2.1 The law requires that certain types of information must be available to councillors, auditors, government services, service users and the public. Different rules apply in different situations. If you are in any doubt as to whether you can release any particular information, always check with your manager or supervisor first.
- 2.2 The confidentiality of information received in the course of your duties should be respected and must never be used for personal or political gain. Also, of course, you should not knowingly pass information on to others who might use it in such a way.

- 2.3 You should not communicate confidential information or documents to others who do not have a legitimate right to know. Information must only be disclosed in accordance with the requirements of the Data Protection Act 1998, which covers computerised and manual information held on individuals. All staff need to bear in mind that an E-mail is as legally binding as a letter and informal messages sent internally can be used in evidence in court proceedings.
- 2.4 Information given in the course of your duties should be accurate and fair and never designed to mislead.
- 2.5 Any particular information received by an employee from a councillor which is personal to that councillor should not be divulged by the employee without the prior approval of that councillor, except where such disclosure is required by law.

### **3. POLITICAL NEUTRALITY**

- 3.1 Employees serve the authority as a whole. It follows that you must serve all councillors equally and ensure that the individual rights of all councillors are respected.
- 3.2 From time to time, some employees may also be requested to advise a full meeting of a political group or its executive. You must do so in ways which do not compromise your political neutrality and inform the Chief Executive in advance.
- 3.3 Whether you hold a politically restricted post or not, you must not allow your own personal or political opinions to interfere with your work.

### **4. RELATIONSHIPS**

#### **4.1 Councillors**

Mutual respect between employees and councillors is essential for good local government. Some employees need to work closely with councillors. Close personal familiarity between employees and individual councillors can damage the relationship and prove embarrassing to other employees and councillors, and should therefore be avoided.

#### **4.2 The Local Community and Service Users**

Employees should always remember their responsibilities to the whole of the community they serve and ensure courteous, effective and impartial service delivery to all groups and individuals within that community in accordance with the policies of the authority.

#### **4.3 Contractors and Suppliers**

- 4.3.1 All relationships of a business or personal nature with external contractors or suppliers, or potential contractors or suppliers, must be declared to your appropriate manager or supervisor in writing at the earliest opportunity.
- 4.3.2 Orders and contracts must be awarded in accordance with the Council's Contract Procedure Rules and no special favour should be shown to anyone, particularly businesses run by, for example, friends, partners or relatives. No part of the community should be discriminated against.

## **5. APPOINTMENT AND OTHER EMPLOYMENT MATTERS**

- 5.1 It is unlawful for appointments to be made on the basis of anything other than the ability of the candidate to undertake the duties of the post. If you are involved in making appointments you should do everything possible to ensure that these are made on the basis of merit and in accordance with the Council's recruitment procedures.
- 5.2 In order to avoid any possible accusation of bias, you must not become involved in any appointment if you are related to an applicant, or have a close personal relationship with him or her.
- 5.3 Similarly, you should not be involved in decisions relating to discipline, promotion or pay adjustments in respect of any other employee who is a relative or with whom you have a close personal relationship; nor should you attempt to influence such decisions.
- 5.4 Senior officers (i.e. Head of Service and above) must disclose to the Monitoring Officer in writing any relationship known to exist between them and any person they know who is a candidate for an appointment with the Council.
- 5.5 If you apply for promotion or are seeking another job in the Council, you must not approach any councillor for a reference. Issues relating to your conditions of service, working arrangements or grading should be raised with your manager or supervisor and not with councillors.

## **6. OUTSIDE COMMITMENTS**

- 6.1 Your off-duty hours are your own concern, but you should make sure that you do not allow yourself to get into a position where your private interests come into conflict with your contractual obligations or are detrimental to the interests or reputation of the Council.
- 6.2 Employees paid from Local Pay Band F are required to devote their whole-time service to the work of the Council and obtain written consent before taking any outside employment. If you fall into this category, and want to seek the Council's agreement, you should email your Manager. The Council will not unreasonably stop officers from undertaking additional employment, but this employment must not, in the Council's view, conflict with or be detrimental to its interests, or weaken public confidence in the conduct of its business.
- 6.3 Even if you are not subject to the provisions in 6.2 above you should ensure that none of your outside activities are detrimental to the Council's interests.
- 6.4 If you write a book or article for payment on subjects relating to your work for the Council, you must seek the permission of the Council through your manager or supervisor in writing. The general presumption would be that any fee or royalty payable would be passed over to the Council.
- 6.5 You must not undertake private or personal work of any description in working hours or in the office unless you have been given specific permission by your manager or supervisor.
- 6.6 Private use of Council facilities and equipment, such as stationery and fax machines, is not allowed. Personal use of the telephone is permitted within reason, provided that calls are properly logged and charges paid back to the Council.

## **7. PERSONAL INTERESTS**

- 7.1 You must declare to your manager or supervisor in writing any financial or non-financial interests which could bring about conflict with the Council's interests.
- 7.2 If you are in any doubt about a potential conflict of interest, you should bring the matter to the attention of your manager or supervisor so that a decision can be made as to how best to proceed.
- 7.3 You must not make, or become involved with any official or professional decisions about matters in which you have a personal interest.
- 7.4 Section 117 of the Local Government Act 1972 requires you to make a formal declaration about *contracts or personal contracts* with the Council in which you have a pecuniary interest. Such declarations should be made in writing and sent to the Monitoring Officer. It is a criminal offence to fail to comply with this provision which is set out in full at *Annex A*.
- 7.5 You must declare to the Monitoring Officer *membership of any organisation* not open to the public, requiring any commitment of allegiance, or which has secrecy about rules or membership or conduct, for example, the freemasons. A definition of such an organisation appears at *Annex B*. Such declarations should be made in writing and sent to the Monitoring Officer.

## **8. EQUALITY**

All members of the local community, customers and other Council employees have a right to be treated fairly and equally. You should become familiar with and observe all Council policies relating to equality issues, e.g the Council's Equal Opportunities Policy, in addition to the requirements of the law.

## **9. TENDERING PROCEDURES**

- 9.1 Employees involved in the tendering process or who have any other official relationship with contractors, must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- 9.2 If you are responsible for engaging or supervising contractors and have previously had, or currently have, a relationship in a private or domestic capacity with contractors, you must declare that relationship to your manager or supervisor in writing.
- 9.3 If you become privy to confidential information on tenders or costs relating either to internal or external contractors, you must not disclose that information to any unauthorised person.
- 9.4 All employees must ensure that no special favour is shown to current, or recent former, employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in any capacity.

## **10. CORRUPTION**

- 10.1 Employees must be aware that it is a serious criminal offence under the Bribery Act 2010 for them to receive or give any gift, loan or reward or advantage in their official capacity "for doing, or not doing, anything", or "showing favour, or disfavour to any person".

If an allegation is made against you, it will be for you to demonstrate that any such rewards have not been corruptly obtained. The relevant statutory rules appear at Annex C.

- 10.2 For your own protection, if anyone makes an approach to you which seems to you, or might seem to a third party, to be aimed at obtaining some form of preferential treatment, or in any suspicious circumstances in connection with a contract, you must report the matter to your manager.

## 11. **POSSIBLE INDUCEMENTS**

### 11.1 **Introduction**

A potential source of conflict between public and private interests is the offer of gifts, hospitality or benefits in kind to employees in connection with their official duties. It is important to avoid any suggestion of improper influence. There is a checklist to help you at the end of this section.

### 11.2 **Gifts Generally**

11.2.1 Casual gifts offered to employees by contractors, organisations, firms or individuals may not be intended as an inducement or connected in any way with the performance of your official duties so as to involve the Bribery Act 2010. Nevertheless, with the exceptions listed below, you should decline any personal gift offered to you or your partner, or to a member of your family, by any person or organisation having dealings with the Council.

11.2.2 Any such offer should be reported to your manager or supervisor (or to the Monitoring Officer if you are a Director or a Head of Service) in writing.

11.2.3 When a gift needs to be refused, this should be done with tact and courtesy, because the offer of gifts is common custom and practice in the commercial world, particularly at Christmas time. If the gift is simply delivered to your place of work, there may be a problem returning it, in which case it should be reported immediately to your manager or supervisor or the Monitoring Officer as appropriate.

### 11.3 **Gifts to Employees with a Caring Role**

11.3.1 There are sometimes special problems encountered by employees who have a “caring” role, or provide a direct personal service to vulnerable people.

11.3.2 It is not unusual for residents of residential care homes, or for people receiving support at home from Council employees, or their relatives to wish to express their thanks and gratitude to care staff by offering gifts, money or even, exceptionally, by making an employee a beneficiary in their Will.

11.3.3 It is most important in such situations that employees and the Council are protected from any suggestion of improper motives or conduct. For the avoidance of doubt, therefore, members of staff and their families are not allowed to accept gifts or legacies from clients.

11.3.4 If you are made aware that a client is considering making a gift to you or including you in their Will, or has actually done so, then you should immediately report the matter to your Manager who will take it up with the client.

11.3.5 Similarly, you should never become involved with making Wills for clients nor act as an Executor in a client's Will.

11.3.6 For the purposes of this section of the Code "client" means any current or former client.

#### 11.4 **Exceptions**

11.4.1 Gifts of a token value given at Christmas, such as calendars, diaries, blotters, pens or other simple items of office equipment for use in Council offices, but only if it bears the company's name or insignia.

11.4.2 Gifts of a promotional nature on the conclusion of a courtesy visit to a factory or company offices, of a sort normally given by the company to visitors.

11.4.3 Any gift up to a de minimis equivalent financial value of £25, which can be accepted and does not need to be declared, up to a cumulative maximum of £100 in any one financial year.

#### 11.5 **Hospitality**

11.5.1 Offers of hospitality are a normal part of the courtesies of business life but in the public service it is important for employees to avoid creating an appearance of improper influence, thus undermining public confidence.

11.5.2 Hospitality is sometimes offered to representatives of the Council in an official or formal capacity. Normally the only officers who would attend would be appropriate Service Managers and above.

11.5.3 If hospitality is offered to you as an individual employee, special caution is needed, particularly when the host is seeking to do business with the Council or to obtain a decision from it. You must exercise the utmost care in dealing with contractors, developers, etc, who may stand to benefit from the goodwill of the Council.

11.5.4 You should also be careful about attending exhibitions, seminars or visiting manufacturers, etc. There is an increasing trend towards linking such visits to, for example, a major sporting event, show or concert with a view to legitimising offers of hospitality.

11.5.5 In general terms, it is more likely to be acceptable for you to join in hospitality offered to a group, than to accept something unique to yourself. When a particular person or body has a matter currently in issue with the Council, for example, an arbitration arising from a contract, then clearly common sense dictates that offers of hospitality should be refused even if in normal times they would be acceptable.

11.5.6 All offers of hospitality should be reported to your manager, or to the Monitoring Officer if you are a Director or a Head of Service, in writing.

#### 11.6 **Checklist**

The question in all these cases is one of judgement, and the following checklist of queries should help you to decide whether a gift or an offer of hospitality should be accepted or tactfully declined.

- 11.6.1 Is the donor, or event, significant in the community or area? If so, is the refusal likely to cause offence?
- 11.6.2 Are you expected to attend because of your position in the community or area?
- 11.6.3 Will the event be attended by others of a similar standing in the community or in other communities?
- 11.6.4 What do you think is the motivation behind the invitation?
- 11.6.5 Would acceptance of the invitation be, in any way, inappropriate or place you under pressure in relation to any current or future issue involving the Council?
- 11.6.6 Could you justify the decision to the Council, press and public?
- 11.6.7 Is the extent of the hospitality, or the nature of the gift reasonable and appropriate?
- 11.6.8 Are you likely to be expected to respond to the hospitality, and if so, how?
- 11.6.9 Are you comfortable about the decision?

## **12. SPONSORSHIP - GIVING AND RECEIVING**

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

## **13. FINANCIAL PROCEDURE RULES**

- 13.1 All employees involved in financial activities and transactions on behalf of the Council, including budgetary control, payments of accounts, payments of salaries and wages, petty cash and orders for works, goods or services must follow the Council's Financial Procedure Rules.
- 13.2 They must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the authority.

**ANY BREACHES OF THESE INSTRUCTIONS MAY LEAD TO DISCIPLINARY ACTION AND COULD LEAD TO DISMISSAL**

**ANNEX A****LOCAL GOVERNMENT ACT 1972, SECTION 117**

1. If it comes to the knowledge of an officer employed, whether under this Act or any other enactment, by a local authority that a contract in which he has an pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the authority or any committee thereof, he shall as soon as practicable give notice in writing to the authority of the fact that he is interested therein.

For the purposes of this section, an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of section 95 above had he been a member of the authority.

2. An officer of a local authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.
3. Any person who contravenes the provisions of subsection (1) or (2) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
4. References in this section to a local authority shall include references to a joint committee appointed under Part VI of this Act or any other enactment.

**ANNEX B****ORGANISATIONS NOT OPEN TO THE PUBLIC**

Any lodge, chapter, society, trust or regular gathering or meeting (other than a professional association), which:-

1. is not open to members of the public who are not members of that lodge, chapter, society or trust; or
2. includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society or gathering or meeting; or
3. includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.

**ANNEX C****BRIBERY ACT 2010**

The Bribery Act 2010 creates offences making it unlawful to give or receive financial or other advantages in return for the improper performance of a relevant function or activity. The Act applies to functions and activities of a public nature which an individual is expected to perform in good faith, impartially or in a position of trust.

