

# Standards Advisory Committee



Thursday, 10 February 2022 at 6.30 p.m.

Committee Room One - Town Hall, Mulberry Place, 5 Clove  
Crescent, London, E14 2BG

## Supplemental Agenda

### Further Information

The main agenda contains the full agenda list including other reports for consideration, meeting contact details, public participation and more information.





# London Borough of Tower Hamlets


## Standards Advisory Committee

Thursday, 10 February 2022

6.30 p.m.

Supplemental Papers for:

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Non-Executive Report of the:  <b>Standards Advisory Committee</b>  Thursday, 10 February 2022	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Director of Legal and Monitoring Officer	<b>Classification:</b> Open (Unrestricted)
<b>Draft Standards Advisory Committee Report to Council</b>	

<b>Originating Officer(s)</b>	Jill Bayley, Deputy Monitoring Officer
<b>Wards affected</b>	(All Wards);

### Executive Summary

This report sets out a final draft of the Committee’s annual report to Council. The report covers the activities of the Committee over the last year as well as being an opportunity to highlight any relevant issues to Council.

The Committee are asked to consider the draft Annual Report and feedback on any last updates before the report is presented to Council in July 2022.

### Recommendations:

The Standards Advisory Committee is recommended:

1. To consider and comment on the suggested draft Annual Report attached as Appendix 1.

### 1. REASONS FOR THE DECISIONS

- 1.1 It is considered best practice in many authorities for the full Council to receive an annual report in relation to the work of the Standards Advisory Committee and on issues around standards generally. The provision of an annual report of the Committee’s business ensures the profile of ethical standards across the organisation and affords the opportunity to highlight areas of good practice and identify any requirements for improvement.

### 2. ALTERNATIVE OPTIONS

- 2.1 The Advisory Committee could decide not to submit an annual report but this course of action is not recommended.

### **3. DETAILS OF THE REPORT**

- 3.1 The Advisory Committee is asked to consider and comment on the proposed draft Annual Report attached as Appendix 1.
- 3.2 The draft report contains an outline of the work and activities of the Standards Advisory Committee over the past year as well as highlighting any particular issues that Council should consider.
- 3.3 The Standards Advisory Committee is asked to note the list of topics for consideration over the next year and to advise whether any additional topics should be considered, and whether any of the topics should be given particular priority.

### **4. EQUALITIES IMPLICATIONS**

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

### **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.
- 5.2 Robust ethical governance arrangements help to ensure the proper, efficient and effective discharge of the Council's functions and contribute to compliance with the requirement to achieve best value.

### **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 There are no direct financial implications arising from this report.

### **7. COMMENTS OF LEGAL SERVICES**

- 7.1 Section 27 of the Localism Act 2011 requires local authorities to promote and maintain high standards of conduct by members and co-opted members of the authority.
- 7.2 This report and its appendix evidence the work undertaken by the Council to fulfil this duty.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- Appendix 1 – Draft Annual Report to Council

### **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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**London Borough of Tower Hamlets**  
**Standards Advisory Committee - Annual Report to Council**  
**Year May 2021 to May 2022**

**Introduction**

1. This is the regular Annual Report of the Advisory Committee. It sets out the key issues dealt with by the Committee during the past municipal year and identifies the priorities for 2022/23.

**Membership**

2. During the municipal year 2021/22 the Committee comprised 5 elected members and 5 independent co-opted members. The Council's Constitution provides that an independent co-opted member be appointed Chair of the Committee.

Elected Members:

- Cllr. Rajib Ahmed
- Cllr. Mufeedah Bustin
- Cllr. Rabina Khan
- Cllr. James King
- Cllr. Abdal Ullah

Independent Co-opted Members

- John Pulford MBE (Chair)
- Fiona Browne (Vice Chair)
- Nafisa Adam
- Mike Houston
- Denzil Johnson

**Independent Persons**

3. The Council has appointed two statutory Independent Persons (IPs) under the Localism Act 2011. Ms Rachael Tiffen was appointed in June 2018 and her term of office expired on 16 January 2022. Ms Elizabeth Hall's term of office expired in September 2021 and a new IP, Amanda Orchard, has been appointed. Both Ms Tiffen and Ms Orchard were appointed as IP at Council

on 19 January 2022. Ms Tiffen's second term of office and Ms Orchard's first term of office both started on 20 January 2022 and last until 20 January 2026.

4. The principal role of the IP is to give an independent view on governance issues in general and specifically in relation to alleged breaches of the Code of Conduct for Members. Both IP's work closely the Monitoring Officer and her Deputies, considering all complaints and whether an alleged breach of the Code meets the criteria for investigation.
5. It is also a statutory requirement to consult the IP before deciding on the outcome of an investigation into a complaint and whether to impose any sanction. The Member complained about may also at any stage of the process seek a view from the IP. In order to avoid any conflict of interest the Council has appointed two IPs.
6. The Council is fortunate to have appointed IPs with a sound understanding of the ethical framework who both act as advocates for the Council in promoting ethical standards and of high standards of conduct. Although not members of the Standards Advisory Committee, they attend meetings and play an important role in the proceedings. Both IPs also contribute to and participate in the Council's mandatory Ethics & Probity training programme. In this report I would like to acknowledge the continuing invaluable work and support of Rachael Tiffen, to thank Elizabeth Hall for her much-appreciated work and support during her 8.5 year period of office, and to welcome Amanda Orchard.

## **Officers**

7. The Committee's lead officers were:
  - Janet Fasan – Director, Legal Services and Monitoring Officer
  - Matthew Mannion – Head of Democratic Services
  - Agnes Adrien – Head of Litigation and Deputy Monitoring Officer (from June 2021)
  - Jill Bayley, Head of Safeguarding and Deputy Monitoring Officer (from June 2021)
  - Mark Norman (former Legal Adviser and Deputy Monitoring Officer) retired in May 2021 and the Committee is grateful to him for his work over many years.

## **Terms of Reference**

8. The current terms of reference for the Standards Advisory Committee are contained in Part B Section 19 of the Constitution, with the Committee's procedures set out in Part D. These are attached as Appendix A to this report.



## Meetings

9. The Standards Advisory Committee held four meetings during the 2022/22 municipal period on the following dates:
  - 1 July 2021
  - 30 September 2021
  - 25 November 2021
  - 10 February 2022
10. Due to the pandemic, the Committee met in hybrid format with a quorum meeting physically and other members attending virtually. This system worked well, allowing for flexibility and it is likely that the committee will continue in this way after the pandemic has ceased.

## Standards Advisory Committee Work Programme 2021/22

11. The Committee agreed a work programme at the first meeting of the municipal period on 1 July 2021. It was updated throughout the year. The key areas of business considered during the year are listed below.

## Code of Conduct for Members – Complaint Monitoring:

12. The Committee received bi-annual monitoring reports on complaints of alleged breach of the Code of Conduct for Members. There were 7 complaints from May 2021 to May 2022.
13. The seven complaints were made by members of the public. None were received from Members. Three complaints were closed without investigation after consultation with the IP. Four complaints are currently subject to initial investigation by the MO and IP. Following consultation with the Independent Person how many? complaint has been referred for investigation.
14. The Committee continues to monitor whether there are lessons to take from complaints monitoring. The Committee continues to monitor remedial actions and that outcomes are reported to the complainant, to give assurance that maintaining ethical standards is given full organisational support.

## Dispensations:

15. The Committee received bi-annual reports on dispensations granted by the Monitoring Officer under section 33 of the Localism Act 2011 in respect of disclosable pecuniary interests (DPI's). There is a continuing General Dispensation to all Members to be present, speak and vote where they would otherwise have a DPI in the following matters:

(a) Housing: where the Councillor (or spouse or partner) holds a tenancy or lease with the Council if the matter does not relate to the particular tenancy or lease of the Councillor (their spouse or partner).

(b) Council Tax: setting the council tax and related matters including setting precepts and agreeing council tax reduction schemes; and

(c) Determining an allowance, travelling expense, payment or indemnity for Councillors. This includes discussions of issues relating to officer pay which could have consequential impacts on Member Allowances.

16. A specific dispensation may also be granted where the Monitoring Officer is satisfied that:

(a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business;

(b) without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business;

(c) granting the dispensation is in the interests of persons living in the authority's area; or

(d) it is otherwise appropriate to grant a dispensation.

Any grant of a dispensation must specify the duration of the dispensation up to a maximum of 4 years. The regular reporting to the Standards Advisory Committee allows Members to maintain oversight of any specific dispensations that are granted.

### **Gifts & Hospitality:**

17. The Committee received quarterly reports on the requirement contained in the Code of Conduct to register gifts and hospitality received or declined with an estimated value of £25 or above.

18. In total **16 to November meeting** declarations were made within the reporting periods of the July 2021, September 2021, November 2021 and February 2022 meetings. This was a very low total. However, it was considered that the Covid-19 pandemic restrictions were the main reason for this, as most events were cancelled for the year and so offers of hospitality were not being received. It is noticeable that the number of declarations increased at the November 2021 meeting when restrictions were beginning to ease.

19. During the year the Committee also monitored the speed of the declarations made, taking interest in whether declarations were made within the 28-day deadline. The Committee were pleased to note that none of the 16 declarations were made after the deadline.

20. The Committee pay particular attention to any large donations received. The Committee would encourage all large gifts to be donated to the Speaker's Charity.
21. The Committee noted that acceptance of gifts and hospitality by councillors is not merely an administrative issue. Acceptance can impact on Member reputation and on the Council as a whole. Members need to show they are acting in the public interest and do not gain personally from receiving gifts.
22. The Register of Interests update form now includes a 'Nil Return' field in relation to Gifts and Hospitalities. This additional field allows Members to actively confirm each time they update their Register that they have declared all relevant gifts and hospitality. This helps mitigate any concerns that a Member had missed any declarations. The Committee will continue to monitor this issue and will receive quarterly update reports.

### **Member Attendance**

23. The Committee meeting in July 2021 received the annual report on Councillor and Co-optee attendance at Council and Committee meetings. The report set out how attendance was recorded and provided details of attendance at meetings by the Mayor, Councillors and Co-optees. It was noted that attendance was generally very good, averaging over 90%. It was noted that attendance had been 10% higher than the previous year, possibly connected to the meetings being held virtually over the pandemic period.
24. It was noted that the Local Government Act 1972 currently forbids the holding of virtual council meetings.
25. It was noted that some Members had lower attendance levels and it was agreed that officers would write to the Chief Whip where there were concerns about the level of attendance.

### **New Model Code of Conduct**

26. As reported in the last Annual Report, in May 2021, the Committee had provided feedback to the Local Government Association (LGA) on its draft Model Code of Conduct.
27. Following publication by the LGA of their new Model Code of Conduct in January 2021 the Committee established a working group to review the Council's Code.
28. The working group were pleased to note that the guidance in the new Model Code generally matched the guidance of the existing Council Code, but it was felt the language and style used were clearer and more accessible and so there was value in basing the Council's new Code on the Model Code.

29. The Committee monitored the progress of the working group throughout the project and agreed with a number of changes to the Model Code to better reflect local priorities, such as maintaining the £25 threshold for the declaration of gifts and hospitality (rather than increasing it to £50).
30. Once the draft Code was completed, the Committee meeting in July 2021 agreed the final draft, which was checked against the final guidance issued by the LGA. This was then circulated to the political groups for feedback. The comments received were limited but generally positive. The Committee approved the new Code of Conduct at the meeting on 30 September 2021 and forwarded it to the Council for adoption.
31. The Code was adopted by the Council on 17 November 2021 and will be in force from the May 2022.
32. The Committee is grateful to the working group for its work on the new Code and welcomes its adoption. Full training will be provided to all Members on the new Code as part of the Member Induction programme after the elections.

#### **Member / Officer Relations Protocol**

33. The Committee agreed at the meeting on 30 September 2021 that the Member / Officer Relations Protocol (the Protocol) should be updated. This Protocol is closely linked to the Code of Conduct (the Code) and, as the Code has been updated, the Protocol should be refreshed to reflect changes.
34. At the Committee meeting in September the Monitoring Officer agreed to set up a working group to consider the Protocol. This work is ongoing. **NB more will be added in the final version.**

#### **Member Learning and Development Programme:**

35. The September meeting of the Committee received the regular yearly report providing an update on the Member Learning and Development Programme listing events that had taken place during the year to that date.
36. The Committee saw that the effect of the Covid-19 pandemic had continued, with much training moving online. It was noted that online training was generally popular with Members and that attendance at virtual sessions was generally higher than for physical sessions, as it allowed Members more flexibility in managing their busy diaries. Sessions had taken place on a number of topics including Local Government Finance, Social Media Policy and Information Governance.
37. Member Briefings were held on topics including Member / Officer Relations and Code of Conduct, Analysis of Safeguarding Adults Review and Update on the Council's Leasehold Portfolio.

