

STANDARDS (ADVISORY) COMMITTEE

Thursday, 22 September 2016 at 7.30 p.m.

Committee Room 1, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG

This meeting is open to the public to attend.

Members:

Chair: John Pulford MBE

Vice-Chair: Nafisa Adam

Mike Houston, Daniel McLaughlin, Councillor Sabina Akhtar, Councillor Marc Francis, Councillor Ayas Miah, Councillor Candida Ronald, Councillor Ohid Ahmed, Councillor Muhammad Ansar Mustaqim and Councillor Chris Chapman

Observers:

Elizabeth Hall (Independent Person)

Deputies:

Councillor David Edgar, Councillor Shiria Khatun, Councillor Denise Jones and Councillor Peter Golds

The quorum for this body is 3 of the total membership including at least one Councillor and one Co-opted member.

Contact for further enquiries:

Antonella Burgio, Democratic Services,
1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, E14 2BG

Tel: 020 7364 4881

E-mail: antonella.burgio@towerhamlets.gov.uk

Web: <http://www.towerhamlets.gov.uk/committee>

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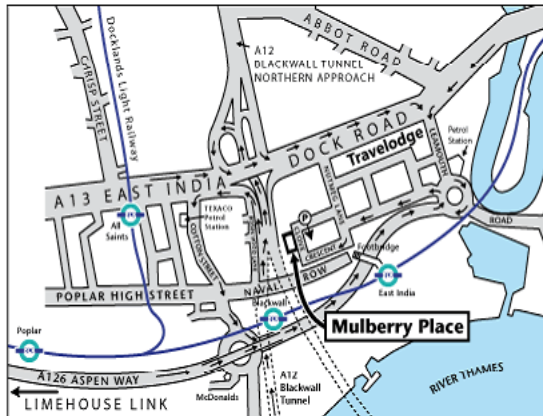
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APOLOGIES FOR ABSENCE

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST (Pages 1 - 4)

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

2. MINUTES OF THE PREVIOUS MEETING(S) 5 - 8

To confirm as a correct record the minutes of the meeting of the Standards (Advisory) Committee held on 28 July 2016.

3. REPORTS FOR CONSIDERATION

- | | | |
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| 3.1 | Recruitment of Reserve Independent Person and Independent Co-opted Members | 9 - 12 |
| 3.2 | Code of Conduct for Members - Complaints and Investigation Monitoring | 13 - 16 |
| 3.3 | Revised Code of Conduct for Members and Revised Arrangements for Dealing with Alleged Breach of the Code | 17 - 50 |
| 3.4 | Update on the Council's Whistleblowing Arrangements | 51 - 86 |
| 3.5 | Proposed Revised Licensing Code of Conduct | 87 - 128 |

4. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT

To consider any other unrestricted business that the Chair considers to be urgent.

Next Meeting of the Committee:

Thursday, 24 November 2016 at 7.30 p.m. to be held in the Committee Room 1, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London E14 2BG

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Agenda Item 1

DECLARATIONS OF INTERESTS - NOTE FROM THE INTERIM MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Interim Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

Melanie Clay, Corporate Director of Law, Probity & Governance & Monitoring Officer, Telephone Number: 020 7364 4801

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>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 the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>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> <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	<p>Any tenancy where (to the Member's knowledge)—</p> <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	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member'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>

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LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE STANDARDS (ADVISORY) COMMITTEE

HELD AT 7.35 P.M. ON THURSDAY, 28 JULY 2016

**COMMITTEE ROOM 1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5
CLOVE CRESCENT, LONDON E14 2BG**

Members Present:

John Pulford MBE
Nafisa Adam
Mike Houston
Councillor Ayas Miah
Councillor Candida Ronald
Councillor Chris Chapman

Observers:

None present. –

Apologies:

Daniel McLaughlin (Co-optee)
Councillor Sabina Akhtar (Member)
Councillor Marc Francis (Member)
Councillor Ohid Ahmed (Member)
Councillor Muhammad Ansar Mustaqim (Member)

Officers Present:

Graham White – (Interim Service Head, Legal Services, Law, Probity and Governance)
Antonella Burgio – (Democratic Services)

1. ELECTION OF CHAIR FOR THE MUNICIPAL YEAR

Co-optee Nafisa Adam nominated and Councillor Candida Ronald seconded that Co-optee John Pulford be appointed Chair of Standards (Advisory) Committee for the duration of the municipal year. There being no other nominations, it was

RESOLVED

That Co-optee John Pulford be appointed Chair of Standards (Advisory) Committee for the duration of the municipal year.

JOHN PULFORD IN THE CHAIR

2. APPOINTMENT OF VICE-CHAIR FOR THE MUNICIPAL YEAR

Councillor Candida Ronald nominated and Co-optee Mike Houston seconded that Co-optee Nafisa Adam be appointed Vice-Chair of Standards (Advisory) Committee for the duration of the municipal year. There being no other nominations, it was

RESOLVED

That Co-optee Nafisa Adam be appointed Vice-Chair of Standards (Advisory) Committee for the duration of the municipal year.

3. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of interest.

4. MINUTES OF THE PREVIOUS MEETING(S)

RESOLVED

That the minutes of the meeting held on 15th March 2016 be approved as a correct record of proceedings.

5. REPORTS FOR CONSIDERATION

5.1 Terms of Reference, Quorum, Membership, Dates of Meetings and Establishment of Sub-Committees

The clerk introduced the report which informed members of the powers and framework of the Committee as set out in the Council's Constitution.

RESOLVED

1. That the Terms of Reference, Membership, Quorum, Dates of future meetings and timing thereof, as set out in Appendices 1, 2 and 3 to this report be noted.

2. That the following sub-committees be established for the municipal year 2016/17, to be convened as required on an ad hoc basis with membership agreed by the Monitoring Officer from amongst the members of the Standards(Advisory) Committee (SAC), including in each case a minimum of three members:-
 - Investigation and Disciplinary Sub-Committee
 - Hearing Sub-Committee
 - Dispensations Sub-Committee

5.2 Covert investigation under the Regulation of Investigatory Powers Act 2000

The Interim Service Head, Legal Services, introduced the report which provided an update on covert surveillance activity undertaken by the Council under the Regulation of Investigatory Powers Act 2000 (RIPA) in the previous three quarterly periods.

The following were noted:

- The Councils policies on the use of forms of covert surveillance were approved in 2012 and have now been reviewed. These will be submitted for approval by Cabinet in autumn 2016.
- One application in each quarter, Q3 2015/16 and Q4 2015/16 were made by the Council under this legislation to investigate illegal tobacco sale and fraudulent social housing claim respectively. No applications were made in Q1 2016/17.
- Following a change to the initial regulations relating to RIPA, applications for surveillance under these powers must be authorised by a magistrate.
- Fireworks regulations require that category 2 and 3 fireworks can only be purchased by an adult and therefore the powers under RIPA may be applied if necessary.

RESOLVED

That information provided on the use of covert surveillance powers and the comments of the Committee be noted

6. ANY OTHER BUSINESS WHICH THE CHAIR CONSIDERS URGENT


Concerning Minute 3.3 of the meeting held on March 2016 (Timesheets), the Chair enquired whether Governance Review Working Group (GRWG) had indicated a timescale for responding to the referral of this matter to the Group. Members were advised that the referral had been noted but no timescales had been advised since GRWG had reviewed its Forward Plan and determined that matters relating to the fulfilment of Secretary of State's Directions and completion of the Best Value Action Plan arising from this should be the focus of the work plan at this time. The Committee noted the response and discussed the advantages and disadvantages of maintaining a timesheet requirement for Elected Members.

RESOLVED

That the discussion be noted.

The meeting ended at 8.00 p.m.

John Pulford Chair,
Standards (Advisory) Committee

Non-Executive Report of the: Standards (Advisory) Committee 22 September 2016	 TOWER HAMLETS
Report of: Melanie Clay, Corporate Director for Law Probity and Governance	Classification: Unrestricted
Recruitment of Reserve Independent Person and Independent Co-opted Members	

Originating Officer(s)	Mark Norman, Deputy Monitoring Officer
Wards affected	All

Summary

This report informs members of Advisory Committee of the current position regarding recruitment of a Reserve Independent Person and additional Independent Co-opted members of the Committee.

Recommendations:

The Standards (Advisory) Committee is recommended to:

1. Note the content of this report.

1. REASONS FOR THE DECISIONS

1.1 N/A

2. ALTERNATIVE OPTIONS

2.1 N/A

3. BACKGROUND

3.1 The membership of the advisory Committee is subject to the annual reconstitution of the Committee at the Council's AGM. The membership of the Committee includes councillors and up to seven voting co-opted members. Councillors are appointed to the Committee annually in accordance with the requirements of political proportionality. The Council has specified that the Chair and Vice-Chair of the Committee should be drawn from amongst the co-opted members. Article 9 of the Council's Constitution, provides that the appointment of co-opted members must be approved by full Council and such appointments will generally be for 4 years

3.2 There are currently three vacancies for Independent Co-opted Members of the Advisory Committee and on 20 July 2016, the full Council agreed to the recruitment of a Reserve Independent Person and three Independent Co-opted Members.

3.3 Following the decision of full Council, an advertisement for the roles was placed in the Council's Our East End September quarterly publication and in two editions of the East London Advertiser (on 8 and 15 September 2016). In addition the advertisement has been included on the Council and the East London Advertiser website.

3.4 The closing date for applications is 12 October 2016, following which candidates will be short listed against criteria contained in role descriptions and person specifications. It is proposed that short listed candidates will be interviewed by a panel comprising the Chair of the Advisory Committee and two Council officers.

3.5 Following completion of the recruitment exercise a report will be prepared by the Monitoring Officer to inform full Council of the outcome of the recruitment with recommendations for the appointment of successful candidates.

4. OBSERVATIONS OF THE CHIEF FINANCE OFFICER

4.1 There are no immediate financial implications arising out of this report.

5. LEGAL SERVICES COMMENTS

5.1 This report has been prepared by the Deputy Monitoring Officer and incorporates legal comments.

6. IMPLICATIONS FOR ONE TOWER HAMLETS

- 6.1 The co-opted members of the Standards (Advisory) Committee are drawn from a variety of communities represented within the borough. The Council seeks to attract applicants from all sectors and communities represented locally to ensure diversity within the Committee membership.

7. ANTI-POVERTY IMPLICATIONS

- 7.1 There are no anti-poverty implications arising from this report.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The Standards (Advisory) Committee plays a key role in ensuring the adequacy of the Council's Governance arrangements and the ethical and assurance framework.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT (SAGE)

- 9.1 There are no SAGE implications arising from this report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no specific crime and disorder reduction implications arising out of this report.

11. EFFICIENCY STATEMENT

- 11.1 This report is not concerned with proposed expenditure, the use of resources or reviewing/changing service delivery and an efficiency statement is not therefore required.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

None

Local Government Act, 1972 Section 100D (as amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

- N/A

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Non-Executive Report of the: Standards (Advisory) Committee 22 September 2016	 TOWER HAMLETS
Report of: Melanie Clay, Corporate Director for Law Probity and Governance	Classification: Unrestricted
Code of Conduct for Members – Complaints and Investigation Monitoring	

Originating Officer(s)	Mark Norman, Deputy Monitoring Officer
Wards affected	N/A

Summary

Appendix 1 to this report updates the Advisory Committee on the quarterly monitoring information for complaints and investigations relating to alleged breaches Council's Code of Conduct for Members.

Recommendations:

The Standards (Advisory) Committee is recommended to:

1. Note the complaints and investigation monitoring information contained in Appendix 1 to this report.

1. REASONS FOR THE DECISIONS

1.1 N/A

2. ALTERNATIVE OPTIONS

2.1 N/A

3. BACKGROUND

3.1 The Council's arrangements for dealing with complaints of breach of the Code of Conduct for Members provide for the Monitoring Officer to report quarterly (or less frequently if there are no complaints to report) to the Advisory Committee on the number and nature of complaints received and action taken as a result.

3.2 The arrangements as revised by full Council on 18 September 2013, also provide that in cases where the Monitoring Officer has extended the time period of investigations into complaints from two months to three months, s/he provide a report on the reasons to the Advisory Committee for noting.

3.3 Monitoring information was last reported to the Advisory Committee in March 2016. At that time all complaints had been dealt with and closed with the exception of one matter which had been subject to external investigation. The outcome of that complaint (05/2015) and new complaints received during since 1 January 2016 are detailed in Appendix 1.

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

4.1 There are no immediate financial implications arising out of this report.

5. LEGAL SERVICES COMMENTS

5.1 This report has been prepared by the Deputy Monitoring Officer and incorporates legal comments.

6. RISK MANAGEMENT IMPLICATIONS

6.1 The provision of quarterly reports relating to the number and nature of complaints assists the Advisory Committee in exercising its oversight role in terms of promoting and maintaining high standards of conduct.

7. ONE TOWER HAMLETS CONSIDERATIONS

7.1 There are no specific anti poverty or equal opportunity implications arising out of this report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 This report has no immediate implications for the Council's policy of sustainable action for a greener environment.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 There are no specific crime and disorder reduction implications arising out of this report.

10. EFFICIENCY STATEMENT

10.1 This report is not concerned with proposed expenditure, the use of resources or reviewing/changing service delivery and an efficiency statement is not therefore required.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix 1 – Complaints and investigation monitoring information

Local Government Act, 1972 Section 100D (as amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.


- Standards (Advisory) Committee files

Officer contact details for documents:

- Melanie Clay/Mark Norman 020 7364 4800

Appendix 1 – Complaints and investigation monitoring information

Complaint reference number	Date complaint received by Monitoring Officer	Complainant	Alleged breach(es) of the Code of Conduct	Outcome of consultation with IP	Date investigation commenced and investigation status	Current Position
05/2015	11/09/2015	Member of the public.	Failure to treat with respect.	Complaint referred for independent investigation.	Investigation commenced on 14 December 2015.	Complaint closed. Investigation & Disciplinary Sub-Committee (IDSC) agreed no further action on 27 April 2016.
01/2016	21 January 2016	Councillor	Failure to treat with respect.	Attempt local resolution	N/A	Complaint closed local resolution agreed and reported to IDSC on 28 July 2016.
02/2016	23 March 2016	Member of the public.	Failure to treat with respect.	Attempt local resolution	N/A	Local resolution complete outcome to be reported to IDSC (date to be agreed).
03/2016	14 March 2016	Member of the public	Failure to treat with respect and disrepute.	No investigation required	N/A	Awaiting decision of IDSC (date to be agreed).
04/2016	19 May 2016	Councillor	Failure to treat with respect, bullying and intimidation.	No investigation required	N/A	Complaint closed. IDSC agreed no further action on 28 July 2016.