## **5.4 - PROTOCOL ON MEMBER/OFFICER RELATIONS**

### **1. INTRODUCTION**

- 1.1 The purpose of this Protocol is to guide members and employees of the Council in their relations with one another.
- 1.2 Given the variety and complexity of such relations, the Protocol does not seek to be prescriptive and it may not cover all situations. However, it does seek to provide guidance on some of the issues that most commonly arise. The approach to these issues will serve as a guide to dealing with other issues.
- 1.3 The Protocol is a written statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty.
- 1.4 It also seeks to reflect the principles underlying the respective rules of conduct that apply to members and employees. Its purpose, therefore, is to enhance and maintain the integrity (real and perceived) of local government by demanding very high standards of personal conduct.
- 1.5 Members and employees are servants of the public and they depend on each other in carrying out the work of the Authority. Members are responsible to the electorate and serve only so long as their term of office lasts, while employees are responsible to the Council. Their job is to give advice to the Council, as well as to individual members, and to carry out the Council's work under the direction and control of the Council and its various bodies.
- 1.6 Mutual respect between members and employees is essential to good local government. However, close personal familiarity between individual members and employees can damage this relationship and prove embarrassing to other members and employees.
- 1.7 The relationship has to function without compromising the ultimate responsibilities of employees to the Council as a whole, and with due regard to such technical, financial, professional and legal advice that employees can legitimately provide to members. The Protocol seeks to set a framework that assists the working relationships between members and employees.

### **2. ROLES OF MEMBERS**

Members undertake many different roles. Broadly these are:

- 2.1 Members express political values and support the policies of the party or group to which they belong (if any).
- 2.2 Members represent their ward and are advocates for the citizens who live in the area.
- 2.3 Members are involved in active partnerships with other organisations as community leaders.
- 2.4 Members contribute to the decisions taken in Full Council and in its various bodies on which they serve, as well as joint committees, outside bodies and partnership organisations.
- 2.5 Members help develop and review policy and strategy.

- 2.6 Members monitor and review policy implementation and service quality.
- 2.7 Members are involved in quasi-judicial work through their membership of regulatory committees.

### **3. ROLES OF EMPLOYEES**

Briefly, employees have the following main roles:

- 3.1 Managing and providing the services for which the Council has given them responsibility and being accountable for the efficiency and effectiveness of those services.
- 3.2 Providing advice to the Council and its various bodies and to individual members in respect of the services provided.
- 3.3 Initiating policy proposals.
- 3.4 Implementing agreed policy.
- 3.5 Ensuring that the Council always acts in a lawful manner.
- 3.6 Officers have various roles depending on their job. These include giving professional or technical advice, undertaking professional, technical or other jobs, training and managing other officers. They are also equipped with various professional and technical competencies and trained professionally to carry out the operations for which they are responsible, in accordance with Council policy. They are insured for this activity and are entitled to certain indemnity in the event of legal challenge or claim.
- 3.7 The Chief Executive and Directors are responsible for the day to day running of the Council in accordance with the decisions of the Council or Cabinet and under delegated authority. No member has that role. Additionally, it must be remembered that officers are accountable to their Director and whilst officers should always seek to assist a Chairman (or indeed any member) they must not, in doing so, go beyond the bounds of whatever authority they have been given by their Director. If any officer is concerned about their position, they should report their concern to their Director and/or the Monitoring Officer. The Council has also adopted a Confidential Reporting Code.
- 3.8 The Chief Executive and Directors and other senior officers are responsible for the management of the officers and are responsible consequently for giving instructions and disciplining officers. Members have no staff management responsibility.

### **4. THE CABINET AND OFFICERS**

- 4.1 Cabinet members are elected councillors who have been given the responsibility for providing the Council's political administration. It is their role to develop and formulate policies (for approval by the Council following advice from the appropriate Cabinet Advisory Committee) which provide clarity of purpose and direction to officers in carrying out the Council's activities and the provision of services and the Cabinet must carry out its functions in accordance with those approved policies. They also have the responsibility for matters of major principle. They are collectively politically accountable to the Council and the electorate for the functions contained within their responsibilities. It is therefore necessary for Cabinet members to have timely access to advice, support and relevant information to fulfil this role effectively.

- 4.2 The Chief Executive is the Head of Paid Service. He or she, with the support of the Directors, is responsible for the management of staff, the implementation of policies approved by, or on behalf of, the Council and for securing the proper undertaking of all operational matters. He or she is responsible for providing advice and guidance to the Cabinet in his or her respective professional and managerial fields. It is vitally important that this advice is, and is seen to be, objective. Members should refrain from attempting to direct the content or conclusion of such advice. Where officers need to convene internal officer level meetings other members may attend such meetings when expressly invited.
- 4.3 In their role, Directors are supported by Heads of Service. The latter provide more specialised and detailed advice and guidance in their field of knowledge, which is normally provided to Cabinet members through Directors. Heads of Service are primarily responsible for the management of staff within units and the operation of the Council services on a day-to-day basis.
- 4.4 Members are, generally, when carrying out their normal representational roles on behalf of local residents, recommended to refer their requests for information or other concerns directly to identified officer contacts across the organisation. However, in view of the special position of the Cabinet members, it is recommended that ward issues should, in their case, be dealt with through the Director or such officer(s) nominated by him or her for this purpose in order to avoid misunderstandings.
- 4.5 Cabinet members should strictly avoid attempting to interfere (other than by exercising their constituency member role) or appearing to interfere with decisions which are excluded from the powers of the Cabinet, for example, Development Control or Licensing decisions.

## **5. OVERVIEW AND SCRUTINY**

- 5.1 Members on the Overview and Scrutiny Committee are entitled to expect the same level of help and advice from officers as is given to the Cabinet and other boards and committees.
- 5.2 Members must recognise that officers are obliged at all times to serve the whole Council. Officers will need to exercise judgment in fulfilling this obligation.
- 5.3 Officers may be asked to explain advice they have given to the Cabinet and may also be asked to explain and justify decisions taken under delegated powers.
- 5.4 Any questions should avoid drawing into questioning an officers' impartiality.
- 5.5 Questions on the merits of alternative courses of action may be asked.

## **6. RESPECT AND COURTESY**

- 6.1 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between members and employees. This plays a very important part in the Council's reputation and how it is seen in public. It is very important that both members and employees remember their respective obligations to enhance the Council's reputation and to do what they can to avoid criticism of other members, or other employees, in public places.

## 6.2 **Undue Pressure**

- 6.2.1 It is important in any dealings between members and employees that neither should seek to take unfair advantage of their position.
- 6.2.2 In their dealings with employees (especially junior employees) members need to be aware that it is easy for them to be overawed and feel at a disadvantage. Such feelings can be intensified where members hold senior official and/or political office.
- 6.2.3 A member should not apply undue pressure on an employee either to do anything that he is not empowered to do or to undertake work outside normal duties or outside normal hours. Except by prior agreement or in cases of genuine emergency, contacting officers out of office hours on matters relating to Council business should be avoided. Even then such contact should be confined to Senior Officers (Heads of Service and above). Particular care needs to be taken in connection with the use of Council property and services.
- 6.2.4 Similarly, an employee must neither seek to use undue influence on an individual member to make a decision in his favour, nor raise personal matters to do with their job, nor make claims or allegations about other employees. (*The Council has formal procedures for consultation, grievance and discipline, and employees have the right to report possible wrongdoing under the Council's Confidential Reporting Code*).

## 6.3 **Familiarity**

- 6.3.1 Close personal familiarity between individual members and employees can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, such as personal details.
- 6.3.2 Such familiarity could also cause embarrassment to other members and/or other employees and even give rise to suspicions of favouritism.
- 6.3.3 For these reasons close personal familiarity must be avoided.

## 6.4 **Breach of Protocol**

- 6.4.1 If a member considers that he has not been treated with proper respect or courtesy he may raise the issue with the employee's line manager. If direct discussion with the manager does not resolve the complaint it should be referred to the Head of Service or Director responsible for the employee concerned. Breach of the Protocol may give rise to disciplinary proceedings against an employee if the circumstances warrant it.
- 6.4.2 If an employee considers that a member has contravened the protocol he should consult his line manager who will if necessary involve the Head of Service or Director. In certain circumstances breach of the Protocol may also constitute a breach of the Members' Code of Conduct. If the breach is sufficiently serious this may warrant a formal reference to the Monitoring Officer as a complaint to be considered for potential investigation by the Audit and Governance Committee. Many complaints will be capable of informal resolution. The Monitoring Officer or the Chief Executive will assist in this process if necessary.

## **7. PROVISION OF ADVICE AND INFORMATION TO MEMBERS**

- 7.1 Members are free to approach employees of the Council to provide them with such information and advice as they may reasonably need in order to assist them in discharging their role as a member of the Council. This can range from a request for general information about some aspect of the Council's activities to a request for specific information on behalf of a constituent.
- 7.2 Employees should always endeavour to respond to requests for information promptly and should in any event inform the member if there is likely to be any appreciable delay in dealing with an enquiry. As a minimum the timescale for responding to correspondence should be observed i.e. either a full response or, if this is not possible, an acknowledgement that fully explains what is happening within 5 working days of the receipt of the enquiry.
- 7.3 The legal rights of members to inspect Council documents are covered partly by statute and partly by common law.
- 7.4 The Access to Information Procedure Rules of the Constitution explain the position with regard to access to papers relating to the business of a Council body.
- 7.5 The exercise of the common law right depends upon a member's ability to demonstrate a "need to know". In this respect a member has no right to "a roving commission" to examine any documents of the Council. Mere curiosity is not sufficient.
- 7.6 The information sought by a member should only be provided by the respective Service as long as it is within the limits of the Service's resources. For their part, members should seek to act reasonably in the number and content of the requests they make.
- 7.7 It is important for Services and their staff to keep members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the area that he represents. Local members should be informed about proposals that affect their ward and should also be invited to attend Council initiated events within their ward. (*Further details are contained in the Local Member Consultative Charter, which is annexed to this Protocol*).
- 7.8 If a member asks for specific information relating to the work of a particular Service, and it appears possible or likely that at a subsequent meeting an issue could be raised or question asked on the basis of the information provided, then the appropriate Cabinet Member or Committee Chairman concerned should be advised about the information provided.
- 7.9 Officers have to advise members from time to time that a certain course of action cannot be carried out. Members sometimes assume that this is a case of officers deliberately obstructing the wishes of politicians. In fact this is hardly ever the case. Officers are employed to give unbiased professional advice even if it is not what Members want to hear. They do this as much for the protection of members as for any other reason. However, the mark of an effective officer is that if they do have to give negative advice, this will be accompanied by suggestions as to how members might achieve some or all of their objectives in other ways. Such officers are invaluable to any Council.
- 7.10 Members may be entitled under the Freedom of Information Act 2000 to receive information which falls outside their common law rights based on the "need to know".

Employees are encouraged to supply documents to members without the need for a formal FOI request if it is apparent from the member's enquiry that any individual would be entitled to receive such documentation. The Council's Customer Care Manager will be able to advise in consultation if necessary with the Monitoring Officer on whether any request would fall within the Freedom of Information Act.

## **8. MEMBERS ACTING AS ADVOCATE FOR OR SUPPORTING THIRD PARTIES IN APPEALS AGAINST COUNCIL DECISIONS**

8.1 Members have the same rights to represent third parties on appeals against Council decisions or to support third parties in such appeals as any member of the public. However, it is important to ensure that when acting in either role should not seek to take improper advantage of their position as a member of the Council and that Council officers are not deterred from defending the Council's decision as vigorously as in any other case. For those reasons members should in such circumstances be particularly careful:

- (a) not to disclose any information which they have received from the Council in their capacity as a member which would not be available to a member of the public;
- (b) not to disclose or make reference to briefings on the relevant matter which they have received from officers;
- (c) to ensure that in the conduct of the appeal they do not seek or appear to seek preferential treatment.

8.2 Members acting as an advocate or as a supporter of any appeal against a Council decision must expect to be treated by officers in exactly the same way as any other advocate or supporter.

8.3 Members acting as an advocate or a supporter of the Council should liaise with relevant officers to ensure that their activity does not weaken the Council's case.

## **9. CONFIDENTIALITY**

9.1 In accordance with the Code of Conduct for Members, a member must not disclose information given to him/her in confidence by anyone, or information acquired which he/she believes, or ought reasonably to be aware, is of a confidential nature, except where:-

- 9.1.1 he/she has the consent of a person authorised to give it;
- 9.1.2 he/she is required by law to do so;
- 9.1.3 the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
- 9.1.4 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 authority.

- 9.2 Confidential Committee papers are to be treated as confidential information unless the relevant Committee resolves not to exclude press and public. Members are reminded that the author of the report makes the initial decision as to whether or not the papers are to be treated as confidential. The decision as to whether they remain confidential is for the Committee. Other information may be confidential because to disclose it would be against the Council's or the public interest. Information may also be confidential because of the circumstances in which it was obtained.
- 9.3 Information and correspondence about an individual's private or business affairs will normally be confidential.
- 9.4 Officers should make it clear to members if they are giving them confidential information. If a member is not sure whether information is confidential, he or she should ask the relevant officer, but treat the information as confidential in the meantime.
- 9.5 Any Council information provided to a member must only be used by the member in connection with the proper performance of the member's duties as a member of the Council.
- 9.6 If a member receives confidential information and considers it should be disclosed to another person because it is reasonable and in the public interest to do so then he or she must first consult with the Monitoring Officer and shall not disclose the information without having regard to any advice given by that officer.

## **10. PROVISION OF SUPPORT SERVICES TO MEMBERS**

- 10.1 The only basis on which the Council can lawfully provide support services (e.g. stationery, word processing, printing, photocopying, transport, etc) to members is to assist them in discharging their role as members of the Council. Such support services must therefore only be used on Council business. They should never be used in connection with party political or campaigning activity or for private purposes.

### **10.2 Correspondence**

Official letters on behalf of the Council should be sent in the name of the appropriate employee, rather than over the name of a member. There are circumstances where a letter sent in the name of a member is perfectly appropriate, for example, in response to a letter of enquiry or complaint sent direct to that member. Letters which, for example, create obligations or give instructions on behalf of the Council should never be sent out in the name of a member.

### **10.3 Media**

Communication with the media can be an important part of a member's workload. In general, members provide comment and views while employees provide factual information. If a member is unsure about the circumstances of a particular issue he should contact the appropriate Director or Head of Service concerned or ask the Communications Office to do so.