38. It was noted that the Member Induction programme planning had started, and that Members would be consulted on the induction, which they had found particularly useful (see below).

### **Member Induction**

39. The Committee meeting in November 2021 considered a report on planning for induction of Members following the election in May 2022. It was noted that Member induction after the election in May 2018 had generally been well received, and feedback from Members would be used to inform planning for induction after the 2022 election.
40. It was noted that, while some of the induction process would need to be conducted face to face, many of the training and information sessions could be undertaken remotely. It was noted that remote training had proved popular with Members and it was expected that this would be a more efficient method of providing training as it would give members flexibility with their busy schedules.
41. A cross-directorate group of officers was working on the details of the programme, which was due to be approved by the General Purposes Committee at its January 2022 meeting. [Note can add more after Feb SAC meeting]

### **Effectiveness of the Standards Advisory Committee**

42. The Committee meeting in November 2021 considered a report on the effectiveness of the Standards Advisory Committee. A survey of Members had been undertaken in November 2021. Although the number of responses was limited, they indicated that they felt the role of the Committee was understood and that the Committee was effective. Members did not appear to feel the need for change at this stage.

### **Standards Advisory Committee Work Planning for 2022-23**

43. The Committee intends to undertake a substantial work programme during 2022-23, including looking at the following items.
- Bi-annual monitoring of complaints of alleged breach of the Code of Conduct for Members.
  - Quarterly monitoring of gifts and hospitality registered.
  - Bi-annual reports on DPI dispensations.
  - Review of the Member / Officer Relations Protocol.
  - Members' training programme including a review of the Member Induction programme planned for after the May 2022 elections, taking into account feedback from Members.

- Review of the Committee's Terms of Reference and procedures.
- Monitoring of DPIs, including considerations about disclosure of Members' personal addresses and their personal safety
- News on ethics matters elsewhere including areas such as good practice, case law, ombudsman and quasi-judicial proceedings and similar.
- Members' attendance at meetings.
- Annual report to Council.
- Annual review of the Member Code of Conduct

44. The 2022/23 work programme aims to continue to embed behaviours that support the seven principles in public life described in the Nolan report, by encouraging Members to apply ethical standards in their day-to-day duties and to look at how these should influence their approach to discharging their responsibilities in their individual and collective capacities.


### **Conclusion**

45. As Chair of the Committee I wish to thank my fellow committee members, the Independent Persons and the Monitoring Officer for their contributions to the Committee's business and their commitment to promoting and maintaining high standards of ethical conduct across the Council. I also wish to thank the officers of the Council for their work in supporting the Committee during the year.

46. I would particularly like to highlight how important it is that the Council has such dedicated co-opted Members who are active contributors to the Committee's discussions and have demonstrated commitment to the role of Standards in the authority. The involvement of co-opted Members should be considered as 'good governance'. We are ahead of many local authorities in this area.

John Pulford MBE

Independent Chair

Non-Executive Report of the:  <b>Standards Advisory Committee</b>  Thursday, 10 February 2022	
<b>Report of:</b> Janet Fasan, Divisional Director, Legal Services and Interim Monitoring Officer	<b>Classification:</b> Open (Unrestricted)
<b>Member / Officer Relations Protocol – update report</b>	

<b>Originating Officer(s)</b>	Agnes Adrien, Head of Litigation
<b>Wards affected</b>	(All Wards);

**Executive Summary**

At its meeting on 4 February 2021, the Committee received a report on the current Member/Officer Protocol from Part C of the Constitution. The Protocol includes a section on Member to Member behaviour.

In light of previous discussions by Committee Members and recommendations in external reviews of the Council’s governance that this Protocol should be reviewed and split off as a separate document).The Committee agreed that the Protocol be passed to the working group for consideration before reporting back to the Committee.

**Recommendations:**

The Standards Advisory Committee is recommended to:

1. To review and comment on the progress to date in relation to the attached Member/Officer Relations Protocol attached at Appendix 1 to the report.

**1. REASONS FOR THE DECISIONS**

- 1.1 The Standards Advisory Committee has a role in overseeing standards in relation to how Members and officers interact with each other. It is therefore appropriate for the Committee to consider and review the existing protocol.
- 1.2 This report enables the committee to steer the development work on the draft new Member/Officer Relations’ Protocol and draws the attention of the Protocol to the Members.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Committee may make any suggestions it deems appropriate for consideration by the Interim Monitoring Officer.

## **3. DETAILS OF THE REPORT**

- 3.1 The Member / Officer Relations Protocol in Part C of the Council's Constitution sets out the parameters through which Members and Officers should engage with each other through their roles.
- 3.2 It deals with a large number of issues including general conduct, decision making, use of resources and day to day contact.
- 3.3 The Protocol also includes a section setting out how Members should interact with each other and the basic standards expected.
- 3.4 The Standards Advisory Committee has a role in monitoring Member standards including how Members interact with each other and with officers.
- 3.5 The Committee are therefore asked to review the suggested amendments made to current protocol set out in Appendix 1 to the report and make any comment as appropriate for the Interim Monitoring Officer to consider.
- 3.6 It should be noted that on a number of occasions, including in external reviews of the Council's governance, it has been suggested that the Member to Member portion of the protocol could be reviewed or set out separately to give it more prominence.

## **4. EQUALITIES IMPLICATIONS**

- 4.1 The Committee should consider the extent to which the Protocol supports equality of opportunity and engagement for all Members and officers including any impact on protected characteristics.

## **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.



5.2 None.

**6. COMMENTS OF THE CHIEF FINANCE OFFICER**

6.1 There are no direct financial implications arising from this report.

**7. COMMENTS OF LEGAL SERVICES**

7.1 The Members/Officer protocol set out at Part 3, section 32 Constitution forms part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.

7.2 Paragraph 15 of the amended Protocol specifies that the Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review, taking place on an annual basis, and make recommendations for changes as appropriate.

7.3 As part of this process the report requests that the Committee review the suggested amendments to the current protocol set out in Appendix 1 to the report and make any comment or specific requests as appropriate for the Interim Monitoring Officer to consider in accordance with this process.

7.4 As set out at paragraph 4.1 of the report, the Committee should pay regard to the Council's Public Sector Equality Duty (Equality Act 2010) and its obligations to equality and diversity in facilitating and/or discharging the business of the Council including the extent to which have informed the protocol and any proposed revisions to it as part of the Committee's review.

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

- None

**Appendices**

- Appendix 1 – Member / Officer Relations Protocol

**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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**32 Member / Officer Relations' Protocol 31.1.22**

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3	The Relationship between <u>Councillors</u> Members and Officers
4	<u>Members</u> Councillor to <u>Member Protocol</u> <u>Councillor</u> Member <u>Expectations</u>
5	<u>Councillors</u> Members and Legal Action by or against the Council
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**1. INTRODUCTION**

1.1 CouncillorsMembers and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. CouncillorsMembers provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by CouncillorsMembers.

1.2 **The protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.**

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1.3 This Protocol seeks to define what should be considered a proper working relationship between CouncillorsMembers and officers in Tower Hamlets and to provide a framework within which confidence in the machinery of local government can be maintained. It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide

APPENDIX 1 – Part C, Section 32 Member / Officer Relations' Protocol

~~Councillors~~Members and officers and explain what they can expect of each other. It also explains what to do when things go wrong.

1.4 This protocol also applies to co-opted members of committees and ~~also~~ to consultants, ~~directly-employed~~ and agency staff working for the Council, ~~accessible via the Council's intranet through the Democratic Services pages, to whom a copy will be supplied.~~ With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Tower Hamlet's code and this protocol.

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1.5 ~~Councillors~~Members appointed to outside bodies or partnership organisations as representatives of Tower Hamlets Council need to be aware that the Code of Conduct for Members applies to these appointments. ~~However, Councillors~~Members are advised to be aware that the outside bodies are likely to have their own other conduct arrangements, of the outside body are likely to exist. In those circumstances, ~~Councillors~~Members should comply with both sets of conduct arrangements, unless the Code of Conduct for Members conflicts with the lawful obligations of the outside body.

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Commented [AA5R4]: Members also have to consider the rules that apply to any outside bodies that they are on.

1.6 A failure to abide by this Protocol by ~~Councillors~~Members is likely to be a breach of the Code of Conduct for Members and may result in a complaint being made to the Monitoring Officer. As to officers, a failure to abide by this Protocol may result in a disciplinary investigation.

1.7 Any reference to '~~Councillor~~Member' or '~~Councillors~~Members' in this Protocol, or any appendices or related Codes/ Protocols, means the Mayor, elected and co- opted members. ~~This Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).~~ This Code applies in all aspects of your activities as a member, including when acting on Council business or when you are perceived by the public to be acting as a member. The Code does not seek to regulate what you do in your private and personal life

1.8 'Officers' and 'staff' mean all persons employed by the Council: whether full or part time; fixed term contract; agency; or consultant.

1.9 A ~~Councillor~~Member in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an officer in need in need of advice about the application of this Protocol should contact their line manager in the first instance.

## 2. ROLES OF ~~MEMBERS~~COUNCILLORS AND OFFICERS

2.1 ~~Councillors~~Members and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to

## APPENDIX 1 – Part C, Section 32 Member / Officer Relations' Protocol

manage an effective public sector organisation but their responsibilities are distinct.

### ~~Councillors~~Members

- 2.2 ~~Councillors~~Members are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of ~~Councillors~~Members is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 All ~~Councillors~~Members have responsibilities to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.

### Officers

- 2.4 Officers are employed by and are accountable to the Council as a whole. With the exception of Political Assistants and the Mayor's Assistant, officers work to the instructions of their senior officers, not individual ~~Councillors~~Members or Political Groups.
- 2.5 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 2.6 Officers have a duty to keep ~~Councillors~~Members of all political groups ~~including and Independents~~ fully informed about developments ~~and events~~ of significance in relation to council activities ~~in general, and within Members' wards or portfolios~~.
- ~~2.7 Officers have a duty to make ward CouncillorsMembers aware of council activities or council related activities within their wards~~

## **3. THE RELATIONSHIP BETWEEN ~~MEMBERS~~COUNCILLORS AND OFFICERS**

- 3.1 Bad relations between ~~Councillors~~Members and officers are counter-productive to good governance and therefore the conduct of ~~Councillors~~Members and officers should be such as to instil mutual trust and respect. ~~Councillors~~Members and officers should understand and respect each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.

Obtaining or granting favours

## APPENDIX 1 – Part C, Section 32 Member / Officer Relations' Protocol

3.2 The Code of Conduct for Members emphasises the need for CouncillorsMembers to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. CouncillorsMembers must not seek personal favours from officers. Officers must not be tempted to give favours to please a CouncillorMember. An example of favour seeking would be asking whether a CouncillorMember's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers must not seek to circumvent agreed staff consultative procedures by lobbying CouncillorsMembers on matters which directly concern them as employees

### CouncillorMember involvement in officer issues

3.3 Issues relating to the appointment, management and dismissal of most officers are reserved by law to the Head of Paid Service and officers appointed by him/her. CouncillorMember involvement in employment issues generally, including where they relate to senior officers, is set out in the Local Authorities (Standing Orders) (England) Regulations 2001.

3.4 Occasions may arise where officers try to involve CouncillorsMembers in day-to-day staff/ management issues. CouncillorsMembers should strongly discourage such approaches. Officers should be advised to pursue matters with their management through the established procedures for resolving grievances etc. Officers must not raise matters concerning their employment with individual CouncillorsMembers; to do so may result in disciplinary action being taken.

### Personal Familiarity

3.5 Personal familiarity between CouncillorsMembers and officers can create the suspicion of improper conduct, however unfounded and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between when officers and Cabinet members or chairs of Committees, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question, the officer's ability to deal impartially with other CouncillorsMembers and other party groups.

3.6 Informal and collaborative two-way contact between CouncillorsMembers and officers is encouraged; personal familiarity can damage the relationship, as might a family or business connection. It is accepted that some close relationships will develop, particularly when CouncillorsMembers and officers work closely together but it is important that close relationships between CouncillorsMembers and officers are openly declared and if any relationship might be seen as unduly influencing their work in their respective roles then they should inform the Monitoring Officer.

APPENDIX 1 – Part C, Section 32 Member / Officer Relations' Protocol

3.7 It is not enough to avoid actual impropriety, **CouncillorsMembers** and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a **CouncillorMember** should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

Courtesy

3.8 **CouncillorsMembers** and officers should respect each other's non-working time and not make contact during non-working time-except in emergencies.