Non-Executive Report of the: Standards (Advisory) Committee 22 September 2016	
Report of: Melanie Clay, Corporate Director for Law Probity and Governance	Classification: Unrestricted
Revised Code of Conduct for Members and Revised Arrangements for Dealing with Alleged Breach of the Code	

Originating Officer(s)	Mark Norman, Deputy Monitoring Officer
Wards affected	All

Summary

This report updates the Advisory Committee on the proposals for revisions to the Council’s Code of Conduct for Members and revisions to the Arrangements for Dealing with Alleged Breach of the Code. The proposed revisions were considered by the cross party Governance Review Working Group on 8 June 2016

Recommendations:

The Standards Advisory Committee is recommended to:

1. Consider and comment on the proposed revisions.

1. REASONS FOR THE DECISIONS

1.1 N/A

2. ALTERNATIVE OPTIONS

2.1 N/A

3. BACKGROUND

3.1 The Council is operating Executive arrangements and pursuant to section 37 of the Local Government Act 2000 it must have a Constitution and also ensure that the Constitution is kept up-to-date.

3.2 Pursuant to Article 15.01 of the Council's Constitution, the Monitoring Officer reviews and monitors the operation of the Constitution and may make recommendations for improvements as appropriate. Non material changes to the Constitution may be approved by the General Purposes Committee on the recommendation of the Monitoring Officer. Substantive proposals for change must be approved by full Council.

3.3 The Code of Conduct for Members is an important Constitutional document which forms part of the Council's ethical framework and is adopted under the provisions of the Localism Act 2011. The 2011 Act requires full Council to approve and adopt the Code and arrangements for dealing with complaints of alleged breach of the Code.

3.4 Annex A to this report contains the existing Code of Conduct for Members and the existing arrangements for dealing with complaints of alleged breach of the Code.

3.5 Annex B to this report contains the proposed revised Code and proposed revised arrangements for dealing with complaints of alleged breach of the Code.

3.6 In summary the proposed revisions to the Code include:

- Changes to the general principles of conduct to bring them up to date in terms of legislative context and current terminology.
- Greater clarity of the requirements to register and declare statutory disclosable pecuniary interests and other interests.
- A potential increase in the current value (£25) requiring the registration of gifts and/or hospitality.

3.7 In summary, the revisions to the arrangements for dealing with complaints of breach of the Code are proposed to streamline the complaint handling process and include:

- Providing greater autonomy for the Monitoring Officer to reject complaints at the initial stage (whilst retaining the ability to seek a view from the Investigation and Disciplinary Sub-Committee in more complex cases).
- Creating defined criteria on which the Monitoring Officer may reject complaints.
- Introducing a requirement for the Monitoring Officer to provide reasons for any rejection at the initial stage to the complainant (and include this in quarterly monitoring information provided to the Standards (Advisory) Committee).
- Introducing greater flexibility to seek local resolution of complaints at all stages of the process.
- Reducing the role of full Council to determine hearings and impose sanctions with a proposal that the Hearings Sub-Committee is decision making as to whether a breach has occurred but a requirement for full Council or the Mayor (as appropriate) to agree more serious sanctions such as removal of a Member from a Council Committee or the Executive.
- Abolishing the Hearings (Appeals) Sub-Committee.

In addition in order to enable proper investigation of more complex cases it is proposed to increase the time allowed to the Monitoring Officer to extend investigations making the total investigation period a maximum of 4 months instead of the current 3 months.

4. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 There are no immediate financial implications arising out of this report.

5. LEGAL SERVICES COMMENTS

- 5.1 This report has been prepared by the Deputy Monitoring Officer and incorporates legal comments.

6. RISK MANAGEMENT IMPLICATIONS

- 6.1 The proposed revisions are designed to make the Code of Conduct more robust and streamline arrangements for handling complaints of alleged breach of the Code. This will assist in promoting and maintaining high standards of conduct and improving confidence in local democracy.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 There are no specific anti poverty or equal opportunity implications arising out of this report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 This report has no immediate implications for the Council's policy of sustainable action for a greener environment.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 There are no specific crime and disorder reduction implications arising out of this report.

10. EFFICIENCY STATEMENT

- 10.1 This report is not concerned with proposed expenditure, the use of resources or reviewing/changing service delivery and an efficiency statement is not therefore required.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

- Annex A - Code of Conduct for Members and the existing arrangements for dealing with complaints
- Annex B - Proposed revised Code and proposed revised arrangements for dealing with complaints of alleged breach of the Code.

Local Government Act, 1972 Section 100D (as amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- Standards (Advisory) Committee file

Officer contact details for documents:

- Mark Norman 020 7364 4800

**EXISTING CODE OF CONDUCT FOR MEMBERS AND EXISTING
ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF ALLEGED
BREACH OF THE CODE**

**PROPOSED REVISED CODE OF CONDUCT FOR MEMBERS AND
REVISED ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF
ALLEGED BREACH OF THE CODE**

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Part 5 - Codes and Protocols

5.1 Code of Conduct for Members

Effective 1st July 2012. Adopted by the Council on 18th June 2012.

CONTENTS

Section	Subject
1	Introduction
2	Scope and Interpretation
3	General Obligations
4	Interests
5	Disclosable Pecuniary Interests
6	Interests arising in relation to Overview and Scrutiny Committees
7	Effect of Disclosable Pecuniary Interest on Participation at Meetings
8	The Register of Members' Interests
9	Sensitive Information

1. INTRODUCTION

1.1 Tower Hamlets Council has adopted this Code of Conduct for Members in accordance with the Localism Act 2011. The Code will assist the authority in providing excellent local government for the people of the borough. This Code of Conduct applies to the Mayor and all Members and Co-opted Members of the authority or any of its committees or sub-committees and it is your responsibility to comply with the provisions of this Code.

1.2 Tower Hamlets' Code of Conduct

(a) Any alleged breach of the provisions of the Code of Conduct by a Member or co-opted Member of the authority shall be dealt with in accordance with the arrangements set out in Appendix A to this Code.

1.3 Additional Codes and Protocols

(a) The Council has approved the following additional Codes and Protocols:

- Planning Code of Conduct
- Licensing Code of Conduct
- Member/Officer Protocol
- Employees' Code of Conduct

This Code should be read in conjunction with these Codes and Protocols that have been adopted by the Council as supplementary guidance for Members

and officers. These Codes and Protocols do not form part of the Code of Conduct but Members and officers are required to comply with their provisions.

- (b) Any failure by the Mayor, a Member or co-opted member to comply with these additional Codes and Protocols may be investigated in accordance with the arrangements set out at Appendix A to this Code
- (c) Any failure by an officer to comply with these additional Codes and Protocols will be referred to the relevant Corporate Director and where appropriate disciplinary action may be taken.

1.4 General Principles of Conduct

You should read this Code together with the general principles prescribed by the Localism Act 2011. These principles are listed below and they should guide all aspects of your conduct as a member of the authority:-

- (a) selflessness;
- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness
- (f) honesty; and
- (g) leadership.

1.5 Further Guidance

If you require further guidance on the application or interpretation of the provisions of this Code of Conduct or any of the additional Codes and Protocols approved by the Council you should contact the Monitoring Officer.

2. SCOPE AND INTERPRETATION

2.1 In this Code 'meeting' means any meeting of:

- (a) the authority;
- (b) the executive of the authority (currently known as the cabinet);
- (c) any of the authority's or its cabinet's committees, sub-committees, joint committees, joint sub-committees, panels, or area committees

2.2 In this Code 'Member' includes the Mayor, a co-opted Member and an appointed Member.

2.3 Subject to paragraph 2.4, you must comply with this Code whenever you:

- (a) conduct the business of the authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

- (b) act, claim to act or give the impression you are acting as a representative of the authority;

and references to your official capacity are construed accordingly.

2.4 Where you act as a representative of the authority:

- (a) on another relevant authority (as defined by section 49(6) of the Local Government Act 2000), you must, when acting for that other authority, comply with any code of conduct adopted by that other authority;
- (b) on any other body, you must, when acting for that other body, comply with this Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. GENERAL OBLIGATIONS

3.1 You must treat others with respect.

3.2 You must not:

- (a) do anything which may cause the authority to breach the Equality Act 2010 or any other equality enactment;
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person, including anyone who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,in relation to an allegation that a Member (including yourself) has failed to comply with his or her authority's code of conduct;
- (d) act in a threatening manner towards any person;
- (e) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3.3. You must not:

- (a) prevent another person from gaining access to information to which that person is entitled by law.
- (b) 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, including information that is exempt from publication in

accordance with Part 1 of Schedule 12A of the Local Government Act 1972 ('Part 2' agenda items), **except** where:

- (i) you have the consent of a person authorised to give it; or
- (ii) you are required by law to do so; or
- (iii) 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
- (iv) the disclosure is reasonable **and** in the public interest **and** made in good faith **and** in compliance with the reasonable requirements of the authority.

3.4 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.

3.5 You:

- (a) must not 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;
- (b) 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;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

3.6 When reaching decisions on any matter you must have regard to any relevant advice provided to you by:

- (a) the authority's Chief Finance Officer; and/or
- (b) the authority's Monitoring Officer,

where they are acting pursuant to their statutory duties.

3.7 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the authority.

4. INTERESTS

4.1 You have an interest in any business of the authority where either:

- (a) it relates to or is likely to affect:
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the authority;

(ii) any body

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in the authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between the authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in the authority's area in which you have a beneficial interest;

(x) any land where the landlord is the authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

4.2 In paragraph 4.1(b), a relevant person is:

- (a) a member of your family or any person with whom you have a close association; 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;
- (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 a type described in paragraph 4.1 (a) (i) or (ii).

5. DISCLOSABLE PECUNIARY INTERESTS

5.1 A Disclosable Pecuniary Interest (DPI) is defined in law as a pecuniary interest of any of the following descriptions:-

Subject	Prescribed description
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— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with

others) to occupy land in the area of the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to M's knowledge)—
(a) the landlord is the relevant authority; and
(b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—
(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

NB: A Member's DPs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

5.2 Subject to paragraphs 5.3 to 5.6, where you have a Disclosable Pecuniary Interest in any business of the authority which is not included in the Member's register of interests and you attend, in any capacity, a meeting of the authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent; and must within 28 days notify the Monitoring Officer of the interest for inclusion in the register.

5.3 Paragraph 5.2 only applies where you are aware or ought reasonably to be aware of the existence of the interest.

- 5.4** Where you have an interest but, by virtue of section 9, sensitive information relating to it is not registered in the authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
- 5.5** Subject to paragraph 7.1 (b), where you have an interest in any business of the authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- 5.6** In this Code 'executive decision' is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

6. INTERESTS ARISING IN RELATION TO OVERVIEW AND SCRUTINY COMMITTEES

- 6.1** You have an interest in any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where:
- (a) that business relates to a decision made (whether implemented or not) or action taken by the Mayor or the authority's cabinet or another of the authority's committees, sub-committees, joint committees or joint sub-committees : and
 - (b) at the time the decision was made or action was taken, you were the Mayor or a member of the cabinet, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

7. EFFECT OF DISCLOSABLE PECUNIARY INTERESTS ON PARTICIPATION AT MEETINGS

- 7.1** Subject to paragraph 7.2 where you have a DPI in any business of the authority:
- (a) you must withdraw from the room or chamber where a meeting considering the business is being held, including from any public viewing area:
 - (i) in a case where paragraph 7.2 applies, immediately after making representations, answering questions or giving evidence;
 - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee;
 - (b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

7.2 Where you have a Disclosable Pecuniary Interest in any business of the authority, or in relation to business before an Overview and Scrutiny Committee of the kind described at section 6 above, you may attend a meeting (including a meeting of the Overview and Scrutiny Committee or of a sub-committee of such a committee) 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, whether under a statutory right or otherwise.

8. THE REGISTER OF MEMBERS' INTERESTS

8.1 Subject to paragraph 9, you must, within 28 days of:

- (a) this Code being adopted by the authority; or
- (b) your election or appointment to office (where that is later); or
- (c) Disclosing a DPI at a meeting of the authority, its executive or any committee or sub-committee;

Notify the Monitoring Officer in writing, for inclusion in the authority's Register of Members' Interests, of details of your Disclosable Pecuniary Interests and other interests that fall within any of the categories mentioned in paragraph 4.1 (a).

8.2 Subject to paragraph 9, you must, within 28 days of becoming aware of any new DPI or change to any interest registered under paragraph 8.1, register details of that new interest or change by providing written notification to the authority's Monitoring Officer.

9. SENSITIVE INFORMATION

9.1 Where you consider that the information relating to any of your interests is sensitive information, and the authority's Monitoring Officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 8.

9.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 9.1 is no longer sensitive information, notify the authority's Monitoring Officer asking that the information be included in the authority's Register of Members' Interests.

9.3 In this Code, 'sensitive information' means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

LONDON BOROUGH OF TOWER HAMLETS

ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF BREACH OF THE CODE OF CONDUCT FOR MEMBERS

Effective 1st July 2012. Arrangements agreed by the Council on 18th June 2012 and subsequently revised by the Council on 18th September 2013.

1. The Monitoring Officer shall be the Proper Officer to receive complaints of any failure by the Mayor, a Councillor or a co-opted member to comply with the Code of Conduct for Members. On receipt of a complaint the Monitoring Officer shall within three working days inform the subject member of the substance of the complaint on a confidential basis.
2. The Monitoring Officer shall ensure that the Council appoints at least one Independent Person and at least one reserve Independent Person.
3. Complainants must provide their name and postal address when submitting a complaint. Anonymous complaints will not be considered unless in exceptional circumstances where the Monitoring Officer decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is capable of investigation without the need to ascertain the complainant's identity.
4. The Monitoring Officer shall, after consultation with the Independent Person and within ten working days of receiving the complaint (so far as practicable), determine whether a complaint merits formal investigation and arrange for such investigation. In making this determination the Monitoring Officer may at his/her discretion also consult other persons including Counsel.
5. In determining whether to refer a complaint for investigation, the Monitoring Officer may take into account how long has elapsed since the event(s) complained about took place and if this is more than one year, then a complaint will be rejected as out of time unless the complainant demonstrates that there are good reasons for the delay such as fresh evidence not available at the earlier date or only recently discovered.
6. The Monitoring Officer may refer a complaint of failure to comply with the Code to the Standards Advisory Committee or its sub-committee to recommend whether or not the complaint requires investigation where s/he feel that it is inappropriate for him/her to take the decision without seeking their advice. Where the Monitoring Officer considers that a complaint should not be subject to investigation, s/he shall convene an Investigation and Disciplinary Sub-Committee of the Standards Advisory Committee which shall make the final decision on the matter.
7. The Monitoring Officer will report quarterly (or less frequently if there are no complaints to report) to the Standards Advisory Committee on the number and

nature of complaints received and action taken as a result. This will include details of complaints that did not require investigation so that the Committee can exercise its oversight role.