## **11. THE COUNCIL'S ROLE AS EMPLOYER**

In their dealings with officers, members should recognise and have regard to the Council's role as employer. Members should be aware that officers could rely on inappropriate behaviour of a member in an employment case against the Council.

## 12. POLITICAL ACTIVITY

- 12.1 There are a number of constraints that apply to an employee who occupies a post that is designated as “politically restricted” under the terms of the Local Government and Housing Act 1989.
- 12.2 In summary, such employees are prevented from:
- 12.2.1 being a Member of Parliament, European Parliament or local authority;
  - 12.2.2 acting as an election agent or sub-agent for a candidate for election as a member of any the bodies referred to in 12.2.1;
  - 12.2.3 being an officer of a political party or any branch of a political party or a member of any committee or sub-committee of such a party or branch, if his duties would be likely to require him to:-
    - (a) participate in the general management of the party or branch; or
    - (b) act on behalf of the party or branch in dealings with persons other than members of the party;
  - 12.2.4 canvassing on behalf of a political party or a candidate for election to any the bodies referred to in 12.2.1
  - 12.2.5 speaking to the public with the apparent intent of affecting public support for a political party; and
  - 12.2.6 publishing any written or artistic work of which he is the author (or one of the authors) or acting in an editorial capacity in relation to such works, or to cause, authorise or permit any other person to publish such work or collection - if the work appears to be intended to affect public support for a political party.
- 12.3 It is common for party groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant decision making body. Employees may properly be called upon to support and contribute to such deliberations by party groups provided they maintain a stance which is politically impartial. Support may include a range of activities including briefings for members relating to their roles e.g. chairperson or spokesperson. Employees should be required to give information and advice to political groups on Council business only and not on matters which are purely of a party political nature. Such advice should be available to all party groups and not solely to the majority group. It is important that the political neutrality of employees is preserved and that group confidentiality is maintained by employees.
- 12.4 Usually the only employees involved in attending group meetings will be the Chief Executive, Directors and Heads of Service and they will generally leave the meeting after making their presentation and answering questions.
- 12.5 Employees are employed by the Council as a whole. They serve the Council and are responsible to the Chief Executive and their respective Directors/Heads of Service, and not to individual members of the Council whatever office they might hold.

- 12.6 Both members and employees are subject to their own Codes of Conduct which can be found in the Constitution. This Protocol provides guidance on working relationships between members and employees. It is essential that both are familiar with the detailed obligations in their respective Codes of Conduct which will prevail in the event of any conflict between the Codes and this Protocol.

### **13. SANCTIONS**

- 13.1 Complaints about any breach of this Protocol by a member may be referred to the Monitoring Officer. It should be noted that certain breaches may also amount to breaches of the Code of Conduct for Members.
- 13.2 Complaints about any breach of this protocol by an officer may be referred to the relevant Head of Service, the Chief Executive or the Monitoring Officer.

### **14. CONCLUSION**

- 14.1 It is hoped that, by following good practice and securing sensible and practical working relationships between members and employees, we can provide one of the cornerstones of a successful local authority and thereby enhance the delivery of high value quality services to the people of the area. Mutual understanding, openness and respect are the greatest safeguard of the integrity of the Council, its members and employees.

### **5.5 - LOCAL MEMBER CONSULTATIVE CHARTER**

The Council is committed to providing its elected members with accurate, helpful and timely consultation, advice and information in relation to any matters of any significance or sensitivity which relate to their particular ward and where circumstances render it appropriate to involve a local member.

1. Directors and staff will be continually vigilant to identify such matters and ensure that local members are informed accordingly. This will also include any matter which could impact upon the neighbouring areas of other members.
2. Directors and staff will ensure that all correspondence/enquiries from local members are dealt with promptly and if necessary members will be kept advised of progress.
3. Appropriate Directors and staff will ensure that, where the Council's Constitution allows, local members will be invited to meetings and receive the necessary documentation.
4. Any matter of significance or sensitivity which relates to a particular ward will be discussed with the local member(s) concerned before being submitted for consideration by the Cabinet or other Council Body. This will provide the opportunity for early awareness and allow a local perspective to be obtained.
5. Directors and staff will regularly brief appropriate Cabinet members on service and partnership issues and developments and will use such occasions to help identify any potential local issues.
6. Details of any petitions received which relate to matters in a particular ward will be sent to the local member concerned. In addition, copies will also be provided to the Leader. Local members will be kept informed on the progress/outcomes of such petitions.
7. Subject to any restrictions caused by commercial, legal or personal confidentiality, copies of all correspondence with Parish/Town Councils and the Local Government Ombudsman which relate to matters of any significance or sensitivity in a particular ward will be sent to the local member concerned.
8. Copies of all correspondence with MPs and MEPs which relate to matters in a particular ward will be sent to the local member concerned. In addition, copies will also be provided to the Leader.
9. Directors and staff will ensure that as much local service information as possible is provided to local members.
10. Services will provide every member with an officer contact guide for the services they provide, including where appropriate local contacts.
11. Wherever appropriate, Services will make local members aware of and invite them to service events and activities in their area. This will include strict adherence to the arrangements that have been agreed for the official opening/launch of Council projects, schemes, exhibitions etc.

- 12.** In certain instances, both members and officers will receive an enquiry which relates to a matter in a particular area. In order to ensure consistency of approach in these circumstances, officers will agree with the member(s) concerned a single response to such enquiries.
- 13.** As part of a continual review of the Charter's effectiveness, the co-operation of members is sought in the responsible use at all times of advice and information that is provided to them, and members are encouraged to advise officers of the information requirements and of any local circumstances or sensitivities which might have a bearing on the Council's work.

## **5.6 - CONFIDENTIAL REPORTING (“WHISTLEBLOWING”) CODE**

### **1. INTRODUCTION**

- 1.1 This is the Council’s Policy intended to encourage and enable employees to raise concerns within the Council without fear of victimisation, subsequent discrimination or embarrassment. It reflects the Council’s commitment to good practices, to valuing staff and setting continuous improvement in service delivery.
- 1.2 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.3 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees, and others that we deal with, who have serious concerns about any aspect of the Council’s work to come forward and voice those concerns. Wherever possible, employees are encouraged to use relevant Council procedures to report issues in an open and transparent way, because that is the type of organisational culture we are trying to foster. It is recognised, however, that some cases will have to proceed on a confidential basis.
- 1.4 This document makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. The Confidential Reporting Code is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking a problem or ‘blowing the whistle’ outside.
- 1.5 The Code applies to all employees and those contractors working for the Council on Council premises, for example, agency staff, builders and drivers. It also covers suppliers and those providing Services under a contract within the Council in their own premises. The Council will seek to ensure that as part of its procurement processes, this code is brought to the attention of such external contractors, suppliers and services providers (described in this code as “Contractors”).
- 1.6 These procedures are in addition to the Council’s complaints procedures and other statutory reporting procedures applying to some Services. If asked, employees should make service users aware of the existence of these procedures.
- 1.7 This Code has been discussed with the relevant trade unions and professional organisations and has their support.

### **2. AIMS AND SCOPE OF THE CODE**

- 2.1 This Code aims to:
  - 2.1.1 encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice.
  - 2.1.2 provide avenues for you to raise those concerns and receive feedback on any action taken.
  - 2.1.3 ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.

- 2.1.4 reassure you that you will be protected from possible reprisals or victimisation.
  - 2.1.5 Reassure you that your concerns will be dealt with in confidence.
  - 2.1.6 reassure you that your anonymity will be maintained providing it is felt that any disclosures have been made in good faith.
- 2.2 There are existing procedures in place to enable you to lodge a grievance relating to your own employment or you consider that you are being harassed due to your race, sex or age, or if you are concerned about health and safety risks. The Confidential Reporting Code is intended to cover major concerns that fall outside the scope of other procedures.
- 2.3 These include:
- 2.3.1 conduct which is an offence or a breach of law;
  - 2.3.2 disclosures related to miscarriages of justice;
  - 2.3.3 health and safety risks, including risks to the public as well as other employees;
  - 2.3.4 damage to the environment;
  - 2.3.5 the unauthorised use of public funds;
  - 2.3.6 possible fraud and corruption;
  - 2.3.7 sexual or physical abuse of clients;
  - 2.3.8 discrimination issues
  - 2.3.9 bullying and harassment
  - 2.3.10 any attempt to prevent disclosure of any of the above;
  - 2.3.11 other unethical conduct.
  - 2.3.12 Thus, any serious concerns that you have about any aspects of service provision or the conduct of officers or members of the Council or others acting on behalf of the Council can be reported under the Confidential Reporting Code.
- 2.4 This may be about something that:
- 2.4.1 makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to;
  - 2.4.2 is against the Council's Constitution and policies;
  - 2.4.3 falls below established standards of practice;
  - 2.4.4 amounts to improper conduct.
- 3. SAFEGUARDS**
- 3.1 The Council is committed to good practice and high standards and wants to be supportive of employees.

- 3.2 The Council recognises that the decision to report a concern can be a difficult one to make. If you believe what you are saying is true and the statement is made in good faith, you should have nothing to fear because you will be doing your duty to your employer and those for whom you are providing a service.
- 3.3 The Council will not tolerate any harassment or victimisation, including informal pressures, and will take appropriate action to protect you when you raise a concern in good faith. This action will depend on the type of concern and specific service arrangements. On very rare occasions, you may be asked whether you would be prepared to obtain further information.
- 3.4 This would be entirely at your discretion and a full risk assessment would be completed, prior to such a course of action being agreed.
- 3.5 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

#### **4. CONFIDENTIALITY**

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. Any breach of confidentiality will be regarded as a serious matter and will be dealt with accordingly. At the appropriate time, however, you may need to come forward as a witness. If you wish to be supported by a representative of your choice, then this would be available to you.

#### **5. ANONYMOUS ALLEGATIONS**

- 5.1 This Code encourages you to put your name to your allegation whenever possible.
- 5.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 5.3 In exercising this discretion, the facts to be taken into account would include:
- 5.3.1 the seriousness of the issues raised;
  - 5.3.2 the credibility of the concern; and
  - 5.3.3 the likelihood of confirming the allegation from attributable sources.

#### **6. UNTRUE ALLEGATIONS**

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. If, however, you make an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken against you.

#### **7. HOW TO RAISE A CONCERN**

This procedure applies to Council employees and contractors.

- 7.1 As a first step, you should normally raise concerns with your immediate line manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if you believe that senior management is involved, you should approach the Chief Executive, the Finance Director, the Monitoring Officer or the Internal Audit Manager.

- 7.2 Concerns may be raised verbally or in writing. Staff who wish to make a written report are invited to use the following format:
- 7.2.1 the background and history of the concern, giving relevant dates;
  - 7.2.2 the reason why you are particularly concerned about the situation.
- 7.3 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 7.4 Advice/guidance on how to pursue matters of concern may be obtained from:
- 7.4.1 Chief Executive
  - 7.4.2 Director of Finance, Policy and Development
  - 7.4.3 Head of Mid Kent Audit
  - 7.4.4 Monitoring Officer
- 7.5 Alternatively, you may wish to seek advice from a person independent of the Council. In this case you should contact the Council's External Auditors (Grant Thornton UK). You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two or more of you who have had the same experience or concerns.
- 7.6 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.

## **8. HOW THE COUNCIL WILL RESPOND**

- 8.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.
- 8.2 Where appropriate, the matters raised may:
- 8.2.1 be investigated by management, internal audit, or through the disciplinary process;
  - 8.2.2 be referred to the police;
  - 8.2.3 be referred to the external auditor;
  - 8.2.4 form the subject of an independent inquiry.
- 8.3 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle, which the Council will have in mind, are your well-being and the public interest. Concerns or allegations that fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

- 8.4 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 8.5 Within ten working days of a concern being raised, the person with whom you have raised your concerns will write to you:
- 8.5.1 acknowledging that the concern has been received;
  - 8.5.2 indicating how we propose to deal with the matter;
  - 8.5.3 giving an estimate of how long it will take to provide a final response;
  - 8.5.4 telling you whether any initial enquiries have been made;
  - 8.5.5 supplying you with information on staff support mechanisms; and
  - 8.5.6 telling you whether further investigations will take place and if not, why not.
- 8.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.
- 8.7 However, should this further information need to be gleaned by you, from another person, without them being made aware of your involvement in the confidential reporting process, specific procedures will need to be applied.
- 8.8 Should a manager believe that this additional information may assist the enquiry, and that the information can only be obtained by you, no action will be taken until the matter has been referred to the Monitoring Officer, for a decision to be made as to whether such a course of action is both necessary and proportionate.

**Important:**

- 8.9 Managers must not, under any circumstances, ask an individual to obtain further information covertly, from another person, without following this procedure. Failure to do so may infringe Human Rights and render the Council liable to legal action.
- 8.10 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union or professional association representative or a friend.
- 8.11 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.
- 8.12 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, we will inform you of the outcome of any investigation.

**9. THE RESPONSIBLE OFFICER**

Directors and their senior staff who receive concerns will copy the initial complaint to the Chief Executive, and keep that officer informed of the progress and outcome of the investigation. The Chief Executive has overall responsibility for the maintenance and operation of the Code. That

officer will maintain a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and will report as necessary to the Council.

## **10. HOW THE MATTER CAN BE TAKEN FURTHER**

- 10.1 This Code is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and if you feel it is right to take the matter outside the Council, the following are possible contact points:
  - 10.1.1 The Council's external auditors: Grant Thornton UK
  - 10.1.2 Your local Citizens' Advice Bureau
  - 10.1.3 A relevant professional bodies or regulatory organisations
  - 10.1.4 A relevant voluntary organisation
  - 10.1.5 The police
  - 10.1.6 Trade Union
- 10.2 If you do take the matter outside the Council, you should ensure that you do not disclose confidential information. Check with the contact point about that.