3.9 **CouncillorsMembers** and officers should be courteous to each other at all times even if they disagree strongly with their respective views. **CouncillorsMembers** and officers should not shout or raise their voice in an aggressive or rude manner.

Bullying

3.10 **CouncillorsMembers** and officers must not bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious, insulting / or humiliating behaviour, or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the **CouncillorMember** or officer has some actual or perceived influence over. [This] can be contrasted with the legitimate challenges which a **CouncillorMember** or officer can make in challenging policy or scrutinising performance.

**Commented [JF6]:** Ensure language is consistent with section of Code of Conduct on bullying

**Commented [AA7R6]:** Code says at point 6 -You should treat all people with respect, you should not bully or harass any person and you should respect the impartiality and integrity of the Council's officers.

3.11 Bad relations between **CouncillorsMembers** and officers can be destructive to good governance. **CouncillorsMembers** may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although occasionally there may be a legitimate reason why member expectations cannot be met, e.g. because of a council policy or a legal requirement such as confidentiality.

3.12 Where a **CouncillorMember** has a concern about an officer or the Council services then this should be made to the Director of the service where the **CouncillorMember** feels the fault lies or to the Chief Executive where it involves a Director personally. Indeed, **CouncillorsMembers** have a duty to raise any issues where they have reason to think that fraud/ probity, corruption or malpractice of any sort is involved within the Council.

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~~Councillors~~Members should not criticise officers in public as ~~Councillors~~Members should bear in mind that officers are instructed not to “answer back” in public. Attacking an officer’s conduct in public can constitute bullying, as will undue pressure brought by either officers or ~~Councillors~~Members in private.

Lines of conduct between ~~Councillors~~Members and officers

- 3.13 ~~Councillors~~Members must remember that Officers within Directorates are accountable to their chief officer. Chief officers, through their senior management, are responsible for the allocation and prioritising of work by their staff. ~~Councillors~~Members should not seek to influence such decisions.
- 3.14 ~~A Councillor~~Member is free to approach any Council Department to provide them with such information, explanation and advice about the Department’s functions as they may reasonably need as a ~~Councillor~~Member. ~~This can range from a request for general information or documentation about some aspect of the Department’s activities, to a request for specific information on behalf of a constituent.~~
- ~~3.15 In making such an approach, the request should be made to the Chief Officer or Divisional Director for the Department concerned. If access is denied or the Chief Officer/ Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.~~~~Councillors~~Members
- ~~3.16 Councillors~~Members should raise constituents’ queries or concerns through the proper channels and not go direct to junior officers. Further in seeking to deal with constituents’ queries or concerns, ~~Councillors~~Members should not seek to jump the queue, but should respect the Council’s procedures. Officers have many pressures on their time and officers may very well not be able to carry out the work required by ~~Councillors~~Members in the requested timescale. ~~Councillors~~Members should respect this. The Council does operate a Member’s Enquiries system (see section 8.1 for more details).
- 3.17 Where ~~Councillors~~Members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. ~~Councillors~~Members and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, ~~Councillors~~Members and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.
- 3.18 Officers within a Directorate are accountable to their Corporate Director and whilst officers should always seek to assist a ~~Councillor~~Member, they must not go beyond the bounds of whatever authority they have been given by their Corporate Director.

**Commented [JB8]:** I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach the Chief Officer or Divisional Director for the Department concerned. If access is denied or the Chief Officer / Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.



**4. MEMBER COUNCILLOR TO MEMBER COUNCILLOR PROTOCOL EXPECTATIONS**

4.1 Whilst this Protocol is primarily aimed at the interaction between **CouncillorsMembers** and Officers, the same principles apply to interactions between **CouncillorsMembers**. Therefore **CouncillorsMembers** should be entitled to expect from each other:

- respect, dignity and courtesy;
- not to be subjected to bullying or personalised attacks;
- respect for differing political views and values;
- maintenance of confidentiality;
- commitment to high standards of debate; and
- compliance with the Council's Constitution including the Code of Conduct for Members.

**Commented [MM9]:** Need to expand this to make it feel like its own document (requirement of various governance reviews)

**5. MEMBERS COUNCILLORS AND LEGAL ACTION BY OR AGAINST THE COUNCIL**

5.1 There is a whole range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. **CouncillorsMembers** have a clear role in representing residents' and general public interests. In this representative capacity, **CouncillorsMembers** will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.

5.2 Conflicts of interest will almost certainly occur when a **CouncillorMember** is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, **CouncillorsMembers** will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, **CouncillorsMembers** must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, **CouncillorsMembers** must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the **CouncillorMember** could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.

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- 5.3 It is therefore particularly important that CouncillorsMembers should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.
- 5.4 In that regard, CouncillorsMembers must not:
- attempt in any way to exercise improper influence over the legal process in which the Council is involved;
  - attempt to exert improper influence on Council officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council officers involved in the legal process or witnesses in the case.
- 5.5 Whilst CouncillorsMembers have every right to information on how any such matter is being dealt with and a duty to represent their constituents, CouncillorsMembers must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 5.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the appropriate Divisional Director or Corporate Director. On no account is the CouncillorMember to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 5.7 If a CouncillorMember believes that the Council's actions or intentions are wrong, they should inform the Corporate Director concerned. It must then be for the Corporate Director to determine what action to take. If the CouncillorMember remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

## 6. REPORTS

- 6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant.
- 6.2 The relevant Corporate Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in their name. Any issues arising between a CouncillorMember and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

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- 6.3 **CouncillorsMembers** have the right to criticise reports or the actions taken by officers, but they should **always**:-
- **not make seek to avoid** personal attacks on officers; and
  - ensure that criticism is constructive and well-founded.
- 6.4 **CouncillorsMembers** have the ability to agree or reject proposals placed before them by officers, irrespective of the advice or recommendations made by officers so long as they generally act in good faith and exercise reasonableness in decision-making and specifically:-
- take into account relevant and dismiss irrelevant matters; and
  - do not come to a conclusion that no reasonable authority would come to.
- Officers must therefore, be able to report to **CouncillorsMembers** as they see fit and without any political pressure.
- 6.5 A resolution may be passed at meetings which authorises an officer to take action between meetings after consultation with the Chair/ Lead Member/ Portfolio Member etc. It is the officer, not the Chair etc., who takes the action and is responsible for it. The Chair etc. does not himself/ herself have the power between meetings to make decisions.

## 7. OFFICER ADVICE TO PARTY GROUPS

- 7.1 It must be recognised by all officers and **CouncillorsMembers** that in discharging their duties and responsibilities officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual **CouncillorMember**. Special rules apply to Political Group Assistants and the Mayor's Assistant and those post holders are made aware of them through separate guidance.
- 7.2 There is statutory recognition for party political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior officers may properly be called upon to support and contribute to such deliberations by political groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual **CouncillorsMembers** treat them in a fair and even-handed manner.
- 7.3 The support provided by officers can take many forms, ranging from a briefing meeting with the Mayor, a Cabinet Member/ Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to

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a political group meeting. Whilst in practice such officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups. In addition to the above, all members grouped (or ungrouped) are entitled to receive support in relation to ~~including ungrouped Councillors~~.

- Members Enquiries
- Members Support
- Questions about services
- Help with IT and similar general support

**Commented [MM10]:** Need to maybe expand a little as we don't offer the same to ungrouped but need to be clear there are lines of communication for them. Maybe include it as a separate para to describe the difference?

**Commented [AA11R10]:** updated

7.4 Certain points, however, must be clearly understood by all those participating in this process, CouncillorsMembers and Officer alike. In particular:

- (i) Requests for officers to attend any political group meeting must be made only to the appropriate member of the Corporate Leadership Team. Normally only that person will attend the meeting, although in exceptional circumstances they may be accompanied by one or more Senior Officers.
- (ii) Unless otherwise agreed in advance with the Chief Executive, officers will not attend political group meetings that include persons who are not CouncillorsMembers. However, where the Chief Executive has authorised such attendance special care needs to be exercised by officers involved in providing information and advice to such political group meetings. Persons who are not elected CouncillorsMembers will not be bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a CouncillorsMembers only meeting.
- (iii) Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Reports or other support will not deal with any political implications of the matter or any option, and officers will not make any recommendations to a political group. Officers (with the exception of Political Group/ Mayor's Assistants) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
- (iv) Political group meetings, whilst they form part of the preliminaries to Council decision making are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (v) It must not be assumed by any political group or CouncillorMember that any Officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.

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- (vi) Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or ~~Councillor~~Member thereof. However, ~~Councillors~~Members should be aware that this would not prevent officers from disclosing such information to other officers of the Council so far as is necessary to perform their duties.
- (vii) Where officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the officers have a statutory duty to provide all necessary information and advice to the Mayor or Cabinet or relevant Committee/ Sub-Committee when the matter in question is considered.

**8. MEMBERS AND ACCESS TO INFORMATIONS' SERVICES AND THE USE OF COUNCIL FACILITIES**

~~Members' Services and~~ Members' Enquiries

8.1 The Council operates a Member's' Enquiries system which is for the Mayor and ~~Councillors~~Members to use for ~~residents' queries or concerns, routine requests for information FOI's and casework and advice.~~ The maximum turn round time expected for such enquiries is 10 working days and officers will chase outstanding enquiries exceeding this period. ~~Matters which are not routine or involve policy should be directed initially to the relevant Corporate Director or Divisional Director or any officer nominated by them.~~

8.2 ~~The Members' Enquiries system should be used for all requests for information and advice except urgent requests. An urgent request should be made to the Chief Officer or Director for the Department concerned. If access is denied or the Chief Officer/ Director is in doubt, the matter must be referred to the Monitoring Officer for determination.~~

8.3 ~~In considering any request for information from Members officers will take into account the access to information procedure rules set out at Part B section 27 of the Council's Constitution.~~

8.3 ~~Members will need to obtain information from council departments to carry out their functions. For all requests for information and advice except urgent requests, members should use the Members' Enquiries (see paragraph 8.1 below).~~

3.15 ~~An urgent request should be made to the Chief Officer or Director for the Department concerned. If access is denied or the Chief Officer/ Director is in doubt, the matter must be referred to the Monitoring Officer for determination.~~

**Commented [JB12]:** I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach the Chief Officer or Divisional Director for the Department concerned. If access is denied or the Chief Officer / Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.

**Commented [JB13]:** I think we should reword this paragraph as it seems to suggest that the first post of call for a member needing information is to approach the DD rather than use the Members' Enquiries system. How about: Members will need to obtain information from council departments to carry out their functions. For routine requests for information and advice, councillors should use the Members' Enquiries (see paragraph 8.1 below). For more detailed requests, such as a request for specific information on behalf of a constituent, Members should approach the Chief Officer or Divisional Director for the Department concerned. If access is denied or the Chief Officer / Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.

~~8.43.16~~ — Members should raise ~~residentseonstituents'~~ queries or concerns through the channels referred to in paragraphs 8.1, ~~8.2 or 8.33-14 or 3-15~~ and not go direct to junior officers. Further in seeking to deal with ~~residentseonstituents'~~ queries or concerns, Members should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time and officers may very well not be able to carry out the work required by Members in the requested timescale. Members should respect this. ~~The Council does operates a Member's Enquiries system (see section 8.1 for more details).~~

## 9. SUPPORT FOR MEMBERS AND MEMBERS' USE OF COUNCIL FACILITIES

~~9.18.2~~ Both Mayor's Office secretarial staff and the ~~CouncillorsMembers'~~ Support Team provide assistance to ~~CouncillorsMembers~~ in their role as Council Members. Staff in these sections may, therefore, be used, as appropriate, to help with ~~work such as casework, meetings and correspondence to do with~~ Council matters. Full details of the service offered are contained ~~on the Members' Hub in the Members' Services Guide.~~

~~9.28.3~~ The Mayor's Office and ~~CouncillorMember~~ Support Team staff will assist with booking venues for, and publishing details of, ~~CouncillorMember'~~ surgeries. ~~CouncillorsMembers'~~ surgeries should normally be held within a ~~CouncillorMember'~~ own ward, but ~~CouncillorMember~~ may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. ~~CouncillorMember~~ must not ask Council officers to assist with any personal, business or party political matters; attend surgeries; or decide how case work will be dealt with.

### Council Facilities

~~9.38.4~~ ~~CouncillorsMembers~~ must use any Council facilities that are provided in their role as a ~~CouncillorMember~~ strictly for that purpose and no other. For example, ~~CouncillorsMembers~~ must not use rooms in the Town Hall or other buildings or any of the Council's paper, computers, photocopiers, or printers for any personal, business related or party political matter, nor, for example, on behalf of any community groups of which the ~~CouncillorMember~~ is a member, unless formal approval has been given by the appropriate chief officer.