8. If a complaint of failure to comply with the Code is referred for investigation the Monitoring Officer shall appoint an investigator or complete the investigation him/herself. Such investigation should be completed within two months of the decision to refer the matter for investigation. The Monitoring Officer may extend this period by up to a further month where s/he feels it is necessary to ensure an adequate investigation.
- 8A. In cases where the Monitoring Officer exercises their power to extend the time period of investigations into complaints from two months to three months, a report on the reasons for this is presented to the Standards Advisory Committee for noting and a letter is to be sent to the complainant(s) and subject(s) of the investigation notifying them of the extension and the reasons for this. The Monitoring Officer will also at each meeting of the Standards Advisory Committee present a report listing all complaints which have exceeded the two month referral for investigation with details of the length of time elapsed and the reasons for the delay. This report will include all complaints which have exceeded the two month investigation period since the last meeting of the Advisory Committee as well as those complaints previously reported to the Advisory Committee which remain outstanding in excess of the two month investigation period.
9. The Monitoring Officer or his/her deputy may, either before a complaint is referred for investigation or during the course of the investigation, seek local resolution of the matter to the satisfaction of the complainant before the investigation is concluded. Where the Monitoring Officer or deputy attempts to reach a local resolution before a complaint is referred for investigation, such attempts shall be subject to a four week time limit.
10. Where any investigation into a complaint of breach of the Code finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall within four weeks of receipt of the investigation report, consult with the Independent Person and the Standards Advisory Committee Investigations and Disciplinary Sub-Committee to confirm their agreement that the matter shall be closed without further hearing. If the Sub-Committee agree then the matter is closed. The Monitoring Officer shall provide a copy of the report and findings of the investigation which shall be kept confidential to the complainant and to the member concerned and shall report the matter as part of the quarterly report to the Standards Advisory Committee for information.
11. Where the investigation finds evidence of a failure to comply with the Code of conduct, the Monitoring Officer in consultation with the Independent Person, may seek local resolution to the satisfaction of the complainant in appropriate cases, with a summary report for information to Standards Advisory Committee in due course. Where such local resolution is not appropriate or not possible the Monitoring Officer shall report the investigation findings to a Hearings Sub-Committee of the Standards Advisory Committee for local hearing and recommendations. The Hearings Sub-Committee will be convened within one month of the Monitoring Officer receiving the

investigation report. The Hearings Sub-Committee may sit in private after advice from the Monitoring Officer.

12. The Hearings Sub-Committee will advise the Monitoring Officer whether or not they consider there has been a breach of the Code and if they consider sanction is appropriate having heard the matter shall request that the Monitoring Officer prepare a report to Full Council setting out the details of the investigation, hearing and proposed sanction which may include any of the following:-
 - Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - Recommend to the Mayor that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
 - Recommend the Monitoring Officer to arrange training for the member (subject to the Members agreement);
 - Recommend remove as from all outside appointments to which the Member has been appointed or nominated;
 - Recommend withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - Recommend excluding the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive Committee and Sub-Committee meetings (as appropriate);
 - Recommend the member to contact the Council via specified point(s) of contact;
 - Write to the member with their advice on the Members conduct.
13. In determining any recommended sanction the Sub-Committee may take into account any previous breach by the member concerned and/or their compliance with any previous sanction applied.
14. Where a subject member feels that a recommended sanction would cause him/her undue hardship or prevent him/her from undertaking ward duties, that Member may make representations to the Council meeting that will consider the recommendations of the Hearings Sub-Committee on the relevant complaint. Any such representations shall be notified to the Monitoring Officer within five working days of the Hearing Sub-Committee meeting.
15. The recommendations of the Hearings Sub-Committee shall be published in a local newspaper in the Public Notices Section and on the Council's website as well as in the minutes of the meeting. The content of any notice to be published shall be subject to agreement by the Chair of the Hearings Sub-Committee. Following publication, a link to the notice shall remain on the front page of the Council's website for a period of one month or such other position and/or period as the Hearings Sub-Committee may recommend. The Monitoring Officer shall draft further guidance on the detailed procedures for publication of decisions as necessary.
16. A member who is the subject of a finding by the Standards Advisory Committee that he/she has breached the code may appeal against that finding and/or against any

sanction applied. A complainant who is dissatisfied with the outcome of his/her complaint may appeal against that outcome. Any appeal under this section shall be notified in writing to the Monitoring Officer within 15 working days of the Hearings Sub-Committee recommendation being notified to the member or complainant and the Monitoring Officer shall arrange for the appeal to be heard by a Hearings (Appeal) Sub-Committee of the Standards Advisory Committee within 15 working days of receipt of the appeal. The decision of the Hearings Sub-Committee shall not be published, nor any sanctions applied, until the period allowed for an appeal has expired.

17. An appeal under 15 above may be made on grounds of either fact or defective procedure. The appellant must state the grounds on which the appeal is made and must provide specific reasons and any further information to support his/her appeal.
18. The Sub-Committee to hear any appeal under 15 above shall not include any member of the Hearings Sub-Committee that considered the investigation of the matter in question.
19. A member who is the subject of a complaint shall be informed of, and shall have the right to attend and/or be represented at, the hearing of the Standards Advisory Committee or any of its sub-committees that considers any matter relating to that complaint following investigation.
20. The timelines set out in this procedure are for guidance only and shall be observed where practicable but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.

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**PROPOSED REVISED CODE OF CONDUCT FOR MEMBERS AND
REVISED ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF
ALLEGED BREACH OF THE CODE**

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TOWER HAMLETS LBC
Revised Code of Conduct for Members
DRAFT

1. Introduction

1.1 This Code sets out the principles and standards of conduct for all elected and co-opted members of the London Borough of Tower Hamlets.

1.2 The Council is committed to the highest standards of ethical behaviour. The law prescribes minimum requirements of conduct which are included in this Code. The Code also contains additional requirements which the Council has chosen to adopt using its own local discretion.

1.3 Any reference to 'members' in this Code, or any appendices or related protocols, means the Mayor, elected and co-opted members. This Code applies at all times when members act in their capacity as member (or claim to act or give the impression of acting in their capacity as a member).

2. General Principles of Conduct

2.1 Members are required to comply with the following principles in their capacity as a member:-

SELFLESSNESS
INTEGRITY
OBJECTIVITY
ACCOUNTABILITY
OPENNESS
HONESTY
LEADERSHIP

2.2 Members must act solely in the public interest. They should not improperly confer (or seek to confer) an advantage or disadvantage on any person. They should not act to gain financial or other benefit for themselves, their family, friends or close associates.

2.3 Members should not place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member.

2.4 Members should make decisions on merit, including when awarding contracts, making appointments, or recommending individuals for rewards or benefits.

2.5 Members are accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their office.

2.6 Members should be as open as possible about their decisions and actions and those of the Council. They should be prepared to give reasons for decisions and have regard to the advice of the Council's statutory officers before making any decision.

2.7 Members should act to ensure Council resources are used prudently. When using or authorising the use by others of Council resources, members must ensure that they are used only for legitimate Council purposes and not for any other purpose. In particular they must not be used improperly for political purposes (including party political purposes).

2.8 Members should take account of the views of others, including their political groups, but must reach their own conclusions and act in accordance with those conclusions.

2.9 Members should promote equality and not discriminate unlawfully against any person. Members should treat all people with respect, they should not bully any person and should respect the impartiality and integrity of the Council's officers.

2.10 Members should promote and support high standards of conduct by leadership and example.

3. Members' Interests

3.1 For the purposes of this Code there are two categories of interest that require registration with the Monitoring Officer:

Disclosable pecuniary interest
Other interests the Council has decided should be registered

3.2 **A disclosable pecuniary interest** is defined by statutory regulation. Members must within 28 days of taking office as a member, notify the Monitoring Officer of any disclosable pecuniary interest to be included in the Register of Members' Interests.

3.3 A disclosable pecuniary interest also includes the interests of a members' partner. A partner is your spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners. A member and their partner is referred to in the statutory definition of a disclosable pecuniary interest as 'relevant person'.

3.4 The categories of disclosable pecuniary interest are:

Employment, office, trade, profession or vocation

Any employment, office, trade, profession or vocation carried on by a relevant person for profit or gain.

Sponsorship

Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 months prior to the date of giving notice of interest for inclusion in the register in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member.

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 a relevant person (or a firm in which they are a partner, or a body corporate in which they are a director or in the securities of which body corporate they have a beneficial interest) and the relevant authority:-

under which goods or services are to be provided or works are to be executed; and
which has not been fully discharged.

Land

Any beneficial interest in land which is within the borough.

Licences

Any licence (alone or jointly with others) to occupy land in the borough for a month or longer.

Corporate tenancies

Any tenancy where (to the member's knowledge):-

the landlord is the Council; and

the tenant is a body in which the relevant person is a firm in which they are a partner, or a body corporate in which they are a director or in the securities of which body corporate they have a beneficial interest.

Securities

Any beneficial interest in securities of a body where:-

that body (to the member's knowledge) has a place of business or land in the borough; and

either:-

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

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.

3.5 Other interests the Council has decided should be registered.

Members must also within 28 days of taking office as a member, notify the Monitoring Officer of such other interests that the Council has decided should be included in the register of Members' Interests. These are:

3.6 Any person from whom you have received a gift or hospitality with an estimated value of at least £25.

3.7 Membership or position of control or management in:-

Any body to which you have been appointed or nominated by the Council; and/or
Any body exercising functions of a public nature (described below) or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party

3.8 There is no definitive list of bodies exercising functions of a public nature, but those bodies which:-

carry out a public service, or
take the place of local/central government (including through outsourcing); or
carry out a function under legislation or in pursuit of a statutory power; or
can be judicially reviewed,

are likely to be bodies carrying out functions of a public nature. They include bodies such as government agencies, other councils, health bodies, council owned companies and school governing bodies.

3.9 All members must ensure that their entries in the Register of Members' Interests are kept up to date they must notify the Monitoring Officer of any change to their interests within 28 days of the change arising.

4. Declaration of interests

4.1 Members with a disclosable pecuniary interest may not participate in any discussion of, vote on, or discharge any function relating to any matter in which the member has such an interest, unless a dispensation has been granted under Section 33 Localism Act 2011.

4.2 The law requires that if a member has a disclosable pecuniary interest

which is not entered on the Register of Members' Interests, then the member must disclose the interest to any meeting of the Council at which they are present where they have a disclosable pecuniary interest in any matter being considered at that meeting. However this shall not apply if the interest is a 'sensitive interest' (see para 4.3 below.) Following any such disclosure the law requires that members update their entry in the Register of Members' Interests within 28 days of the date of disclosure. In this context the law defines a meeting as a meeting of the Council, or any committee, sub-committee or joint committee of it.

4.3 A 'sensitive interest' is an interest the disclosure of which the member and Monitoring Officer have agreed could lead to the member or a person connected with them being subject to violence or intimidation

4.4 Where a member is present at a meeting and has registered an interest in any matter which is to be discussed at the meeting (which is not a disclosable pecuniary interest) they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. The member may stay in the room and participate in consideration of the matter and vote on it subject to paragraph 4.5.

4.5 Where a member has an interest which under this Code would not be a disclosable pecuniary interest but requires registration (and therefore would not generally by law prevent participation in consideration of a matter in which the member has that interest,) the member must also consider whether a reasonable member of the public in possession of all the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.

5. Interests not included in the Register of Members' Interests

5.1 Occasions may arise where a matter under consideration would, or would be likely to, affect the wellbeing of the member, their family, friend or close associate(s) more than it would affect those in the local area generally, but which is not required to be included in the Register of Members' Interests (for example, a decision in relation to a school closure, where a member has a child at the school). In such matters, members must comply with paragraph 4 in its entirety as if the interest were a registerable one.

Note: The provisions of paragraphs 4 and 5 apply not only to meetings but to circumstances where a member makes a decision alone.

6. Access to Information

6.1 Members must not disclose confidential information given to them in the course of their duties without the consent of the person entitled to give it unless:-

there is a legal requirement to disclose the information, or

the disclosure is to a third person for the purpose of obtaining professional advice and the third party agrees not to disclose it, or

the disclosure is reasonable, in the public interest, made in good faith and made in accordance with the Council's reasonable requirements.

6.2 Conversely, members must not prevent access to information to which another is entitled by law.

7. Protocols

7.1 The Council has approved the following additional Codes and Protocols:

- Planning Code of Conduct
- Licensing Code of Conduct
- Member/Officer Protocol
- Employees' Code of Conduct

This Code should be read in conjunction with these Codes and Protocols.

8. Complaints

8.1 Any alleged breach by a member of the provisions of this Code or any of the Codes and Protocols listed in section 7 above will be dealt with in accordance with the arrangements set out in Appendix A to the Code.

8.2 Any failure by an officer to comply with the provisions of any of the Codes and Protocols listed in section 7 above will be referred to the relevant Corporate Director and may result in disciplinary action.

8.3 Members are reminded that breach of any of the statutory requirements relating to the registration and declaration of disclosable pecuniary interests may result in prosecution. Breach of the provisions introduced locally by the Council will be dealt with in accordance with Appendix A.

Members in need of advice about the application of this Code should contact the Monitoring Officer, Melanie Clay

Revised Code of Conduct for Members Appendix A

LONDON BOROUGH OF TOWER HAMLETS

REVISED ARRANGEMENTS FOR DEALING WITH COMPLAINTS OF BREACH OF THE CODE OF CONDUCT FOR MEMBERS

Arrangements agreed by the Council on 2016.

Introduction

The Council has adopted a Code of Conduct for Members which is available on the Council's website and on request from the Monitoring Officer.

In accordance with section 28 of the Localism Act 2011, these arrangements set out how an allegation may be made that the Mayor, an elected Member or a Co-opted Member of the London Borough of Tower Hamlets has failed to comply with the Council's Code of Conduct for Members and how the Council will deal with such allegations.

These arrangements also require that the Monitoring Officer shall ensure that the Council appoints at least one Independent Person and at least one reserve Independent Person for the purposes of meeting the statutory requirements of the Localism Act 2011.

Any reference in these arrangements to the Monitoring Officer shall include a deputy Monitoring Officer. The timelines set out are for guidance and shall be observed where practicable but may be extended by the Monitoring Officer as necessary if they cannot be complied with by any relevant party due to sickness, holidays or other reasonable cause.

Complaints

1. Allegations concerning possible breaches of the Code of Conduct for Members should be made in writing to the Monitoring Officer.
2. On receipt of a complaint the Monitoring Officer shall within five working days acknowledge receipt to the complainant. The Monitoring Officer will also within five working days and on a confidential basis, inform the subject Member of the substance of the complaint and the identity of the complainant (unless the Monitoring Officer considers that such notification would prejudice the proper consideration and investigation of the complaint).
3. Complainants must provide their name and postal address when submitting a complaint. Anonymous complaints will not be considered unless the Monitoring Officer decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is capable of investigation without the need to ascertain the complainant's identity.
4. A complainant when making an allegation should specify the identity of the person(s) alleged to have breached the Code, the conduct that is alleged to give rise to the breach, the evidence that supports the allegation and the names (and contact details) for any potential witnesses able to give direct evidence of the events complained about.