## **5.7 - LOCAL CODE OF CORPORATE GOVERNANCE**

1. Corporate governance is a term used to describe how organisations direct and control what they do. As well as systems and processes this includes cultures and values. For local authorities this also includes how a council relates to the communities that it serves. Good corporate governance requires local authorities to carry out their functions in a way that demonstrates accountability, transparency, effectiveness, integrity, impartiality and inclusivity. Corporate governance is also the structure through which strategic objectives are set and performance monitored.
2. This Council is committed to demonstrating that it has the necessary corporate governance arrangements in place to perform effectively.
3. The Code is a public statement that sets out the way the Council will meet that commitment. As such it represents a key component of the Council's governance arrangements. The Code has been developed in accordance with and is consistent with the CiPFA/SOLACE Delivering Good Governance in Local Government Framework and is based upon the following 6 core principles:
  - (i) Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area.
  - (ii) Members and officers working together to achieve a common purpose with clearly defined functions and roles.
  - (iii) Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour.
  - (iv) Taking informed and transparent decisions which are subject to effective scrutiny and managing risk.
  - (v) Developing the capacity and capability of members and officers to be effective.
  - (vi) Engaging with local people and other stakeholders to ensure robust public accountability.
4. The Code explains how the Council meets these core principles and the supporting principles that underpin them. To complement this, the Code also highlights the key documents and functions which contribute to the Council's good governance arrangements.
5. The mechanisms for monitoring and reviewing the Council's corporate governance arrangements are set out in the Code.

## **5.8 - THE COUNCIL'S CORPORATE GOVERNANCE ARRANGEMENTS**

### **1. PRINCIPLE 1: FOCUSING ON THE COUNCIL'S PURPOSE AND COMMUNITY NEEDS**

- 1.1 The Council will exercise strategic leadership by developing a clear vision and purpose, identifying intended outcomes and ensuring that these are clearly communicated to all stakeholders of the organisation, both internal and external. In doing so, the Council will report regularly on its activities and achievements, and its financial position and performance. The Council will publish annually:
- 1.2 The Corporate Strategy and Annual Report, including externally verified performance information:
  - 1.2.1 Directorate and Service Plans;
  - 1.2.2 The Statement of Accounts, incorporating the Annual Governance Statement.
- 1.3 In addition, the Council will keep its corporate strategies, objectives and priorities under constant review, so as to ensure that they remain relevant to the needs and aspirations of the community.
- 1.4 In undertaking all its activities, the Council will aim to deliver high quality services which meet the needs of service users. Delivery may be made directly, in partnership with other organisations or by a commissioning arrangement. Measurement of service quality will also be a key feature of service delivery. In addition, the Council will aim to ensure that tax payers and service users receive excellent value for money, and the Council will therefore continue to review this.
- 1.5 The Council will also seek to address any concerns or failings in service failure by adhering to and promoting its Complaints and Feedback Procedure.

### **2. PRINCIPLE 2: HAVING CLEAR RESPONSIBILITIES AND ARRANGEMENTS FOR ACCOUNTABILITY**

- 2.1 To ensure accountability, the Constitution determines the roles and responsibilities of the Council's functions.
- 2.2 In particular, the Council's Constitution:
  - 2.2.1 clearly defines the statutory roles of Head of Paid Service, Section 151 Officer and Monitoring Officer;
  - 2.2.2 sets out a protocol to address the working relationship between the Leader and the Chief Executive which enables each to fulfil their respective roles;
  - 2.2.3 ensures that a constructive working relationship exists between members and officers and that the responsibilities of members and officers are carried out to a high standard;
  - 2.2.4 includes schemes of member and officer delegations;
  - 2.2.5 includes protocols for partnership working that help to ensure that responsibilities are clearly defined and that relationships work effectively for the benefit of service users;

2.2.6 requires appropriate governance arrangements for partnerships, which define the legal status of the entity and also the extent to which decisions taken by the partnership will be binding for each organisation;

2.2.7 will be reviewed annually.

### 3. **PRINCIPLE 3: GOOD CONDUCT AND BEHAVIOUR**

3.1 The Council will conduct its activities in a manner which promotes high ethical standards and good behaviour and will ensure that its members and officers exercise leadership by behaving in ways that exemplify high standards of conduct and effective governance. The following policies and protocols have been established and will be kept under review to assist the Council in fostering this culture:

3.1.1 Member Code of Conduct

3.1.2 Employee Code of Conduct

3.1.3 Protocol on Officer/Member Relations

3.1.4 Whistleblowing policy

3.2 The aim is to develop a set of shared values which will underpin an ethos of good governance. This will be further supported by compliance with legislation and all relevant professional standards.

3.3. The Council has also established the Audit and Governance Committee to discharge its responsibilities for promoting and maintaining high standards of member conduct.

3.4 Where the Council works in partnership it will continue to uphold its own ethical standards, as well as acting in accordance with the partnership's shared values and aspirations.

### 4. **PRINCIPLE 4: INFORMED, TRANSPARENT DECISION MAKING AND MANAGING RISK**

4.1 The Council observes this principle through the:

4.1.1 Establishment of an effective scrutiny function;

4.1.2 Recording of all decisions taken and the reasons for those decisions;

4.1.3 Maintenance of registers to record potential conflicts of interest;

4.1.4 Operation of the Audit and Governance Committee;

4.1.5 Existence of an effective and transparent complaints and feedback procedure;

4.1.6 Provision of timely and relevant information to all interested parties;

4.1.7 Involvement of proper professional legal and/or financial expertise to inform decision-making;

4.1.8 Existence of an embedded risk management culture;

- 4.1.9 Existence of effective whistle blowing procedures;
  - 4.1.10 Observation of all specific legislative requirements placed upon the Council.
- 4.2 The Council has established a scrutiny framework that will ensure policies and decisions are made which reflect the Council's strategic objectives and priorities. Members will be supported in decision making by ensuring that they are properly informed of all legal and resource considerations.
- 4.3 Risk management processes within the Council will be maintained so as to ensure that the risk and impact of decisions can be fully assessed.

## **5. PRINCIPLE 5: DEVELOPING SKILLS AND CAPACITY**

- 5.1 The Council is continually seeking to develop the capacity and capability of both its members and officers in recognition that the people who direct and control the organisation must have the right skills to do so. This is achieved through a commitment to training and development, as well as recruiting people with the right balance of knowledge and experience.
- 5.2 The Council will achieve this by:
- 5.2.1 Operating member and employee induction programmes and identifying personal development needs;
  - 5.2.2 Providing career structures to encourage development;
  - 5.2.3 Investing in member and officer training and development;
  - 5.2.4 Maintaining an effective performance management system;
  - 5.2.5 Encouraging a wide variety of individuals to participate in the work of the Council.

## **6. PRINCIPLE 6: ENGAGING STAKEHOLDERS TO ENSURE ROBUST ACCOUNTABILITY**

The Council will seek the views of its stakeholders and respond appropriately. The Council will achieve this by:

- 6.1 publishing an annual Statement of Accounts and Annual Report to inform stakeholders and services users of the previous year's achievements and outcomes;
- 6.2 producing plans for service delivery within the community;
- 6.3 clearly identifying its stakeholders, in order to ensure that relationships with these groups continue to be effective;
- 6.4 maintaining effective and clear channels of communication which reach all groups within the community and other stakeholders as well as offering a range of consultation methods;
- 6.5 producing an annual report on the performance of the scrutiny function;

- 6.6 providing a variety of opportunities for the public to engage effectively with the Council including attending meetings;
- 6.7 ensuring partnership arrangements demonstrate clear, appropriate governance accountabilities;
- 6.8 presenting itself in an open and accessible manner to ensure that council matters are dealt with transparently, in so far as the need for confidentiality allows;
- 6.9 developing an internal communication policy which will outline how staff and their representatives are consulted and involved in decision-making.

## **7. MONITORING, REVIEW AND REPORTING**

- 7.1 The Council's Audit and Governance Committee is responsible for monitoring and reviewing the Council's corporate governance arrangements.
- 7.2 The Audit and Governance Committee is independent of the Council's Cabinet and Scrutiny functions and has various powers and responsibilities in relation to audit and governance issues, as detailed in the Constitution.
- 7.3 The Audit and Governance Committee promotes and maintains high standards of conduct by councillors and co-opted members of the Council. The Committee also assists councillors to observe the Members' Code of Conduct and provides advice to the Council on issues relating to member/officer relations. The Committee includes independent members.
- 7.4 The Council is required to annually review the effectiveness of its system of internal controls. This review will seek to:
  - 7.4.1 Identify principal risks to the achievement of council objectives;
  - 7.4.2 Identify and evaluate key controls to manage principal risks;
  - 7.4.3 Obtain assurances of the effectiveness of key controls;
  - 7.4.4 Evaluate assurances and identify gaps in control/assurances.

## **8. THE ANNUAL GOVERNANCE STATEMENT**

- 8.1 Following the annual review of the Council's governance arrangements and system of internal control, an Annual Governance Statement (AGS) will be published as part of the Council's Statement of Accounts.
- 8.2 Action plans will be drawn up in response to any significant control weakness identified in the AGS. A follow up process will be overseen by the Audit and Governance Committee to ensure continuous improvement of the system of corporate governance.

## **5.9 PROPER OFFICERS AND DESIGNATED OFFICERS**

### **Definition**

By section 270(3) of the Local Government Act 1972, a Proper Officer is defined as, in relation to any purpose and any local authority or other body or any area, an officer appointed for the purpose. Accordingly, the Council needs to decide which of their officers should be identified to carry out particular functions which are, by primary or secondary legislation, to be carried out by a specified post which will be the Proper Officer post mentioned by the legislation concerned.

A designated officer is an officer designated by the Council to carry out a particular function but which is not prescribed as a Proper Officer function by legislation.

### **Proper Officer Posts**

The Tunbridge Wells Borough Council has specified the posts referred to in this document as Proper Officers or Designated Posts in relation to the functions specified.

### **PROPER OFFICERS AND DESIGNATED OFFICERS**

Proper officer posts except where otherwise indicated:

#### **Chief Executive or, in his or her absence, the Finance Director**

- (1) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Clerk of a Council or the Town Clerk of a Borough shall be construed as a reference to the Chief Executive.
- (2) The following provisions in the Local Government Act 1972: -
  - (a) Section 13(3) - The officer who together with the Chairman of the Parish Meeting shall be a body corporate by the name of 'The Parish Trustees' in a parish not having a separate parish council.
  - (b) Section 83(1) - The officer to whom a person elected to the office of Mayor, Deputy Mayor or councillor of the Council of the Borough shall deliver a declaration of acceptance of office in a form prescribed by rules made under Section 36 of the Representation of the People Act 1983.
  - (c) Section 84 - The officer to whom a person elected to any office under the Act may give written notice of resignation.
  - (d) Section 88(2) - The officer who may convene a meeting for the election of Mayor of the Council following a casual vacancy in that office.
  - (e) Section 89(1) - The officer to whom notice shall be given of any casual vacancy occurring in the office of councillor.
  - (f) Section 210(6) and (7) - The officer who shall exercise the powers relating to charities conferred by these sub-sections.
  - (g) Schedule 12, Part 1, paragraph 4(2)(b) - The officer who shall sign a summons to attend a Council meeting.

- (h) Schedule 12, Part 1, paragraph 4(3) - The officer to whom a member of the Council shall give a notice in writing desiring summonses to attend meetings of the Council to be sent to an address specified in the notice other than his or her place of residence.
- (3) The following provisions in the Representation of the People Act 1983: -
  - (a) Section 8 - The Registration Officer of any constituency or any part of a constituency coterminous with or situated in the district.
  - (b) Section 35 - The Returning Officer at an election of councillors of the district (and or parishes and communities within the district).
- (4) Designated as Head of Paid Service in accordance with Section 4 of the Local Government and Housing Act 1989.
- (5) With regard to any other requirement for the appointment of a proper officer, the Chief Executive is hereby appointed such proper officer in the absence of any specific appointment for that purpose.
- (6) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

#### **Chief Executive, Directors and their Heads of Service**

- (7) Local Government Act 1972, Section 234(1) - the authentication of documents in relation to:
  - (i) any matters which fall within the terms of any delegated powers conferred upon them by the Council; and
  - (ii) subject thereto, matters which come exclusively within the scope of their duties.

#### **Monitoring Officer**

- (8) The officer with whom the list and revised lists of politically restricted posts under Section 2(4) of the Local Governmental and Housing Act 1989 shall be deposited.
- (9) Local Government Act 1972 Section 100B(2) - the officer who may exclude reports from being open to public inspection which, in part or wholly, relates to items during which the meeting is not likely to be open to the public.

- (10) Local Government Act 1972 Section 100C - the officer who, where in consequence of the exclusion of parts of the minutes which disclose exempt information, the document open to inspection does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, shall make a written summary of the proceedings or part thereof which provides such a record without disclosing the exempt information.
- (11) Local Government Act 1972 Section 100D - the officer who shall compile a list of background papers for a report for a meeting of the Council.
- (12) Local Government Act 1972 Section 100F - the officer who, where it appears to him/her that a document discloses exempt information of a description for the time being falling within any of paragraphs 1 to 6, 9, 11, 12 and 14 of Part 1 of Schedule 12A to the 1972 Act, subsection (1) of Section 100F of the 1972 Act does not require the document to be open to any member of the Council.
- (13) Local Government Act 1972, section 225(1) - the officer who shall receive and retain documents deposited with the Council pursuant to the Standing Orders of either House of Parliament or any enactment or instrument and shall take such action relating to these documents as may be directed.
- (14) Local Government Act 1972, section 229(5) - the officer who shall certify a photographic copy of a document in the custody of the Council, or of a document which has been destroyed whole in the custody of the Council, or of any part of any such document.
- (15) Local Government Act 1972, section 234(1) - the officer for the purpose of the authentication of documents in relation to any matters not falling within the definition referred to under the heading 'Chief Executive and Heads of Service and their Divisional Managers etc' at paragraph (7) above, following or otherwise dealt with.
- (16) Local Government Act 1972, Section 236(9) and (10) - The officer who shall send a copy of every Byelaw made by the Council and confirmed, to the Proper officer of every parish or community to which they apply, and to the County Council.
- (17) Local Government Act 1972, section 238 - the officer who shall certify a printed copy of a Byelaw of the Council.
- (18) Local Government Act 1972, Schedule 14, Part II, paragraph 25(7) - the officer who shall certify a copy of resolution of the Council has been passed applying or dis-applying the provisions of the Public Health Acts 1875 to 1925.
- (19) Local Government and Housing Act 1989, section 5 - designated as the Monitoring Officer.
- (20) Local Government Act 1974, Section 30(5), as amended by the Local Government Act 1988 - the officer who shall give public notice relating to reports issued by a Local Commissioner (an Ombudsman).
- (21) Local Government (Miscellaneous Provisions) Act 1976, section 41 - the officer to certify documents to be used in proceedings.
- (22) Local Government and Housing Act 1989, Section 19 - the officer to whom a general notice of a member's direct and indirect pecuniary interest shall be given.

