

Appendix A

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1. Introduction and Purpose of the Protocol

- 1.1 This protocol is part of the Council's governance arrangements and should be read together with the Council's Constitution, the Code of Conduct for Members and disciplinary codes which provide guidance or obligations which Members and officers must consider. They regulate the conduct of others and other relevant codes of guidance.
- 1.2 The protocol has been developed to support the high standards of leadership and performance of members and officers. It also explains the working relationship between Members and officers, what they can expect of each other and what to do when working together. It contains interpretation and guidance on some of the issues which commonly arise
- 1.3 The Protocol applies to the Mayor, elected Members, Co-opted members of the Council (collectively referred to as Member(s) in the remainder of this document). The Protocol applies at all times when Members act in their capacity as Members (or claim to act or give the impression of acting in that capacity).

The protocol also applies to officers, meaning all persons employed by the Council whether full or part time; fixed term contract; agency or consultant

staff. 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.

- 1.4 The purpose of this Protocol is to assist you, as a Member and as an Officer, in modelling the behaviour that is expected of you. It is absolutely necessary for Members and officers to work together and it is essential that there is mutual respect between both to achieve the shared purpose of improving the lives of residents. Together, they bring the critical skills, experience and knowledge required to manage an effective public sector organisation. Members provide a democratic mandate to the Council, whereas officers contribute the professional expertise needed to deliver the policy framework agreed by Members.
- 1.5 As an officer you may encounter Members in your day to day role eg when you receive a Members Enquiry, if you work with Members in the preparation of committee reports or if you attend committee meetings, liaising on a policy update. This Protocol will apply to each of those occasions. 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.
- 1.6 When Members are appointed to an outside body or partnership organisations as a representative of Tower Hamlets Council, you need to be aware that the Code of Conduct for Members applies to these appointments. However, Members are expected to be aware of any rules of conduct set out by that outside body. 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.
- 1.7 Breach of this Protocol by 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 breach of this Protocol may result in a disciplinary investigation. It is recognised that there may be differences of opinion between members and officers. Ideally, these differences can be resolved amicably.
- 1.8 A 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 AND OFFICERS

Members

- 2.1 As referred to in Part A of the Council's constitution, as a Member in undertaking my role:
- a) I am a policy-maker and carry out a number of strategic functions;
 - b) I represent my community and I am the advocate of and for my community;
 - c) I effectively represent the interests of my ward and of individual constituents;
 - d) I respond to constituents' enquiries and representations, fairly and impartially;
 - e) I participate in the governance of the Council;
 - f) I make myself available to represent the Council on other bodies; and
 - g) I maintain the highest standards of conduct and ethics

Officers

As an Officer in undertaking my role:

- 2.2 a) I am employed by and I am accountable to the Council .
- 2.3b) With the exception of Political Assistants and the Mayor's Assistant, I work to the instructions of my senior officers, not individual Members or Political Groups.
- 2.4 c) I manage and provide the Council's services within the responsibilities delegated to me including the effective management of employees and operational issues.
- 2.5 d) I have a duty to keep Members of all political groups including Independents fully informed about developments of significance in relation to council activities.
- 2.6 e) I have a duty to make ward Members and portfolio holders aware of council activities or council related activities within their wards or relevant to their portfolio.

3. THE RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

- 3.1 Local Authorities exist to improve the lives of the residents in the borough. Members and officers strive to achieve this. However, when there is miscommunication and things go wrong, it can detract from this common goal. Members and officers should have a relationship that instils mutual trust and respect. 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.

General Expectations of Conduct

- 3.2 Everyone in public office at all levels; who serve the public or deliver public services, including Members and local authority officers; should uphold the Seven Principles of Public Life

<https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2> also known as the Nolan Principles . The Nolan Principles are set out in Appendix A of the Members Code of Conduct

- 3.3 This section sets out the obligations and the common aims of both members and officers which should assist in achieving the aim of making things better for the population of the borough.

Courtesy

- 3.4 As a Member and as an officer we should :

a) respect each other's non-working time and not make contact during non-working time.except in emergencies.

b) be courteous to each other at all times even if we disagree strongly with their respective views. We should not shout or raise our voices in an aggressive or rude manner.

Lines of conduct between Members and officers

- 3.5 As a Member, I am aware that:

a)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. I must not attempt to influence such decisions.

b) I am 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 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.

3.6 In making such an approach, the request should be made using the Members' Enquiries system for routine requests for information and advice – see paragraph 8.1 below . If the impact on the issue on constituents is extremely urgent, the Member can contact 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. Members should use the Members' Enquiries system for routine requests for information and advice – see paragraph 8.1 below.