Assessment of Complaints

5. The Monitoring Officer shall, after consultation with the Independent Person and within ten working days of receiving the complaint:

- (a) Decide whether or not a complaint merits formal investigation and where appropriate arrange for an investigation; OR
 - (b) Decide to attempt to facilitate informal resolution of the complaint (such attempt shall be subject to a four week time limit).
6. In making this determination the Monitoring Officer may at his/her discretion report the matter to the Investigation & Disciplinary Sub-Committee (IDSC) of the Standards (Advisory) Committee for consideration and/or consult other persons as appropriate.
7. The Monitoring Officer may decide not to refer the matter for investigation where:
- (a) The allegation does not demonstrate any potential breach of the Code (because for example it relates to dissatisfaction with a Council decision/service or relates to events which occurred when the person complained about was not acting in an official capacity).
 - (b) The event(s) complained about took place more than six months ago and there are no valid reasons for the delay in bringing the complaint, such as fresh evidence not available at the earlier date or only recently discovered.
 - (c) The allegation is about someone who is no longer the Mayor or a Member/Co-opted Member.
 - (d) The complainant has failed to provide the information specified in paragraph 4 above or any other information reasonably requested by the Monitoring Officer.
 - (e) The same or a similar allegation has been investigated and determined.
 - (f) The Mayor, Member or Co-opted Member has already accepted they made an error in their conduct and/or has apologised for their conduct and the Monitoring Officer considers the matter would not warrant a more serious sanction.
 - (g) The allegation is politically motivated and/or 'tit for tat'.
 - (h) The allegation is not considered sufficiently serious to merit the cost to the public of carrying out an investigation.
 - (i) The Monitoring Officer has facilitated an informal resolution of the complaint (see below) and the Mayor or Member/Co-opted Member complained about has offered to take remedial action that the Monitoring Officer considers appropriate in all the circumstances (for example by apologising to the complainant and/or undertaking training or issuing a statement of factual correction).
8. Where the Monitoring Officer decides to reject a complaint s/he shall inform the complainant in writing giving the reasons for rejection.

Investigation and Monitoring of Complaints

9. If a complaint of failure to comply with the Code is referred for investigation the Monitoring Officer shall appoint an investigator or complete the investigation him/herself. Such investigation should whenever possible be completed within two months of the decision to refer the matter for investigation. The Monitoring Officer may extend this period by up to a further two months where s/he feels it is necessary to ensure a proper and adequate investigation.
10. The Monitoring Officer will keep the complainant and the subject Member informed as to progress at appropriate intervals and shall inform them of any extension to the period for the investigation.


11. The Monitoring Officer will report quarterly (or less frequently if there are no complaints to report) to the Standards (Advisory) Committee on the number and nature of complaints received and action taken as a result. This will include details of complaints that have been rejected by the Monitoring Officer and any extension made to the period for an investigation of a complaint.
12. Where any investigation into a complaint of breach of the Code finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer shall within four weeks of receipt of the investigation report, consult with the Independent Person and decide whether the matter should be closed without reference to a Hearings Sub-Committee. The Monitoring Officer shall provide a copy of the report and findings of the investigation which shall be kept confidential to the complainant and to the Member concerned and shall report the matter as part of the quarterly report to the Standards (Advisory) Committee for information. The Monitoring Officer may also seek advice from the IDSC before deciding that a matter should be closed without reference to the Hearings Sub-Committee.
13. Where an investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer following consultation with the Independent Person, may seek local resolution of the complaint. If local resolution succeeds the Monitoring Officer shall report the matter as part of the quarterly report to the Standards (Advisory) Committee. If local resolution does not succeed or if following consultation with the Independent Person, the Monitoring Officer considers that it is not appropriate to seek local resolution, the Monitoring Officer shall report the investigation findings to a Hearings Sub-Committee of the Standards (Advisory) Committee for local hearing and determination. The Hearings Sub-Committee will whenever practicable be convened within one month of the Monitoring Officer receiving the investigation report.

Hearings Sub-Committee

14. The Hearings Sub-Committee will consider the investigation report and any submissions from the subject Member and determine:
 - (a) If there has been a breach of the Code of Conduct having taken into account the views of the Independent Person; and if so
 - (b) Whether any sanction is appropriate having taken into account the views of the Independent Person.
15. Possible sanctions may include any of the following:-
 - (a) Publication of the Sub-Committee's decision.
 - (b) Reporting the Sub-Committee's decision to Council.
 - (c) Requesting the Monitoring Officer to arrange training for the Member (subject to the Member's agreement).
 - (d) Issuing a censure or reprimand which may also be reported to Council.
 - (e) Requiring the Member to contact the Council and officers via specified point(s) of contact.
 - (f) Withdrawing facilities provided to the Member by the Council, such as a computer or internet access.
 - (g) Excluding the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Executive, Committee and Sub-Committee meetings (as appropriate).
 - (h) Recommending to the Member's Group Leader that s/he be removed from any or all Committees or Sub-Committees of the Council.
 - (i) Recommending to the Mayor that the Member be removed from the Executive, or removed from particular portfolio responsibilities.

- (j) Recommending to Council or the Mayor as appropriate the removal from outside appointments to which the Member has been appointed or nominated.
- (k) Recommending to Council that the Member be removed from any or all Council Committees or Sub-Committees.

16. In determining any recommended sanction the Hearings Sub-Committee may take into account any previous breach by the Member concerned and/or their compliance with any previous sanction applied.

Non-Executive Report of the: Standards Advisory Committee 22 nd September 2016	
Report of: Graham White, Interim Service Head, Legal Services and Deputy Monitoring Officer	Classification: Unrestricted
Update on the Council's Whistleblowing Arrangements	

Originating Officer(s)	Paul Greeno
Wards affected	All wards

Summary

This is a periodic report updating on the Council's whistleblowing arrangements.

Recommendations:

The Standards Advisory Committee is recommended to:

1. Note the updated version of the Whistleblowing Policy at Appendix 1;
2. Note the accompanying Process Chart, Blow the Whistle report form, guidance for investigators, and guidance for managers at Appendices 2 to 5 respectively;
3. Note the whistleblowing concern and investigation monitoring information contained in Appendix 6 to this report;
4. Note the introduction of the 'clear up' team project; and
5. Note that an independent review is to be undertaken on how the Council handles concerns, with particular focus on the whistleblowing process.

1. REASONS FOR THE DECISIONS

1.1 This is a noting report.

2. ALTERNATIVE OPTIONS

2.1 This is a noting report.

3. DETAILS OF REPORT

Whistleblowing Policy

3.1 As part of the steps to improve the Council's organisational culture, the Council's approach to Whistleblowing has been reviewed and improved with a revised procedure accessible on the Council's intranet and website for use by staff and the public. Further work is underway.

3.2 A new stand-alone Whistleblowing Policy has been introduced. This Policy is being kept under regular review and the most up to date version is version 4 which is attached as Appendix 1. The Policy includes version control so that there can be an assurance that the most up-to-date policy is being used. The Policy specifies time limits and a requirement to keep the person raising a concern informed as to progress.

3.3 The new Policy and the investigation process is managed by the Monitoring Officer. A Process Chart, Blow the Whistle report form, guidance for investigators, and guidance for managers have also been prepared and these are attached as Appendices 2 to 5 respectively. These documents are designed to assist persons who wish to raise concerns; managers to whom concerns may be raised and investigators.

Whistleblowing Concerns raised since April 2016

3.4 This new Whistleblowing process was initially introduced in April 2016. Since that time and to date, 19 concerns have been raised under the new Policy. Of those 19, 12 were not whistleblower complaints and were referred to appropriate service area to respond.

3.5 As regards the remaining 7 concerns, 1 investigation has been completed and closed; 2 investigations are underway and further information is required in respect of 3 concerns so that they can be investigated (requests have been made but no additional information has yet been forthcoming). The remaining concern raises matters that overlap with an investigation that is underway and the outcome of that investigation will inform how to proceed with that other matter.

3.6 Whistleblowing concern and investigation monitoring information is contained in Appendix 6 to this report.

Clear-Up Team

- 3.7 A Clear-Up Team is being established to conduct a review of any unconsidered allegations of improper Council decision making or impropriety in the discharge of Council functions which took place between October 2010 and June 2016. The team will not investigate allegations if they have already been considered or satisfactorily investigated through another process.
- 3.8 Allegations can be submitted during a three (3) month period from 8th September 2016 to 8th December 2016 which should allow sufficient time for allegations to be made with a cut-off point after which allegations can be reviewed and where appropriate investigated. It is intended that all investigations will be completed by 31st March 2017.
- 3.9 The governance of the Clear-Up Team will be overseen by the Clear-Up Board which will consist of:
- 3 x Statutory Officers of the Council (Chief Executive (Chair), Section 151 Officer and Monitoring Officer).
 - 1 x DCLG Commissioner.
- 3.10 The Clear-Up Board will meet regularly and will:
- Receive updates from the Programme Manager for the Clear-Up Team who will inform the Board of the number and nature of the allegations received as well as providing indicative timescales for completing the investigations.
 - Consider requests by the Programme Manager where there are issues, such as access to information or to employees in the Council, for the Board to take action to ensure that any blockages are resolved quickly and efficiently.
 - Consider reports from the Programme Manager on each of the investigations detailing:
 1. Whether the allegation has been upheld or rejected
 2. Where an allegation is upheld, a view on whether the impropriety has since been remedied. For example, by changes to Council practices and internal controls
 3. Recommendations for further action, including in relation to individuals involved.
 - The Clear Up Board will consider each investigation report and recommend action, if any, to the appropriate body or person.
 - In any instances where it is not entirely clear whether the allegation has previously been considered or investigated, the Programme Manager will present the summary details of any allegation to the Board who will decide on the merits of investigating any elements of the allegation that have not been identified or sufficiently considered previously.
 - Receive reports of concerns raised under the new Whistleblowing Policy.

- 3.11 At the close of the Clear-Up project, the Board will produce a final report on the work of the Clear-Up Team including details of the number and nature of the allegations made; the number of allegations that were substantiated; and any action taken as a result of the investigations. The report will also summarise any lessons learnt from the project and how these will be fed into policy and practice in the future. The report will be submitted to a public meeting of the Council.

Further Review

- 3.12 An independent review is being commissioned on how the Council handles concerns with the following processes in the scope of the review:
- Whistleblowing Process
 - Complaints
 - FOIs/MEs
 - Accident/Incident Reporting
 - CHAD Procedure
 - Grievance Procedure
 - Standards Board complaint procedure
- 3.13 The review will consider current processes and procedures, compare these with best practice and make recommendations for consideration by the Council. An action plan will be produced based on the agreed recommendations, setting out the timetable for implementation and the resource requirements.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There will be additional costs associated with the independent review and the 'Clear Up Team', which will comprise an independent Programme Manager and independent investigators, the exact number of which will depend on the nature, volume and complexity of issues raised. Costs are estimated to be in the region of £100k-£250k but again will depend on the recommendations made by the independent review, the size of the team required by the Clear Up Team and complexity of issues to be investigated and resolved. However, costs will be monitored carefully and further updates will be provided as part of regular updates to the Clear Up Board. These costs will need to be funded through general reserves or through corporate contingencies.

5. LEGAL COMMENTS

- 5.1 This is a report of Legal Services and any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The review of whistleblowing is a continuation of the Council's improvement to its organisational culture. It demonstrates a commitment to put the concerns of employees and local people first and for fair and transparent decision making and which contributes to the delivery of One Tower Hamlets priorities and objectives.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty.
- 7.2 By virtue of Directions made by the Secretary of State on 17 March 2015 the Council was required to draw up and agree with the Commissioners a strategy and action plan for securing the Authority's compliance with the best value duty. Part of that plan included a recommendation that the Council set up a Clear-Up Team to ensure that any historic unconsidered allegations of improper Council decision making or impropriety in the discharge of Council functions are properly investigated and determined.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 None.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Ensuring a culture whereby persons feel empowered to raise concerns when there is a reasonable belief (and it is in the public interest) that one or more of a criminal offence, a breach of legal obligation, a miscarriage of justice, a danger to the health and safety of an individual, damage to the environment, and/ or a deliberate attempt to conceal one of these, has occurred or is likely to occur is an important part of risk management and should reduce risks.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Ensuring a culture whereby persons feel empowered to raise concerns when there is a reasonable belief (and it is in the public interest) that a criminal offence, a miscarriage of justice is likely to occur should assist in reducing crime.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 - Whistleblowing Policy version 4
- Appendix 2 - Process Chart
- Appendix 3 - Blow the Whistle report form
- Appendix 4 - Guidance for investigators
- Appendix 5 - Guidance for managers
- Appendix 6 - Whistleblowing concern and investigation monitoring information

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

- N/A

APPENDIX 1

LONDON BOROUGH OF TOWER HAMLETS

WHISTLEBLOWING POLICY



CONTENTS

1. INTRODUCTION.....	02 to 03
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Date Last Reviewed:	6th September 2016
Approved By:	Melanie Clay, Corporate Director, Law, Probity and Governance and Monitoring Officer
Date Approved:	6th September 2016
Version No.	4
Document Owner:	Paul Greeno
Post Holder:	Senior Corporate and Governance Lawyer
Date of Next Scheduled Review:	31st March 2017

2. Introduction

The London Borough of Tower Hamlets is committed to the highest standards of openness, probity and accountability.

Whistleblowing is the term used when someone who works in or for an organisation wishes to raise concerns about malpractice, wrongdoing, illegality or risk in the organisation (for example, crimes, civil offences, miscarriages of justice, dangers to health and safety), and/or the cover up of any of these. The malpractice etc. must have a public interest aspect to it, usually because it threatens others. It applies to raising a concern within the organisation as well as externally, such as to a regulator.

An important aspect of accountability and transparency is a mechanism to enable Members, employees, contractors, suppliers and partners to voice concerns in a responsible and effective manner. It is a fundamental term of every contract of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. Nevertheless, where an individual discovers information which they believe shows serious malpractice or wrongdoing within the Council then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in certain circumstances the line manager would be the appropriate person to be told).

The Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 both amend the Employment Rights Act 1996 and gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. This Policy has been introduced to ensure that an employee should not feel at a disadvantage in raising legitimate concerns.

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question operational decisions taken by the Council nor should it be used to reconsider any matters which have already been addressed through the Council's existing procedures. Further this Policy is supplemental to and not a substitute for the usual mechanisms. In that regard, it is important to note that the Whistleblowing Policy is not intended to replace any of the complaint/ concern mechanisms already in place at Tower Hamlets.