~~9.48.5~~ The use of Council facilities and services by ~~CouncillorsMembers~~ during a pre-election period for election campaigning or political purposes is not allowed. Specific guidance will be issued at that time to both ~~CouncillorsMembers~~ and officers.

~~8.9.55~~ ~~Councillors~~Members should act to ensure Council resources are used prudently, are expected to must not use Council IT (such as email addresses, laptops) should be used for legitimate Council purposes and not for any other purpose ~~business~~. email addresses Members are expected to ~~use~~ access IT training and guidelines on the proper and effective use of Council IT resources when provided. Officers should use Members council email addresses when corresponding with Members unless previously agreed by the Monitoring Officer. ~~and telephone numbers for council business. C non-council functions..... (reflect wording in members bulletin message ), they are provided at public expense and may only be used in connection with, or in support of, council functions.~~

## 10. Legal representation for Members

~~10.18.6~~ The Council can will only provide legal advice and -representation to an individual CouncillorMember or officer in connection with where the action taken is taking place in the name of the Council I.e -a whilst carrying on any function at the request of, with the approval of, or for the purposes of. the authority with some additional xxx ~~nd the individual deserves the protection of the Council. All such matters should be raised with the Chief Executive in the first instance. NEED TO CONSIDER FURTHER~~

~~8.7~~ The CouncilCouncillorsMembers cannot provide legal advice where a councillormember is sued in his personal capacity. (Check local authority indemnity Order 2004 see above)

## 11. Political Party Workers

~~11.18.7~~ CouncillorsMembers are often assisted by political party workers. There is no objection to this, but no non-elected party worker has any entitlement to:

- information to which a CouncillorMember has access in their role as Mayor or CouncillorMember;
- use Council facilities provided for the use of CouncillorsMembers.

The principles which apply to use of facilities provided for CouncillorsMembers (and the officers employed to assist them) apply equally to all Council property and facilities and all Council employees.

### Use of IT

~~8.8~~ From time to time training and guidelines on the proper and effective use of Council IT resources will be issued.

**Commented [JB14]:** Do we really need to put this in there? Is it really relevant to the member / officer relationship? It's more for each individual and I don't think it's relevant here.

**Commented [AA15R14]:** It may be helpful to warn that indemnity is not available in all circumstances

**Commented [JB16]:** The Council will only provide legal advice or representation to an individual Member or officer where the need for legal advice or representation arises solely out of the individual's position as a Member or officer of the Council, and the Monitoring Officer has approved the provision of legal advice or representation by the Council for that individual. January 25, 2022, 4:50 PM

**Commented [AA17R16]:** There are limited circumstances where this can be extended. ( I'm not including all of this wording in the draft, however, Artic 5 of the Indemnity Order says this can be extended where the officer or member acts as a director of a company at the request of the authority , and is therefore acting in their capacity as a director - SeaHomes?)

**129. POLITICAL ASSISTANTS**

**12.19.4** Section 9 of the Local Government and Housing Act, 1989 gives councils a power to appoint political assistants to qualifying political groups. Whilst the Act allows the political affiliation of an individual to be taken into account in the appointment of any Political or Mayor's Assistant, they remain officers of the Council and must therefore not undertake any activity, which may be deemed unlawful. In this context, it should be realised that officer support to the political groups is in the context of their role in the discharge of Council business and although it may require liaison with political parties, at both local and national level, should not be used in promoting the views of an individual political party or undertaking campaigning or other party political business.

**129.2** Political assistants hold politically restricted posts and therefore also face restrictions on their personal political activity.

**103. MEMBERS' COUNCILLORS' ACCESS TO INFORMATION**

General

**103.1** In principle, Members have the same ordinary rights of access to certain information as is enjoyed by the general public but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Member provided that it is reasonably necessary to enable the Member to properly perform their duties as a Member (see "Need to Know" below). This right of access of additional access may not extend to the publication of or otherwise making public such information as there may be issues of confidentiality.

**13.2** The following paragraphs identify the rights of ~~Councillors~~Members and the procedures that they must comply with when applying for access to Cabinet/ Committee/ Sub-Committee papers and other documents/ information. These paragraphs take into account the following:

- Relevant legislation including the Local Government Act 1972; the Data Protection Act 1998; the Freedom of Information Act 2000; and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
- Local Government Transparency Code 2015
- Open and accountable local government: plain English guide
- Access to Information Procedure Rules (Part B Section 27 of the Constitution)
- Relevant case law

**Commented [MM18]:** Should this just be in the main Access to Information Section of the constitution and then referenced here to avoid conflicting advice?



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~~10.2 In principle, CouncillorsMembers have the same ordinary rights of access to certain information as is enjoyed by the general public but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a CouncillorMember provided that it is reasonably necessary to enable the CouncillorMember to properly perform their duties as a CouncillorMember (see “Need to Know” below). This right of access of additional access may not extend to the publication of or otherwise making public such information as there may be issues of confidentiality.~~

Access to Committee Papers for Forthcoming Meetings

103.3 The rights of ~~CouncillorsMembers~~ can be summarised as follows:-

- (i) ~~CouncillorsMembers~~ enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.
- (ii) ~~CouncillorsMembers~~ of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part II exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the “Need to Know” principles (see below).
- (iii) ~~CouncillorsMembers~~ of the Overview and Scrutiny Committee will have a prima facie “Need to Know” where they require access to Part II Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee’s terms of reference.
- (iv) All other Members who require access to confidential/ exempt Cabinet/ Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or demonstrate a “Need to Know” by complying with the principles set out below.

Access to Other Documents/Information – “The Need to Know”

103.4 It is important to note that in some cases access to information to which the public is not entitled only applies where ~~CouncillorsMembers~~ are clearly carrying out their role as elected representatives. Where a ~~CouncillorMember~~ has a financial or personal interest in a matter the ~~CouncillorMember~~ will only be entitled to the same access as would be the case for a private individual. In these circumstances, the ~~CouncillorMember~~ must make it clear that they are acting in their private capacity and not as a ~~CouncillorMember~~.

103.5 Under common law principles ~~CouncillorsMembers~~ have the right to access information held by the Council where it is reasonably necessary to enable the ~~CouncillorMember~~ to properly perform their duties as a ~~CouncillorMember~~. This is known as the “Need to Know”. This means that information must not be used for party political purposes.

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- 103.6 The common law “Need to Know” is the prima facie right of CouncillorsMembers to inspect documents of the authority which exist as CouncillorsMembers are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to CouncillorsMembers who do not have statutory rights to exempt or confidential information and to other documents held by the Council under local government legislation or the Freedom of Information Act 2000.
- 103.7 For example, a CouncillorMember is likely to have a prima facie “Need to Know” where they have yes a legitimate Ward problem and needs access to the documents that are relevant to that specific problem. Also, for example, a Cabinet Member whose Portfolio covers the matter in question and they need to be aware of what is occurring for the purpose of their Cabinet position.
- 103.8 Access to information on the basis of a ‘Need to Know’ does not exist where the CouncillorMember is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
- 103.9 It should be noted that some material (for example if commercially sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a CouncillorMember to exercise their role as an elected representative.
- 103.10 There will also be a range of documents which, because of their nature are either not accessible by CouncillorsMembers (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the CouncillorsMembers of other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council’s and the public interest.
- 103.11 Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a CouncillorMember of one political group will not have a “Need to Know” and therefore, a right to inspect, a document which forms part of the internal workings of another political group.

Use of Council Information – Confidentiality

- 103.12 Procedural Rules and specific local procedures (e.g. on contracts) require CouncillorsMembers and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and any breach of confidentiality will almost certainly lead to disciplinary action.

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Officers must distinguish between assisting an elected representative in the course of the Councillor/Member's Council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor/Member with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the same situation, and interpret the relevant rules and procedures as they would for any other client or customer.

103.13 Equally, any Council information provided to a Councillor/Member on the basis of a 'Need to Know' must only be used by the Councillor/Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor/Member's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors/Members may be discussed in Part II Committee meetings or in private meetings of appropriate Councillors/Members and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors/Members.

103.14 In cases where a Councillor/Member discloses information given to him/her in confidence by anyone, or information acquired by the Councillor/Member which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor/Member may find themselves the subject of a complaint to the Standards Advisory Committee that they have contravened the Code of Conduct for Members.

103.15 Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor/Member.

103.16 Any request from a Councillor/Member for information will be treated in confidence by Officers and will not be made known to any other Councillor/Member or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor/Member(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Councillor/Member, Officer or person not already privy to that information.

103.17 The duty of officers to observe a Councillor/Member's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate.

144. WHEN THINGS GO WRONG

APPENDIX 1 – Part C, Section 32 Member / Officer Relations' Protocol

Procedure for officers

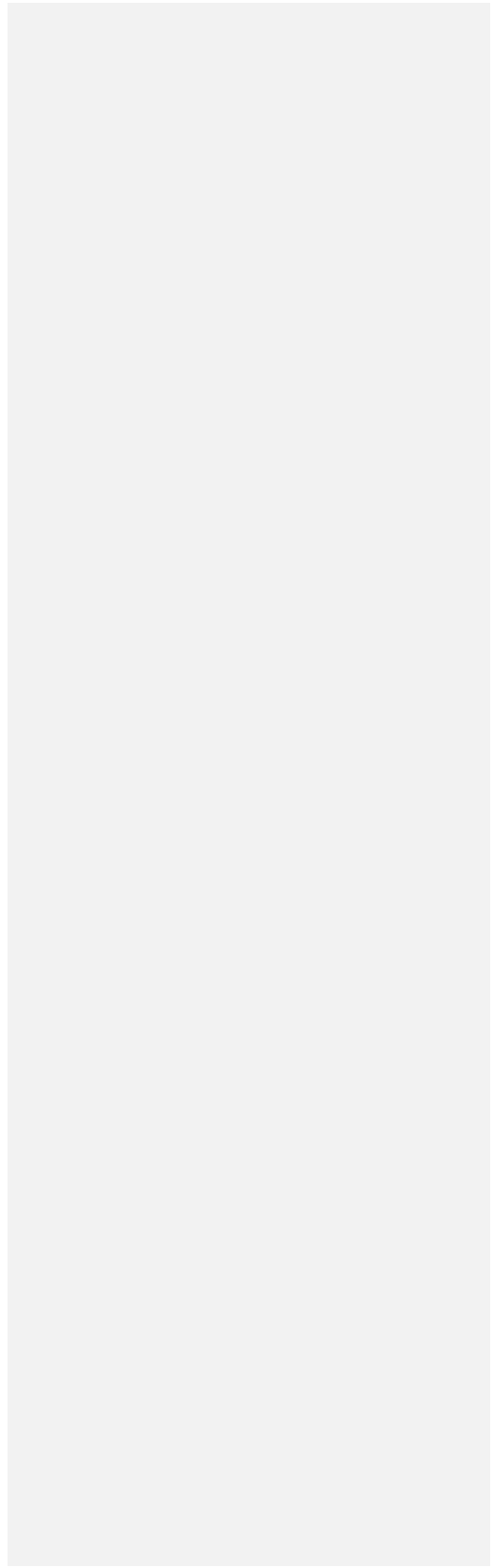
144.1 If an officer has a complaint about a ~~Councillor~~Member it is always preferable to resolve matters informally, through an appropriate senior manager. If the matter cannot be resolved informally or it is not suitable for such then officers can make a complaint to the Monitoring Officer.

Procedure for ~~Councillors~~Members

~~144.10.2~~ If a ~~Councillor~~Member has a concern about the conduct or capability of an officer, they should raise the matter privately with the appropriate Divisional Director or Corporate Director. Any concern about a Corporate Director should be raised privately with the Chief Executive. Any concern about the Chief Executive should be raised privately with the Monitoring Officer.

~~152.1~~ REVIEW

~~15.24.1~~ The Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review and make recommendations for changes as appropriate. A review will take place annually in any event.



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## 32 Member / Officer Relations' Protocol

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#### 1. INTRODUCTION

- 1.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. Councillors provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by Councillors.
- 1.2 The protocol is part of the Council's ethical framework and should be read in conjunction with the Council's Constitution, the Code of Conduct for Members, disciplinary codes which regulate the conduct of officers and other relevant codes and guidance.
- 1.3 This Protocol seeks to define what should be considered a proper working relationship between Councillors and officers in Tower Hamlets and to provide a framework within which confidence in the machinery of local government can be maintained. It contains interpretation and guidance on some of the issues which commonly arise. It cannot cover every matter which will arise in council life but it reflects an approach and sets standards which will serve as a guide to dealing with other issues. It is intended to guide Councillors and

officers and explain what they can expect of each other. It also explains what to do when things go wrong.