3.7 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, 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 operates a Member's Enquiries system (see section 8.1 for more details).

3.8 Where Members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. 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, Members and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.

3.9 Officers within a Directorate are accountable to their Corporate Director and whilst officers should always seek to assist a Member, they must not go beyond the bounds of whatever authority they have been given by their Corporate Director.

Obtaining or granting favours

3.10 The Code of Conduct for Members emphasises the need for Members to avoid behaviour which could be viewed as conferring an advantage or disadvantage on an officer. Members must not seek personal favours from officers. Officers must not be tempted to give favours to please a Member. An example of favour seeking would be asking whether a Members' 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 Members' on matters which directly concern them as employees

Member involvement in officer issues

3.11 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. Member involvement in employment issues generally, including where they relate to senior officers, is set out in the Local Authorities (Standing Orders) (England) Regulations 2001

3.12 Occasions may arise where officers try to involve Members in day-to-day staff/ management issues. Members 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 Members ; to do so may result in disciplinary action being taken.

Personal Familiarity

- 3.13 Personal familiarity between Members 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 Members and other party groups.
- 3.14 Informal and collaborative two-way contact between Members 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 Members and officers work closely together but it is important that close relationships between Members 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.
- 3.15 It is not enough to avoid actual impropriety, Members 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 Member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.

Bullying

3.16 As a Member:

- i) I do not bully any person
- ii) I do not harass any person
- iii) I promote equalities and do not discriminate unlawfully against any person 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 Member or officer has some actual or perceived influence over. This can be contrasted with the legitimate challenges which a Member or officer can make in challenging policy or scrutinising performance.

3.17 Bad relations between Members and officers can be destructive to good governance. Members 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.

- 3.18 Where a Member has a concern about an officer or the Council services then this should be made to the Director of the service where the Member feels the fault lies or to the Chief Executive where it involves a Director personally. Indeed, Members 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. Members should not criticise officers in public as 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 Members in private.

Lines of conduct between Members and officers

- 3.19 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. Members should not seek to influence such decisions.
- 3.20 A 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 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.
- 3.21 In making such an approach, the request should be made using the Members’ Enquiries system for routine requests for information and advice – see paragraph 8.1 below. If the impact on the issue on constituents is extremely urgent, the Member can contact 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.
- 3.22 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, 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 operates a Member’s Enquiries system (see section 8.1 for more details).
- 3.23 Where Members and officers share an office building particular care needs to be taken to maintain appropriate lines of contact. 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, Members and officers should use the meeting facilities provided and sensitive or confidential issues should not be discussed in the open plan environment.

- 3.24 Officers within a Directorate are accountable to their Corporate Director and whilst officers should always seek to assist a Member, they must not go beyond the bounds of whatever authority they have been given by their Corporate Director.

MEMBER TO MEMBER EXPECTATIONS Whilst the Protocol is primarily aimed at the interaction between Members and Officers, the same principles apply to interactions between Members. Members are referred to the Member Code of Conduct for the general principles in relation Member conduct. Therefore Members should be entitled to expect from each other:

- Respect,
Respect means politeness, and courtesy in behaviour, speech and in the written word. It includes
 - Not being subjected to Bullying Behaviour or personalised attacks - see 3.10 above
 - respect for differing political views and values; Debate and having different views are all part of a healthy democracy .Having a difference of opinion and defending your views through Members arguments and public debates are part of political life. Being respectful in defending those views will helpo avoid conflict and stress
 - commitment to high standards of debate; A culture of mutual respect can encourage positive debate and meaningful communication
 - maintenance of confidentiality; - Any information received on the basis that it is reasonably necessary to enable a Member to perform their role should only be used for the purposes the information was provided
 -
 - compliance with the Council’s Constitution including the Code of Conduct for Members.

5. MEMBERS 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. Members

have a clear role in representing residents' and general public interests. In this representative capacity, Members 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 Member is enquiring on behalf of an individual or body involved in legal action by or against the Council. In such cases, Members will be required to balance their representative role with their wider responsibilities in representing the corporate interests of the authority. For this reason, Members must be circumspect in any dealing with persons taking action against the Council, or against whom any legal action is being taken. Particularly, Members 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 Members 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 Members 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, Members 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 Members have every right to information on how any such matter is being dealt with and a duty to represent their constituents, Members 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 Director or Corporate Director. On no account is the Member to contact any officers involved in the proceedings to discuss or make any enquiries regarding the proceedings.
- 5.7 If a Member 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 Member remains

unhappy with the action taken, then they should refer the matter to the Council's Monitoring Officer or to the Chief Executive.