Whilst the term “whistleblowing” applies to an individual who works in or for an organisation, the Council considers that this mechanism should also be used when members of the public wish to raise public interest concerns and which are not appropriate for consideration under another Council procedure. This Policy is therefore also applicable to members of the public who wish to raise concerns about malpractice, wrongdoing, illegality or risk in the Council.

Anyone, including elected Members, employees, service users, partners and members of the public are encouraged to raise genuine concerns with the Council through existing procedures. These are:

- The Complaints Procedure
- A Complaint against a Councillor pursuant to “The Arrangements for dealing with allegations of a Breach of the Code of Conduct for Members”
- CHAD Procedures
- The Grievance Procedure
- Line Management
- The Directorate Health and Safety co-ordinator
- The Corporate Health and Safety Manager
- The Housing Benefit Fraud Hotline (0207 364 7443)
- The Council General Inquiry number (020 7364 5000)
- The External Auditor
- Public Concern at Work (020 7404 6576)

This Policy should also be read in conjunction with the Council’s Anti-Money Laundering Policy, Anti-Bribery Policy, Enforcement Policy, and Directorate Health and Safety Policies.

Finally, if you are considering raising a concern you should read this policy first.

3. **Aims and Scope of Policy**

This policy is designed to enable you to raise concerns at a high level and to disclose information which you believe shows malpractice, impropriety, criminal activity, or dangers to health and safety. This policy is intended to cover concerns which are in the public interest and may at least initially be investigated separately but might then lead to the instigation of other procedures e.g. disciplinary.

This policy aims to:

- encourage you to feel confident in raising serious concerns and to question and act upon such concerns;
- provide avenues for you to raise those concerns and to receive feedback on any action taken;
- ensure that you receive a response to your concerns and that you are aware of how to pursue them if they are not satisfied;
- reassure you that, as a “whistleblower”, you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have raised any concerns in good faith.

These concerns could include

- Financial malpractice or impropriety or fraud including unauthorised use of public funds
- Theft or abuse of Council property
- Failure to comply with a legal obligation or Statutes
- Dangers to Health & Safety or the environment
- Criminal activity
- Miscarriages of justice
- Improper conduct or unethical behaviour
- Attempts to conceal any of these
- Other unethical conduct

4. **Safeguards**

(i) Protection

This policy is designed to offer protection to you when you disclose such concerns provided that the disclosure is made:

- in good faith;
- that any evidence that the you have gathered has not been obtained inappropriately or unlawfully; and
- in the reasonable belief by you that it is in the public interest and tends to show malpractice, impropriety etc. and that the disclosure is made to an appropriate person (see below).

It is important to note that if you are an employee then no protection from internal disciplinary procedures is offered to those who make malicious or vexatious allegations or makes an allegation for personal gain. This could be construed as gross misconduct and disciplinary action may be taken.

(ii) Confidentiality

The Council will treat all such disclosures in a confidential and sensitive manner. Your identity will be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process could reveal the source of the information and you may need to provide a statement as part of the evidence required. In such cases, we will always ask your consent to disclose your identity. Further, it is always possible that your identity could be guessed.

(iii) Anonymous Allegations

It is not unusual for individuals who are thinking about raising a concern to want to make it anonymously. However it is best that concerns are raised openly as it makes it easier for consideration and investigation of the concern. It is recognised, however, that there are circumstances when you would wish to keep your identity confidential (see above).

Anonymous concerns will not be considered unless in exceptional circumstances where it is decided that it raises a serious issue affecting the public interest and which is capable of investigation without the need to ascertain the your identity. Therefore, whilst we do not rule out the possibility of conducting investigations where you have not given your name, it should be noted that, in practice, we are unlikely to be able to proceed in the majority of such cases because off the practical difficulties that arise. Anonymity will often present a barrier to effective investigation because it is impossible to contact you to check information received, ask for more details, or give feedback.

Reasons why the Council will not accept or adjudicate anonymous concerns include:

- Accepting anonymous concerns make it difficult to assess your veracity as well as the credibility of the facts and evidence on which you have based your concern. Some cases will rise or fall on your credibility. Therefore, who you are can be critical and, in close cases, your credibility can make the difference whether a concern is founded.
- It reduces the likelihood of frivolous concerns or concerns filed with ill-will or malice.

(iv) Untrue Allegations

If you make an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against you. In raising a concern, you should exercise due care to ensure the accuracy of the information. If you make a malicious or vexatious allegation, or make an allegation for personal gain then further action may be taken against you (and if you are an employee that could include disciplinary action).

5. **Procedures for Raising a Concern**

You can raise your concerns in confidence in the following ways:

- Complete the 'Blow the Whistle' report form and which is available:
 - on the Council's website;
 - on the Council's intranet (for employees);and then email it to: monitoring.officer@towerhamlets.gov.uk
- Speak to any Senior Manager in the Council who will help you to complete a 'Blow the Whistle' report form to be sent to the Monitoring Officer at the above email address;
- Via the Whistleblowing Hot Line 0800 528 0294 (a 'Blow the Whistle' report form will be completed and emailed to the Monitoring Officer);

You should provide as much information as possible; including names, dates and places where possible and explaining the reason for the concern as well. Details of any action that you have taken to date should also be included.

You can also raise the concern through a friend, a trade union representative (if an employee), or a professional association representative. This friend or representative can also be present during any meetings or interviews in connection with the concern. Any meetings that need to be arranged can be held off-site, if appropriate.

If there is evidence of criminal activity then the investigating officer will be obliged to inform the police. The Council will ensure that any internal investigation does not hinder a formal police investigation.

Subject to the nature of the concern or the individual(s) who is the subject of the concern then the investigation may be handled internally, referred to the District Auditor or Police, or looked at by another independent investigator.

6. Timescales

Provided that you are not anonymous then within five (5) working days commencing from the first working day following receipt of the 'Blow the Whistle' report form, a written acknowledgement will be sent to you. Within fifteen (15) working days commencing from the first working day following receipt of the 'Blow the Whistle' report form, you will then be informed in writing of how it is proposed to deal with the matter.

This written communication will also give an estimate of how long it is likely to take to deal with the matter. Due to the varied nature of these sorts of matters, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations in this Policy. Such matters are expected to be investigated quickly but without compromising a proper investigation. There is therefore a presumption that the investigation should normally be completed within forty (40) working days commencing from the decision to investigate and you will be advised in writing of an estimated completion date within that time. If it is clear that the investigation will take longer, for example if outside agencies' are involved, then this time may need to be extended. In this event a revised date will be set for completion and all parties informed in writing and setting out the reason for the extension.

Please note that these time estimates are indicative only. The Council will respond to your concerns as quickly as possible but the Council will have to test your concerns. Rest assured though that testing your concerns is not the same as either accepting or rejecting them. The overriding principle for the Council will be the public interest. In order to be fair, initial enquiries will have to be made to decide whether an investigation is appropriate and, if so, what form it should take.

7. Investigating Procedure

The Monitoring Officer or his/ her nominated officer will arrange for the appointment of an investigating officer who will:

- Ensure that full details and clarifications of the concern are obtained.
- Consider the involvement of any external agencies at this stage (e.g. the Police).
- Ensure that the allegations are fully investigated with the assistance, where appropriate, of other individuals / bodies.
- Hold interviews with all relevant people as soon as possible.
- Prepare a written report containing the findings of the investigation promptly at the conclusion of the investigation.
- Keep the complainant informed of the progress of the investigations and, if appropriate, of the final outcome.

If one or more member(s) of staff is implicated then:

- They should be informed as soon as is practicably possible;
- The investigator should liaise with the relevant manager(s), where appropriate;
- The investigator must keep an open mind;
- The investigator's report will be passed to the Monitoring Officer who will decide what further action to take; and
- The Monitoring Officer will inform any individuals under investigation and the relevant manager(s), where appropriate, as to whether or not the concern has been substantiated.

8. Taking The Matter Further

Any concern about the conduct of an investigation should be raised in confidence with the Monitoring Officer. There are other options if you do not wish to report your concern to the Monitoring Officer: you can [get legal advice](#) from a lawyer, or tell a [prescribed person or body](#).

A Prescribed person or body as set out in the “prescribed persons list” published by the Department for Business, Innovation and Skills. The organisations and individuals on the list have usually been designated as prescribed persons because they have an authoritative or oversight relationship with the sector, often as a regulatory body. An up-to-date list can be found here:

(<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>)

For example:

- Any Member of Parliament
www.parliament.uk/mps-lords-and-offices/
- Your legal adviser, in the course of obtaining legal advice
- The Comptroller and Auditor General
National Audit Office
020 7798 7999
www.nao.org.uk/contact-us/
- The Council’s External Auditor
Andrew Sayers,
for and on behalf of KPMG LLP, Appointed Auditor
15 Canada Square, London, E14 5GL
- Commissioners for Her Majesty’s Revenue & Customs
0800 788 887
www.hmrc.gov.uk
- The Charity Commission for England and Wales
0300 066 9197
whistleblowing@charitycommission.gsi.gov.uk
- Children’s Commissioner
020 7783 8330
info.request@childrenscommissioner.gsi.gov.uk

- The Information Commissioner
0303 123 1113
casework@ico.org.uk
- The Health and Safety Executive
<http://webcommunities.hse.gov.uk/connect.ti/concernsform/answerQuestionnaire?qid=594147>
- Care Quality Commission
0300 061 6161
www.cqc.org.uk

If you tell a prescribed person or body, it must be one that deals with the issue you're raising, e.g. a disclosure about wrongdoing in a care home can be made to the Care Quality Commission.

As stated in the introduction to this Policy, the Employment Rights Act 1996 and gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. This protection is also afforded to qualifying disclosures made to a prescribed person or body on "prescribed persons list". Qualifying disclosures are disclosures of information where the worker reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.

- A criminal offence
- The breach of a legal obligation
- A miscarriage of justice
- A danger to the health and safety of any individual
- Damage to the environment
- Deliberate attempt to conceal any of the above.

Through this Policy, the Council also guarantees like protection if it is a qualified disclosure made to:

- The Police
- Public Concern at Work
020 7404 6576
(The whistleblowing charity who can give advice and help on whistleblowing)
- The Local Government Ombudsman
0300 061 0614
http://www.lgo.org.uk/forms/ShowForm.asp?fm_fid=62

If you, as an employee, raise concerns outside the Council you should ensure that it is to either one of the prescribed persons or bodies as set out in the "prescribed persons list" published by the Department for Business, Innovation and Skill or the additional contacts

as set out above. A public disclosure to anyone else could take you outside the protection of the Employment Rights Act 1996 and of this Policy.

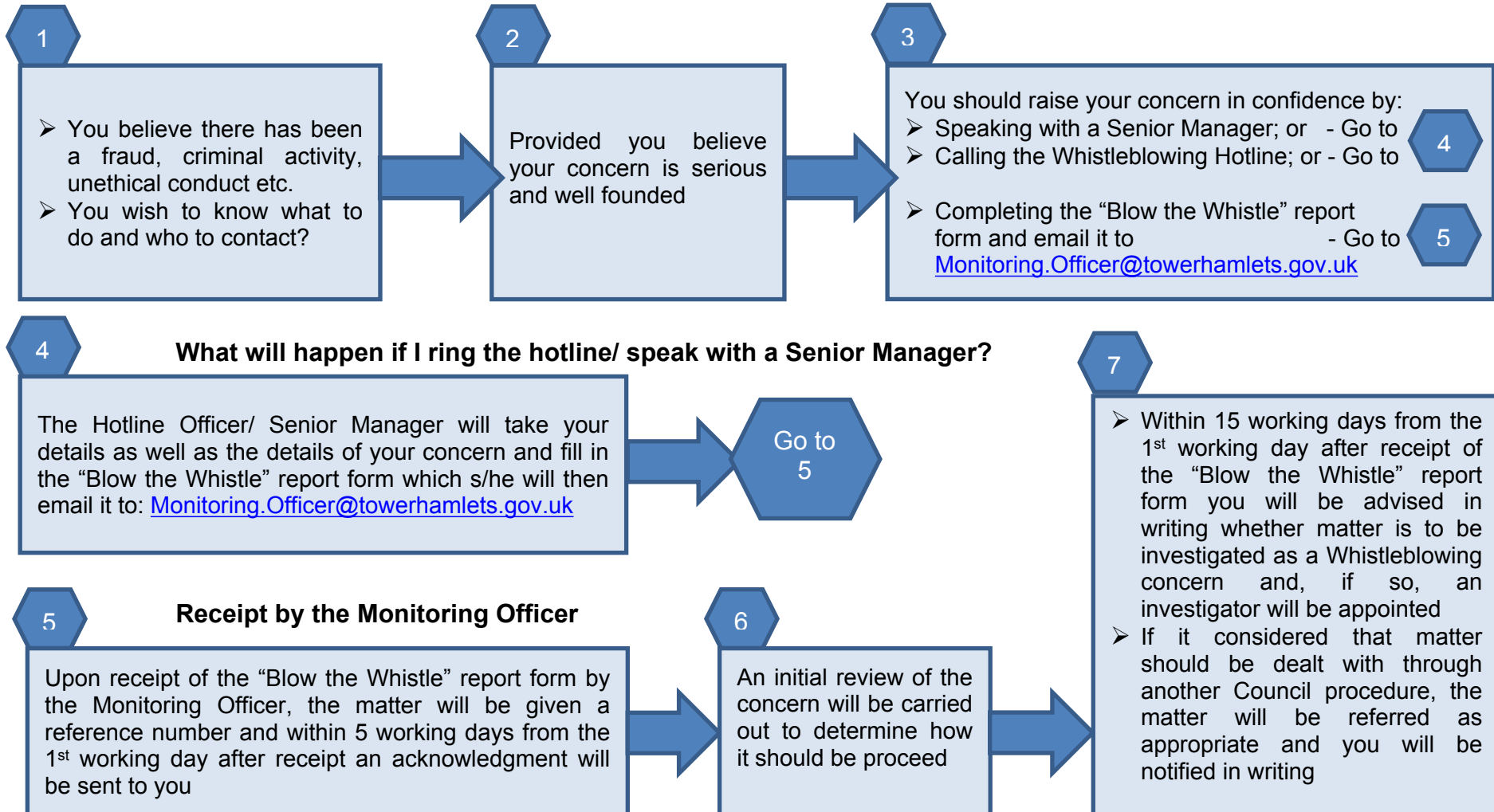
You should not disclose information that is confidential to the Council or to anyone else, such as a client or contractor of the Council, except to either one of the prescribed persons or bodies as set out in the “prescribed persons list” or the additional contacts as set out above.

Ultimately however, this Policy 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 where such concerns are raised with it but if you are not and you feel it is right to take the matter outside the Council, then you can raise it with either one of the prescribed persons or bodies as set out in the “prescribed persons list” or the additional contacts as set out above.