- 1.4 This protocol also applies to co-opted members of committees and also to consultants and agency staff working for the Council, to whom a copy will be supplied. With regard to associates from partnership organisations, where their organisation has no code of conduct, it is expected they will abide by the principles of Tower Hamlet's code and this protocol.
- 1.5 Councillors appointed to outside bodies or partnership organisations as representatives of Tower Hamlets Council need to be aware that the Code of Conduct for Members applies to these appointments. However, Councillors are advised to be aware that other conduct arrangements of the outside body are likely to exist. In those circumstances, Councillors should comply with both sets of conduct arrangements, unless the Code of Conduct for Members conflicts with the lawful obligations of the outside body.
- 1.6 A failure to abide by this Protocol by Councillors is likely to be a breach of the Code of Conduct for Members and may result in a complaint being made to the Monitoring Officer. As to officers, a failure to abide by this Protocol may result in a disciplinary investigation.
- 1.7 Any reference to 'Councillor' or 'Councillors' in this Protocol, or any appendices or related Codes/ Protocols, means the Mayor, elected and co-opted members. This Code applies at all times when Councillors act in their capacity as Councillors (or claim to act or give the impression of acting in their capacity as a Councillor).
- 1.8 'Officers' and 'staff' mean all persons employed by the Council: whether full or part time; fixed term contract; agency; or consultant.
- 1.9 A Councillor in need of advice about the application of this Protocol should contact the Monitoring Officer, whereas an officer in need of advice about the application of this Protocol should contact their line manager in the first instance.

## **2. ROLES OF COUNCILLORS AND OFFICERS**

- 2.1 Councillors and officers are indispensable to one another and mutual respect between both is essential for good local government. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation but their responsibilities are distinct.

Councillors



- 2.2 Councillors are democratically accountable to residents of their Wards and serve only so long as their term of office lasts. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.
- 2.3 All Councillors have responsibilities to determine the policy of the Council, monitor its performance, represent the Council externally and act as advocates on behalf of their constituents.

#### Officers

- 2.4 Officers are employed by and are accountable to the Council as a whole. With the exception of Political Assistants and the Mayor's Assistant, officers work to the instructions of their senior officers, not individual Councillors or Political Groups.
- 2.5 Officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 2.6 Officers have a duty to keep Councillors of all political groups fully informed about developments of significance in relation to council activities.

### **3. THE RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 3.1 Bad relations between Councillors and officers are counter-productive to good governance and therefore the conduct of Councillors and officers should be such as to instil mutual trust and respect. Councillors and officers should understand and respect each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.

#### Obtaining or granting favours

- 3.2 The Code of Conduct for Members emphasises the need for Councillors to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Councillors must not seek personal favours from officers. Officers must not be tempted to give favours to please a Councillor. An example of favour seeking would be asking whether a Councillor's parking ticket could be withdrawn or whether an application for a service could be expedited. Similarly officers must not seek to circumvent agreed staff consultative procedures by lobbying Councillors on matters which directly concern them as employees

#### Councillor involvement in officer issues

- 3.3 Issues relating to the appointment, management and dismissal of most officers are reserved by law to the Head of Paid Service and officers appointed by him/her. Councillor involvement in employment issues generally, including where they relate to senior officers, is set out in the Local Authorities (Standing Orders) (England) Regulations 2001.
- 3.4 Occasions may arise where officers try to involve Councillors in day-to-day staff/ management issues. Councillors should strongly discourage such approaches. Officers should be advised to pursue matters with their management through the established procedures for resolving grievances etc. Officers must not raise matters concerning their employment with individual Councillors; to do so may result in disciplinary action being taken.

#### Personal Familiarity

- 3.5 Personal familiarity between Councillors and officers can create the suspicion of improper conduct, however unfounded and can undermine public confidence in the Council. Whilst it is clearly important that there should be a close working relationship between when officers and Cabinet members or chairs of Committees, such relationships should never be allowed to become so close, or appear to be so close, as to bring into question, the officer's ability to deal impartially with other Councillors and other party groups.
- 3.6 Informal and collaborative two-way contact between Councillors and officers is encouraged; personal familiarity can damage the relationship, as might a family or business connection. It is accepted that some close relationships will develop, particularly when Councillors and officers work closely together but it is important that close relationships between Councillors and officers are openly declared and if any relationship might be seen as unduly influencing their work in their respective roles then they should inform the Monitoring Officer.
- 3.7 It is not enough to avoid actual impropriety, Councillors and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a Councillor should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

#### Courtesy

- 3.8 Councillors and officers should respect each other's non-working time.

- 3.9 Councillors and officers should be courteous to each other at all times even if they disagree strongly with their respective views. Councillors and officers should not shout or raise their voice in an aggressive or rude manner.

#### Bullying

- 3.10 Councillors and officers must not bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person whom the Councillor or officer has some actual or perceived influence over. This can be contrasted with the legitimate challenges which a Councillor or officer can make in challenging policy or scrutinising performance.
- 3.11 Bad relations between Councillors and officers can be destructive to good governance. Councillors may from time to time become frustrated by what they regard as unacceptable or incompetent officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although occasionally there may be a legitimate reason why member expectations cannot be met, e.g. because of a council policy or a legal requirement such as confidentiality.
- 3.12 Where a Councillor has a concern about an officer or the Council services then this should be made to the Corporate Director of the service where the Councillor feels the fault lies or to the Chief Executive where it involves a Corporate Director personally. Indeed, Councillors have a duty to raise any issues where they have reason to think that fraud/ probity, corruption or malpractice of any sort is involved within the Council. Councillors should not criticise officers in public as Councillors should bear in mind that officers are instructed not to “answer back” in public. Attacking an officer’s conduct in public can constitute bullying, as will undue pressure brought by either officers or Councillors in private.

#### Lines of conduct between Councillors and officers

- 3.13 Councillors must remember that Officers within Directorates are accountable to their chief officer. Chief officers, through their senior management, are responsible for the allocation and prioritising of work by their staff. Councillors should not seek to influence such decisions.
- 3.14 A Councillor is free to approach any Council Department to provide them with such information, explanation and advice about the Department’s functions as they may reasonably need as a Councillor. This can range from a request for general information or documentation about some aspect of the Department’s activities, to a request for specific information on behalf of a constituent.

- 3.15 In making such an approach, the request should be made to the Chief Officer / Corporate Director or Director for the Department concerned. If access is denied or the Chief Officer/ Divisional Director is in doubt, the matter must be referred to the Monitoring Officer for determination.
- 3.16 Councillors should raise constituents' queries or concerns through the proper channels and not go direct to junior officers. Further in seeking to deal with constituents' queries or concerns, Councillors should not seek to jump the queue, but should respect the Council's procedures. Officers have many pressures on their time and officers may very well not be able to carry out the work required by Councillors in the requested timescale. Councillors should respect this. The Council does operate a Member's Enquiries system (see section 8.1 for more details).
- 3.17 Where Councillors and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. Councillors and officers are reminded that within an open plan environment office certain standards are expected to be maintained. In particular meetings should not be held at workstations, Councillors and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.
- 3.18 Officers within a Directorate are accountable to their Chief Officer / Corporate Director and whilst officers should always seek to assist a Councillor, they must not go beyond the bounds of whatever authority they have been given by their Chief Officer / Corporate Director.

#### **4. COUNCILLOR TO COUNCILLOR EXPECTATIONS**

4.1 Whilst this Protocol is primarily aimed at the interaction between Councillors and Officers, the same principles apply to interactions between Councillors. Therefore Councillors should be entitled to expect from each other:

- respect, dignity and courtesy;
- not to be subjected to bullying or personalised attacks;
- respect for differing political views and values;
- maintenance of confidentiality;
- commitment to high standards of debate; and
- compliance with the Council's Constitution including the Code of Conduct for Members.

#### **5. COUNCILLORS AND LEGAL ACTION BY OR AGAINST THE COUNCIL**

- 5.1 There is a whole range of circumstances where the Council as a corporate body may be involved in legal proceedings. This could be against residents or other individuals, organisations and companies, and across the whole range of service areas including housing, planning, highways, etc. Councillors have a clear role in representing residents' and general public interests. In this representative capacity, Councillors will inevitably become involved in issues where the Council is considering, or is in the process of taking legal action, or where the Council is the defendant to legal actions brought by third parties.
- 5.2 Conflicts of interest will almost certainly occur when a Councillor is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Councillors will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Councillors must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Councillors must be extremely cautious about having any dealings with professional representatives, advisers or witnesses in the case. Not only could such intervention prejudice the Council's position but the Councillor could find himself/ herself accused of an offence of Misconduct of Public Office or, Perverting the Course of Justice or an attempt or conspiracy to do so.
- 5.3 It is therefore particularly important that Councillors should be sure not only to avoid any actual impropriety, but at all times avoid any occasion for suspicion or any appearance of improper conduct.
- 5.4 In that regard, Councillors must not:
- attempt in any way to exercise improper influence over the legal process in which the Council is involved;
  - attempt to exert improper influence on Council officers involved in the legal process or witnesses in the case;
  - attempt to engage the community to exert improper influence on Council officers involved in the legal process or witnesses in the case.
- 5.5 Whilst Councillors have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Councillors must also realise that the response on behalf of the Council must be limited to comments on process, so as not to prejudice the proceedings.
- 5.6 In respect of any ongoing or contemplated proceedings, all enquiries must be addressed to either the appropriate Divisional Director or Corporate Director. On no account is the Councillor to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.

5.7 If a Councillor believes that the Council's actions or intentions are wrong, they should inform the Corporate Director concerned. It must then be for the Corporate Director to determine what action to take. If the Councillor remains unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

## **6. REPORTS**

6.1 Officers' reports should contain clear, evidence-based advice as to why a course of action is being recommended. From time to time corporate advice is given to officers on report writing and they should take care to follow it. The report should lay out all relevant factors for the decision maker, and examine all alternatives in an even handed way. Officers should take care to include even unpopular options if they feel they are relevant.

6.2 The relevant Corporate Director will always be fully responsible (and retains ultimate responsibility) for the contents of any report submitted in their name. Any issues arising between a Councillor and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

6.3 Councillors have the right to criticise reports or the actions taken by officers, but they should always:-

- seek to avoid personal attacks on officers; and
- ensure that criticism is constructive and well-founded.

6.4 Councillors have the ability to agree or reject proposals placed before them by officers, irrespective of the advice or recommendations made by officers so long as they generally act in good faith and exercise reasonableness in decision-making and specifically:-

- take into account relevant and dismiss irrelevant matters; and
  - do not come to a conclusion that no reasonable authority would come to.
- Officers must therefore, be able to report to Councillors as they see fit and without any political pressure.

6.5 A resolution may be passed at meetings which authorises an officer to take action between meetings after consultation with the Chair/ Lead Member/ Portfolio Member etc. It is the officer, not the Chair etc., who takes the action and is responsible for it. The Chair etc. does not himself/ herself have the power between meetings to make decisions.

## **7. OFFICER ADVICE TO PARTY GROUPS**

- 7.1 It must be recognised by all officers and Councillors that in discharging their duties and responsibilities officers serve the Council as a whole and not exclusively any political group, combination of groups or any individual Councillor. Special rules apply to Political Group Assistants and the Mayor's Assistant and those post holders are made aware of them through separate guidance.
- 7.2 There is statutory recognition for party political groups and it is common practice for such groups to give preliminary consideration to matters of Council business in advance of such matters being considered by the relevant Council decision making body. Senior officers may properly be called upon to support and contribute to such deliberations by political groups but must at all times maintain political neutrality. All officers must, in their dealings with political groups and individual Councillors treat them in a fair and even-handed manner.
- 7.3 The support provided by officers can take many forms, ranging from a briefing meeting with the Mayor, a Cabinet Member/ Chair/ Spokesperson prior to a Council, Cabinet, Committee or Sub-Committee meeting to a presentation to a political group meeting. Whilst in practice such officer support is likely to be in most demand from whichever political group is in control of the Council at the time, such assistance is available to all political groups.
- 7.4 Certain points, however, must be clearly understood by all those participating in this process, Councillors and Officer alike. In particular:
- (i) Requests for officers to attend any political group meeting must be made only to the appropriate member of the Corporate Leadership Team. Normally only that person will attend the meeting, although in exceptional circumstances they may be accompanied by one or more Senior Officers.
  - (ii) Unless otherwise agreed in advance with the Chief Executive, officers will not attend political group meetings that include persons who are not Councillors. However, where the Chief Executive has authorised such attendance special care needs to be exercised by officers involved in providing information and advice to such political group meetings. Persons who are not elected Councillors will not be bound by the Code of Conduct for Members (in particular, the provisions concerning the declaration of interests and confidentiality) and for this and other reasons officers may not be able to provide the same level of information and advice as they would to a Councillors only meeting.