- (23) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 2, Articles 3, 4 and 5 (see also Access to Information Procedure Rules) - the officer who shall ensure that records of Cabinet decisions and those made by individual Cabinet members, together with the reasons for those decisions and relevant officer reports and background papers are produced and are made publicly available as soon as possible.
- (24) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 2, Paragraph 6 (see also Access to Information Procedure Rules) - the officer to set out in every report to be made available to the public a list of those documents relating to the subject matter of the report.
- (25) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, paragraph 9 (see also Access to Information Procedure Rules) - the officer who shall make available to the public a report received by an individual member of the Cabinet which he or she intends to take into account in making any key decision.
- (26) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, Paragraph 11(2) and (7) (see also Access to Information Procedure Rules) - the officer who may, if he or she thinks fit, exclude from the copy of a report the whole or any part of the report to an item of business during which, in his or her opinion, the meeting is not likely to be open to the public and who may, on receiving a request from a newspaper, supply a copy of any document.
- (27) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 3, Paragraph 12 (see also Access to Information Procedure Rules) - the officer who, on instructions by the Cabinet Leader, shall publish a document which states that key decisions are to be made, a formal plan prepared etc in at least one newspaper circulating in the area of the Council.
- (28) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations Part 3, Paragraph 15 (see also Access to Information Procedure Rules) -
- (a) The officer who shall inform the relevant Overview and Scrutiny Select Committee by notice in writing of a matter about which a decision is to be made, such matter being one which is not included in the Cabinet Leader's Forward Plan and where such inclusion is impracticable and the matter would be a key decision;
  - (b) The officer who shall make available at the offices of the Council for inspection by the public a copy of the notice given pursuant to (a) above.
- (29) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 4, Article 17 (see also Access to Information Procedure Rules) - the officer who:-
- (a) where it appears to him or her that documents under the control of the Cabinet, which otherwise would be available for inspection by any member of the Council, would involve the disclosure of exempt information, then the documents concerned shall not be available as specified above;

- (b) where it appears to him or her that documents under the control of the Cabinet which otherwise would be available for inspection by any member of the Council would involve the disclosure of advice provided by a political adviser or assistant, then the documents concerned shall not be available as specified above.
- (30) The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 Part 4 Article 19 (see also Access to Information Procedure Rules) - the officer who, when so requested by the Chairman or any five members of the Select Committees, may require the Cabinet to submit a report to the Council where he or she thinks that a key decision has taken place which was not included in the forward plan, or was not the subject of the general exception procedure or the subject of an agreement between the relevant Select Committee Chairman or the Chairman or Vice-Chairman of the Council.
- (31) Budget and Policy Framework Procedure Rule 2 - the officer for the purpose of referring Cabinet proposals to Council and related matters.
- (32) Cabinet Procedure Rules - the officer to whom the Leader, where he or she has been given the power to delegate executive functions, must give written notice.
- (33) Cabinet Procedure Rules - the officer who shall comply with requests by the Cabinet Leader, any member of the Cabinet, the Overview and Scrutiny Committee, Full Council, the Monitoring Officer or the Finance Director to place an item on the agenda of a meeting of a Cabinet.
- (34) Overview and Scrutiny Procedure Rules - the officer to whom any change in the Overview and Scrutiny Committee is to be notified.
- (35) Overview and Scrutiny Procedure Rules - the officer to whom a member of the Overview and Scrutiny Committee shall give notice if he or she wishes an item to be placed on an agenda.
- (36) Overview and Scrutiny Procedure Rules - the officer to whom a formal report is to be submitted.
- (37) Overview and Scrutiny Procedure Rules - the officer to whom the Overview and Scrutiny Committee will inform that it requires any member or officer to attend one of its meetings.
- (38) Overview and Scrutiny Procedure Rules - the officer for the purposes of receiving notice and taking action in relation to a call-in by the Overview and Scrutiny Committee.
- (39) The Local Authority (Standing Orders) (England) Regulations 2001 - Schedule 1, Part II, Paragraph 5 (see also Officer Employment Procedure Rule 5) - the officer who shall receive notice of the name and other relevant details of the person to whom it is proposed to make an offer of appointment to a post specified in the Regulations. On receipt of such notice, the office shall notify every member of the Cabinet.
- (40) The Local Authority (Standing Orders) (England) Regulations 2001 - Schedule 1, Part II, Paragraph 6 (see also Officer Employment Procedure Rule 6) - the officer who shall receive notice of the name and other relevant details of the proposed dismissal of a postholder. On receipt of such notice, the officer shall notify every member of the Cabinet. If no objection has been received by the officer within the specified period, he or she shall notify the Council, Committee, Sub-Committee or officer.

## **Directors**

- (41) In the event of the Chief Executive being absent, to deal with matters for which the Chief Executive has been designated the proper officer, during his/her absence except where the Chief Executive has specifically delegated a director/directors to undertake such functions.
- (42) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

## **Finance Director**

- (43) Any reference in any enactment passed before or during the 1971/72 Session of Parliament, other than the Local Government Act 1972, or in any instrument made before 26 October 1972 to the Treasurer of a local authority shall be construed as a reference to the Chief Financial Officer.
- (44) Local Government Act 1972, Section 115(2) - The Officer who shall receive an accounting of and all money due from any officer of the Council.
- (45) Local Government Act 1972, Section 146(1) - The officer who (upon a transfer of securities on the alteration of the name of the District) shall make a statutory declaration specifying the securities and verifying the change of name and identity of the Council, or shall give such a certificate as is prescribed by paragraph (b) of this sub-section.
- (46) Local Government Act 1972, Section 151 - The officer having responsibility for the administration of the Council's financial affairs.
- (47) Local Government Finance Act 1988 Section 116(1) - the officer who shall notify the Council's Auditor of a meeting to consider a report under Section 114 of the Act (unlawful expenditure).
- (48) Local Government Finance Act 1988 Section 116(2) - the officer who shall notify the Council's Auditor of a decision made at the meeting referred to in paragraph (46) above.

## **Clinical Director of the Kent Local Health Protection Unit, the Consultant in Communicable Disease Control/Health Protection and any other Medical Officer authorised by the Clinical Director**

- (49) Any reference in any enactments passed before or during the 1971-1972 Session of Parliament, other than in the Local Government Act 1972, or in an instrument made before 26 October 1972 relating to the control of notifiable disease and food poisoning, to the Medical Officer of Health which thereafter shall be deemed to refer to the Proper Officer shall be construed as a reference to the Clinical Director of the Kent Local Health Protection Unit or any other Medical Officer authorised by the Clinical Director and the Consultant in Communicable Disease Control/Health Protection.
- (50) Without limiting the generality of the foregoing, where reference is deemed to be made in the following Acts, sections and regulations to the Proper Officer it shall be construed as a reference to the Clinical Director or any other medical officer authorised by him or her, and the Consultant in Communicable Disease Control/Health Provision as specified above: -

### **National Assistance Act 1948**

Section 47(2) of the National Assistance Act 1948 as amended (removal of suitable premises of persons in need of care and attention).

(51) The following provisions of the Public Health (Control of Disease) Act 1984

Section 11 - Cases of notifiable disease or food poisoning to be notified to Local Health Authority. Duty of General Practitioner to notify the Proper Officer.

- 18 - Power to obtain information from occupier in case of no notifiable disease or food poisoning.
- 20 - Power to stop employment to prevent spread of disease (compensation payable)
- 21 - Notice to prevent child suffering from notifiable disease attending school.
- 22 - Requisition of list of day scholars at school where notifiable disease exists.
- 24 - Restriction on sending infected articles to laundry, etc, unless disinfected.
- 29 - House or room to be disinfected to the satisfaction of the Proper Officer after case of notifiable disease, before letting.
- 31 - Power to certify the need to disinfect premises.
- 32 - Power to certify the need to remove temporarily (not themselves sick) of infected house.
- 36 - Power to Justice to order medical examinations on receipt of written certificate issued by Proper Officer (to be a registered medical practitioner).
- 40 - Power to Justice to order medical examination of inmates of common lodging house on complaint made to him by Proper Officer.
- 42 - Power to certify common lodging house to be free of infection.
- 43 - Power to certify body with infectious disease not to be removed from hospital except to mortuary or to be forthwith buried or cremated.
- 48 - Power to apply to a Justice of the Peace for an Order for a dead body to be removed to mortuary or buried forthwith if health endangered.
- 59 - Authorisation of documents relating to matters where designated as Proper Officer by the Council.

(52) The following provisions of the Public Health (Infectious Disease) Regulations 1988

Regulation 6 - Cases of infectious disease to be specially reported.

Regulation 8 - Weekly and quarterly returns.

Schedule 4 - Food poisoning and food borne infection.

Regulation 10 - Immunisation and vaccination

- (53) Proper Officer for all relevant environmental health matters forming part of the duties or terms of reference of the posts and for which the Clinical Director of Communicable Disease Control and any other Medical Officer are authorised by the Clinical Director.

#### **Chief Executive**

- (54) Local Government Act 1972 - Section 191(2) - the officer who shall receive an application under Section 1 of the Ordnance Survey Act 1841.

#### **Head of Planning Services**

- (55) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

#### **Head of Revenue and Benefits**

- (56) Designated, in accordance with Article 2 of the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Order 2000, for the purpose of authorising directed surveillance and the use of covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

## 5.10 TERMS OF INDEMNITY FOR MEMBERS AND OFFICERS

1. Tunbridge Wells Borough Council will, subject to the exceptions set out below, indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his or her action or failure to act in his or her capacity as a member or employee of the Council.

**This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:**

- 1.1. any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee;
  - 1.2. any act or failure to act by the member or employee otherwise than in his or her capacity as a member or employee of the authority;
  - 1.3. failure by the member to comply with the Council's Code of Conduct for members.
2. The Council will, subject to the provisions set out below, indemnify each of its members and employees against the reasonable costs which he or she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he or she is subject:
    - 2.1. "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court in the United Kingdom.
    - 2.2. "Part 3 proceedings" means an investigation, hearing or other proceedings for an alleged failure to comply with the Council's Code of Conduct for members which is being conducted by an Investigation Officer? or before a Case Tribunal or the Adjudication Panel for England or an appeal there from.
    - 2.3. This indemnity applies for the defence of defamation proceedings by members and employees subject to the alleged statement being made in the member's capacity as a member or the employee's capacity as an officer; but not for the bringing of defamation proceedings (the Council will consider any particular case of the defamation of an employee, outside of this indemnity).
    - 2.4. Where any member or employee avails him or herself of this indemnity in respect of defending him or herself against any criminal proceedings or Part 3 proceedings, this indemnity is subject to a condition that if, in respect of the matter in relation to which the member or employee has made use of this indemnity –
      - 2.4.1. the member or employee is convicted of a criminal offence in consequence of such proceedings; or
      - 2.4.1. a Case Tribunal or the Audit and Governance Committee determines that the member has failed to comply with the Code of Conduct for members.

and the conviction or determination is not overturned on appeal, the Member shall reimburse TWBC for any sums expended by TWBC pursuant to this indemnity.
    - 2.5. If the circumstances in 2.4. above arise, the member or officer shall, if required by the Council, sign an agreement confirming the contingent repayment obligation before the release of a sum or sums by the Council.

- 2.6. Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in 2.4 and 2.5 above shall apply as if references to the Council were references to its insurer.
3. For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the member or employee "in his or her capacity as a member or employee of the Council" where:
- 3.1. The act or failure to act was outside the powers of the Council, or outside the powers of the member or employee, but the member or employee reasonably believed that the act or failure to act was within The Council's powers or within the powers of the member or employee (as appropriate) at the time that he or she acted or failed to act, as the case may be.
- 3.2. The act or failure to act occurred not in the discharge of the functions of the member or employee as a member or employee of the Council but in their capacity as a member or employee of another organisation, where the member or employee is, at the time of the action or failure to act, a member or employee of that organisation either –
- 3.2.1. in consequence of his/her appointment as such member or employee of that organisation by the Council; or
- 3.2.2. in consequence of his/her nomination for appointment as such member or employee of that organisation by the Council; or
- 3.2.3. where the Council has specifically approved such appointment as such a member or employee of that organisation for the purpose of these indemnities.

(Note: Members or employees of such an organisation shall include a representative of Tunbridge Wells Borough Council appointed by the Council to that organisation).

4. Tunbridge Wells Borough Council undertakes not to sue (or join in action as co-defendant) an employee of Tunbridge Wells Borough Council in respect of any negligent act or failure to act by the employee in his or her capacity as an employee of Tunbridge Wells Borough Council Tunbridge Wells, subject to the following exceptions:
- 4.1. Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the employee; or
- 4.2. Any act or failure by the employee otherwise than in his or her capacity as an employee of Tunbridge Wells Borough Council.
5. These indemnities and undertakings will not apply if a member or employee, without the express permission of Tunbridge Wells Borough Council or of Tunbridge Wells Borough Council's appropriate officer, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope hereof.
6. These indemnities and undertakings shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or employee has ceased to be a member or employee of Tunbridge Wells Borough Council as well as during his or her membership of or employment by Tunbridge Wells Borough Council.
7. In the event that a member or employee is threatened with proceedings, whether civil or criminal, it is incumbent on him/her to immediately inform Tunbridge Wells Borough Council

(Chief Executive or his or her nominated officer and the Monitoring Officer) thereof and to follow such reasonable instructions as may be given.