APPENDIX 2

RAISING A CONCERN

WHISTLEBLOWING HOTLINE: 0800 528 0294



APPENDIX 3

Blow the Whistle: Report a Concern



Tower Hamlets is committed to the highest standards of transparency, openness, integrity and accountability. In line with this, our whistleblowing policy provides a framework for anyone to raise concerns which they believe are in the public interest and may relate to unsafe, illegal, improper or unethical conduct.

This form should be used where you have a concern of this kind.

In filing this report in good faith you will be protected from detrimental treatment, e.g. victimisation or dismissal. The Whistleblowing Policy complies with the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013. You can view the Policy document by following [this link](#), and the process by going [here](#)

Contact Details of the person reporting a concern

Your identity will be kept confidential so long as it does not hinder or frustrate any investigation. We will always ask you for consent if we need to disclose your identity.

Anonymous concerns will not be considered unless there are exceptional circumstances where it is decided that the concern raises a serious issue affecting the public interest and which is capable of investigation without the need to ascertain your identity.

Name	
Address	
Phone number	
Email address	
Please provide your details below if you are a friend, manager or trade union or other representative completing this form on behalf of someone else:	
Name	
Address	
Phone number	
Email address	
For Monitoring Office use only	
Received by:	Date:
Sent to:	Date:
	Acknowledgement due:
	Initial Report estimate:

Nature of the Concern:

Please provide as much information as you can about your concern.		
You should include where possible:		
Name/s of any specific individual/s who's behaviour you are concerned about:		
A description of what specifically concerns you (e.g. what have you observed)?		
The dates and places you observed this:		
Why does this concern you?		
Any names and email/phone numbers of other people who could corroborate your observations.		
Details of any other organisations/ people you have reported this to, such as an external body, your Union or a Senior Manager		
Are there any special circumstances for which you require assistance or appropriate support why we investigate your concern? Please place a X in the relevant box	Yes I would like someone to support me	<input type="checkbox"/>
	I already have the support I need	<input type="checkbox"/>
	I do not need any support	<input type="checkbox"/>
Please advise what those special circumstances are so that we can assess them		

You should email your completed form to: Monitoring.officer@towerhamlets.gov.uk

APPENDIX 4

GUIDANCE FOR MANAGERS – 17TH MAY 2016

- Read and understand the concern that has been raised
- Plan your investigation-
 - What additional information do you need?
 - Who do you need to interview?
 - What outside agencies, if any, do you need to liaise with?
 - Do you need to liaise with the manager(s) of individual(s) who is/ are the subject of the concern.
- Estimate the time to be taken to carry out the investigation. **Remember the presumption is that the investigation should normally be completed within forty (40) working days.**
- Write to the individual who raised the concern to introduce yourself and giving an estimated date for conclusion of the investigation. If any additional information is required before holding interviews then request it at this stage.
- Write to the individual(s) who is/ are the subject of the concern and advise that a concern has been raised and that you have been asked to investigate under the Whistleblowing procedure. Notify the manager(s) of individual(s) who is/ are the subject of the concern, if appropriate.
- Arrange and hold interviews with all relevant people as soon as possible. This is important as memories of events can fade. **Delays in investigating will lessen the effectiveness of the procedure and make it harder to obtain the evidence. Delays can also cause unnecessary concern and resentment for the person under investigation.**
- Send statements/ transcripts of interviews to the individual interviewed following the interview for them to confirm accuracy and add any clarification.
- If there are delays in the investigation, make sure to keep the individual who raised the concern informed and given updated completion estimate.
- Once the investigation has concluded, promptly prepare a written report containing the findings of the investigation. Make sure that if you are summarising interviews that the summaries are accurate. **Remember the decision as to action to be taken is for the Monitoring Officer although you should make a recommendation for consideration.**
- Write to the individual who raised the concern to advise them that the investigation has been completed and a report referred to the Monitoring Officer. **Do not advise that individual as to the outcome of the investigation but advise that the Motoring Officer will consider the report and write to that individual accordingly.**
- Write to the individual(s) who is/ are the subject of the concern to advise them that the investigation has been completed and a report referred to the Monitoring Office. **Again, do not advise as to the outcome of the investigation but state that the Motoring Officer will consider the report and write to that individual accordingly.**

- **REMEMBER CONFIDENTIALITY AND YOU MUST NOT DISCLOSE THE IDENTITY OF THE PERSON RAISING THE CONCERN UNLESS THAT INDIVIDUAL HAS CONSENTED**

- **YOU MUST ENSURE THAT ALL CORRESPONDENCE IS COPIED TO THE MONITORING OFFICER QUOTING THE MATTER REFERENCE NUMBER**

APPENDIX 5

GUIDANCE FOR MANAGERS – 17TH MAY 2016

- If a concern is raised, assess whether it falls within the Whistleblowing Policy or is it should it be raised through other existing procedures (e.g. The Complaints Procedure OR CHAD Procedures)
- Ensure confidentiality and act sensitively so that an individual feels confident in raising serious concerns
- Do not ignore concerns but act upon them as appropriate
- Provide reassurance that an individual raising a concern will be protected from possible reprisals or victimisation as long as the concern is raised in good faith
- Reassure the individual raising concern that their identity will be kept confidential and not disclosed unless their consent has been obtained. Do advise them however, that there is a possibility that the investigation may reveal them as the source of the information
- Advise them that if an investigation is undertaken that it is likely that the investigating officer will need to interview them
- Advise them that if there is evidence of criminal activity that the matter will have to be referred to the Police
- Draw their attention to the Whistleblowing Policy, the flow chart, and the “Blow the Whistle” report form and explain the process to them
- Advise as to timescales:
 - Within five (5) working days commencing from the first working day following receipt of the ‘Blow the Whistle’ report form, a written acknowledgement will be sent
 - Within fifteen (15) working days commencing from the first working day following receipt of the ‘Blow the Whistle’ report form, the individual will then be informed in writing of how it is proposed to deal with the matter. **This time allows initial enquiries to be made and for a decision to be taken as to whether an investigation is appropriate and, if so, what form it should take**
 - The presumption is that the investigation should normally be completed within forty (40) working days of the date that it is decided to investigate
 - **Do advise that timescales are indicative only. The overriding principles are public interest and fairness**
- Do warn that action will be taken if the concern is raised falsely and with the intention of personal gain
- Do consider whether any outside agencies should be involved (e.g. the Health and Safety Executive or the Police)
- Advise that Investigating Officer will prepare a report of the investigation that the decision as to action to be taken is for the Monitoring Officer
- The Monitoring Officer will write to advise as to the outcome of the investigation

- **REMEMBER CONFIDENTIALITY AND YOU MUST NOT DISCLOSE THE IDENTITY OF THE PERSON RAISING THE CONCERN UNLESS THAT INDIVIDUAL HAS CONSENTED**

IF IN ANY DOUBT AS TO HOW TO PROCEED, PLEASE CONTACT THE MONITORING OFFICER FOR ADVICE

APPENDIX 6

Complaint Ref. No.	Date Received by MO	Complainant	Details of Concern	Outcome of initial review	Whistleblow concern	Action taken	Current status
001/WB/2016	11/03/2016	Member of staff	Allegation of threatening behaviour by a Senior Manager and racism by flawed management. Concern ongoing since March 2015	All the matters raised in the concern are matters that had been raised in a CHAD. CHAD investigation undertaken by an external person and CHAD was not upheld. The concerns raised are therefore not whistleblowing but have been dealt with by other procedures	No	28/07/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
002/WB/2016	15/03/2016	Member of the public on behalf of member of staff (anonymous)	Allegation of a string of gross misconduct offences by a Senior Manager. No details of the offences given	Matter raised falls within the framework of Whistleblowing Policy. As insufficient details given, requested specific details of allegations. No response received	Yes	Specific details of allegations awaited	Open
003/WB/2016	17/03/2016	Member of staff	4 separate concerns but all relate to allegations of management failures	Matter raised falls within the framework of Whistleblowing Policy. Matter allocated for investigation	Yes	Investigation completed & investigating officer compiling report	Open


004/WB/2016	13/04/2016	Member the public and staff (all anonymous)	21 allegations against a Senior Manager including bullying; unhelpful and discriminatory behaviour; making defamatory statements. All over a span of 14 months. No details of specific incidents given.	Matter raised falls within the framework of Whistleblowing Policy. As insufficient details given, requested specific details of allegations. No response received	Yes	Specific details of allegations awaited	Open
005/WB/2016	06/06/2016	Member of the public	Road safety concern for the public living around and visiting Royal London Hospital – could speed calming measures be installed	Not a whistleblower complaint. Matter was referred to Transport and Highways to consider and to reply to complainant by 22/06/2016	No	08/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
006/WB/2016	05/06/2016	Member of the public	Charge Certificate sent to complainant's address. Addressee is another person who has never lived at that address	Not a whistleblower complaint. Matter was referred to Parking to consider and to reply to complainant by 22/06/2016	No	08/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
007/WB/2016	04/06/2016	Member of staff	Allegations of management failures	Matter reviewed and falls within the framework of Whistleblowing Policy. Complaint overlaps with 003/WB/2016	Yes	27/07/2016 – Complainant written to and advised awaiting outcome of earlier investigation	Open

008/WB/2016	09/06/2016	Member of the public	Health & Safety complaint about an injury complainant suffered whilst working at a private business	Not a whistleblower complaint. Matter was referred to Health & Safety Inspectors to consider and to reply to complainant by 22/06/2016	No	15/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
009/WB/2016	09/06/2016	Member of the public	Complaint of property fraud in relation to complainant's ex-husband trying to sell leasehold property without consent. Council only involved as we are freeholder	Not a whistleblower complaint. As property is an ex-Council property purchased under the Right to Buy, matter brought to the attention of Leasehold Property Services who can log information	No	15/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
010/WB/2016	13/06/2016	Member of the public	Complaint of piles of rubbish bags being left out (dumped). Has been happening consistently over the last 6 months	Not a whistleblower complaint. Matter was referred to Waste Enforcement for investigation and reply by 28/06/2016	No	15/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
011/WB/2016	19/06/2016	Member of the public	Complaint of drug dealing by persons unknown. Complainant has complained to the Police several times	Not a whistleblower complaint. Matter for Police but was referred to Council's ASB Investigation Team to consider and reply by 11/07/2016	No	15/06/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed

012/WB/2016	03/07/2016	Member of the public	Traffic blockage due to narrow roads	Not a whistleblower complaint. Matter was referred to Transport and Highways to consider and to reply to complainant by 20/07/2016	No	11/07/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
013/WB/2016	18/07/2016	Member of staff	HR issues - deletion of post & creation another post	Matter falls within framework of Whistleblowing Policy but concern now overtaken by events as post not authorised & matter being dealt with as part of an organisational review	Yes	27/07/2016 – Complainant written to and advised whilst a whistleblowing matter that corrective actions requested by complainant had been taken	Closed
014/WB/2016	22/07/2016	Member of the public	Complaint of dumping of rubbish at abandoned land	Not a whistleblower complaint. Matter was referred to Waste Enforcement for investigation and reply by 11/08/2016	No	27/07/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
015/WB/2016	24/07/2016	Member of the public	Health & Safety complaint regarding failure to properly maintain a lift in a residential block	Not a whistleblower complaint. Matter was referred to Health & Safety Inspectors to consider and to reply to complainant by 11/08/2016	No	27/07/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed

016/WB/2016	27/07/2016	Member of the public	Claim that a fraudulent PCN has been issued by a Civil Enforcement Officer	Not a whistleblowing complaint. Complainant admitted not displaying a resident permit and was given a PCN. It is a requirement to display a PCN. Therefore PCN not issued fraudulently. Matter was referred to Parking to consider and to reply to complainant by 11/08/2016	No	27/07/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
017/WB/2016	21/06/2016	Member of the public	Claim that 2 persons were fraudulently given a tenancy of Flat X XXXX House with the assistance of special favours from key officers in Tower Hamlets Homes	Matter raised falls within the framework of Whistleblowing Policy. Matter allocated for investigation	Yes	Investigation ongoing	Open
018/WB/2016	12/08/2016	Member of the public on behalf of Council staff (anonymous)	Claim of drug dealing by Council officers. Vehicles can possibly be identified by sources but not individuals. Matter referred to Police who took no action	Matter raised falls within the framework of Whistleblowing Policy. Complainant's advised of Safeguards within Policy but Complainant advised probably not sufficient but would check with sources. In the meantime, matter allocated for investigation	Yes	Investigation ongoing	Open

019/WB/2016	23/08/2016	Member of the public	Race discrimination – private advertising properties for rent and stipulating which ethnic groups are eligible.	Not a whistleblower complaint & complainant advised to raise matter with the Equality and Human Rights Commission. Details of website and postal address of Commission given	No	24/08/2016 – Complainant written to and advised not a whistleblowing matter and why	Closed
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Non-Executive Report of the: Standards Advisory Committee 22 nd September 2016	
Report of: Graham White, Interim Service Head, Legal Services and Deputy Monitoring Officer	Classification: Unrestricted
Proposed Revised Licensing Code of Conduct	

Originating Officer(s)	Paul Greeno
Wards affected	All wards

Summary

This report advises of a proposed revised Licensing Code of Conduct at Part 5.3 of the Tower Hamlets Constitution.

Recommendations:

The Standards Advisory Committee is recommended to:

1. Note the revised Licensing Code of Conduct in Appendix 1 of the report;
2. Note that Licensing Code of Conduct is part of the Council's ethical framework and should be read in conjunction with the Councillors' Code of Conduct and the Member/Officer Protocol;
3. Note as this is a Member Code of Conduct then pursuant to the Terms of Reference for the Standards Advisory Committee that this revised Code is being brought before this Committee for consideration so that the Committee can advise Council on the adoption or revision of the Code;
4. Note that the revised Code will also go to General Purposes Committee for consideration;
5. Note that pursuant to Part 1 Paragraph 4.02 of the Constitution the adoption and amendment of the revised Licensing Code of Conduct is a matter for Council; and
6. Consider the Code and advise on the adoption or revision of the Code.

1. REASONS FOR THE DECISIONS

- 1.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 1.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 1.3 As the work of the Licensing Committee is quasi-judicial and therefore there are a higher set of standards on Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to better assist Councillors when determining such applications.

2. ALTERNATIVE OPTIONS

- 2.1 The Council can decide not to adopt a revised Policy.

3. DETAILS OF REPORT

- 3.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 3.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 3.3 Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions.
- 3.4 The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 3.5 Appendix 1 contains the existing Code of Conduct for Licencing and Annex B contains the revised Code.