- (iii) Officer support (whether in the form of a written report or otherwise) must not extend beyond providing information and advice in relation to matters of Council business. Officer support will be limited to a statement of material facts and identification of options and the merits and demerits of such options for the Authority. Reports or other support will not deal with any political implications of the matter or any option, and officers will not make any recommendations to a political group. Officers (with the exception of Political Group/ Mayor's Assistants) are not expected to be present at meetings or part of meetings when matters of party business are to be discussed.
- (iv) Political group meetings, whilst they form part of the preliminaries to Council decision making are not empowered to make decisions on behalf of the Council. Conclusions reached at such meetings do not therefore rank as Council decisions and it is essential that they are not interpreted or acted upon as such.
- (v) It must not be assumed by any political group or Councillor that any Officer is supportive of any policy or strategy developed because of that officer's assistance in the formulation of that policy or strategy.
- (vi) Officers must respect the confidentiality of any political group discussions at which they are present in the sense that they should not relay the content of any such discussion to another political group or Councillor thereof. However, Councillors should be aware that this would not prevent officers from disclosing such information to other officers of the Council so far as is necessary to perform their duties.
- (vii) Where officers provide information and advice to a political group meeting in relation to a matter of Council business, it should be understood that the officers have a statutory duty to provide all necessary information and advice to the Mayor or Cabinet or relevant Committee/ Sub-Committee when the matter in question is considered.

## **8. MEMBERS' SERVICES AND THE USE OF COUNCIL FACILITIES**

### Members' Services and Members' Enquiries

- 8.1 The Council operates a Member's Enquiries system which is for the Mayor and Councillors to use for routine requests for information and advice. The maximum turn round time expected for such enquiries is 10 working days and officers will chase outstanding enquiries exceeding this period. Matters which are not routine or involve policy should be directed initially to the relevant Corporate Director or Divisional Director or any officer nominated by them.
- 8.2 Both Mayor's Office secretarial staff and the Councillors' Support Team provide assistance to Councillors in their role as Council Members. Staff in these sections may, therefore, be used, as appropriate, to help with work such



as casework, meetings and correspondence to do with Council matters. Full details of the service offered are contained in the Members' Services Guide.

- 8.3 The Mayor's Office and Councillor Support Team staff will assist with booking venues for, and publishing details of, Councillor' surgeries. Councillors' surgeries should normally be held within a Councillor's own ward, but Councillor may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. Councillor must not ask Council officers to assist with any personal, business or party political matters; attend surgeries; or decide how case work will be dealt with.

#### Council Facilities

- 8.4 Councillors must use any Council facilities that are provided in their role as a Councillor strictly for that purpose and no other. For example, Councillors must not use rooms in the Town Hall or other buildings or any of the Council's paper, computers, photocopiers, or printers for any personal, business related or party political matter, nor, for example, on behalf of any community groups of which the Councillor is a member, unless formal approval has been given by the appropriate chief officer.
- 8.5 The use of Council facilities and services by Councillors during a pre-election period for election campaigning or political purposes is not allowed. Specific guidance will be issued at that time to both Councillors and officers.
- 8.6 The Council can only provide legal representation to an individual Councillor where the action is taking place in the name of the Council and the individual deserves the protection of the Council. All such matters should be raised with the Chief Executive in the first instance.

#### Political Party Workers

- 8.7 Councillors are often assisted by political party workers. There is no objection to this, but no non-elected party worker has any entitlement to:
- information to which a Councillor has access in their role as Mayor or Councillor;
  - use Council facilities provided for the use of Councillors.

The principles which apply to use of facilities provided for Councillors (and the officers employed to assist them) apply equally to all Council property and facilities and all Council employees.

#### Use of IT

8.8 From time to time training and guidelines on the proper and effective use of Council IT resources will be issued.

## **9. POLITICAL ASSISTANTS**

9.1 Section 9 of the Local Government and Housing Act, 1989 gives councils a power to appoint political assistants to qualifying political groups. Whilst the Act allows the political affiliation of an individual to be taken into account in the appointment of any Political or Mayor's Assistant, they remain officers of the Council and must therefore not undertake any activity, which may be deemed unlawful. In this context, it should be realised that officer support to the political groups is in the context of their role in the discharge of Council business and although it may require liaison with political parties, at both local and national level, should not be used in promoting the views of an individual political party or undertaking campaigning or other party political business.

9.2 Political assistants hold politically restricted posts and therefore also face restrictions on their personal political activity.

## **10. COUNCILLORS' ACCESS TO INFORMATION**

### General

10.1 The following paragraphs identify the rights of Councillors and the procedures that they must comply with when applying for access to Cabinet/ Committee/ Sub-Committee papers and other documents/ information. These paragraphs take into account the following:

- Relevant legislation including the Local Government Act 1972; the Data Protection Act 1998; the Freedom of Information Act 2000; and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089)
- Local Government Transparency Code 2015
- Open and accountable local government: plain English guide
- Access to Information Procedure Rules (Part B Section 27 of the Constitution)
- Relevant case law

10.2 In principle, Councillors have the same ordinary rights of access to certain information as is enjoyed by the general public but they also have the right to access any other information (i.e. confidential or exempt) held by the Council of which they are a Councillor provided that it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor (see "Need to Know" below). This right of access of additional access may not

extend to the publication of or otherwise making public such information as there may be issues of confidentiality.

#### Access to Committee Papers for Forthcoming Meetings

10.3 The rights of Councillors can be summarised as follows:-

- (i) Councillors enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.
- (ii) Councillors of the appropriate Cabinet/ Committee/ Sub-Committee will have a good reason for access to all Part II exempt information on the respective Cabinet/ Committee/ Sub-Committee agenda under the “Need to Know” principles (see below).
- (iii) Councillors of the Overview and Scrutiny Committee will have a prima facie “Need to Know” where they require access to Part II Cabinet agenda items as part of their scrutiny function provided the subject matter is within the Committee/ Sub-Committee’s terms of reference.
- (iv) All other Members who require access to confidential/ exempt Cabinet/ Committee/ Sub-Committee documentation will need to request disclosure under the Freedom of Information Act 2000 or demonstrate a “Need to Know” by complying with the principles set out below.

#### Access to Other Documents/Information – “The Need to Know”

- 10.4 It is important to note that in some cases access to information to which the public is not entitled only applies where Councillors are clearly carrying out their role as elected representatives. Where a Councillor has a financial or personal interest in a matter the Councillor will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Councillor must make it clear that they are acting in their private capacity and not as a Councillor.
- 10.5 Under common law principles Councillors have the right to access information held by the Council where it is reasonably necessary to enable the Councillor to properly perform their duties as a Councillor. This is known as the “Need to Know”. This means that information must not be used for party political purposes.
- 10.6 The common law “Need to Know” is the prima facie right of Councillors to inspect documents of the authority which exist as Councillors are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Councillors who do not have statutory rights to exempt or confidential information and to other

documents held by the Council under local government legislation or the Freedom of Information Act 2000.

- 10.7 For example, a Councillor is likely to have a prima facie “Need to Know” where there has been a legitimate Ward problem and needs access to the documents that are relevant to that specific problem. Also, for example, a Cabinet Member whose Portfolio covers the matter in question and they need to be aware of what is occurring for the purpose of their Cabinet position.
- 10.8 Access to information on the basis of a ‘Need to Know’ does not exist where the Councillor is considered to be “fishing” for information or seeks access for an ulterior/improper purpose (e.g. for a private purpose). Case law has established that mere idle curiosity as to what is in the documentation will not be sufficient.
- 10.9 It should be noted that some material (for example if commercial sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a Councillor to exercise their role as an elected representative.
- 10.10 There will also be a range of documents which, because of their nature are either not accessible by Councillors (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Councillors of other political groups. An example of this latter category would be draft documents compiled in the context of emerging Council policies and draft Committee reports, the premature disclosure of which might be against the Council’s and the public interest.
- 10.11 Whilst the term “Council document” is very broad and includes, for example, any document produced with Council resources, it is accepted by convention that a Councillor of one political group will not have a “Need to Know” and therefore, a right to inspect, a document which forms part of the internal workings of another political group.

#### Use of Council Information – Confidentiality

- 10.12 Procedural Rules and specific local procedures (e.g. on contracts) require Councillors and officers to maintain confidentiality in certain circumstances. Officers are bound by their contracts of employment and any breach of confidentiality will almost certainly lead to disciplinary action. Officers must distinguish between assisting an elected representative in the course of the Councillor’s Council business and dealing with the same person as a client or customer, e.g. a Housing Benefit claimant. In the latter case, Officers will treat the Councillor with the same degree of helpfulness, courtesy and confidentiality as would be afforded to any other member of the public in the

same situation, and interpret the relevant rules and procedures as they would for any other client or customer.

- 10.13 Equally, any Council information provided to a Councillor on the basis of a 'Need to Know' must only be used by the Councillor for the purpose for which it was provided, i.e. in connection with the proper performance of the Councillor's duties as an elected representative of the Council. Confidential or exempt information provided to Councillors may be discussed in Part II Committee meetings or in private meetings of appropriate Councillors and Officers. However, it should not be discussed with, or released to, any other persons. Any information that is provided should be clearly marked as confidential before it is released to Councillors.
- 10.14 In cases where a Councillor discloses information given to him/her in confidence by anyone, or information acquired by the Councillor which they believe, or ought reasonably to be aware, is of a confidential nature then that Councillor may find themselves the subject of a complaint to the Standards Advisory Committee that they have contravened the Code of Conduct for Members.
- 10.15 Similarly, the unauthorised disclosure of confidential or exempt information is regarded by the authority as a serious disciplinary offence for Officers. This includes an unauthorised disclosure to a Councillor.
- 10.16 Any request from a Councillor for information will be treated in confidence by Officers and will not be made known to any other Councillor or political group. Officers are also under a duty not to relate any information disclosed privately by a Councillor(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Councillor, Officer or person not already privy to that information.
- 10.17 The duty of officers to observe a Councillor's confidence however will not apply if the information disclosed relates to something which could severely damage the Council or which is illegal or constitutes maladministration. In this event the matter will be referred to the appropriate Corporate Director and/or Monitoring Officer and Chief Executive for further investigation and action as appropriate.

## 11. WHEN THINGS GO WRONG

### Procedure for officers

- 11.1 If an officer has a complaint about a Councillor it is always preferable to resolve matters informally, through an appropriate senior manager. If the

matter cannot be resolved informally or it is not suitable for such then officers can make a complaint to the Monitoring Officer.

#### Procedure for Councillors

10.2 If a Councillor has a concern about the conduct or capability of an officer, they should raise the matter privately with the appropriate Divisional Director or Corporate Director. Any concern about a Corporate Director should be raised privately with the Chief Executive. Any concern about the Chief Executive should be raised privately with the Monitoring Officer.

#### 11. REVIEW

11.1 The Standards Advisory Committee and the Monitoring Officer will jointly keep this Protocol under review and make recommendations for changes as appropriate. A review will take place annually in any event.

## 33 Employee Code of Conduct

### INTRODUCTION

1. This code aims to guide all employees on their conduct inside work and outside work where this has a bearing on their position within the Council. It is the responsibility of all Council employees to read this Code and work in accordance with it. If you are unsure about any aspect, check it with your line manager or Human Resources.
2. As an employee you should read this Code in conjunction with other relevant parts of the Constitution, Council policies and procedures relevant to your work and more detailed operational guidelines for example in areas such as computer use, The Code, in setting out our values, rules and principles, should not be interpreted as a complete list of what you can and cannot do, but rather to enable you as an employee to understand the ground-rules that all must observe, and the differences in the roles and duties of Members (the Mayor and Councillors) and employees.
3. Any breach of this Code may lead to disciplinary action and may in some instances constitute gross misconduct.

### GENERAL CONDUCT

4. The public is entitled to demand the highest standards of conduct from all local government employees.
5. The Council is extremely conscious that public confidence can be damaged where the integrity of a Council employee is called into question and they are suspected of being influenced by improper motives.
6. Paragraphs 2.1 and 2.2 of the National Joint Council for Local Government Services, National Agreement on Pay and Conditions of the Service states:
  - “Employees will maintain conduct of the highest standard such that public confidence in their integrity is sustained
  - Local codes of practice will be developed to cover the official conduct and the obligations of employees and employers.”