6. OFFICERS REPORTS

6.1 When an Officer provides a report it 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 Member and a Corporate Director in this area should be referred to the Monitoring Officer or Chief Executive for resolution.

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

- not make personal attacks on officers; and
- ensure that criticism is constructive and well-founded.

6.4 Members 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 Members 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 Members 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 Member. 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 Members 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 including ungrouped Members. Clarification of the support provided can be obtained from the Member Support Team
- 7.4 Certain points, however, must be clearly understood by all those participating in this process, Members 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 Members. 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 Members 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 Members 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 Member 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 Member thereof. However, 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' 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 Members to use for routine requests for information and advice. A copy of the procedure is found at [Member Enquiries Policy and Process \(towerhamlets.gov.uk\)](http://towerhamlets.gov.uk) 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 Director or any officer nominated by them.
- 8.2 Both Mayor's Office staff and the Member's ' Support Team provide assistance to Members 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.
- 8.3 The M Members' Support Team staff will assist with booking venues for, and publishing details of, Member' surgeries. The Mayor's Office book the Mayor's surgeries. Members' surgeries should normally be held within a Members' own ward, but a Member may arrange a surgery in premises outside their ward if this is necessary to provide suitable surgery facilities for their own constituents. Member 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 Members must use any Council facilities that are provided in their role as a Member strictly for that purpose and no other. For example, Members must not use rooms in the Town Hall or other buildings or any of the Council's paper, email addresses, telephone numbers, 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 Member is a member, unless formal approval has been given by the appropriate chief officer.
- 8.5 The use of Council facilities and services by Members during a pre-election period for election campaigning or political purposes is not allowed. Specific guidance will be issued at that time to both Members and officers.
- 8.6 *The Council will only provide indemnities to Members or officers in circumstances which fall within the Local Authorities (Indemnities for Members and Officers) Order 2004. The Chief Executive will decide in the individual circumstances of each case whether an indemnity is appropriate.*

Political Party Workers

- 8.7 Members 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 Member has access in their role as Mayor or Member ;
 - use Council facilities provided for the use of Members.

The principles which apply to use of facilities provided for Members (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. MEMBERS' ACCESS TO INFORMATION

General

10.1 The following paragraphs identify the rights of 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 General Data Protection Regulations; 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, 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.

Access to Committee Papers for Forthcoming Meetings

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

- (i) Members enjoy the same access rights as members of the public in respect of Part I Cabinet/Committee/Sub-Committee papers.

- (ii) Members 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) Members 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 Members are clearly carrying out their role as elected representatives. Where a Member has a financial or personal interest in a matter the Member will only be entitled to the same access as would be the case for a private individual. In these circumstances, the Member must make it clear that they are acting in their private capacity and not as a Member .
- 10.5 Under common law principles Members have the right to access information held by the Council where it is reasonably necessary to enable the Member to properly perform their duties as a Member. 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 Members to inspect documents of the authority which exist as Members are under a duty to keep themselves informed of Council business which relate to their role as elected representatives. Thus, this right applies to Members 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 Member is likely to have a prima facie “Need to Know” where they have 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 Member 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 commercially sensitive) may be redacted from information that is disclosed, if this does not affect the ability of a Member 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 Members (such as the personal records of an individual) or are accessible only by the political group forming the administration and not by the Members 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 Member 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 Members 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 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 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.
- 10.13 Equally, any Council information provided to a Member on the basis of a 'Need to Know' must only be used by the Member for the purpose for which it was provided, i.e. in connection with the proper performance of the Member's duties as an elected representative of the Council. Confidential or exempt information provided to Members may be discussed in Part II Committee meetings or in private meetings of appropriate 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 Members.

- 10.14 In cases where a Member discloses information given to him/her in confidence by anyone, or information acquired by the Member which they believe, or ought reasonably to be aware, is of a confidential nature then that Member 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 Member.
- 10.16 Any request from a Member for information will be treated in confidence by Officers and will not be made known to any other Member or political group. Officers are also under a duty not to relate any information disclosed privately by a Member(s) (e.g. during Part II discussions at Committee, etc., informal briefings, private conversations or Group meetings) to another Member, Officer or person not already privy to that information.
- 10.17 The duty of officers to observe a 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.

11. WHEN THINGS GO WRONG

Procedure for officers

- 11.1 If an officer has a complaint about a 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 Members

- 11.2 If a Member has a concern about the conduct or capability of an officer, they should raise the matter privately with the appropriate 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.

12. REVIEW

- 12.1 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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