## **5.11 PROTOCOL FOR MEMBERS TAKING PART IN THE PLANNING PROCESS**

### **1. Introduction**

- 1.1 The scope of this Protocol relates to the following areas of the Council's planning functions:
- 1.1.1 pre-application discussions.
  - 1.1.2 handling planning applications.
  - 1.1.3 planning appeals.
  - 1.1.4 planning enforcement.

It relates to any member involved in any aspect of the above functions, whether or not they are a member of the Planning Committee or Board.

- 1.2 Members and officers must carry out their duties in accordance with the Council's Constitution, which sets down the rules which govern the conduct of Council business. Members and officers must apply the rules in the Constitution first, and then apply this Protocol which seeks to supplement the Constitution for the purposes of planning.
- 1.3 The purpose of planning is to control the use and development of land in the public interest. The aim of this Protocol is to ensure that there are no grounds for suggesting that any planning decisions have been biased, partial or not well founded in any way.
- 1.4 In making planning decisions members have an overriding duty to the whole community. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions are made in accordance with the Development Plan unless material considerations indicate otherwise.
- 1.5 Attached to the Protocol, at Appendix 1, is Guidance for Members who are not sitting on the Planning Committee or undertaking a "Representative" Role, at a Planning Committee meeting. The Guidelines do not form part of the Protocol but they do provide further advice on good practice to assist the operation of the planning process.

### **2. General Roles of Members and Officers**

- 2.1 Members are accountable to the electorate while officers are accountable to the Council as a whole. Officers advise members of the Council, and also carry out the Council's work.
- 2.2 Both members and officers are governed by Codes of Conduct. Members are governed by the Code of Conduct for members and the Protocol on Member/Officer relations which form part of the Council's Constitution.
- 2.3 Officers are subject to the Council's Officer Code of Conduct. In addition officers who are members of professional bodies are subject to rules of conduct, breaches of which may result in disciplinary action. Officers in Planning Services are normally members of the Royal Town Planning Institute.

- 2.4 It is important for members to understand whom they represent and whose views they should consider. Whilst members have a duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. They must not favour any individuals or groups. It follows therefore that when they come to vote, they must do so in the interests of the Borough as a whole rather than just those of their own ward.
- 2.5 Members must recognise that Planning Officers' recommendations will be presented on the basis of their overriding obligation of professional independence, which may at times conflict with the views of the Committee or its members. Members must not put pressure on officers to put forward a particular recommendation.
- 2.6 Members are free to seek information from Planning Officers about planning proposals. Where questions relate to factual details regarding the proposal itself or procedural issues, they must contact the Case Officer. If members wish to raise questions regarding the interpretation of policy, they must address these to the Head of Service.
- 2.7 When an application is decided by the Committee, members must not vote unless they have been present to hear the entire consideration of that application including the officer's presentation and any public speaking. If they need to leave the meeting for a short while they may request the Chairman to adjourn the meeting at an appropriate time to allow that to happen.

### **3. Declaration of Interests**

- 3.1 The Code of Conduct for members sets out the requirements and guidance for declaration of Disclosable Pecuniary or Other Significant Interests. Members must disclose the existence and nature of any interest at any relevant meeting, including informal meetings with officers or other members.
- 3.2 A member who has either a Disclosable Pecuniary or Other Significant Interest must not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority. However, such a member may represent local or other views by making a statement at the start of the consideration of the item on the same basis as members of the public. Members will be required to leave the Committee room as soon as they have made their statement.
- 3.6 Members who have prejudicial interests which will prevent them voting on a regular basis should not be nominated to serve on the Planning Committee.

### **4. Fettering of Discretion**

- 4.1 Members serving on the Planning Committee must approach Committee meetings with an open mind and must not decide how to vote until they have heard the presentation, any public speaking, and the evidence and arguments on either side.
- 4.2 Members must avoid fettering their discretion and therefore their ability to participate in planning decision by making up their mind, or clearly appearing to have made up their mind on how they will vote on any planning matter prior to formal consideration of the matter at the meeting of the Planning Authority. Fettering discretion in this way, and then taking part in the decision, will put the Council at risk of a finding of maladministration or legal proceedings being taken against it.

- 4.3 Members who have fettered their discretion must declare this at the start of the meeting and must not speak in their role as a Planning Committee member nor vote on a proposal. However such a member may represent local or other views by making a statement on the same basis as members of the public and must make their role clear to all parties by speaking from the public speaking area rather than from their normal Committee seat. Members will still be required to leave the Committee room as soon as they have made their statement.

## **5. Applications submitted by or on behalf of Members**

- 5.1 Serving members must never act as agents for people pursuing a planning matter with the Council. Should they submit their own proposals to the Council, they must take no part in its processing.
- 5.2 Members submitting their own proposals should appoint a representative who can deal with officers. Members doing so are able to exercise their right to make representations to the Committee as set out under paragraph 3.2 above.
- 5.3 Proposals submitted by members will always be determined by the Planning Committee.

## **6. Lobbying of Members**

- 6.1 Lobbying takes place when an interested party seeks to influence the view of the member or, more importantly, in the way in which the councillor is to vote on an item. Members are often lobbied by applicants and their agents, other supporters of the application, neighbours of the site, objectors and fellow borough, parish or town councillors. Lobbying might be carried out by letter or e-mail, by phone or in person. Lobbying is not wrong or unethical in principle, but members must make sure that they retain an open mind about any given application, despite wide-ranging or intensive lobbying.
- 6.2 Problems should not arise if members simply listen to a point of view about a planning proposal and provide procedural advice (in particular referring the person to officers if he or she is a member of the public and not professionally represented).
- 6.3 Planning Committee members who find themselves in a situation which is developing into a lobby must take steps to prevent this happening or at least explain that whilst they can listen to what is being said, they cannot express their point of view or an intention to vote one way or another. Otherwise they may well have to declare that they have fettered their discretion and will not be able to take part in the subsequent committee decision.
- 6.4 Applicants and objectors sometimes write directly to Planning Committee members, seeking to influence their vote. Any such communications must be copied by the member, to the Case Officer.
- 6.5 Given that the point at which a decision is made cannot occur before the Committee meeting, when all information is to hand and has been duly considered, any political group meeting beforehand must not be used to decide how members should vote. The Ombudsman considers that the use of political 'whips' could amount to maladministration. Less formal arrangements or understandings could also amount to maladministration.
- 6.6 Members will be asked at the beginning of Planning Committee meetings to declare whether they have been lobbied in connection with any application on the agenda, and if so, whether by, or in support of, the applicant or objectors.

Details of the lobbying will not need to be declared at this stage, but members should ensure that a record of lobbying is kept in case of later challenge. Notes of phone calls and other conversations and/or copies of letters and e-mails should be passed to the Case Officer for retention.

## **7. Lobbying by Members**

- 7.1 Members should not lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If they do, they will have fettered their discretion and will have to withdraw from the meeting. Members are still able to exercise their rights to make representations to committee as set out in paragraph 4.3 above.
- 7.2 Members must not lobby fellow members regarding concerns or views, nor attempt to persuade them how to vote, in advance of the meeting at which any planning decision is to be taken.

## **8. Pre Application advice**

- 8.1. From time to time members of the public may approach borough councillors informally to discuss proposals that are likely to become the subject of an application. This need not cause any problems for Planning Committee members, provided that such members simply listen to the views being put forward and provide only general advice about the planning process or matters of principle, such as the importance of Areas of Outstanding Natural Beauty or Conservation Areas.
- 8.2. Planning Committee members should make it clear that they neither support nor object to any specific proposal at this stage. If members of the public have specific queries about the need for planning permission they should be referred to the Council's Planning Services. If they are asking about the likelihood of an application being approved, or the best way to present an application, they should be advised to seek independent professional advice.
- 8.3. The Planning Services Charter sets out the circumstances in which the Council's Planning Service can give pre-application advice. Planning Committee members should normally avoid formal meetings with applicants, developers or objectors. Where, exceptionally, Planning Committee members are involved in such meetings this should always be with an officer present.

## **9. Membership of Other Organisations**

- 9.1 It is common for borough members also to be elected or appointed to other local organisations such as town and parish councils, the County Council, school Governing Bodies, or Housing Associations.
- 9.2 If an application relating to such a body comes before the Planning Committee the member should take advice from the Monitoring Officer in advance of the meeting to see if they must declare a Disclosable Pecuniary or Other Significant Interest, and only participate in the meeting at which any such application is discussed to the extent that they are entitled to do by paragraph 3.2 above.
- 9.3 When acting as part of a body consulted on an application such as a town or parish council, members may take part in the debate provided:

- the proposal does not substantially affect the well being or financial standing of the consultee body;
- they make it clear to the consultee body that:
  - (a) views are expressed on the information before them only;
  - (b) they reserve judgement and the independence to make up their own mind on each separate proposal, based on the overriding duty to the whole community, as and when it comes before the Borough Council's Committee and they hear all of the relevant information; and
  - (c) they disclose any Disclosable Pecuniary or Other Significant Interest if appropriate when the Borough Council's Committee comes to consider the proposal.

9.4 Planning Committee members may also be involved in matters which are the subject of a planning permission or other application which comes before the Planning Committee. This might arise, for example, because a member of the Planning Committee is also a member of the Licensing Committee and has previously considered an application for a licence for an activity which comes before the Planning Committee as a Change of Use application.

9.5 In these cases, it is important to note that there are different criteria against which the Licence and Planning Permission application must be judged. As long as members do not carry with them any prejudices or preconceptions about the later application they have formed as a result of considering the same facts from a different viewpoint previously, then they are quite entitled to consider the matter again. Members must not, of course, try to use the second meeting to address what they see as defects in the decision made by the first – they cannot, for example, apply conditions to a Planning Permission if they are not necessary for sound planning reasons but usefully address something not covered by the Licence which the member feels should have been included.

9.6 Membership of the Council's Cabinet can be more complicated because it is more likely that there will be associations and possibly interdependencies between the decisions of Cabinet and the decisions of the Planning Committee. This might arise, for example if Cabinet has approved the sale of a piece of Council owned land for development or agreed that it be brought forward for development by TWBC, and a Cabinet member then sits on the Planning Committee addressing the application for the necessary planning permission.

9.7 It is important that there is no actual, or perceived, pre-determination of the application by the "dual-hatted" member. Although no Code of Conduct interest arises in this case, the member's participation in the decision-making process may "taint" the Committee's decision to the extent that it would be successfully challenged on the grounds of bias. However, this is unlikely to be the case if the member in question makes it clear that s/he is aware of his or her obligations as a Planning Committee member to assess the planning merits of any given application and has kept an open mind about the matter, regardless of the potential impact on the value of the land of the grant or otherwise of planning permission. Members in this position should seek advice from the Monitoring Officer before the meeting.

## 10. Training

10.1 Members must not participate in decision making at meetings dealing with planning matters unless they have undertaken any training designated jointly by the Chief Executive and the Leader of the Council as mandatory.

- 10.2 Members have a general duty to attend specialised training sessions, which will be provided from time to time, (including 'Short Bite' training sessions before each Planning Committee) as these are designed to extend their knowledge of planning procedures, policies and practice beyond the minimum level referred to above.

## **11. Site Inspections**

- 11.1. Members are encouraged to attend site inspections prior to a Planning Committee, to enable a full understanding of the material planning issues pertinent to the applications. Members' site inspections will be carried out where applications are to be determined by the Planning Committee. The Chairman, in consultation with the Head of Planning Services, will normally identify the need for any site inspections in advance of the meeting. Councillors who believe that a site inspection is appropriate in a particular case are encouraged to contact the Head of Planning Services as soon as possible. This will include selecting appropriate viewpoints. Only exceptionally should an item be deferred for a site inspection, and site inspections will only be arranged where the proposal to hold a site inspection fits at least one of the following criteria:
- 11.2. A Site Inspection may be determined to be necessary if:
1. Particular site factors are significant in terms of weight attached to them relative to other factors and it would be difficult to assess those factors without a site inspection
  2. The characteristics of the site need to be viewed on the ground in order to assess the broader impact of the proposal
  3. Objectors to and/or supporters of a proposal raise matters in respect of site characteristics, the importance of which can only reasonably be established by means of a site inspection
  4. The scale of the proposal is such that a site inspection is essential to enable members to be fully familiar with all site-related matters of fact
  5. There are very significant policy or precedent issues and where site-specific factors need to be carefully assessed
- 11.3. When requesting the Chairman of the Planning Committee to authorise a site inspection, the person making such a request (whether the Head of Planning Services or an elected member) must state under which of the above five criteria the inspection is requested and must also provide supporting justification, to the satisfaction of the Chairman.
- 11.4. The purpose of a site inspection is to view the site and its surroundings and to relate the application proposals to the site. Officers will explain the submitted drawings. Neither the applicant nor any objectors should take part. Where an applicant has to be present to allow access to the site, the visiting members should stand away from him or her (or if necessary, ask the applicant to stand away) and should not engage in any discussions. Members should avoid any discussion of the merits of the case on site, on the journey to/from the site, or anywhere other than the Committee meeting.

## **12. Annual Review/Tour of Borough**

- 12.1. The Head of Planning Services will arrange an annual tour of the Borough to allow members to view and appraise developments and areas of the borough of relevance to the Council's

function as the Local Planning Authority. Visits further afield may be arranged as appropriate.

The Head of Planning Services may also arrange an associated annual review of the Committees' function and preview of anticipated matters, together with an examination of key issues and themes for the future.

## **GUIDANCE FOR MEMBERS WHO ARE NOT SITTING ON THE PLANNING COMMITTEE OR TAKING A REPRESENTATIVE ROLE AT THE PLANNING COMMITTEE MEETING**

*NB This Guidance is ancillary to the protocol for members taking part in the planning process and does not form part of the Protocol itself.*

Members who are not a sitting member of the Planning Committee may attend a meeting of the Planning Committee to make representations in support of, or in opposition to, any application due to be considered by the Planning Committee at that meeting on the same basis as members of the public.