- 3.6 Reasons for suggesting changes to the current Code of Conduct fall into 4 categories:
- (i) Changes that bring the Code up to date in terms of legislative context, the organisational structure of the Council and/or current terminology;
 - (ii) Improvements to achieve better consistency with other documents in terms of content and style and structure;
 - (iii) The addition of information/explanation to aide understanding;
 - (iv) Material changes to the Code that will require members and/or officers to conduct themselves differently than under the existing Code
- 3.7 Changes relating to (i) and (ii) above have been made to all sections of the document and, as they are not material, have not been singled out.
- 3.8 Changes to sections relating to categories (iii) and (iv) above are identified in Table 1 for each code as it was felt that these changes in particular should be brought to Members' attention.
- 3.9 The revised Code has been referred to, the Head of Environmental Health and Trading Standards, and within whose area Licensing sits and he has confirmed that he has no issues with it. He raised a separate issue regarding Member training and it is intended that if the revised Code is introduced that it would be presented to Members of the Licensing Committee along with a briefing as to the revised Code.
- 3.10 The revised Code was also presented to the Governance Review Working Group and the following observations were made:
- (i) Members queried whether information could be given more succinctly and a bulleted point A4 sheet of dos and don'ts will be introduced along with any revised Code that is approved;
 - (ii) Members wanted more information about relationship with applicants and information relevant to this in paragraphs 5, 8, 9 and 10 of the revised Code; and
 - (iii) Councillor Golds considered the addition on site visits was useful and advised of a site visit on a Licensing application last year and which was very useful in relation to the determination of the application.
- 3.11 The revised Code has gone to the Licensing Committee who made no observations but the Procedure Rules in Appendix A and Appendix B of the revised Code have been adopted by the Licensing Committee.
- 3.12 For information, Members are also advised that, in addition to this Code, all the Codes/ Protocols in Part 5 of the Constitution are being reviewed.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There are no financial implications arising from this report, although the revision to the Code of Conduct should reduce the likelihood of successful appeals against decisions made by the Committee and the associated cost of those appeals.

5. LEGAL COMMENTS

- 5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved. In implementing the Code, Councillors will ensure that decisions are taken for Licensing reasons only and should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The report does not propose any direct expenditure. Rather, it is concerned with ensuring that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. Whilst this might not lead to fewer appeals, the implementation of the Code should result in a much decreased chance of success on such appeals and which should reduce cost implications for the Council on any such appeals.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. It is not considered that there are any environmental implications if this revised Code is ultimately adopted.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposed revision of the Licensing Code of Conduct is designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The overall aim is therefore to reduce risk.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 In considering Licensing applications, the Council has to have regard to Crime and Disorder and by ensuring that licensing decisions are taken on proper licensing grounds this should reduce assist reduce crime and disorder.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Table 1 - Changed sections and reason for change
- Appendix 1 - Current Licensing Code of Conduct
- Appendix 2 – Proposed Revised Licensing Code of Conduct.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

- N/A

Table 1: Changed sections and reason for change

	Changes to improve quality/clarity of information or explanation		Additional/ Material changes to the Code affecting members and / or officers	
	Current Version Annex 1	Proposed New Version Annex 2	Current Version Annex 1	Proposed New Version Annex 2
Licencing Code	<ul style="list-style-type: none"> 1. Introduction 2. Legal Background 3. Before the hearing <ul style="list-style-type: none"> 3.1 Training for Councillors 3.2 Application by a councillor or officer 3.3 Lobbying 3.5 Discussions before the hearing 4. At the Hearing <ul style="list-style-type: none"> 4.2 Conduct at the Hearing 5. Councillors who are not on the committee 6. Record Keeping 	<ul style="list-style-type: none"> 1. Introduction 2. Human rights Act 3. Quasi-Judicial Hearings 6. Training for Councillors 7. Application by Councillor or Officer 9. Lobbying 10. Pre-hearing Discussions 13. Conduct of the Hearing 14. Councillors who are not on the committee 17. Record Keeping 	<ul style="list-style-type: none"> 4.1 Interests 	<ul style="list-style-type: none"> 4. Predisposition, Predetermination or Bias 5. Interests 8. Application by the Council (or where the Council is the landowner) 11. Site Visits 12 Relationship between members and officers 15 Making the Decision 16 Appeals 18 Procedure Notes

APPENDIX 1

5.3 Licensing Code of Conduct

CONTENTS

Section	Subject
1	Introduction
2	Legal Background
3	Before the Hearing
4	At the Hearing
5	Councillors who are not on the Committee
6	Complaints and Record Keeping

1. INTRODUCTION

- 1.1 Most decisions taken by Councillors are administrative in nature. The work of the Licensing Committee is different in that its proceedings are quasi judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process. Failure to abide by these standards may render the Council or individual Councillors open to challenge either through the courts or the Monitoring Officer/Standards Advisory Committee.
- 1.2 This Code provides a set of guidelines for Councillors on the standards which apply to the Licensing Committee. It is part of the Council's ethical framework and should be read in conjunction with the Members' Code of Conduct and the Member/Officer Protocol.

2. LEGAL BACKGROUND

2.1 Human Rights Act

- 2.1.1 The Human Rights Act 1998, which came into full effect on 2 October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform with Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.
- 2.1.2 Members of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

- **Article 6: Right to a fair trial**

In the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

- **Article 8: *Right to respect for family and private life***

Everyone has a right to respect for his or her private life, and his or her home and correspondence.

- **Article 1: *of the First Protocol: Protocol of property***

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- **Article 14: *Prohibition of discrimination***

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2.1.3 Articles 6 and 14 are absolute but most Convention rights are not and in respect of those Articles there are circumstances when an interference with a person's rights is permitted, although any interference with the rights must be proportionate and go no further than is necessary.

2.2 Quasi-Judicial Hearings

2.2.1 A quasi-judicial hearing is one:

- which affects a person's livelihood;
- which involves disciplinary action; or
- which affects property

2.2.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention that a hearing is both "fair" and presided over by an "independent and impartial tribunal" are met.

2.2.3 There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing, the applicant should have disclosure of the nature of the objections as well as knowing who is objecting and there should be a right to question witnesses.

2.2.4 Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.

2.2.5 The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.

3. BEFORE THE HEARING

3.1 Training of Councillors

3.1.1 Because the technical and propriety issues associated with licensing are not straightforward, it is the Council's policy to arrange training on the work of the Licensing Committee for all Councillors who sit on the Committee. Councillors must undertake the training (i) before participating in a meeting of the Committee and (ii) annually while they remain a member of the Committee. For a Member who has previously undertaken the full training and is re-appointed to the Committee for a further year without a break, only a refresher session is required. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.

3.2 Application by a Councillor or Officer

3.2.1 The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. On receipt, the Corporate Director Communities, Localities and Culture will pass a copy of the application to the Monitoring Officer who will satisfy himself/herself that the application can be, and is being, processed and determined without suspicion or impropriety.

3.3 Lobbying

- 3.3.1** Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. Lobbying is a normal and perfectly proper part of the political process but it does not sit well with the quasi judicial nature of a Licensing Committee when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing. **Being lobbied in advance is incompatible with this high standard.**
- 3.3.2** If a member is approached s/he should advise the lobbyist to address any comments or concerns to the Corporate Director Communities, Localities and Culture. In no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and prejudicial. A Councillor who feels that s/he has been exposed to undue or persistent lobbying should advise the Monitoring Officer.
- 3.3.3** When attending a public meeting at which a licensing issue is raised, a member of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application.
- 3.3.4** Correspondence received by any member of the Council (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director Communities, Localities and Culture so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.

3.5 Discussions before the Hearing

- 3.5.1** Pre-application discussions – discussion between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by members of the Licensing Committee.
- 3.5.2** Post-application discussions – a Councillor should not approach an applicant for a licence in an effort to secure changes to the application. Such an approach would inevitably give rise to allegations of partiality or bias.

3.5.3 Generally, any contact with applicants should be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director, Communities, Localities and Culture.

3.6 Use of the Party Whip

3.6.1 The use of a party political whip is inconsistent with the rules of natural justice and should be avoided by Councillors sitting on the Licensing Committee.

4. AT THE HEARING

4.1 Interests

4.1.1 In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.

4.1.2 A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or

- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
- any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.

4.1.3 When a member considers that s/he has a personal interest, they must declare it at the start of the meeting or as soon as the interest becomes apparent. The full nature of the interest must be declared. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion.

4.1.4 A personal interest becomes a prejudicial interest when a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the Councillor's judgement of the public interest. Working closely with an applicant or a group of objectors to achieve a certain outcome, lobbying other Councillors on the Committee or generally declaring voting intentions ahead of the meeting would usually indicate that a Councillor on the Committee has a prejudicial interest.

- 4.1.5 A Councillor with a prejudicial interest cannot participate in the discussion on the application and must leave the room when the discussion on the item begins or as soon as the interest becomes apparent. S/he cannot seek to influence the decision.
- 4.1.6 Being a member for the ward in which particular premises are situated is not necessarily declarable and as a general rule members of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. To underline the openness of proceedings, the Licensing Committee agenda papers show which ward each member represents.
- 4.1.7 More information on what constitutes a personal or prejudicial interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Service Head, Democratic Services are available to give advice if required.

4.2 Conduct at the Hearing

- 4.2.1 The essence of the rules of natural justice are that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than the Clerk.
- 4.2.2 Again, to ensure compliance with the rules of natural justice, Councillors on the Committee must ensure that they hear the evidence and arguments for and against the application. If a Member arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Member has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment.

5. COUNCILLORS WHO ARE NOT ON THE COMMITTEE

- 5.1 A Councillor who is not a member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the consultation period. The applicant has the right to see any objections in advance.

S/he also has a right of reply. The Council will only entertain late objections in exceptional circumstances.

- 5.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 5.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. S/he should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private.
- 5.4** A Councillor who has submitted an application or who otherwise has an interest in the application, should not attend the meeting at all but should arrange to be represented by others.
- 5.5** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

6. RECORD KEEPING

- 6.1** In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Members.
- 6.2** The same principles of good record keeping will be observed in relation to all enforcement and licensing matters. Monitoring of record keeping will be undertaken regularly by the Head of Trading Standards and Environmental Health (Commercial) and the Team Leader (Licensing) in the Communities, Localities & Culture Directorate.

APPENDIX 2

5.3 Licensing Code of Conduct

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1. INTRODUCTION

- 1.1** The Licensing Code of Conduct has been adopted by Tower Hamlets Council to regulate the performance of its licensing functions that fall within the Terms of Reference for the Licensing Committee. Its major objectives are to guide Councillors and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-Committees and the expression "Licensing Committee" should be interpreted accordingly.
- 1.2** The Licensing Code of Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that Code. Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process.
- 1.3** The provisions of this Code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4** This Code is part of the Council's ethical framework and in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.5** **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

3. HUMAN RIGHTS ACT

- 3.1** The Human Rights Act 1998, which came into full effect on 2nd October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform to Convention rights.

Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.

- 3.2** Councillors of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

Article 6: Right to a fair trial

In the determination of a person's civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 8: Right to respect for family and private life

1. Everyone has a right to respect for his or her private life, and his or her home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1: of the First Protocol: Protocol of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- 2.3** Article 6 is an 'absolute' right and cannot be interfered with. This means that these rights can never be detracted from because it is considered to be fundamental to the rights of man. The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' Court, so satisfying the provisions of Article 6. The Licensing Committee must however conduct a fair hearing in accordance with the rules of natural justice.

- 2.4** Article 8 and Article 1 of the First Protocol are both qualified rights and the Council can interfere with these provided that such interference had a clear legal basis. In therefore deciding whether to interfere with this right, Councillors should consider the matter within

the framework of a 'fair balance' test. This requires that a balance be struck between the protection of the right of property and the general interests of the community. An interference with a person's rights must be proportionate and go no further than is necessary.

2.5 Specifically as to Article 1 of the First Protocol, an existing licence is a possession under this Article and therefore if a person does not currently hold a licence then it will not apply. Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.

2.6 As to Article 14, whilst this is also an 'absolute' right it does not create an independent right as it only operates to prevent discrimination in the exercise of other convention rights. If there is discrimination however in respect of a particular protected right then there is no need to show a violation of the article giving such right for there to be a breach of Article 14. All it is necessary to show is that there has been discrimination. Accordingly, in exercising its Licensing Functions, the Council must not treat persons differently where such persons are placed in an analogous situation.

3. QUASI-JUDICIAL HEARINGS

3.1 A quasi-judicial hearing is one:

- which affects a person's livelihood;
- which involves disciplinary action; or
- which affects property

3.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention that a hearing is both "fair" and presided over by an "independent and impartial tribunal" are met.

3.3 There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing and the applicant should have disclosure of the nature of the objections/ representations as well as knowing who is objecting/ making a representation so that they can prepare a response to the points raised in such objections/ representations.

3.4 The rules of natural justice could also include asking questions of other parties. In respect of 'Alcohol and Entertainment Licensing' however, the Licensing Act 2003 (Hearings) Regulations 2005 ('the 2005 Regulations') provide that the hearing should take the form of a discussion led by the authority and cross-examination should not be permitted unless the Licensing Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

3.5 As to sufficient notice of the hearing, in respect of 'Alcohol and Entertainment Licensing', the 2005 Regulations also address this point as they specify the **period of time within which a hearing must be commenced;** the minimum time before the hearing that notice

should be given; **persons to whom notice of hearing is to be given; and the documents to accompany notice of hearing.** The 2005 Regulations **do provide that a failure to comply with the Regulations does not of itself render the proceedings void but** where there is such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.

- 3.6** The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.7** Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.
- 3.8** The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.
- 3.9** The use of a party political whip is inconsistent with the rules of natural justice and must be avoided by Councillors sitting on the Licensing Committee.

4. PREDISPOSITION, PREDETERMINATION OR BIAS

- 4.1** Section 25 of the Localism Act 2011 ('the 2011 Act') provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 4.2** As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is s/he has made up his/her mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as no one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having a predetermined view before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing his/her mind to the merits of the decision.

- 4.3** Councillors must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the Councillor hearing the evidence and arguments on both sides. A Councillor should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind.
- 4.4** **Any licensing decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.**
- 4.5** Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).
- 4.6** If a Councillor considers that s/he does have a bias or cannot be impartial then they should withdraw from being a Member of the Licensing Committee for that application.
- 4.7** Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 5 below), they will not appear to be predetermined through-
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to prejudging the issue and the Councillor makes clear that 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 as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/ local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

4.8 The following advice applies:

- Councillors must not make up their mind, or appear to have made up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and of the Councillor hearing evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/ or statements made in the past. The Councillor should take advice from the Legal Adviser to the Licensing Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.

- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would arise where that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.
- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to licensing policies of the Council or to licensing policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has, due to his/ her political membership, predetermined a particular matter.
- When considering a licensing application, Councillors must:
 - act fairly and openly;
 - approach each application with an open mind; carefully weigh up all relevant issues; and
 - determine each item on its own licensing merits
- And Councillors must not:
 - take into account irrelevant issues;
 - behave in a manner that may give rise to a public perception that s/he may have predetermined the item; and
 - behave in such a manner which may give rise to a public perception that s/he may have been unduly influenced in reaching a decision.