The Council believes:

- (a) The public is entitled to demand of a Local Government Officer conduct of the highest standard and public confidence in their integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives.

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Non-Executive Report of the:  <b>Standards Advisory Committee</b>  Thursday 10 February 2022	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Janet Fasan, Director, Legal Services and Monitoring Officer	<b>Classification:</b> Open (Unrestricted)
Guidance for Members and Officers on Outside Organisations	

<b>Originating Officer(s)</b>	Janet Fasan, Director, Legal Services and Monitoring Officer
<b>Wards affected</b>	(All Wards);

### Executive Summary

The report presents to the Committee the current Guidance for Members and Officers on Outside Organisations and invites members to review the Guidance and consider whether it wishes to make changes or improvements.

This follows discussions by Committee Members and a recommendation by an external reviewer to consider the appropriateness of current arrangements for supporting appointees to outside bodies to fulfil their responsibilities.

### Recommendations:

The Standards Advisory Committee is recommended to:

1. To review and comment on the attached Guidance for Members and Officers on Outside Organisations at Appendix 1 to the report.
2. To consider whether to set up a working group of members for this purpose

### 1. REASONS FOR THE DECISIONS

- 1.1 The Standards Advisory Committee has a role in overseeing standards of member behaviour. It is therefore appropriate for the Committee to consider whether the Guidance provides members with the information necessary to support ethical behaviours and conduct when sitting on outside organisations.

### 2. ALTERNATIVE OPTIONS

- 2.1 The Committee may make any suggestions it deems appropriate for consideration by the Monitoring Officer.

### **3. DETAILS OF THE REPORT**

- 3.1 The Guidance for Members and Officers on Outside Organisations is at Appendix 1 to this report.
- 3.2 The Guidance is designed to members and officers. It sets out general expectations of both and includes an appendix which reflects the duties of directors/trustees as set out in law. It also sets out the various types of organisations that members may typically be appointed to.
- 3.3 The Standards Advisory Committee has a role in overseeing standards of behaviour on the part of members appointed to outside organisations.
- 3.4 The Committee are therefore asked to review the current Guidance as set out in Appendix 1 to the report and make any comments as appropriate for the Monitoring Officer to consider. The Committee could also request that officers undertake a more detailed review looking at any specific issues of concern.
- 3.5 The Monitoring officer has started to review the Guidance , and these changes are reflected in the Appendix.
- 3.6 It should be noted that an external review of the Council's governance, also recommended that the council review the appropriateness of current arrangements for supporting appointees to outside bodies to fulfil their responsibilities. The Guidance document forms a part of the framework of support .

### **4. EQUALITIES IMPLICATIONS**

- 4.1 The Committee should consider the extent to which the Guidance supports equality of opportunity and engagement for all Members and officers including any impact on protected characteristics.

### **5. OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.

5.2 None.

## **6. COMMENTS OF THE CHIEF FINANCE OFFICER**

6.1 There are no direct financial implications arising from this report.

## **7. COMMENTS OF LEGAL SERVICES**

7.1 The Guidance document sets out important information for members that are appointed to outside organisations . It is essential that it is reviewed from time to time to ensure that it reflects the law and meets members' needs.

7.2 The Guidance does not form part of the Members Code of Conduct.

7.3 Whilst the Committee can make recommendations about changes to the Guidance, the final document will need to be approved by the General Purposes Committee.

7.4 As set out at paragraph 4.1 of the report, the Committee should pay regard to the Council's Public Sector Equality Duty (Equality Act 2010) and its obligations to equality and diversity in facilitating and/or discharging the business of the Council including the extent to which they have informed the Guidance and any proposed revisions to it as part of the Committee's review.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

Appendix 1 – Guidance for Members and Officers on Outside Organisations

- **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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## GUIDANCE FOR MEMBERS AND OFFICERS ON OUTSIDE ORGANISATIONS

### 1. Introduction

~~1.1 This document sets out guidance for elected Councillors, Officers and other individuals who are not elected Councillors or Officers, who are appointed or nominated by the Council to serve on outside bodies such as companies, charities and unincorporated associations. It is not intended to apply to representatives who may legitimately promote the Council's own interests, for example at meetings of London Councils.~~

~~1.2 The Council has nomination/appointment rights to a wide range of outside bodies (e.g. voluntary organisations, foundations, trusts, boards of management, central and local authority organisations).~~

~~1.3 The Council values its links with these bodies and appreciates the time and service Councillors, Officers and other individuals devote to the wider community by participating in their work.~~

1.1 This guidance is designed to assist councillors and officers appointed or nominated by the Council to serve on outside organisations, whether as company director, trustee of a charity or a representative on a management committee. It outlines some of the most important responsibilities but you should contact the Monitoring Officer for advice if you are unclear about any of your obligations.

1.2 Outside organisations include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations. You may be involved as a director, trustee, governor or member (with or without voting powers).

1.3 In performing your role, you may be acting in various capacities for example as an individual, as a representative of the Council or as director/trustee.

1.4 This can give rise to conflicts of interest, particularly where the organisation is seeking or receiving funding from the Council. You will always need to be clear about your role and alert to potential conflicts of interest in order to ensure transparency.

### 2. General

2.1 Authority to nominate or appoint ~~c~~Councillors ~~and~~ ~~o~~Officers ~~and other individuals~~ to serve on outside ~~organisations~~bodies rests with the Mayor in respect of Executive functions and ~~the~~ General Purposes Committee in respect of non-Executive functions. All nominations to outside ~~organisations~~bodies are published on the Council's website.

2.2 Any ~~one such Councillor, Officer or individual~~ serving on an outside ~~organisation~~ body has a responsibility to commit to the task, attend meetings and support the work of the organisation. Some organisations have rules about attendance (e.g. missing a number of consecutive meetings may lead to loss of the place on the body). It is therefore for ~~you~~Councillors ~~etc.~~ to understand the extent of the commitment before seeking or agreeing to an appointment to an outside ~~organisation~~body.

**Commented [MM1]:** Should we add something about the situation where someone is on an outside body of their own accord? E.g. if you are involved in an outside body where you weren't appointed by the Council similar issues may arise and you are advised to consider whether there are issues to address' or something like that?

**Commented [JF2R1]:** this is about council appointments though. so if someone is a trustee in their spare time it should be down to them to establish what the need to do

**Commented [MM3R1]:** Should we make that clear in the doc?

2.3 Service on an outside organisation body requires the nominated or appointed person to:

- act according to the rules, constitution and framework of the outside organisation body;
- make independent and personal judgements in line with the duty of care to the outside organisation body;
- report back to the Council and lead member or relevant committee as requested or as necessary;
- behave ethically, and follow the Council's Member or Officer Codes of Conduct, as appropriate **unless this conflicts with other obligations to which the outside organisation body is subject**;
- take an active and informed role in the management of the outside body's organisation's affairs;
- ensure the Council's Register of Interests is updated to include reference to your his/her representational role on the organisation organisation outside body.

2.4 Service on an outside organisation body generally often means that you the Councillor, Officer or other individual cannot represent the Council's interests. For example, if the service is as a trustee or a company director you the appointee has a legal responsibility to act in the interests of the outside organisation body only, as opposed to the interests of the Council or any other body organisation. This could lead to conflicts of interest (including a conflict of loyalty) between your the role as a cCouncillor, Officer or appointed/nominated individual and the role you have on the an outside organisation body.

2.5 When any matter arises within the Council that relates to an outside organisation body on to which you a Councillor, Officer or other have been nominated/appointed individual sits, a conflict of interest may arise. For Councillors, or other nominated/appointed individual serving on Council Committees, The an interest may also arise which must need to be declared and recorded in your on the Councillor or individual's Register of Interests as an officer or councillor.

2.6 For councillors, wA whether or not the interest is a disclosable pecuniary or other registrable non-pecuniary interest under the Code of Conduct for Members will depend on all the circumstances, including whether a member of the public would reasonably consider it is likely to affect your the Member's ability to act in the public interest.

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2.7 Independent or co-opted persons serving on Council Committees are also expected to comply with the Members' Code of Conduct and therefore, should any of those persons also be nominated or appointed by the Council to an outside organisation body, the same principles on managing conflicts shall apply to them as to elected cCouncillors.

2.8 Councillors and ~~aco-opted persons~~ ~~ny relevant individual~~ should refer to the Code of Conduct, any relevant Guidance which the Council has published, and can seek further advice from the Monitoring Officer. Officers will need to seek advice from their Corporate Director as to how best to deal with such a conflict and must have regard to the Officers' Code of Conduct.

2.9 Conversely, when any matter arises within the outside ~~organisation body to which you have been on which a Councillor, Officer or~~ nominated/appointed ~~individual sits~~ that relates to the Council, a conflict of interest may also arise and should be managed in accordance with that ~~organisation's outside body's~~ rules and processes for dealing with conflicts of interest.

2.106 Subject to any other duties and responsibilities ~~you Councillors, Officers and nominated/appointed individuals~~ owe in respect of ~~your their~~ service to the outside ~~organisation body~~ (for example the duty of confidentiality), ~~you those persons~~ should:

(i) provide an annual update on the work of the ~~organisation outside body~~, and

(ii) provide any information relevant to any application from the ~~organisation outside body~~ for funding from the Council to the General Purposes Committee.

~~2.7 For general advice on any aspect of their service, Councillors, or other nominated/appointed individuals, should contact the Members' Service Team.~~

### 3. Legal Advice

3.1 A guide to the law as it affects ~~c~~Councillors ~~and~~, ~~O~~Officers ~~and individuals~~ serving on outside ~~organisations bodies~~ is attached as **Appendix A**. The guide covers the range of different outside ~~organisations bodies~~ and, therefore, those seeking guidance can refer to the relevant section.

3.2 A guide to the eligibility criteria for serving on outside organisations is attached as **Appenix B**,

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## APPENDIX A

### SERVICE ON OUTSIDE **ORGANISATIONS**BODIES A GUIDE TO THE LAW

This advice is for **c**Councillors and **o**Officers who are appointed or nominated by the Council to outside **organisations**bodies whether as a company director, trustee of a charity or representative on a management committee. It sets out some of the most important responsibilities and requirements relating to service on the outside **organisation**body. More than one set of provisions may apply (for example, if a company limited by guarantee is also a charity). It is not meant to be a comprehensive guide. If **you** **Councillors or Officers** have queries then **you****they** should consult the Monitoring Officer.

For the purposes of this Guide, all references to a “Councillor” includes all elected Councillors, and any other individual nominated or appointed by the Council to an outside body.

#### General

1. There are some general provisions which apply to Councillors and Officers who act in the role of company director, charity trustee, or on the committee of management of an unincorporated voluntary organisation.
2. Councillors are under a duty to exercise independent judgement in the interest of the organisation in which they are involved. Whilst it is recognised that Councillors and Officers may have a commitment to representing the Council on an outside body, they must be aware that it is their responsibility to decide what view to take on any question before that organisation. Where a Councillor or Officer is participating in an outside organisation in a representative capacity, s/he must declare that fact to the organisation. There may be a fine line to tread between his/her duty to the organisation and to the Council.
3. The Councillor or Officer in acting as a director/trustee or member of a management committee of an outside **organisation**body must act in the interests of that organisation. A mandate from the Council to vote one way or the other would put the Councillor or Officer in breach of the duty to that organisation. It is permissible to take account of the Council’s wishes, but not to vote simply in accordance with them.  
**The overriding duty when considering an item before the outside **organisation**body is to act in accordance with the interests of that organisation.**
4. Councillors and Officers must ensure that the organisation is properly managed in accordance with the law and the organisation’s own governing document. They must also ensure that avoidable loss is not incurred in managing the organisation. They cannot avoid these responsibilities by not reading the papers or failing to ask for appropriate reports. They will be expected to seek professional advice where appropriate.
5. An individual may not be appointed or nominated as a charity trustee or director if s/he is disqualified from taking up this position. Eligibility requirements are set out in Appendix B.



## COMPANIES

### General

6. On incorporation, a company becomes a separate legal entity which can hold property in its own right, enter into contracts and sue and be sued in its own name. The company is distinct from its members and officers. In the case of a limited liability company, the liability of members of the company is limited to the amount they paid or agreed to pay when they joined the company.

7. Companies limited by shares are those that have a share capital. Each member holds shares and receives a share in the profits made by the company according to the value of the shares held. Shares can be sold. Companies limited by guarantee are those where there is no shareholding. Instead each member agrees that in the event of the company being wound up they will pay a certain amount. This may be as little as £1. This form of company is the most usual in the public and voluntary sector particularly where charitable status is sought.