### **1. PROCEDURE**

- 1.1 Members who wish to exercise this right must advise the Chairman, the Vice- Chairman and the Committee Administrator by 4pm on the last working day before the Committee meeting.

### **2. THE CODE OF CONDUCT**

- 2.1 Members attending a meeting who are not sitting members are still bound by the provisions of the Code of Conduct for members at the meeting. This means that even though they are not sitting, a member who has either a Disclosable Pecuniary or Other Significant Interest must declare it at the start of the meeting, and must leave the room while the item is debated, although they may exercise their rights to make representations on the same basis as members of the public as set out under paragraph 3.2 above.

### **3. “FETTERING OF DISCRETION”**

- 3.1 Members who are not sitting members of the Planning Committee cannot vote at meetings of the Planning Committee. For this reason, the common law rules which prohibit members from “fettering their discretion” by committing themselves in advance of a vote to treating any given application in a particular way do not apply to non-sitting members.
- 3.2 It is therefore acceptable for non-sitting members to indicate in advance of a vote on any given application whether or not they support or oppose the application.

### **4. LOBBYING**

- 4.1 Members who are not sitting on the Planning Committee may discuss particular applications with their Planning Committee member colleagues, but should be careful that any “discussions” do not become unreasonable attempts to influence. Members will inevitably be seen by members of the public as having greater influence over Committee members and all members, whether or not members of the Committee must ensure that their actions do not bring the planning system into disrepute.
- 4.2 When contemplating the discussion of individual applications with the Planning Committee members, members who are not sitting must bear in mind the “General Principles” which govern the conduct of all members at all times when official business is being conducted formally or informally discussed (see the Relevant Authorities (General Principles) Order 2001).

## **5. OFFICERS**

- 5.1 Members who are not sitting on the Planning Committee will also need to remember the provisions of the Protocol on Member/Officer Relations. Pressure from an applicant for planning permission or a supporter or objector must not give rise to any member, whether the Planning Committee member or not, attempting to exert inappropriate influence over any officer dealing with the application.

## **6. INDEMNIFICATION**

- 6.1 All borough members are indemnified by the Borough Council in the event that they are pursued for costs or damages incurred by others as a result of the conduct in good faith of a councillor's business as a councillor.
- 6.2 This means that if a member who is not sitting on the Planning Committee is challenged, or faces a claim made by someone he or she represented at the Planning Committee, the Borough Council will support him or her, financially and otherwise, in dealing with that claim or challenge. However, this support is only available if the member concerned was acting within his or her remit and authority, and in good faith.

## **7. CLARIFICATION OF ROLES**

- 7.1 For this reason, it is important that members who are not sitting on the Planning Committee ensure that any person or group they agree to represent is aware of their role and standing in the planning process. They should emphasise that members who are not sitting members cannot vote at a meeting. It is also important for ward members to be clear that they are not professionally qualified Town Planners, and that there is no client/professional relationship between the "representee" and the ward members.
- 7.2 For the reasons outlined earlier, it is not unusual for members of the public to expect members, particularly their own ward member, to have considerable influence over all council matters, including planning permission. Members who are not sitting on the Planning Committee who agree to act as a representative must make it clear that their support for the "representee's" point of view does not mean that the matter will be decided in a particular way".
- 7.3 Member representatives may also find it helpful to ensure that "representees" know that as members they are always bound by the Code of Conduct and the General Principles of conduct when they are dealing with planning matters.

## **8. SOME PRACTICAL ISSUES**

- 8.1 Just as in litigation process there is "no property in a witness", in the planning process there is "no property in a ward councillor" – this means that no individual or group has a right to claim any ward councillor as their representative if the ward councillor in question does not wish to take that part. Members who are not sitting members of the Planning Committee should be aware when speaking to or corresponding with potential or existing "representees" that he or she is quite entitled to change his or her mind if additional information appears, and should remind "representees" about this.
- 8.2 For similar reasons, it may well be sensible for members who are not members of the Planning Committee to delay agreeing to support or object to any given application until they

have made some (at least preliminary) enquiries about the reasonableness of the potential “representee’s” position, and about other views likely to be relevant.

Members will not wish to find themselves caught between neighbours already at odds over an application, particularly if the member’s involvement is going to inflame the position further.

## **9. THE HEAD OF PLANNING SERVICES AND THE MONITORING OFFICER**

- 9.1 The Head of Planning Services and the Monitoring Officer will be available to discuss representation issues with members.

## **5.12 PROTOCOL FOR MEMBERS DEALING WITH LICENSING MATTERS**

### **BACKGROUND**

Recent changes in legislation introduced by the enactment of the Licensing Act 2003 and the Gambling Act 2005 transferred substantial additional responsibilities for licensing to local government and established the Council as the Licensing Authority for the regulation of various forms of licensable activities. The new responsibilities are undertaken by the Licensing Committee and its Sub-Committees. Members act in a quasi-judicial capacity in carrying out the Council's licensing functions.

This Protocol is designed to apply the principles contained in the members' Code of Conduct to members' licensing responsibilities and to support and maintain high ethical standards in local government. It applies to the actions of the Council in its statutory capacity as the Licensing Authority via the Licensing Committee. For the purposes of this Protocol, the Council is collectively described as the Licensing Authority.

This Protocol has regard to the Local Authorities Coordinators of Regulatory Services' (LACORS) guidance on the role of elected members in relation to Licensing Committee hearings under the Licensing Act 2003.

### **INTRODUCTION**

The aim of the Protocol is to ensure that in the operation of the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of licensing is to regulate certain activities in the public interest and to promote the licensing objectives as defined in the legislation. In addition, the authority must have regard to statutory guidance issued by the Secretary of State and the Gambling Commission.

The role of a member of the Licensing Authority is to make decisions impartially, with sound judgement and for justifiable reasons. However members will deliberate and determine applications having excluded the press, the public and applicant.

This Protocol also applies to members at all times when involving themselves in the licensing process. It applies equally to licensing enforcement and licensing policy issues as it does to licensing applications. This includes taking part in decision-making meetings of the licensing authority and when involved in less formal occasions, such as meetings with officers or the public and consultative meetings.

References to officers in this Protocol relate to employees of the Council and employees of other councils that are members of the Licensing partnership who have been duly authorised to act on behalf of the Council.

If there are any doubts about the application of this Protocol to members' own circumstances he or she must seek advice from the Monitoring Officer or one of his or her staff, preferably well before any meeting takes place.

## 1. Relationship to the Members' Code of Conduct

- Members must apply the rules in the members' Code of Conduct first: these must always be complied with.
- Members must then apply the rules in this Licensing Protocol, which seek to explain and supplement the members' Code of Conduct for the purposes of dealing with all licensing matters. If members do not abide by this Protocol, he or she may put:

(a) the Licensing Authority at risk of allegations of maladministration or proceedings as to the legality of the related decision; and

(b) the member at risk of either being named in an Ombudsman's report of maladministration made to the Council or, if the failure is likely to be a breach of the Code of Conduct, a complaint being submitted.

## 2. Licensing Proposals and Interests under the Members' Code

A members' interest in a licensing matter may take a variety of forms:

- As a member of the Cabinet or by being the relevant executive councillor;
- He or she may have either collective or individual responsibility for premises in the Council's ownership or a licensable activity which the Council is promoting for which a licence is required or has already been granted;
- He or she may be a member of another organisation or body that is applying for a licence or is carrying out a licensable activity;
- He or she may be an employee of a responsible authority defined in the legislation or may be an interested party because they live or have business premises in the vicinity of an application site or licensed premises;
- He or she may be a member of a lobby group or campaign;
- He or she may be the applicant for a licence or the provider of a licensable activity or a member of a registered club that is doing so;
- He or she may be a supplier of goods to an applicant or an existing licensee or club or they may act in some capacity on their behalf;
- He and she may also be an existing licensee or a member of a club whose business may be affected if a licence or club premises certificate is granted for a similar activity elsewhere.

Whatever a members' interest, a member must:

- Disclose the existence and nature of their interest at any relevant meeting, including informal meetings or discussions with employees and other members.
- Then act in accordance to the Members' Code of Conduct..

The member must notify the Monitoring Officer in writing of their own interest and note that:

- notification to the Monitoring Officer should be made no later than submission of the application; and
- it is advisable that he or she employ an agent to act on their behalf on the proposal in dealing with officers.

### **3. Fettering Discretion in the Licensing Process**

- The member must not fetter their discretion and therefore their ability to participate in licensing decision-making by making up their mind (particularly in relation to an external interest or lobby group), as to how he or she will vote on any licensing matter prior to its formal consideration at a hearing or meeting of the Licensing Authority and hearing the representations and evidence on both sides. Fettering their discretion in this way and then taking part in the decision will put the licensing authority at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- The member must be aware that he or she are likely to have fettered their discretion where the Council is the landowner, developer or applicant and they have acted as, or could be perceived as being, a chief advocate for a proposal. (This is more than a matter of membership of both the proposing and licensing determination bodies, but because through their significant personal involvement in preparing or advocating the proposal they will be, or could be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.)
- The member must not sit as a member of a Licensing Sub-Committee if the premises are situated in the ward that he or she represent or if an application is being made to review a licence or certificate held by a premises in their ward.
- The member must not sit as a member of the Licensing Sub-Committee where he or she has fettered their discretion. Because of the limited size of the Licensing Sub-Committee, they should advise officers as soon as it becomes apparent to them that they have fettered their discretion and certainly before the meeting commences to enable an alternative member to be found. The member does not have to withdraw from the room where the meeting is taking place, but it would be preferable for them to do so.
- Members may take the opportunity (if he or she are not sitting on the Licensing Sub-Committee or does not have a personal and prejudicial interest) to exercise their rights as a member to speak on behalf of an applicant or interested person even if he or she has represented their views or those of others before the meeting and fettered their discretion.

### **4. Contact with Applicants, Developers and Objectors**

- The member must refer those who approach them for licensing, procedural or technical advice to officers.
- The member must not attend any meeting with applicants or interested parties if he or she are a member of the Sub-Committee. Pre-application discussions, if held for clarification purpose will involve officers only who will ensure that those present are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Sub-Committee.

- The member must meet with an applicant or interested party if the member is considering representing their interests or speaking on their behalf at a hearing of the Sub-Committee of which he or she are not a member.

## 5. Lobbying of Councillors

- The member must explain, if he or she are a member of the Sub-Committee, to those who may be attempting to lobby them that they cannot listen to what is said as this will prejudice their impartiality and therefore their ability to participate in the decision making process.
- The member must remember that, as a member of the Licensing Committee, he or she will probably be unaware whether an application will be determined by the Sub-Committee or whether they will be a member of that determining body until they have been notified by officers. If the member has been lobbied by an applicant or interested party, he or she should notify officers as soon as it comes to their attention that they have been invited to sit on a relevant Sub-Committee. In such circumstances, the member should not take part in that hearing or meeting and officers will make arrangements for another member to take their place on the Sub-Committee.
- The member is not to feel constrained, if he or she are not a member of the Sub-Committee, to receive an approach from an applicant or interested party and, having considered the information they have supplied, to agree to speak or make representations on their behalf at a meeting of a Sub-Committee.
- The member must remember, if he or she are a member of the Sub-Committee, that their overriding duty is to the whole community and, taking account of the need to make decisions impartially, that they should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- The member must not accept gifts or hospitality from any person involved in or affected by a licensing application or who may be providing a licensable activity. If a degree of hospitality is entirely unavoidable, the member must ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £25, in accordance with the members' Code of Conduct.
- The member must copy or pass on any lobbying correspondence he or she receive if they are a member of the Sub-Committee to the Head of Environment and Street Scene at the earliest opportunity in order that it can be placed on the appropriate licensing file and is open for inspection before a decision is made.
- The member must inform the Monitoring Officer where he or she feel they 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.
- The member must note that, unless he or she are a member of the Sub-Committee or they have a personal and prejudicial interest, they will not have fettered their discretion or breached this Licensing Protocol through:
  - listening or receiving viewpoints from residents or other interested parties as long as the member makes themselves equally available to those of differing viewpoints if requested to do so;

- making comments to residents, interested parties, other members or appropriate officers, provided the member does not consist of or amount to pre-judging the issue and he or she makes clear they are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting in support of an application or in expressing representations on behalf of an interested party.

## **6. Lobbying by Councillors**

- The member must not become a member of, lead or represent, an organisation whose primary purpose is to lobby to promote or oppose licensing proposals. If he or she does, they will have fettered their discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- The member may join general interest groups which reflect their areas of interest and which concentrate on issues beyond particular licensing proposals, such as a local civic society, but are required to disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the licensing authority that he or she has reserved judgement and the independence to make up their own mind on each separate proposal.
- The member must not excessively lobby fellow members regarding their concerns or views nor attempt to persuade them how they should vote in advance of the meeting at which any licensing decision is to be taken.
- Political group meetings should never dictate how members should vote on any licensing application.

## **7. Site Visits**

- If necessary, a site visit will be organised for the Licensing Sub-Committee members by the Licensing Partnership Manager, in consultation with the Chairman. If a site visit is organised and a member is unable to take part they will be unable to take part in the Sub-Committee meeting. The member should therefore notify the Licensing Partnership Manager as soon as it comes to their attention that they are unable to attend such site visit. Where a site visit takes place, members will be accompanied by officers of the authority.
- The member must ensure he or she treats the site visit only as an opportunity to observe the site.
- The member may ask the officers at the site visit questions, or seek clarification from them on matters which are relevant to the site inspection.
- The member must not hear representations from the applicant or an interested party at the site visit. Where he or she are approached by the applicant or an interested party, the member must direct them to, or inform, the officer present.
- The member must not express opinions or views to anyone.