5. INTERESTS

5.1 In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.

5.2 There are three (3) categories of interests, namely:

- Disclosable pecuniary interests (DPIs);
- Other registerable interests; and
- Non registerable interests

5.3 Chapter 7 of the 2011 Act places requirements on Councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a Councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 5.1 of the Code of Conduct for Members. A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. These interests can be either an interest of the Member or an interest (of which the Member is aware) of a spouse, civil partner or a person that the Member is living with as a spouse or civil partner. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

- 5.4** A failure to register or declare a DPI or the provision of false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.
- 5.5** A DPI relating to an item under discussion requires the immediate withdrawal of the Councillor from the Licensing Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.
- 5.6** Having regard to the rules of natural justice and the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration must also be given to other non-DPI personal interests that are either registrable as required by the Code of Conduct for Members or are personal interests that do not require registration.
- 5.7** A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or
- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
 - any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.
- 5.8** If a Councillor has a personal interest in any licensing application or other matter before the Licensing Committee then the Member shall, if present, disclose the existence and nature of the interest before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion or voting.
- 5.9** The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are working closely with an applicant or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; acting as an agent for a person pursuing a licensing matter with the Council; or generally declaring voting intentions ahead of the meeting etc.
- 5.10** A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias must not participate in the discussion on the application and must leave the room immediately when the discussion on the item begins or as soon as the interest becomes apparent. S/he cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a Councillor will have the same

right. Once the Councillor has exercised that right then the Councillor must withdraw from the room for the rest of that item and play no further part in the discussion or vote.

5.11 Being a Councillor for the ward in which particular premises are situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Councillors should remember, however, that their overriding duty is to the licensing objectives and not to the residents and businesses within their ward. Councillors have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality. If a Member feels that they cannot do this then the Member must leave the room when the discussion on the item begins.

5.12 More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Service Head Legal Services are available to give advice if required.

6. TRAINING OF COUNCILLORS

6.1 As the technical and propriety issues associated with licensing are not straightforward, Councillors on the Licensing Committee must participate in a programme of training on the licensing system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. The aim of the training is to assist Members in carrying out their role properly and effectively. If a Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of the Licensing Committee.

6.2 Councillors should be aware that training is particularly important for Councillors who are new to the Licensing Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.

6.3 Where a Member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

7. APPLICATION BY A COUNCILLOR OR OFFICER

7.1 The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-

- (a) On receipt of such an application, a copy of the application will be referred to the Corporate Director.
- (b) The Corporate Director will pass a copy of the application to the Monitoring Officer who will satisfy himself/ herself that the application can be, and is being, processed and determined without suspicion or impropriety.
- (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
- (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent his/her views.
- (e) Councillors of the Licensing Committee must consider whether the nature of any relationship with the person (either a Member or an officer) making the application requires that they make a declaration of interest and if necessary also withdraw from the meeting.
- (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three (3) years following their departure from the Council.

8. APPLICATION BY THE COUNCIL (OR WHERE THE COUNCIL IS THE LANDOWNER)

- 8.1** Councillors may need to determine an application submitted by the Council for the Council's own land or in respect of land where the Council is the landowner. It is perfectly legitimate for such applications to be submitted to and determined by the Licensing Authority. Applications should be treated with the same transparency and impartiality as those of other applicants so as not to give rise to suspicions of impropriety.
- 8.2** If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be disclosed. In such circumstances, the Councillor should seek advice from the Legal Adviser to the Licensing Committee.

9. LOBBYING

- 9.1** Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. This can happen prior to an application being made or at any time after the application is made. Whilst lobbying is a normal and perfectly proper part of the political process, it does not sit well with the quasi-judicial nature of a Licensing Committee when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing. **Being lobbied in advance is therefore incompatible with this high standard.**
- 9.2** Therefore if a Member is approached then s/he should:
 - (a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected Councillors who are not Councillors of the Licensing Committee;

- (b) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned; and
- (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

9.3 In no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental.

9.4 If a Councillor who is not a Councillor of the Licensing Committee is contacted by an applicant, objector or interested party then that Councillor can discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will, provided it is lawful, include the relevant information in the report to the Licensing Committee. If a Councillor wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.

9.5 When attending a public meeting at which a licensing issue is raised, a Councillor of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application.

9.6 Correspondence received by any Councillor (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.

9.7 Councillors should not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.

9.8 Councillors should not become a member of, lead or represent a national charity or local organisation whose primary purpose is to lobby to promote or oppose licensing applications. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.

9.9 Councillors must also not lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

10. PRE HEARING DISCUSSIONS

10.1 Discussions between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and

potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by Councillors of the Licensing Committee.

- 10.2** Generally, any contact with applicants and/ or objectors should only be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director.

11. SITE VISITS

- 11.1** If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committee. A site visit may also assist Councillors in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Councillors should avoid expressing opinions during site visits to any person present, including other Members. Councillors can, of course, rely upon their own local knowledge.

- 11.2** During site visits, Councillors of the Licensing Committee shall not engage individually in discussion with applicants or objectors.

- 11.3** On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Councillors features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.

- 11.4** A Councillor of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:

- (i) their reason for the request; and
- (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the Councillor provides these at least one week prior to the relevant meeting, a site visit will not proceed.

- 11.5** If any Councillor of the Licensing Committee wishes to informally view an application's site then that viewing must only take place if it can be done from a public place. Councillors of the Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a Councillor is unable to attend an official site visit that has been arranged, a site visit by an individual Councillor may be carried out provided that the Councillor is accompanied by a licensing officer.

12. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS

- 12.1** Councillors of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 12.2** Any criticism by Councillors of the Licensing Committee or an officer in relation to the handing of any licence application should be made in writing to the Corporate Director and/ or the Monitoring Officer and not to the Officer handling the application.
- 12.3** If any officer feels or suspects that pressure is being exerted upon him/ her by any Councillor of the Council in relation to any particular application, s/he shall forthwith notify the matter in writing to the Monitoring Officer.
- 12.4** If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Licensing Committee meeting.
- 12.5** No officer of the Council shall engage in any paid work for any licensing matter for which Tower Hamlets is the Licensing Authority other than on behalf of the Council.

13. CONDUCT AT THE HEARING

- 13.1** The essence of the rules of natural justice is that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.
- 13.2** Councillors of the Licensing Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors shall be respectful to the Chair and to each other and to officers and Members of the public including applicants, their agents and objectors and shall not bully any person.
- 13.3** When questioning witnesses at a meeting of a Licensing Committee, Councillors shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 13.4** Councillors must ensure that they hear the evidence and arguments for and against the application, in accordance with the rules of natural justice. Councillors must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the

opportunity in advance of the hearing to prepare their case in answer to the objectors/ interested parties/ responsible authorities.

- 13.5** If a Councillor of the Licensing Committee arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Councillor has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment
- 13.6** It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 13.7** In considering objections/ representations Councillors are advised that if such are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then they carry no weight whatever and must be ignored. Further Councillors are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.
- 13.8** Also in considering the application, it may well be that hearsay evidence is presented. Councillors are advised that the strict rules of evidence do not apply in licensing applications and therefore hearsay is admissible. Indeed, hearsay might by its source, nature and inherent probability carry a greater degree of credibility than first hand evidence. What must be discounted, however, are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be accepted where it can fairly be regarded as reliable although Councillors must give the other side a fair opportunity of commenting on it and contradicting it. Ultimately, hearsay evidence must be treated with great reservation by Councillors, who must make an assessment of its weight and credibility.
- 13.9** When new matters are raised as objections by any person at a hearing, the Licensing Committee is not obliged to hear them. However, if Councillors feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to 'Alcohol and Entertainment Licensing' under the Licensing Act 2003 or 'Gambling Licensing' under the Gambling Act 2005, as new objections cannot be raised at the hearing).

14. COUNCILLORS WHO ARE NOT ON THE COMMITTEE

- 13.1** A Councillor who is not a member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the relevant consultation period. The applicant has the right to see any objections in advance. S/he also has a right of reply.

- 14.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 14.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. S/he should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private..
- 14.4** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

15. MAKING THE DECISION

- 15.1** The decision whether or not to grant a licensing application is a decision for the Councillors of the Licensing Committee only. The assessment of the weight and credibility of evidence is also for Councillors alone to decide.
- 15.2** Councillors shall retire to decide the matter in closed session. The Legal Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer will only provide advice on legal issues relating to the application and will assist in the drafting of any proposed conditions to ensure that they are legally enforceable.
- 15.3** In accordance with regulations, Councillors considering applications relating to 'Alcohol and Entertainment Licensing' under the Licensing Act 2003 or 'Gambling Licensing' under the Gambling Act 2005 should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 15.4** Councillors will normally return to open session to announce its decision and give reasons for the same but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising then of the determination.
- 15.5** Written notice of the decision together with Councillors' reasons will always be given and such notice will set out any rights of appeal against the decision.

- 15.6** Councillors own knowledge of the circumstances surrounding an application is valid provided that they are put to the applicant for a response. In reaching their decision Councillors must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and Councillors have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 15.7** Councillors considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Councillors must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.
- 15.8** In considering applications, Councillors must also have due regard to any Council Policy (e.g. the Council’s Statement of Licensing Policy) and any statutory guidance (e.g. Licensing Guidance issued under section 182 of the Licensing Act 2003). Any departure from such should be justified and based on the facts before them.
- 15.9** Councillors should be aware that an unreasonable decision taking into account the above criteria is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and will likely have to pay costs. The role of officers is to point this out and advise Councillors as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council’s fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

16. APPEALS

- 16.1** The Licensing Committee’s decision is not a final one and applicants (and in certain cases interested parties and responsible authorities) have the right to appeal to the Magistrates Court and beyond in certain cases.
- 16.2** An appeal must be lodged within a prescribed time of receiving written notification of the decision.
- 16.3** On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence. Councillors who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 16.4** Taking this factor into account along with the real risk of costs against the Council, Councillors must be wary of relying on any matters which could not readily be proved in evidence. Essentially, for Committee decisions to “stand up” on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

17. RECORD KEEPING

- 17.1** In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council's Information Governance Framework and, specifically, the Council's Records Management Policy.

18. PROCEDURE NOTES

- 18.1** Appendix A to this Code of Conduct sets out the Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003.
- 18.2** Appendix B to this Code of Conduct sets out the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

Date Last Reviewed:	14th June 2016
Approved By:	Licensing Committee
Date Approved:	14th June 2016
Version No.	2
Document Owner:	Paul Greeno
Post Holder:	Senior Corporate and Governance Lawyer
Date of Next Scheduled Review:	31st March 2017

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) ('the Hearings Regulations'). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005.
- 1.2 Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-committees and the expression 'Licensing Committee' should be interpreted accordingly.
- 1.3 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.4 These Procedures, therefore, set out the way in which Licensing Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations.
- 1.5 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31) save that in any case of such an irregularity, the Licensing Committee shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination (Regulation 32).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of three (3) members and no business shall be transacted unless three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such

steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.

- 3.4 The Licensing Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- 3.5 The Chair will then explain how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee must have regard to the requirement to allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing if it considers it to be necessary in the public interest. An adjournment will not be considered where due to the operation of the Hearing Regulations it would not be possible to adjourn.
- 3.8 If the Licensing Committee adjourns the hearing to a specified date it must specify the date, time and place to which the hearing has been adjourned and why it is considered necessary in the public interest.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any representations withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to present a summary of the nature and extent of the application. This should be brief, avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise,

and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate, and respond to the written representations received. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant or who has made a representation in favour of the application.

- 3.14 The application is to be presented within the time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 Members of the Licensing Committee may ask questions of the person presenting the case after their address as well as any other person who has spoken in support of the application. Members can also ask questions of the applicant as well as any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask the persons who have made representations against the application to address the Licensing Committee within the time limit that has been set. They should not repeat what is already set out in their representations or notice or raise new matters. In their address they should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence.
- 3.19 Members of the Licensing Committee may then ask questions of the persons making representations against the application and any other person who has spoken in support of such representation. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Licensing Committee will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:
 - a) their application, representation or notice; and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police

- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.24 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.
- 3.25 There is no right for any party to sum up but they may be permitted to do at the discretion of the Chair and within time limits prescribed by the Chair.
- 3.26 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.27 The Licensing Committee will normally return to open session to announce its decision but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

TOWER HAMLETS**LICENSING COMMITTEE****RULES OF PROCEDURE****GOVERNING APPLICATIONS FOR****SEX ESTABLISHMENT LICENCES**

**UNDER SECTION 2 OF AND SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1982**

Date Last Reviewed:	14th June 2016
Approved By:	Licensing Committee
Date Approved:	14th June 2016
Version No.	2
Document Owner:	Paul Greeno
Post Holder:	Senior Corporate and Governance Lawyer
Date of Next Scheduled Review:	31st March 2017

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

2. Composition of the Licensing Committee

- 2.1 The Licensing Committee will consist of fifteen (15) members and no business shall be transacted unless at least three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Committee. The Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Chair will explain how the proceedings will be conducted, and indicate any time limits that will be imposed on the parties. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee should allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing.
- 3.8 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.

- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application or objection given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any objections withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to state their case. This should avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Sex Establishment Licensing Policy, where appropriate; address, where appropriate, the matters stated in the Sex Establishment Licensing Policy that the Licensing Committee will take into account when considering applications; and respond to the written objections received. The submission may be followed by the evidence of any person who is giving supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.14 The application is to be presented within any time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 The objectors (or their representative) will be invited to question the applicant.
- 3.16 Members of the Licensing Committee may ask questions of the applicant and/ or their representative as well as any other person who has spoken in support of the application. Members can also ask questions of any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask objectors against the application to state their case within any time limit that has been set. The objectors should not repeat what is already set out in their objections. In stating their case, the objectors should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who is giving supporting evidence.

- 3.19 The applicant (or their representative) will be invited to question the objectors.
- 3.19 Members of the Licensing Committee may then ask questions of the objectors and any other person who has spoken given evidence in support. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.23 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.24 The applicant (or their representative) will then be permitted to “Sum Up”.
- 3.25 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.26 The Licensing Committee will normally return to open session to announce its decision but where they consider it appropriate for the determination to be given at a later time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place later and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

DO'S AND DO NOT'S**1. Councillors must:**

- (a) Attend compulsory training sessions;
- (b) Be open minded and impartial;
- (c) Declare any actual interest;
- (d) Listen to the arguments for and against;
- (e) Carefully weigh up all relevant issues;
- (f) Ask questions that relate only to licensing considerations relevant to the particular application;
- (g) Make decisions on merit and on licensing considerations only;
- (h) Respect the impartiality and integrity of the Council's officers;
- (i) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (j) Promote and support the highest standards of conduct; and
- (k) Promote equality and not discriminate unlawfully against any person, and treat all people with respect;

2. Councillors must not:

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member (e.g. by accepting gifts or hospitality from any person involved in or affected by a licensing application);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during any site visit to any person present, including other Members.