8. The management of a company is generally the responsibility of a board of directors. The powers of the directors are usually set out in the company's Articles of Association (the rules each company has to govern its internal management). Sometimes, even though a company has been incorporated, the directors may be referred to as members of the committee of management, governors or even trustees. However, this does not change their status as directors. Conversely, sometimes officials are called directors but they are not members of the board. Again, their status will not be affected. Directors are those who are appointed by the company to act in that capacity.

### Directors' Duties

9. A director is an agent of the company. His/her prime duties are as follows:

#### ***(1) Duty to act within powers***

Directors are required to act in accordance with the company's constitution and only exercise powers for the purposes for which they are conferred. This means they must stay within the constraints of the objects clause, if there is one, and must observe the other terms of the Articles of Association.

#### ***(2) Duty to promote the success of the company***

A director must act in a way that s/he considers, in good faith, would be most likely to promote the success of the company for the benefit of the company's members as a whole. Where the purposes of the company include things other than the benefit of the members, for example where the company is a charity, working to achieve these things will amount to working for the success of the company.

#### ***(3) Duty exercise independent judgement***

A director is under a duty to exercise independent judgement. This means that they must not be unduly influenced by the wishes or instructions of others, though it is permissible for them to take account of the interests of the third party which they

represent. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote and speak simply in accordance with the Council mandate. To do so would be a breach of duty.

***(4) Duty to exercise reasonable care, skill and diligence***

A director must exercise the care, skill and diligence which would be exercised by a reasonably diligent person with both the general knowledge, skill and experience that the director actually has, and that to be expected of a person carrying out his/her functions in relation to the company. In effect a director must meet the higher of the two requirements. A director is not deemed to be an expert, but is expected to obtain expert advice if necessary.

***(5) Duty to avoid conflicts of interest***

A director must avoid a situation where s/he will have, or may have, an interest that conflicts with the interests of the company. There may be actual or potential conflicts between the interests of the Council and the interests of the company. In such circumstances the Councillor or Officer should notify the Council and the company and, if appropriate, take no further part in the determination of the matter giving rise to the interest. For example, this could occur where the Council **wais** considering making a grant to the company, or determining a permission, licence or consent in relation to the company. In extreme cases, if such conflicts regularly arise, it may be necessary for the Councillor or Officer to resign either from the company or from the Council.

***(6) Duty not to accept benefits from third parties***

A director must not accept a benefit from a third party conferred by reason of his being a director or his doing (or not doing) anything as a director. However, the duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. Acceptance of a benefit may also be authorised by the members or, in some cases, by the board.

***(7) Duty to declare interest in proposed transaction or arrangement***

A director must declare a direct or indirect interest in a proposed transaction or arrangement with the company that s/he is (or should be) aware of. No disclosure is necessary if the other directors are (or should be) aware of the interest, or if it cannot reasonably be regarded as likely to give rise to a conflict of interest. The interest of a person connected to the director, for example a family member, must be disclosed. Whether the director is then allowed to vote will depend on the Articles of Association.

***(8) Duty to ensure compliance with the Companies Acts***

Directors are under an obligation to see that various information is filed at Companies House. They also have a duty to prepare and file the company's accounts, and to maintain certain statutory books and registers. Failure to do so may incur fines and persistent default can lead to disqualification as a director.

## **Directors' Liabilities**

10. Directors may be liable in the following circumstances:

(1) The remedies available against a director for a breach of the duties set out at paragraphs 9(1-3) and 9(5-7) above include damages, accounting for profits made, restitution of property and injunctive relief. In practice damages are by far the most common remedy. Damages are the only remedy for a breach of the duty set out at paragraph 9(4).

(2) The company's name must clearly be shown on its business stationery. The company number, place of registration and registered office address must be shown on business letters, order forms (including equivalent emails) and any company website. If any of the directors' names are shown then they must all appear. Non-compliance is an offence and the directors and company officers can be fined.

(3) If a director knows or ought to know that there is no reasonable prospect of the company avoiding liquidation, a Court may require that director to contribute to the company's assets on liquidation if the company continues to trade. This is known as wrongful trading. No such order will be made if the Court is satisfied that the director took all reasonable steps to minimise the loss to the creditors. However, liability can be incurred through failing to act. If a director has concerns about the company's financial position he/she would be well advised to inform the other directors and seek advice from the company auditors. He/she should try to ensure that further debts are not incurred.

(4) A director will also be liable if to his/her knowledge the company carries on business with intent to defraud creditors or any other person, or for any other fraudulent purpose. Fraudulent trading can lead to disqualification from acting as a director. It is also a criminal offence and can lead to a fine or imprisonment.

(5) All cheques and similar documents which purport to be signed on behalf of the company must bear the company name. Where they do not, the director signing on behalf of the company may be liable to a fine and may also be liable to the payee if the company fails to honour the cheque. It is, therefore, wise for directors to make sure that all documents they sign on behalf of the company state very clearly that they act as agent for the company, (e.g. Director, for and on behalf of).

(6) A third party who enters into a contract on the assumption that a director has power to bind the company, may be able to claim damages against the director if it subsequently transpires that the director had no such power. Directors would be well advised to ensure that contracts are approved by the board and that the authority to enter into any contract has been properly delegated before signing it.

(7) Though company liability ceases on dissolution, the liability of the directors (if any) may still be enforced after dissolution.

## **Indemnities and Insurance**

11. The following arrangements apply:

(1) Directors cannot be indemnified by the company against liability arising out of negligence, default, breach of duty or breach of trust in relation to the company. However, the company's Articles of Association may allow for directors to be indemnified by the company against liability to a third party, although this must not extend to payment of a criminal fine, a financial penalty payable to a regulatory authority, or liabilities incurred in certain legal proceedings where the director is unsuccessful. Please note that it is lawful for companies to purchase insurance to protect their directors against claims of negligence, breach of duty, breach of trust and default. Directors may, therefore, wish to consider maintaining such insurance. For professional directors (accountants, solicitors, etc.) providing specialist knowledge and expertise, professional indemnity insurance may be available at a cost.

(2) The first recourse would be to ensure that the company provides insurance. The Council may provide indemnities for Councillors or Officers when appointing them to act as directors, and has insurance to cover any losses which they may suffer through acting conscientiously as a director, ~~although the cover only.~~

#### **Local Authorities (Companies) Order 1995**

12. This Order sets out rules concerning local authorities' involvement in "regulated companies" which are subject to extensive controls. "Regulated companies" are so defined if they are controlled or influenced by the local authority. These are at present relatively rare, but one such example is London Councils Limited. Members and Officers can obtain further information on the additional rules affecting such companies [from the Monitoring Officer upon request.](#)

#### **CHARITIES**

##### **General**

13. To be a charity an organisation must operate for one of the following charitable purposes and be able to demonstrate that its aims are for the public benefit:

- the prevention or relief of poverty;
- the advancement of education;
- the advancement of religion;
- the advancement of health or the saving of lives;
- the advancement of citizenship or community development;
- the advancement of the arts, culture, heritage or science;
- the advancement of amateur sport;
- the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- the advancement of environmental protection or improvement;
- the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
- the advancement of animal welfare;
- the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;

- other purposes recognised as charitable under existing law and any new purposes which are similar to another prescribed purpose. ~~14. A charitable organisation must operate for the public benefit and have exclusively charitable purposes. An organisation that operates for political purposes does not qualify for charitable status.~~

14. A charitable organisation must operate for the public benefit and have exclusively charitable purposes. An organisation that operates for political purposes does not qualify for charitable status. To register as a charity the organisation must submit its governing document (constitution or rules, trust deed, or Memorandum and Articles of Association – depending on whether it is an unincorporated association, trust or limited company) plus any other required documents to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.

15. Those who are responsible for the control and administration of a charity are referred to as charity trustees, and will have those obligations even where the charity has the legal form of a company limited by guarantee. Trustees of a charity retain personal liability, and can only delegate to the extent that the governing document authorises them so to do.

16. Specific guidance for those serving on charitable organisations is available from the Charity Commission.

#### **Trustees' Duties**

17. Trustees have the following duties:

(1) Trustees must take care to act in accordance with the governing document and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, (and as relevant the Trustee Acts) and should note the particular requirements of the applicable Acts in respect of land transactions.

(2) Trustees must ensure the charity is carrying out its purposes for the public benefit, must always act in the charity's best interests and act with reasonable care and skill.

(3) Generally speaking, trustees must not profit from their position. They cannot receive remuneration or any other personal benefit without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.

(4) Trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent where this is required.

(5) If charitable income exceeds £10,000, the letters, advertisements, cheques etc. must bear a statement that the organisation is a registered charity.

(6) Trustees are under a duty to ensure compliance with all relevant legislation and other regulators (if any) which govern the activities of the charity.

(7) Trustees have a duty of care to their charity if they work with vulnerable groups including children and will need to take the necessary steps to safeguard and take responsibility for them.

### **Trustees' Personal Liability**

18. If in doubt, always consult the Charity Commission. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.

19. Liabilities may arise in the following ways:

(1) Generally, a trustee incurs personal liability if s/he/she:

- acts outside the scope of the governing document
- falls below the required standard of care
- acts otherwise than in the best interests of the charity, in a way which causes loss to the charity
- makes a personal profit from the charity's assets.

(2) In such circumstances the trustee will incur personal liability for losses incurred and/or for personal gain.

(3) Trustees can be personally liable to third parties because, unlike a company, a trust or unincorporated association has no separate identity from the trustees. The governing document will normally provide for trustees to be given an indemnity from the charity's assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the charity they should seek an indemnity from their successors. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course, but will be personally liable if they commit a breach of trust (see (1) above).

(4) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

### **Indemnities**

20. An indemnity can be given from the charity's assets provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. The premiums can be paid out of the charitable funds so long as there is no express prohibition in the governing document, the trustees observe their duty of care, the insurance is in the best interests of the charity and the cost is reasonable.

## **COMMITTEES OF MANAGEMENT**

### **Unincorporated Associations**

21. Groups which are not trusts or limited companies are “unincorporated associations”. The rules governing the association’s members’ duties and liabilities will be set out in a constitution, which is an agreement between the members as to how the organisation will operate. Usually the constitution will provide for a management committee to be responsible for the everyday running of the organisation. An unincorporated association may be charitable and may register as a charity.

22. Property will have to be held by individuals, and contracts entered into ‘on behalf of unincorporated associations, as they have no separate legal identity from their members.

### **Duties**

23. Broadly, those who are elected or appointed to the association’s Management Committee must act within the constitution, and must take reasonable care in exercising their powers and will have the responsibility for holding property and entering into contracts for the association.

### **Liabilities**

24. The following liabilities may arise:

(1) Generally, the Management Committee members are liable for the acts of the organisation, but are entitled to an indemnity from the funds of the organisation if they have acted properly. If there are not enough funds, the Committee members are personally liable for the shortfall.

(2) If one person is appointed by the constitution to act as the agent of the organisation for certain purposes, then that person acts as the agent of all the members, who have joint and several liability for the agent’s actions.

(3) Members of the committee of management will have personal liability if they act outside the authority given to them or if they do not comply with statute e.g. the payment of employees’ tax etc.

### **Indemnities**

25. Members will be entitled to an indemnity if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution.

## APPENDIX B

### Eligibility to serve on Outside Organisations Bodies

#### Trustee

Prospective Trustees must meet the following eligibility requirements before any appointments can be made. They must:

- Be at least **18 years old** or at least 16 years old if the charity is also a Company or Charitable Incorporated Organisation (CIO).
- Have no unspent conviction for an offence involving dishonesty or deception.
- Not be declared bankrupt or be subject to bankruptcy restrictions, an interim order or have an individual voluntary agreement (IVA) with creditors.
- Not be disqualified from being a company director.
- Not been removed as a trustee by either the charity commission, the Scottish charity regulator or the High Court due to misconduct or mismanagement.
- Not be disqualified from being a trustee by an order of the Charity Commission under section 181A of the Charities Act 2011

#### Director

Prospective Directors must meet the following eligibility requirements before any appointments can be made. They must:

- Be at least **16 years old** for the appointment to the Outside organisationBody to take effect (section 157 Companies Act 2006).
- Not be subject to a bankruptcy restrictions order or undertaking, or a debt relief restrictions order or undertaking.
- Not be subject to an order made under section 429(2)(b) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual).
- **Not** be convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, with the receivership of a company's property or with them being an administrative receiver of a company (section 2, Company Directors Disqualification Act 1986).