- The member must exercise their discretion, if he or she are not a member of the Sub-Committee, as to whether to accept an invitation to visit a site which is the subject of an application or provides a licensable activity. Where a member does accept an invitation, he or she must exercise caution and ensure they comply with these good practice rules.
- Details of those attending the visit, questions asked and answers given must be recorded and retained by an officer of the Authority.

## **8. Public Speaking at Meetings**

- The member must not allow members of the public to communicate with them in isolation, if he or she are a member of the Sub-Committee during the hearing or meeting proceedings (orally or in writing) as this may give the appearance of bias.

## **9. Officers**

- The member must not put pressure on officers to put forward a particular recommendation. This does not prevent them from asking questions or submitting views to the Head of Environment and Street Scene but hearing or meeting reports will contain only representations that have been submitted in the manner prescribed by the legislation. Attention is drawn to the danger of fettering discretion on a matter which is covered in Section 3 of this Protocol.
- The member must recognise that officers are part of a management structure and discuss a proposal, outside any arranged meeting, only with the Head of Environment and Street Scene or those officers who are authorised by them to deal with the proposal at member level.
- The member must recognise and respect that officers involved in the processing and determination of licensing matters must act in accordance with the Council's Code of Conduct for Employees and the requirements of the licensing legislation. As a result, Licensing Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence and the promotion of licensing objectives, which may on occasion be at odds with the views or opinions of members.

## **10. Decision-Making**

- Members must come to meetings with an open mind and demonstrate he or she are open-minded;
- Members must comply with the licensing legislation and make decisions in accordance with statutory licensing objectives, having regard to guidance that has been issued under the relevant legislation and the authority's statement of licensing policy;
- Members must come to their decision only after due consideration of all of the information reasonably required upon which to base a decision. If he or she feel there is insufficient time to digest new information or that there is simply insufficient information before them, request that further information and, if necessary, adjourn the hearing or meeting until the information has been provided and they have had an opportunity to consider it;
- Members must not vote or take part in the hearing or meeting on a proposal unless they have been present to hear the entire debate, including the officers' introduction to the matter.

- Members must make sure if they are proposing, seconding or supporting a decision contrary to the licensing objectives or the statutory guidance issued by the Secretary of State or Gambling Committee or the authority's statement of licensing objectives, that he or she clearly identify and understand the reasons leading to this conclusion/decision. These reasons must be given prior to the vote being taken and be recorded; and
- Be aware that the member may have to justify the resulting decision by giving evidence in the event of any challenge.

## **11. Training**

- Members must not participate in decision making at hearings and meetings dealing with licensing matters unless he or she has attended suitable licensing training provided by the Head of Environment and Street Scene.
- Members must endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of licensing law, regulations, procedures, statutory guidance and licensing policy beyond the minimum referred to above and thus assist them in carrying out their role properly and effectively.

## **5.14 ACQUISITION AND DISPOSAL OF PROPERTY GUIDANCE**

### **1 Definitions and interpretation**

#### **1.1 Definitions**

In this Guidance the following words shall where the context so admits have the following meanings:

“Authorised Signatory List” - a list showing the officers who may sign contracts for specified amounts maintained by the Section 151 Officer.

“Chief Officer” - the Chief Executive, Deputy Chief Executive

“disposal” - disposal of an interest in land whether by way of sale, lease, licence, grant of an easement or other interest in land.

“General Disposal Consent” -the General Disposal Consent (England) 2003.

“land” - all real property owned by the Council and includes all easements, rights and other interests in, on, over or under or in relation to land.

“the records system” -the terrier and the computerised records system

“Value” - the total consideration for the acquisition or sale or, in the case of leases and such like, the premium, rent and other outgoings payable to the Landlord during the term of the agreement. If the agreement gives the Council an option to extend the term, payments due during any such extension of the term (whether or not the extension is actually exercised) but excluding value added tax. The Value shall include annual increases as set out in the contract.

#### **1.2 Interpretation**

1.2.1 The headings for each section throughout this Guidance are provided for ease of reference only and do not affect the context.

1.2.2 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa as appropriate.

1.2.3 Reference to any Act of Parliament and to any orders regulations or rules made pursuant to that Act shall include reference to any modifications re-enactment or replacement.

1.2.4 Unless otherwise stated reference to a paragraph is reference to a paragraph in this Guidance.

### **2 General**

2.1 This Guidance is for the guidance of officers dealing with the acquisition and disposal of land.

2.2 This Guidance must be read in conjunction with the Council’s Constitution, the Contract Procedure Rules (“CPR”) and the Finance Procedure Rules.

2.3 In dealing with land Officers and members must have regard to the following:

2.3.1 the Local Government Act 1972 sections 123 and 127;

2.3.2 the General Disposal Consent (England) 2003;

2.3.3 Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained.

- 2.4 The definitions and interpretations contained in the Contract Procedure Rules shall also apply to this Procurement Guidance.

### **3 Compliance And Exemptions**

Every contract for the acquisition or disposal of land shall comply with this Guidance and no exemption from any of the provisions of this Guidance shall be made otherwise than by direction of the Council or the Cabinet (or, if relevant, the Portfolio Holder) and only if the exemption is justified by special circumstances.

### **4 Best Consideration**

- 4.1 Any disposal of an interest in land must be for the best consideration reasonably obtainable except where:
- 4.1.1 It is the grant of a tenancy with a term of seven years or less
  - 4.1.2 It is the assignment of a term which has not more than seven years to run
  - 4.1.3 One or more of the special circumstances set out in paragraph 2 of the General Disposal Consent applies
  - 4.1.4 The Secretary of State consents to the disposal
  - 4.1.5 The disposal contributes towards the Council's published priorities.

### **5 Method of Disposal**

- 5.1 Land shall be disposed of only by way of the following methods by:
- 5.1.1 inviting sealed offers following public advertisement which shall have been placed in at least one local newspaper and such other publication or publications as the Head of Service shall deem appropriate,
  - 5.1.2 public auction, or
  - 5.1.3 private treaty (provided such method of disposal shall first have been authorised by the Cabinet in all cases where the value exceeds £10,000).
- 5.2 If sealed offers are invited the tendering procedure set out in the Council's Procurement Guidance shall be used.
- 5.3 The procedures for acquiring or disposing of interests in land shall be in accordance with general conveyance practice from time to time.

### **6 Authority**

- 6.1 All acquisitions and disposals of land must be properly authorised.
- 6.2 The Section 151 Officer shall have the power to authorise the acquisition or disposal of land in accordance with his delegated powers.
- 6.3 All acquisitions or disposals which the Section 151 Officer does not have power under the Constitution to authorise must be authorised by Cabinet, or where the Value is £250,000 or under, the relevant Portfolio Holder, following a report submitted by the Section 151 Officer.

### **7 Content**

- 7.1 Every document for the disposal of land and any amendment thereto must be in writing and must be approved in writing by the Legal Services Department.

- 7.2 Every document relating to the disposal of land must specify the consideration, the interest to be disposed of and the date from which the disposal takes effect.
- 7.3 There shall be inserted in every contract for the disposal of land a clause empowering the Council to cancel the contract and recover from the buyer the amount of any loss resulting from such cancellation if the buyer shall have acted corruptly in relation to the contract.
- 7.4 The Legal Services Department will advise as to the wording but regard should be had to the suggested wording contained in the Contract Procedure Rules.

## **8 Execution**

- 8.1 The Legal Services Department shall advise whether or not a particular document must be executed under seal or under hand. Paragraphs 8.2 and 8.3 give general guidance as to which documents the Legal Department is likely to state must be sealed or signed.
- 8.2 The following are examples of documents which must be executed under seal:
  - 8.2.1 Transfers of land
  - 8.2.2 Leases with a term in excess of three years
  - 8.2.3 Licences with a term in excess of three years
  - 8.2.4 Variations of a document that was itself executed under seal
  - 8.2.5 Deeds of Surrender of a lease
  - 8.2.6 Deeds of Grant of easement
- 8.3 The following are examples of documents which may not need to be executed under seal:
  - 8.3.1 A contract for sale/purchase
  - 8.3.2 A licence or lease with a term less than three years
- 8.4 Any Chief Officer and the Monitoring Officer shall be able to sign contracts up to the amount he is authorised to sign, as stated in the Authorised Signatory List.
- 8.5 Any document which must be executed under seal shall be sealed by persons authorised to witness the seal.

## **9 Records**

- 9.1 All disposals and acquisitions of land shall be noted in the Council's records system.
- 9.2 Files shall be kept or disposed of in accordance with the recommendations of the Law Society.

## **10 Exemptions**

- 10.1 This Guidance does not apply to disposals that are pursuant to compulsory purchase procedures.
- 10.2 The hiring out of the Assembly Hall or other buildings or land belonging to the Council shall not be regarded as a disposal of land.

### 5.15 GENERAL MEMBER PROTOCOL

1. On behalf of the people of the Borough, the Council has high expectations of its elected and co-opted, independent members.
2. In return, the Council and its officers provide members with a wide range of support and information.
3. The Council's general expectations of all members are laid out below:
  - 3.1. Members must produce their duly signed and witnessed declaration of acceptance of office promptly on their election. Members are in any event required by law to do so within two calendar months of their election, and cannot act as a member or receive any member allowances before they do so.
  - 3.2. *Officers will support members in meeting this expectation by making arrangements for newly elected members to make their declaration in the first two weeks after their election, and notifying new members of those arrangements on the night of their election if they attend the count or in the following 48 hours if they don't. Officers will also make alternative arrangements for new members to make their declaration if the first offered plans are not suitable.*
  - 3.3. Members are expected to use all reasonable endeavours to attend at least 66% of the meetings of Council and the committees of which they are a member. Members who fail to maintain a 66% attendance record will be expected to account to the Audit and Governance Committee for their attendance rates.
  - 3.4. *Officers will support members by maintaining records of members' attendance at Council and committee meetings. The Council will support members in meeting this expectation by keeping meeting times and venues under review from year to year. Appropriate officer support will be provided at meetings of the Council and committees.*
  - 3.5. Members are expected to use all reasonable endeavours to attend all of the training and development activities booked for them personally in line with the results of their training and development needs analysis. Members who find they are unable to attend such training through ill-health or other unavoidable later commitment are expected to advise the Democratic Services Team immediately, and to assist, so far as possible with finding another attendee.
  - 3.6. Members are expected to use all reasonable endeavours to attend all training and development activities that the Leader and the Chief Executive jointly declare to be compulsory. Members are expected to use all reasonable endeavours to attend 66% of the member briefing sessions provided by the Council.
  - 3.7. *Officers will support members by maintaining records of members' attendance at training events. The Council will support members in meeting this expectation by keeping training times and venues under review from year to year. The Council will also support members by making sure that compulsory training is provided on more than one occasion, and that members' availability is taken into account when making alternative arrangements.*
  - 3.8. To enhance democratic accountability to their electorate, members are strongly advised to present a written report to the Monitoring Officer each year outlining the activities they have undertaken in the course of fulfilling their role as a member.

The report should cover matters such as training and development activities undertaken, ward and community level action and involvement, Council and committee meetings attended, information about external bodies on which members represent the Council, regional and national events and programmes attended in the members' capacity as a representative of their ward or borough, and any other matters that have consumed members' time, attention and resources. The report is also expected to include confirmation that the author has checked his/her declarations of interest and can confirm that the Register of Interests is up to date.

- 3.9. *Officers will support this by maintaining records of Council and committee meetings attended by members, providing templates for the reports to the Monitoring Officer well in advance and by co-ordinating the production and presentation of the reports to the Monitoring Officer.*
- 3.10. Members are expected to notify the Council's Democratic Services Team and the Council/Committee Chairman if they are unable to attend a Council/Committee meeting, as soon as they become aware that they will not be present.
- 3.11. *Officers will support members in meeting this expectation by ensuring that there is a dedicated Committee Clerk for Council and each committee to ensure that members are aware of their appropriate point of contact. Officers will accept notification of members' apologies to the Council/committee by letter, telephone or e-mail, and officers will ensure that these forms of communication are appropriately forwarded in the event of officer absence. Committee Chairmen will set their own arrangements for receiving notification of anticipated absence from Council/committees directly from members.*
- 3.12. Members who are members of committees which include substitutes amongst their membership are expected by the Council to arrange for a substitute member to attend in their stead if they become aware that they are unlikely to be able to attend a particular meeting.
- 3.13. *Officers will support members in meeting this expectation and in making the substitute system work effectively by ensuring that all full members and all substitute members of each relevant committee are kept fully apprised of committee dates and venues and that substitute committee members also receive copies of agenda and reports.*
- 3.14. Members are expected to use all reasonable endeavours to engage with the Council's processes for assessing their training and development needs and with the arrangements for officers to draw up a programme of activities intended to meet these needs. Members are also expected to participate in any programme of training and development activities they have agreed with officers.
- 3.15. *Officers will support members in meeting this expectation by arranging for the training and development needs of all members to be assessed within 6 months of their election (and thereafter within 6 months of their re-election), and by designing, in conjunction with each participating member, a programme intended to meet members' training and development needs, and where possible, training and developmental aspirations.*
- 3.16. Members are expected to use all best endeavours to prepare adequately for the fulfilment of their roles and functions by undertaking appropriate training, seeking advice and support whenever they feel they need it (from officers and/or from fellow members and Group Chairmen) and by considering Council/committee agenda and reports in advance of the meetings at which they will be discussed.

- 3.17. *Officers will support members in meeting this expectation by ensuring that all members are apprised of the contact details of the officers who can assist them with queries and advice on the full range of Council activities; by keeping members up to date about Council events and activities; by providing information packs and other resources; by providing training and development opportunities and by providing Council/committee agenda and reports in a variety of formats. The Council also supports members in meeting this expectation by providing financial assistance to members for the purchase and use of Information and Communication Technology (ICT) equipment for the home, ICT equipment in the Town Hall and a Members' Room which includes a library of useful materials, internet access and a printer and paper.*
- 3.18. All members attending external meetings in their capacity as a member should make it known to the Chairman of that meeting that they are members of the Council and the position they hold.